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**STATE OF MINNESOTA
IN COURT OF APPEALS
A10-1747**

State of Minnesota,
Respondent,

vs.

Adam Frederick Wagner,
Appellant.

**Filed May 23, 2011
Reversed
Klaphake, Judge**

Ramsey County District Court
File No. 62-CR-09-16713

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Sara Grewing, St. Paul City Attorney, Maureen J. Dolan, Assistant City Attorney, St. Paul, Minnesota (for respondent)

Rodd A. Tschida, Minneapolis, Minnesota (for appellant)

Considered and decided by Klaphake, Presiding Judge; Toussaint, Judge; and Connolly, Judge.

UNPUBLISHED OPINION

KLAPHAKE, Judge

Following a stipulated facts trial conducted under Minn. R. Crim. P. 26.01, subd. 3, appellant Adam Wagner was convicted of two gross misdemeanor offenses: second-degree test refusal (Minn. Stat. § 169A.20, subd. 2 (2008)), and third-degree driving

while impaired (Minn. Stat. §§ 169A.20, subd. 1(1) (2008) and 169A.26 (2008)). On appeal, he challenges his convictions, claiming that the evidence was insufficient because the state did not show that the Wisconsin offenses that were the basis for charging him with aggravated crimes were “in conformity with” Minnesota law. *See* Minn. Stat. § 169A.03, subds. 3(1), 21(a)(4) (2008) (requiring a prior license revocation under a “statute or ordinance from another state, in conformity with any provision listed in clause (1), (2), or (3)”). Because the facts pertaining to enhancement of appellant’s charges were not included in the stipulation that serves as the factual basis for the district court’s finding of guilt, we reverse.

D E C I S I O N

“In Minnesota, an impaired driving offense can be enhanced based on qualified prior impaired driving incidents.” *State v. Schmidt*, 712 N.W.2d 530, 533 (Minn. 2006) (citation to statute omitted); *see* Minn. Stat. § 169A.03, subd. 3(1) (requiring for DWI charge enhancement, “qualified prior impaired driving incident” in the preceding ten years). “In order for an out-of-state conviction or license revocation to be ‘qualified,’ the statute or ordinance that the conviction was based on must be ‘in conformity with’ one of the enumerated Minnesota impaired driving-related statutes.” *Schmidt*, 712 N.W.2d at 533; Minn. Stat. § 169A.03, subd. 20(5) (2008). The precise statutory language states that a “qualified prior impaired driving incident” includes both prior convictions and “prior impaired driving-related losses of license.” Minn. Stat. § 169A.03, subd. 22 (2008).

“[I]n a stipulated-facts trial under rule 26.01, subd. 3, the facts are not disputed, but the court determines if the defendant’s guilt is proved beyond a reasonable doubt.” *See State v. Mahr*, 701 N.W.2d 286, 292 (Minn. App. 2005), *review denied* (Minn. Oct. 26, 2005). When a prior conviction is an element of a charged offense, a party may prove the existence of the prior conviction “by competent and reliable evidence, including a certified court record of the conviction.” Minn. Stat. § 609.041 (2008). As in any case tried without a jury, the court must “make findings in writing of the essential facts” once it has made a general finding of guilt. Minn. R. Crim. P. 26.01, subd. 2(b).

Here, the stipulated facts were drafted and signed by appellant and his attorney and did not include facts that would serve as a basis for enhancing appellant’s charged offenses to gross misdemeanors. The stipulation merely refers to the fact that the amended criminal complaint includes a reference to a Wisconsin driver’s license revocation as a basis for aggravating appellant’s current charges. Other than this statement, the state offered no evidence to demonstrate the factual basis for enhanced charges.¹ Thereafter, the district court “adopt[ed] the stipulated facts as the Court’s findings” and ruled that the state had proved its case.

¹ While an affidavit signed by appellant that was attached to his motion to dismiss the charges included a certified copy of appellant’s court file from Wisconsin as an exhibit, this evidence was not mentioned in the stipulation or considered by the court in finding appellant guilty. *See State v. Eller*, 780 N.W.2d 375, 381 (Minn. App. 2010) (affirming conviction for gross misdemeanor DWI when a stipulation included a reference to a criminal complaint that included evidence of a prior DWI conviction for enhancement purposes which parties stipulated could be admitted into evidence), *review denied* (Minn. June 15, 2010).

We conclude that the stipulation in this case was factually inadequate to support appellant's enhanced charges or to support the district court's finding of guilt to those charges. "Due process requires that every element of the offense charged must be proven beyond a reasonable doubt by the prosecution." *State v. Cross*, 577 N.W.2d 721, 726 (Minn. 1998); *see In re Winship*, 397 U.S. 358, 361, 90 S. Ct. 1068, 1071 (1970). Here, the evidence on charge enhancement was not shown by "competent and reliable evidence." Further, by adopting the inadequate facts of the stipulation, the district court also relied on evidence that was insufficient to support its determination of guilt.

For these reasons, we must reverse appellant's convictions on the enhanced charges.

Reversed.