

**STATE OF MINNESOTA
IN COURT OF APPEALS
A21-1742**

State of Minnesota,
Respondent,

vs.

Sara Jane Olson,
Appellant.

**Filed November 21, 2022
Affirmed
Larkin, Judge**

Hennepin County District Court
File No. 27-CR-20-24441

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Kristyn Anderson, Minneapolis City Attorney, Amy J. Tripp-Steiner, Assistant City Attorney, Minneapolis, Minnesota (for respondent)

Bruce D. Nestor, De Leon, Nestor & Torres, Minneapolis, Minnesota (for appellant)

Considered and decided by Reyes, Presiding Judge; Larkin, Judge; and Halbrooks, Judge.*

SYLLABUS

The circumstantial-evidence standard of review is applied by the court on appellate review; a fact-finder is not required to apply that standard when determining whether the state has proved a defendant's guilt beyond a reasonable doubt at trial.

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

OPINION

LARKIN, Judge

Appellant challenges the district court's finding, after a court trial, that she was guilty of a petty-misdemeanor offense for using a controlled-access highway as a pedestrian. She argues that the evidence was insufficient to sustain the finding of guilt. We affirm.

FACTS

Respondent State of Minnesota charged appellant Sara Jane Olson with a petty-misdemeanor offense under Minn. Stat. § 169.305, subd. 1(c) (2020), alleging that she had been a pedestrian on a "controlled-access highway." Specifically, the state alleged that Olson was among a large group of demonstrators who walked onto Interstate 94 (I-94).

Olson was tried on the charge to the district court. The state called two law-enforcement officers as witnesses. Lieutenant Eric Micek testified that on November 4, 2020, a large group of demonstrators was present on Cedar Avenue near I-94. Lieutenant Micek was part of a team monitoring the group's movements using a freeway-camera system. Lieutenant Micek observed the group turn from Cedar Avenue onto the eastbound entrance ramp to I-94. He went to the scene and observed the group walking "in the eastbound lane of traffic" on I-94.

Lieutenant Micek testified that law enforcement "encircled" the group of approximately 650 demonstrators on I-94, told them they were under arrest, and directed them to "sit down." He testified that the Cedar Avenue entrance ramp was about five blocks from the arrest location. Law enforcement identified and photographed the arrested

demonstrators. Olson was among those arrested. Lieutenant Micek testified that he photographed Olson while she was standing “in the right lane of eastbound [I-94] just west of 25th Avenue.”

Lieutenant Micek testified that as he approached the demonstrators, he observed “a couple” demonstrators on the grass-covered shoulder of I-94. He testified that those people “[m]ostly ended up being media.” Lieutenant Micek testified that he advised the people in the grassy area that “they needed to leave the area” and that they “couldn’t be on the freeway,” but he acknowledged that he “didn’t encounter all of them.” Lieutenant Micek subsequently testified that if law enforcement had encountered people in the grassy area along I-94, those people would have been swept into the larger group, but he clarified that “the only ones that were in the grassy area other than next to that main group there was media, and they were asked to leave the area immediately, which they did.”

Major Sean Meagher testified regarding his involvement in law enforcement’s response to the demonstrators.¹ He testified that he monitored a live aerial video feed of the demonstrators, which was transmitted from a helicopter. He testified that “[l]ead vehicles” were driven onto I-94 by people participating in the protest to block traffic and then “the mass of people marched onto the freeway and blocked the freeway.” Images from the helicopter video feed were admitted into evidence. They showed “the lead vehicles and the bulk of the people walking southbound on Cedar Avenue,” turning “onto the on-ramp of [I-94],” and then proceeding “eastbound on [I-94].”

¹ The transcript lists Major Meagher’s name as John, but the state’s witness list identifies him as Sean, and the state identifies him as Sean in its brief.

