STATE OF MINNESOTA
IN COURT OF APPEALS
A20-1036, A22-0103

Jesse Lee Helget, petitioner,
Appellant (A20-1036),

vs.

Commissioner of Public Safety,
Respondent,

State of Minnesota,
Respondent,

vs.

Jesse Lee Helget,
Appellant (A22-0103).

Filed January 23, 2023
Affirmed
Larkin, Judge
Dissenting, Ross, Judge

Brown County District Court
File Nos. 08-CR-19-805, 08-CV-19-1029

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Considered and decided by Larkin, Presiding Judge; Ross, Judge; and Bryan, Judge.

NONPRECEDENTIAL OPINION

In these consolidated appeals, appellant challenges the revocation of his driver's license and convictions of driving while impaired (DWI)—test refusal and obstructing legal process. He asserts that (1) officers lacked probable cause to arrest him for DWI, (2) the district court erred in concluding that he refused a breath test, (3) the district court abused its discretion by refusing his requested jury instruction on the defense of reasonable refusal, and (4) there was insufficient evidence to support his convictions. We affirm.

FACTS

On September 8, 2019, around 1:00 a.m., a caller notified law enforcement that a white pickup truck was "all over the road" in New Ulm. The caller provided his name, the pickup's license-plate number, and updates regarding the pickup's location as he followed it. Officer Patrick Fay received word of the caller's report from police dispatch and suspected that the pickup's driver might be impaired.

Fay drove his marked squad car to the area described by the caller and saw a pickup matching the description of the suspect vehicle. While passing the pickup, Fay saw its driver and its license-plate number, which matched the plate number provided by the caller. As Fay passed the pickup, the caller in some way indicated to him that this pickup was the vehicle that the caller had observed "all over the road."

Fay drove half a block, made a U-turn, and looked for the pickup. He learned that the registered owner of the pickup had a rural New Ulm address. But Fay located the pickup parked on the apron to a garage behind 810 North Payne Street in New Ulm. He parked his squad car behind the pickup and turned on his white "takedown" lights, but not

his emergency lights.[1] While doing so, he saw the driver of the pickup, later identified as appellant Jesse Lee Helget, get out of the pickup and walk to the corner of the garage. Fay got out of his marked squad car and yelled at Helget to stop. Helget, who was about 25 feet away, looked back over his shoulder in Fay's direction, but he kept walking. Helget turned at the corner of the garage and walked toward the house located beyond the garage.

For a brief period, the garage blocked Fay's view of Helget. After Fay walked past the garage, he saw Helget standing in the back yard of the residence at 806 North Payne Street, which was next door to the residence where Helget had parked. Fay observed that a three-foot-high chain-link fence ran between the two properties and surmised that Helget had climbed over the fence.

Upon seeing Helget, Fay again yelled at Helget to stop; this time, Helget complied. Fay, who was still on the 810 North Payne side of the fence, asked Helget to walk toward him so the two could talk. Helget did not comply. He remained standing on the far side of the adjoining lot.

Officer Eric Gramentz arrived around a minute after Fay, drove to the front of the residence at 810 North Payne Street, parked his squad car, and walked toward the back yard where Helget was standing. Gramentz approached Helget, and the following exchange occurred:

Gramentz:	Hello sir, what's your first name?
Helget:	I don't know, what'd I do?
Gramentz:	Do you have an ID on ya?
Helget:	Well, what'd I do?

[1] The district court found that Fay turned on his emergency lights, but the record shows that Fay turned on his white "takedown" lights.

Gramentz: I'm trying to identify who you are.
Helget: Well, I'm in my back yard.
Gramentz: Ok, what's the address here?
Helget: 810 North Payne.
Gramentz: Ok, you're not in your back yard then.
Helget: Oh…I'm sorry…I'll go in my back yard.

Helget then began slowly walking away from Gramentz in the direction of Fay and the fence separating the two properties. One of the officers stated, "hold on," and Helget stopped. Gramentz again asked Helget for his first name, and Helget responded, "What did I do?" Helget then resumed walking away from Gramentz in the direction of Fay and the property line. At that point, Fay stated, "Well currently you're in a yard that you don't seem to know that's yours." Helget replied, "This is [K.R.'s] yard."

