STATE OF MINNESOTA
IN COURT OF APPEALS
A12-1462

State of Minnesota,
Respondent,

vs.

Tomas Almenteros Interian,
Appellant.

Filed May 6, 2013
Affirmed
Hudson, Judge

Olmsted County District Court
File No. 55-CR-12-235

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

Mark A. Ostrem, Olmsted County Attorney, James P. Spencer, Assistant County Attorney, Rochester, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Sharon E. Jacks, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Kirk, Presiding Judge; Stoneburner, Judge; and Hudson, Judge.

U N P U B L I S H E D O P I N I O N

HUDSON, Judge

Appellant argues that the evidence is insufficient to support his conviction of felony test refusal because the state failed to provide competent evidence of the

aggravating factor of three or more qualified prior impaired driving incidents within ten years of the offense. Because we conclude that a certified copy of appellant's driving record from the Minnesota Department of Public Safety (DPS) provided competent evidence from which the district court could determine that appellant had three qualified prior impaired driving incidents within the ten-year period prior to the offense, we affirm.

FACTS

After police stopped a van driven by appellant Tomas Almenteros Interian on suspicion of driving while impaired, appellant declined to take a blood or urine test, and the state charged him with felony refusal to submit to a chemical test in violation of Minn. Stat. §§ 169A.20, subd. 2, 169A.24, subd. 1(1) (2010). Appellant waived his right to a jury trial and stipulated to all elements of the offense except for proof that he had three prior impaired driving incidents within a ten-year period. *See* Minn. Stat. § 169A.24, subd. 1(1) (providing for enhanced penalty if defendant commits the charged violation "within ten years of the first of three or more qualified prior impaired driving incidents").

To prove this element, the state offered a certified copy of appellant's DPS driving record. That record provides, in relevant part:

> *09/05/10 REV-IMPLIED CONSENT TEST-DRUGS 0090
> 12/03/2010 N 03/29/2010
>
> *12/16/10 REV-2 UNDER INFLUENCE IN 10 YR 0180
> 06/14/2011 N 11/09/2010
>
> *01/28/11 REV-IMPLIED CONSENT TEST-DRUGS 0180
> 07/27/2011 N 09/08/2010

Appellant argued that the DPS driving record, without more, was insufficient to prove beyond a reasonable doubt that he had the requisite number of qualified prior impaired driving incidents and that to provide sufficient proof of that enhancement factor, the state was required to provide additional certified documentation of his prior convictions or revocations, including offense dates and statutory cites for each conviction or revocation.

After taking the matter under advisement, the district court issued its written findings of fact and verdict finding appellant guilty of felony test refusal. The district court found that, although "a DPS driving record print-out is a special type of document that uses certain specialized nomenclature, codes, and a set of standard abbreviations," the district court was able to decipher the document. Based on examination of the DPS record, the district court found that appellant's 90-day, September 5, 2010, revocation stemmed from a March 29, 2010 implied-consent drug test in Rice County; that his 180-day, December 16, 2010 revocation related to a November 9, 2010, DWI conviction in Dakota County; and that his 180-day, January 28, 2011, revocation related to a September 8, 2010 implied-consent test in Mower County. The district court found that these revocations were qualified impaired driving-related losses of license, which provided sufficient evidence for the court to infer beyond a reasonable doubt that they occurred under Minnesota's implied-consent and/or impaired driving laws. The district court sentenced appellant to 63 months, and this appeal follows.

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)

(quoting Minn. Stat. § 169A.24, subd. 1(1) (2004)); *see* Minn. Stat. § 169A.03, subd. 3(1) (2010) (defining qualified impaired driving incidents within the ten years that immediately preceded the current offense as an aggravating factor). "'Qualified prior impaired driving incident' includes prior impaired driving convictions and prior impaired driving-related losses of license." Minn. Stat. § 169A.03, subd. 22 (2010).

Appellant stipulated to every element of the test-refusal offense except the aggravating factor of three qualified prior impaired driving incidents within the previous ten years. To support an enhanced sentence, the state was required to prove that factor beyond a reasonable doubt. *See State v. Cross*, 577 N.W.2d 721, 726 (Minn. 1998) ("Due process requires that every element of the offense charged must be proven beyond a reasonable doubt by the prosecution."). Appellant challenges the sufficiency of the evidence on that factor. An appellate court reviews insufficient evidence claims by determining whether the evidence, viewed in a light most favorable to the conviction, would allow the factfinder to reach the verdict that it did. *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989).

When a prior conviction is an element of a charged offense, a party may prove the existence of that conviction "by competent and reliable evidence, including a certified court record of the conviction." Minn. Stat. § 609.041 (2010). "But section 609.041 . . . does not limit such proof to a certified court record." *State v. Eller*, 780 N.W.2d 375, 380–81 (Minn. App. 2010), *review denied* (Minn. June 15, 2010). Rather, other sufficiently competent and reliable evidence may also provide proof of that conviction. *See id.* (concluding that a sworn statement in the factual portion of the probable-cause

section of a criminal complaint provided sufficiently competent and reliable evidence to establish fact of a defendant's prior conviction).

Appellant argues that the certified copy of the DPS driving record, by itself, is insufficient to establish beyond a reasonable doubt the existence of three qualified prior impaired driving incidents within the ten years preceding the offense. He maintains that the driving record does not provide competent and reliable evidence of those incidents because it is confusing, difficult to interpret, and subject to data-entry inaccuracy. Instead, he argues that the state should have been required to produce certified copies of the actual notices sent to him with the statutory bases, incident dates, and facts supporting the revocations. To support his argument, he points to the district court's acknowledgment of the shortcomings of the DPS record and the state's refusal to furnish additional evidence of his revocations.

"[T]he primary purpose of DPS driver's-license records is to provide current information about the license status of drivers to ensure that only drivers with valid licenses operate motor vehicles in the state." *State v. Vonderharr*, 733 N.W.2d 847, 852 (Minn. App. 2007). As a corollary to this purpose, DPS driver's-license records provide documentation relating to events that affect a driver's license status, such as license revocations, which are considered prior impaired driving-related losses of license. *See* Minn. Stat. § 169A.03, subd. 21 (2010) (noting that a prior impaired driving-related loss of license "includes a driver's license suspension, revocation, cancellation, denial, or disqualification" under listed statutes). We conclude that the district court did not err by considering the DPS driving record as competent and reliable evidence of appellant's

prior license revocations. *See, e.g.*, *Eller*, 780 N.W.2d at 381. And we reject appellant's contention that the driving record was deficient as evidence of prior impaired driving-related losses of license because it did not specify the statutes under which appellant's license was revoked.

Based on appellant's DPS driving record, the district court made findings on the dates, length, and locations of his three prior license revocations within the ten years preceding this offense. These findings are not clearly erroneous. We therefore conclude that the DPS record provided sufficient evidence on which the district court could determine that the state had proved beyond a reasonable doubt that appellant had three qualified prior impaired driving incidents, as required to enhance his conviction to a felony. *See* Minn. Stat. § 609.041.

We also note that for the first time on appeal, appellant argues that the evidence is insufficient to prove that he had a prior impaired driving-related loss of license in January 2011 because on that date, his license was already revoked based on a November 2010 incident. But an appellate court will generally not consider issues that were not argued to, and decided by, the district court. *Roby v. State*, 547 N.W.2d 354, 357 (Minn. 1996). Therefore, because appellant did not raise this argument before the district court, we decline to consider it.

Affirmed.