Major Meagher believed that the occupants of the lead vehicles were cited “and allowed to drive off the freeway.” But he acknowledged that “back” or “flank” vehicles “associated with the protest” were towed so that law enforcement “could set up a secure area for processing the people who were being cited.” Major Meagher would not estimate the number of lead vehicles, but he acknowledged that there were at least four. Major Meagher also photographed a Minnesota Department of Transportation (DOT) sign positioned adjacent to the Cedar Avenue on-ramp. The sign stated, “emergency stopping only,” and it “prohibited” pedestrians, bicycles, motorized bicycles, and nonmotorized traffic.

During cross-examination, defense counsel asked Major Meagher if it was possible that “before the encirclement was complete, people could have tried to leave the group or people, if they wanted to, could have tried to join the group?” Major Meagher responded, “I don’t remember people trying to join, but I remember people trying to jump over the fence when they saw law enforcement officers.”

Olson called a defense investigator who testified that he “went down to the area in question and moved alongside the frontage roads for the on-ramps and the highway in this area, specifically noting potential points of ingress and egress.” During the investigator’s testimony, photographs were admitted into evidence showing ingress and egress points in the walls and fencing near the area where the arrests occurred. The investigator acknowledged that the photographs were taken approximately one year after the event in question. Olson did not testify.

Olson moved for judgment of acquittal, and the district court denied the motion. The district court ultimately found Olson guilty as charged and sentenced her to pay a fine, fees and surcharges totaling \$378.

Olson appeals, challenging the sufficiency of the evidence to support the district court's finding of guilt.

ISSUES

- I. Did the district court err by not applying the circumstantial-evidence standard of review when determining Olson's guilt?
- II. Was the evidence sufficient to sustain the district court's finding of guilt?

ANALYSIS

In this appeal, we consider Olson's contention that the evidence was insufficient to support the district court's finding of guilt.

A finding of guilt can be based on direct or circumstantial evidence. Circumstantial evidence is "evidence from which the [fact-finder] can infer whether the facts in dispute existed or did not exist." *State v. Harris*, 895 N.W.2d 592, 599 (Minn. 2017) (quotation omitted). "In contrast, direct evidence is evidence that is based on personal knowledge or observation and that, if true, proves a fact without inference or presumption." *Id.* (quotations omitted).

When considering a sufficiency challenge to a guilty verdict based solely on direct evidence, an appellate court carefully analyzes the record to determine whether the evidence, viewed in the light most favorable to the conviction, was sufficient to permit the fact-finder to reach its verdict. *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989). The

appellate court assumes that the fact-finder believed the state's witnesses and disbelieved any contrary evidence. *State v. Brocks*, 587 N.W.2d 37, 42 (Minn. 1998). The appellate court defers to the fact-finder's credibility determinations and will not reweigh the evidence on appeal. *State v. Franks*, 765 N.W.2d 68, 73 (Minn. 2009); *State v. Watkins*, 650 N.W.2d 738, 741 (Minn. App. 2002). An appellate court will not disturb a guilty verdict if the fact-finder, acting with due regard for the presumption of innocence and the requirement of proof beyond a reasonable doubt, could have reasonably concluded that the state proved the defendant's guilt. *Bernhardt v. State*, 684 N.W.2d 465, 476-77 (Minn. 2004).

However, if the state relied on circumstantial evidence to prove an element of an offense, an appellate court applies a heightened standard of review. *See Harris*, 895 N.W.2d at 601-03 (discussing circumstantial-evidence standard); *State v. Al-Naseer*, 788 N.W.2d 469, 471 (Minn. 2010) (stating that "the heightened scrutiny applies to any disputed element of the conviction that is based on circumstantial evidence"). Under the circumstantial-evidence standard of review, an appellate court first determines the circumstances proved, disregarding evidence inconsistent with the verdict. *Harris*, 895 N.W.2d at 600-01. Next, the appellate court determines "whether the circumstances proved are consistent with guilt and inconsistent with any rational hypothesis other than guilt." *Loving v. State*, 891 N.W.2d 638, 643 (Minn. 2017) (quotation omitted). The appellate court does not defer to the fact-finder's choice between reasonable inferences. *State v. Silvernail*, 831 N.W.2d 594, 599 (Minn. 2013). But an appellate court will not

reverse a conviction based on circumstantial evidence unless there is a reasonable inference other than guilt. *Loving*, 891 N.W.2d at 643.