While speaking to Helget, Gramentz came within two feet of him and could smell alcohol on his breath. Gramentz also observed that Helget was making "head and eye movements," which caused him to believe Helget might flee. Gramentz "went hands on," grabbed Helget's left wrist, and told him to put his hands behind his back. Helget minimally resisted but was quickly subdued by the officers. The officers handcuffed Helget and escorted him to Fay's squad car, where they asked him to take a seat in the back.

At the squad car, Helget repeatedly refused commands to sit in the squad car and stated, "I'm not being detained." Helget did not comply until an officer threatened to tase him. He then refused to slide his feet into the squad car, despite repeated commands to do so.

Helget repeatedly asked why he was being detained, and Gramentz replied, "You're under arrest for fleeing right now, so that's what you're under arrest for." In response, Helget noted that he had not fled and that he had stopped. Later, again in response to Helget's inquiries, Gramentz told Helget that he was being detained "for investigations."

Once Helget was secure in the squad car, Gramentz called and spoke to the citizen caller about what he had observed. The officers then conferred and decided to proceed with a DWI investigation based on the caller's reported observations and the smell of alcohol emanating from Helget.

Fay explained to Helget that they had received a complaint that his pickup had been driving "all over the road." Fay told Helget that he wanted to run him through field sobriety tests. Helget replied that he just wanted to go to bed. Fay again asked Helget if he would perform field sobriety tests. Helget did not answer. Instead, he continued to protest that he had done nothing wrong. After repeating the request for field sobriety tests several times with the same response, the officers decided to transport Helget to the law-enforcement center (LEC).

Once at the LEC, Helget performed field sobriety tests, which indicated that he was intoxicated. Fay asked Helget if he had ever taken a preliminary breath test (PBT). Helget questioned why he would need to take a PBT, given that he had submitted to the field sobriety tests. Fay told Helget that he thought Helget was under the influence of alcohol based on the field sobriety tests. Helget did not provide a PBT.

Fay next read Helget Minnesota's statutory breath-test advisory. Helget declined to consult with an attorney, and Fay asked Helget if he would take a breath test. Helget did

not answer "yes" or "no." Instead, he asked why he was being detained, asserted that Fay had not seen him driving, and was generally argumentative. Fay asked Helget several times if he would take a breath test, but Helget would not answer "yes" or "no." Fay eventually deemed Helget's actions to be a test refusal and told Helget that his license was being revoked for that offense. Approximately two and a half minutes later, Helget asked if he could take a test. Fay declined to provide Helget a second testing opportunity.

Respondent Commissioner of Public Safety revoked Helget's driver's license based upon Fay's certification that there was probable cause to believe that Helget had been driving while impaired and had refused testing. Helget petitioned for judicial review of his license revocation asserting, in part, that the state lacked probable cause to arrest him for DWI.

Respondent State of Minnesota charged Helget with third-degree test refusal, fourth-degree DWI, obstruction of legal process or arrest, and public urination. Helget moved the district court to suppress the evidence against him and to dismiss the criminal charges, again asserting that his arrest was not supported by probable cause.

The district court held a combined evidentiary hearing on Helget's petition to rescind his license revocation and his motion to dismiss his criminal charges. The court heard testimony from Officers Fay and Gramentz, and received several exhibits, including the officers' squad and body-camera videos. Video evidence showed that approximately 17 minutes elapsed between the time that Fay read Helget the breath-test advisory and the time that Fay informed Helget that his license was being revoked for the crime of test refusal. During that time, Fay repeatedly told Helget that he needed to give a "yes" or "no"

answer. Fay asked Helget if he would submit to a breath test seven times. Helget did not expressly agree or refuse to submit to testing, despite saying that he understood the advisory.

The district court sustained the revocation of Helget's license. The district court concluded that the officers had sufficient articulable suspicion to justify an "investigative detention" of Helget, including placing him in handcuffs and placing him in the squad vehicle. In an accompanying memorandum, the district court concluded that even if Gramentz's actions of handcuffing Helget and placing him in a squad car constituted an arrest, at that point there was sufficient probable cause to arrest Helget for the offenses of fleeing on foot[2] and DWI.