An appellate court uses “the same standard of review in bench trials and in jury trials in evaluating the sufficiency of the evidence.” *State v. Palmer*, 803 N.W.2d 727, 733 (Minn. 2011). The appellate court does so even if a guilty verdict was based on circumstantial evidence. *See id.* (considering whether circumstantial evidence was sufficient to support a conviction for first-degree premeditated murder).

I.

Olson contends that the district court did not “apply the correct standard for a conviction based on circumstantial evidence, improperly shifted the burden of proof to [Olson] and did not consider whether the circumstances proved are inconsistent with a rational hypothesis other than guilt.” Olson’s arguments in support of those contentions suggest that the district court was required to apply the circumstantial-evidence standard of review when acting as a fact-finder and determining Olson’s guilt. For example, Olson argues that “the language used” by the district court “is not reflective of the requirement that the circumstances proved be ‘consistent with guilt and inconsistent with any rational hypothesis except that of guilt.’”

We are aware of only one circumstance in which a district court must use the circumstantial-evidence standard of review. In *State v. Sam*, this court held that when a district court considers a motion for judgment of acquittal, the court “must apply the same standard appellate courts use to review challenges to sufficiency of the evidence.” 859 N.W.2d 825, 831 (Minn. App. 2015). But Olson does not challenge the district court’s

denial of her motion for judgment of acquittal. Instead, she challenges the district court's ultimate finding of guilt. Thus, Olson essentially presumes that a fact-finder must apply the circumstantial-evidence standard when determining guilt at trial.

In *Harris*, the Minnesota Supreme Court refused to abandon the circumstantial-evidence standard of review and to “adopt in its place a unified standard of review that applies to all evidence, circumstantial or otherwise,” which would have resulted in appellate courts treating direct and circumstantial evidence the same on review. 895 N.W.2d at 597. In doing so, the supreme court recognized the different roles of a fact-finder at trial and an appellate court on review. The supreme court explained that the “circumstantial-evidence standard of review appropriately balances” an appellate court’s “need to defer to the [fact-finder’s] credibility determinations and [its] duty to ensure that defendants not be convicted based on insufficient evidence.” *Id.* at 599. Thus, it is clear that although an appellate court prefers direct evidence to circumstantial evidence when reviewing a determination of guilt on appeal, a fact-finder does not prefer one form of evidence over the other when determining guilt at trial. ²

² The dissenting opinion in *State v. Harris* emphasized that point stating:

Every week in at least one of Minnesota’s 87 counties, a district court instructs a jury that a fact may be proven by direct evidence, or by circumstantial evidence, or by both. The district court admonishes the jury that the law does not prefer one form of evidence over the other.

But, on appellate review, we do not follow that admonition. Our standards of review prefer direct evidence. When we review convictions, we apply one standard for

Moreover, the Minnesota Supreme Court has noted that “tests for sufficiency of evidence to support a conviction should be distinguished conceptually from jury instructions, and that not every sufficiency of evidence test should be read to the jury.” *State v. Turnipseed*, 297 N.W.2d 308, 312 (Minn. 1980). *Turnipseed* reinforces the principle that the standard a court applies to review an evidence-sufficiency challenge on appeal differs from the standard a fact-finder applies when determining guilt at trial.

In sum, a fact-finder at trial does not distinguish between direct and circumstantial evidence when determining whether the state has proved a defendant’s guilt beyond a reasonable doubt. Olson does not cite and we are not aware of any authority indicating that the fact-finder’s role in determining guilt differs based on whether the fact-finder is a judge or a jury, such that a district court must distinguish between direct and circumstantial evidence and apply the circumstantial-evidence standard to determine guilt in a bench trial. In fact, caselaw establishes that an appellate court uses “the same standard of review in bench trials and in jury trials in evaluating the sufficiency of the evidence.” *Palmer*, 803 N.W.2d at 733. Consistent with that approach, the fact-finder at trial—whether judge or jury—should apply the same standard when determining guilt.

For those reasons, we reject Olson’s argument that the district court was required to apply the circumstantial-evidence standard at trial and to articulate “whether the circumstances proved may [have] supported any rational inference other than guilt.” We

convictions based on direct evidence, and we apply another standard for convictions based on circumstantial evidence.

895 N.W.2d 592, 603-04 (Minn. 2017) (Lillehaug, J., dissenting).

reiterate that the circumstantial-evidence standard of review is applied by the court on appellate review; a fact-finder is not required to apply that standard when determining whether the state has proved a defendant's guilt beyond a reasonable doubt at trial. We therefore hold that the district court did not err by not applying the circumstantial-evidence standard when determining Olson's guilt at trial.

II.

We now turn to Olson's contention that the evidence was insufficient to support the district court's finding of guilt. Olson was convicted of violating Minn. Stat. § 169.305, subd. 1(c), which provides:

The commissioner of transportation may by order, and any public authority may by ordinance, with respect to any controlled-access highway under their jurisdictions, prohibit or regulate the use of any such highway by pedestrians, bicycles, or other nonmotorized traffic, or by motorized bicycles, or by any class or kind of traffic which is found to be incompatible with the normal and safe flow of traffic.

At trial, the district court took judicial notice of the fact that the commissioner exercised such authority by issuing order number 30757, which is codified at Minn. R. 8810.0050 (2019):

Pursuant to the Laws of Minnesota 1959, chapter 439, and after due consideration for safety and convenience of public travel on the main roadways, entrance and exit ramps to same on the national system of interstate and defense highways in Minnesota, it is hereby ordered that the use of such main roadways and ramps by pedestrians, bicycles, or other nonmotorized traffic, or by any person operating any such vehicle, is hereby prohibited.

The district court reasoned, and the parties do not dispute, that to establish Olson’s guilt under section 169.305, subdivision 1(c), the state had to prove the following elements:

- (1) I-94 is a “controlled-access highway,”
- (2) the DOT commissioner prohibited pedestrians from using I-94,
- (3) Olson used I-94 as a pedestrian,
- (4) Olson’s use was incompatible with the normal and safe flow of traffic, and
- (5) the incident took place in Hennepin County on the date alleged.

“Pedestrian” is defined as “any person afoot or in a wheelchair.” Minn. Stat. § 169.011, subd. 53 (2020); *see* Minn. Stat. § 169.011, subd. 1 (2020) (“For the purposes of this chapter, the terms defined in this section shall have the meanings ascribed to them.”).

The district court also reasoned, and the parties do not dispute, that the charged offense is one of strict liability. “Statutes that dispense with mens rea and do not require the defendant to know the facts that make [her] conduct illegal impose strict criminal liability.” *State v. Ndikum*, 815 N.W.2d 816, 818 (Minn. 2012) (quotation omitted).

For the purposes of our analysis, we assume without deciding that the district court correctly identified the elements of the charged offense and correctly concluded that the offense is one of strict liability.

Olson concedes that pedestrian traffic is prohibited on the “main roadway” of I-94, and she does not dispute that I-94 is a “controlled-access highway,” that the DOT commissioner prohibited pedestrians from walking on the paved portion of I-94, that walking on the paved portion of I-94 is incompatible with the normal and safe flow of traffic, and that the incident took place in Hennepin County on the date alleged. As to the

remaining element—whether Olson used I-94 as a pedestrian—Olson applies the circumstantial-evidence standard of review on appeal, and the state responds without questioning its application. We assume without deciding that the circumstantial-evidence standard applies here.

The circumstances proved are as follows. A large group of demonstrators walked down Cedar Avenue and proceeded down the I-94 on-ramp. A DOT sign positioned near the on-ramp prohibited pedestrians. Some vehicles assisted the demonstrators by blocking traffic. The demonstrators walked in the eastbound lane of I-94. Officers slowly approached, encircled, and arrested the large group of demonstrators that were walking on I-94. There were approximately 650 people in the group of encircled demonstrators. Olson was among those arrested. As part of the arrest process, law-enforcement individually photographed each of the arrested demonstrators, including Olson.