The district court denied Helget's motion to dismiss the criminal charges. The district court concluded that the police lawfully seized Helget based on suspicion of DWI and that there was probable cause to arrest Helget for fleeing on foot and DWI.

The criminal matter proceeded to a jury trial. Helget requested a jury instruction stating, in relevant part, that a defendant is not guilty of test refusal if his refusal was reasonable. The district court denied Helget's requested instruction.

The district court granted judgment of acquittal on the charge of urinating in public. The jury found Helget guilty of test refusal and obstruction of legal process, and not guilty of DWI. The district court entered judgments of conviction on the two guilty verdicts.

[2] The district court determined that there was probable cause for the fleeing charge based on Helget's initial evasive actions toward Fay. The state never charged Helget with fleeing on foot, a violation of Minn. Stat. § 609.487, subd. 6 (2018).

Helget separately appealed the order sustaining the revocation of his driver's license and his convictions. This court granted his motion to consolidate the appeals.

DECISION

I.

Helget contends that the district court erred in determining that there was probable cause to arrest him for fleeing on foot and DWI. The existence of probable cause to arrest for DWI is material in this case because it was the basis for the state's invocation of Minnesota's implied-consent law. Under that law, a person is required to submit to a chemical test to determine the presence of alcohol if an "officer has probable cause to believe the person was driving . . . a motor vehicle" in violation of Minnesota's DWI statute, Minn. Stat. § 169A.20 (2018), and "the person has been lawfully placed under arrest for violation of section 169A.20." Minn. Stat. § 169A.51, subd. 1 (2018).

Upon certification by a peace officer that there existed probable cause to believe a person had been driving a motor vehicle in violation of section 169A.20 and that the person refused to submit to a test, the commissioner shall revoke the person's license to drive. Minn. Stat. § 169A.52, subd. 3 (2018). In addition, "[i]t is a crime for any person to refuse to submit to a chemical test . . . of the person's breath" under Minn. Stat. § 169A.51 (2018), which governs chemical tests for intoxication. Minn. Stat. § 169A.20, subd. 2. Thus, a determination that probable cause existed to support Helget's arrest for DWI is necessary to sustain his conviction for test refusal, as well as his license revocation. *See State v. Koppi*, 798 N.W.2d 358, 362 (Minn. 2011) (stating that probable cause is required for a test-refusal conviction); *Mesenburg v. Comm'r of Pub. Safety*, 969 N.W.2d 642, 647

(Minn. App. 2021) (stating that a chemical breath test can only be required if probable cause exists), *rev. denied* (Minn. Mar. 15, 2022).

The United States and Minnesota Constitutions guarantee "[t]he right of the people to be secure in their persons, houses, papers, and effects" against "unreasonable searches and seizures." U.S. Const. amend. IV; Minn. Const. art. I, § 10. "The touchstone of the Fourth Amendment is reasonableness." *State v. Johnson*, 813 N.W.2d 1, 5 (Minn. 2012) (quotation omitted). Generally, warrantless searches and seizures are per se unreasonable. *State v. Horst*, 880 N.W.2d 24, 33 (Minn. 2016). An exception to the warrant requirement permits a police officer to "conduct a brief, investigatory stop when the officer has a reasonable, articulable suspicion that criminal activity is afoot." *State v. Timberlake*, 744 N.W.2d 390, 393 (Minn. 2008) (quotation omitted). And under certain circumstances, the police may conduct a warrantless arrest based on probable cause. *See* Minn. Stat. § 629.34, subd. 1(c) (2018) (providing that certain peace officers may make an arrest without a warrant if "a public offense has been committed or attempted in the officer's presence").

The level of suspicion required for an arrest is higher than that required for an investigative seizure. "The test of probable cause to arrest is whether the objective facts are such that under the circumstances a person of ordinary care and prudence would entertain an honest and strong suspicion that a crime has been committed." *State v. Wynne*, 552 N.W.2d 218, 221 (Minn. 1996) (quotation omitted). We apply an objective standard when determining whether police had probable cause to believe that a crime had been committed, and if the objective standard is met, we will not suppress evidence or invalidate an arrest "even if the officer making the arrest or conducting the search based his or her

action on the wrong ground or had an improper motive." *State v. Olson*, 482 N.W.2d 212, 214 (Minn. 1992).