Although the photographs from Olson’s investigator showed potential points of ingress through the walls and fencing near the arrest location, there was no evidence that those access points were used by the demonstrators. Major Meagher instead saw people attempt to jump over the fences to get off of I-94 when they saw law enforcement officers coming from both sides. Lieutenant Micek observed only “a couple” demonstrators in the grassy area, and although he did not encounter every person in the grassy area, he directed the ones that he encountered to leave. The people on the grassy area were mostly members of the media. Those people were asked to leave the area immediately and did so.

The circumstances proved are consistent with Olson’s guilt, that is, it is reasonable to infer that Olson was among the group of demonstrators that walked on the paved portion

of I-94 or its on-ramp. Olson argues that the circumstances proved are also consistent with a rational hypothesis other than guilt. She acknowledges that demonstrators walked on the entrance ramp and on the paved surface of I-94, but she argues that the evidence does not “rule out” the possibility that, prior to being encircled by police, she never set foot on the paved roadway or entrance ramp. She posits that she “could have” been encircled by police while standing on the grassy area near the roadway and that she could have reached that grassy area by using an entry point in the nearby wall or fencing or by walking on the grassy area adjacent to the entrance ramp and roadway. She also posits that she could have been a passenger in one of the vehicles that blocked traffic and “herded” to the arrest location on the I-94 pavement.

When applying the circumstantial-evidence standard of review, we consider whether “a reasonable inference inconsistent with guilt *can be drawn from the circumstances proved,*” viewed as a whole. *Harris*, 895 N.W.2d at 600 (emphasis added). Alternative hypotheses to guilt may not be based on “mere conjecture.” *State v. Tscheu*, 758 N.W.2d 849, 858 (Minn. 2008). The state’s evidence need not “exclude all inferences other than that of guilt.” *Id.* at 857. “The [s]tate’s obligation is to exclude all *reasonable* inferences other than guilt.” *Id.* Possibilities of innocence do not require reversal “so long as the evidence taken as a whole makes such theories seem unreasonable.” *State v. Taylor*, 650 N.W.2d 190, 206 (Minn. 2002) (quotation omitted).

The circumstances proved do not reasonably support Olson’s alternative theories of innocence. Major Meagher did not observe people joining the group of demonstrators by using entry points in the walls and fencing near the point of arrest. And Lieutenant Micek

observed only “a couple” demonstrators in the grassy area, and although he did not encounter every person in the grassy area, he directed the ones that he encountered to leave. In addition, the people on the grassy area were mostly members of the media. Those people were asked to leave the area immediately and did so. Finally, there is no circumstance proved connecting Olson with any vehicle, let alone a vehicle at the arrest scene on I-94. Thus, Olson’s theories of innocence are based on mere conjecture, and they are unreasonable in light of the circumstances proved as a whole. We therefore hold that the circumstantial evidence was sufficient to prove beyond a reasonable doubt that Olson used a paved portion of I-94 as a pedestrian and to sustain the district court’s finding of guilt.

Because we conclude that the evidence was sufficient to prove that Olson used a paved portion of I-94 as a pedestrian, we do not consider the state’s argument that the charged offense prohibits pedestrians on all parts of I-94, including the adjacent unpaved portions (i.e., the grassy areas). It is therefore unnecessary to address Olson’s challenge to the district court’s finding that an officer “credibly testified that the grassy shoulder on the median . . . is part of I-94 that is prohibited to ‘pedestrian travel.’” And because we do not rely on the district court’s finding regarding Olson’s “age and physical mobility,” it is unnecessary to address Olson’s challenge to that finding. *See State v. Soukup*, 656 N.W.2d 424, 426-27 (Minn. App. 2003) (declining to reverse for harmless error), *rev. denied* (Minn. Apr. 29, 2003).

DECISION

Because the district court was not required to apply the circumstantial-evidence standard when acting as fact-finder at trial, and because the evidence was sufficient to sustain the district court's finding of guilt, we do not disturb that finding.

Affirmed.