"To establish probable cause, facts need not exclude all innocent explanations for conduct nor conclusively show that conduct was illegal." *State v. Hawkins*, 622 N.W.2d 576, 577 (Minn. App. 2001). The ultimate inquiry "is not whether there is some hypothesis of . . . innocence which is reasonably consistent with the circumstances shown, for such an analysis is more appropriate to the beyond a reasonable doubt standard used on the merits," rather, "we are dealing with probable cause, which requires far less evidence." *United States v. Sanchez*, 689 F.2d 508, 515-16 (5th Cir. 1982) (quotations omitted).

When reviewing a district court's finding that there was probable cause to arrest, we independently review the facts to determine the reasonableness of the officer's actions. *State v. Camp*, 590 N.W.2d 115, 118 (Minn. 1999). Again, whether the actions of the police were reasonable is an objective, and not subjective, inquiry, and the existence of probable cause depends on the facts of each particular case. *State v. Moorman*, 505 N.W.2d 593, 598-99 (Minn. 1993).

Helget does not dispute that reasonable articulable suspicion justified a temporary warrantless seizure to investigate whether he had been driving while impaired. Instead, he asserts that the police converted his lawful seizure into an illegal arrest and argues that the circumstances did not satisfy the higher probable-cause standard necessary for a warrantless arrest.

To determine whether there was probable cause to arrest Helget for DWI, we must first determine the point at which Helget was arrested. "The ultimate test to be used in

determining whether a suspect was under arrest is whether a reasonable person would have concluded, under the circumstances, that he was under arrest and not free to go." *State v. Beckman*, 354 N.W.2d 432, 436 (Minn. 1984). There is no bright-line test separating a legitimate investigative stop from an unlawful arrest. Instead, "common sense and ordinary human experience must govern over rigid criteria." *State v. Balenger*, 667 N.W.2d 133, 139 (Minn. App. 2003), *rev. denied* (Minn. Oct. 21, 2003).

The supreme court has held that "briefly handcuffing a suspect while the police sort out the scene of an investigation does not per se transform an investigatory detention into an arrest, nor does placing the suspect in the back of a squad car while the investigation proceeds." *State v. Munson*, 594 N.W.2d 128, 137 (Minn. 1999). Here, the police handcuffed Helget, escorted him to a squad car, and threatened to tase him if he did not enter the back seat of the squad car. Those circumstances alone might lead a reasonable person to conclude that he was under arrest and not free to go. *See State v. Blacksten*, 507 N.W.2d 842, 846 (Minn. 1993) ("[Defendant] was under arrest from the time he was ordered to the ground at gunpoint, handcuffed, and put in the squad car."). But in this case there is one additional circumstance that makes that conclusion unavoidable. As the officers placed Helget in the squad car, Gramentz told him, "*You're under arrest* for fleeing right now, so that's what you're under arrest for." (Emphasis added.) Although Gramentz subsequently told Helget that he was being detained "for investigations," under the circumstances, Gramentz's statement that Helget was "under arrest . . . right now" would lead a reasonable person to conclude that he was under arrest and not free to go. We therefore consider whether at that point, the objective facts were such that a person of

ordinary care and prudence would have entertained an honest and strong suspicion that Helget had committed the crime of DWI.

The relevant facts were as follows. A known citizen called the police around 1:00 a.m. to report that Helget's pickup was "all over the road." Time of day is a relevant consideration when assessing suspicion of DWI because DWI offenses are common in the early morning hours. *See Otto v. Comm'r of Pub. Safety*, 924 N.W.2d 658, 661 (Minn. App. 2019) (considering 1:20 a.m. on a Saturday morning to be a "time of day when drinking is often found to be involved"). Fay located the pickup and observed Helget driving it. Although Fay did not observe Helget commit any moving offenses, the citizen caller generally alleged that Helget's truck was "all over the road." That comment reasonably suggested that Helget's pickup was being *driven* all over the road and likely in violation of traffic laws. *See, e.g.*, Minn. Stat. § 169.18, subd. 7(a) (2018) ("A vehicle shall be driven as nearly as practicable entirely within a single lane and shall not be moved from such lane until the driver has first ascertained that such movement can be made with safety.").

After Helget parked and exited his pickup, he was evasive. As Helget walked away from his pickup, Fay yelled at Helget to "stop." Helget looked back over his shoulder toward Fay and kept walking away from the officer. Fay pursued Helget and observed him in the adjacent yard. Fay also observed a three-foot-high fence that Helget had to cross to get there. Although Helget stopped in response to Fay's second command to do so, he did not comply with Fay's subsequent command to approach.

When Gramentz arrived and got within two feet of Helget, he noticed that Helget emitted an odor of alcohol, a common indication of intoxication. *See State v. Kier*, 678 N.W.2d 672, 678 (Minn. App. 2004) ("Common indicia of intoxication include an odor of alcohol, bloodshot and watery eyes, slurred speech, and an uncooperative attitude."), *rev. denied* (Minn. June 15, 2004). Helget told Gramentz that he was in his own back yard, even though he was standing in another person's yard and had to cross over a fence to get there. Helget's statement reasonably suggested either further evasive behavior or confusion stemming from intoxication. Lastly, Helget displayed an uncooperative attitude, which is another recognized indication of intoxication. *See id*. His refusal to cooperate progressed from verbal to physical resistance as the police tried to secure him in the squad car while they pursued their lawful investigation.

Admittedly, some might view the existence of probable cause to arrest Helget for DWI in this case as a close call. On one hand, the assertion of impaired driving conduct is limited to the citizen caller's general allegation that Helget's pickup was "all over the road." And the record indicates that the police wanted to do more to confirm their suspicion of DWI. Indeed, the record supports a conclusion that the officers did not *subjectively* believe that there was sufficient probable cause for a DWI arrest. But our probable-cause determination is based on an objective standard; it is not limited to the beliefs or motives of the arresting officers. "[T]he issue is not whether the officers subjectively felt that they had probable cause but whether they had objective probable cause." *Costillo v. Comm'r of Pub. Safety*, 416 N.W.2d 730, 733 (Minn. 1987) (noting that it was "not clear from the record that the arresting officers subjectively believed that they had probable cause to

believe Costillo was under the influence"). Moreover, the possibility of innocent explanations for Helget's otherwise suspicious behavior does not preclude a finding of probable cause to arrest.

In sum, probable cause has been described as a "common-sense, nontechnical" concept that deals with "the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act." *Illinois v. Gates*, 462 U.S. 213, 231 (1983) (discussing the probable-cause standard in the context of a search-warrant application). We therefore take a common-sense approach to the probable cause determination in this case. Applying an objective standard, as we must, we hold that the known citizen caller's assertion that Helget's pickup was "all over the road," the early morning hour, Fay's observation of Helget driving the suspect pickup, Helget's emission of an odor of alcohol, and Helget's evasive behavior and uncooperative attitude together support an honest and strong suspicion that Helget had committed the crime of DWI. *See State v. Carver*, 577 N.W.2d 245, 248 (Minn. App. 1998) (quotation omitted) ("An officer needs only one objective indication of intoxication to constitute probable cause to believe a person is under the influence."). The district court therefore did not err in determining that there was probable cause to arrest Helget for DWI. Because there was probable cause to arrest for that offense, we need not consider whether the district court erred in determining that there was also probable cause to arrest Helget for fleeing on foot.

II.

Helget contends that the district court erred in finding that he refused to submit to a chemical test of his breath under the implied-consent law. He offers two theories to support

that contention: (1) he had a "prompt change of mind" and consented to the breath test and (2) his refusal was reasonable under the circumstances. We address each in turn.

Prompt Change of Mind

In sustaining the revocation of Helget's license, the district court found that Helget refused to submit to a test by failing to respond to Fay's repeated requests for a breath test. To determine whether a driver's failure to provide a test sample constitutes refusal, a court should look at the driver's words and actions. *Stevens v. Comm'r of Pub. Safety*, 850 N.W.2d 717, 722 (Minn. App. 2014). A failure to respond to a request for testing may be deemed a refusal. *Gabrick v. Comm'r of Pub. Safety*, 393 N.W.2d 23, 25 (Minn. App. 1986). Whether a driver has refused to submit to chemical testing is a question of fact, which this court reviews for clear error. *Stevens*, 850 N.W.2d at 722.

Given Helget's words and actions when confronted with Fay's multiple requests for a breath test, the district court did not clearly err in finding that Helget refused testing. As found by the district court, Helget did not answer yes or no to Fay's inquiries. Rather, he remained argumentative, asserted that Fay had not seen him driving, and continued to ask why he was being detained.

Although Helget agreed to testing after Fay informed him that his license was being revoked for the crime of test refusal, "[t]his court has consistently held that a subsequent change of heart does not revoke an initial refusal, even when a relatively short period of time has elapsed between the initial refusal and the reconsideration except for an almost immediate change of mind." *Lewis v. Comm'r of Pub. Safety*, 737 N.W.2d 591, 593 (Minn. App. 2007) (quotations omitted). In *Schultz v. Comm'r of Pub. Safety*, this court held that

because a "change of mind was almost immediate" and "was not separated from [the driver's] initial response by any substantial time, place, or a telephone call to counsel or a friend," the police should have accepted it. 447 N.W.2d 17, 19 (Minn. App. 1989). In *Schultz*, the officer only had time to mark a refusal on the form before the driver changed his mind. *Id*. at 18.

This case is distinguishable because Helget's change of mind was not immediate. He did not tell Fay that he would submit to testing until two and a half minutes after Fay told him that his license was being revoked for the crime of test refusal. Moreover, the driver in *Schultz* indicated that he did not understand the advisory and stated that he refused because he did not understand. *Id.* at 18. Helget told Fay that he understood the advisory. As found by the district court, when Fay asked why Helget was refusing the test, he responded, "I don't have a reason." Under these circumstances, the district court did not clearly err in finding that Helget refused testing, despite his change of mind.

Reasonable Refusal

Helget argues that his refusal was reasonable under the circumstances because he was confused by the process. Minnesota's implied-consent laws allow for an affirmative defense that a refusal "was based on reasonable grounds." Minn. Stat. § 169A.53, subd. 3(c) (2018). The defense has been narrowly construed. "[C]onfusion regarding the testing obligation" can only satisfy the affirmative defense if police misled the driver into believing that refusal was acceptable or did not attempt to explain a confused driver's obligations. *Linde v. Comm'r of Pub. Safety*, 586 N.W.2d 807, 810 (Minn. App. 1998), *rev. denied* (Minn. Feb. 18, 1999). Whether a refusal was reasonable is a question of fact,

and we review a district court's finding on that question for clear error. *Frost v. Comm'r of Pub. Safety*, 401 N.W.2d 454, 456 (Minn. App. 1987). "To conclude that findings of fact are clearly erroneous we must be left with the definite and firm conviction that a mistake has been made." *Rasmussen v. Two Harbors Fish Co.*, 832 N.W.2d 790, 797 (Minn. 2013) (quotations omitted).

Helget relies on *Frost*, in which we upheld a district court's determination that a driver's refusal was reasonable because the record contained support for the defense. 401 N.W.2d at 454-56. In that case, the driver stated that he would not take a breath test without his doctor present, the trooper stated that he would not delay the test, and the driver stated that the trooper was required to wait a reasonable time for the doctor. *Id.* at 455. The trooper deemed the driver's actions a refusal and completed the implied-consent process in approximately three minutes. *Id.* The trooper did not tell the driver that he had deemed his actions a refusal. *Id.* Later, the driver asked another officer when the test was going to be administered. *Id.* at 455. The district court found that the driver's refusal was reasonable because the trooper failed to clear up the driver's confusion. *Id.* at 456. We held that there was sufficient evidence to support the district court's finding because the driver testified regarding his confusion, and the circumstances surrounding the advisory process allowed for "a colorable defense of confusion." *Id.*

The circumstances here are distinguishable. The district court in this case found that Helget was not confused, and the record supports that finding. Fay read Helget the implied-consent advisory, and Helget indicated that he understood it. The district court did

not err in declining to rescind the revocation of Helget's license on the grounds of reasonable refusal.

III.

Helget argues that the district court abused its discretion by refusing to give his requested jury instruction regarding reasonable test refusal.

District courts are allowed "considerable latitude" in the selection of language for jury instructions. *State v. Baird*, 654 N.W.2d 105, 113 (Minn. 2002). "[J]ury instructions must be viewed in their entirety to determine whether they fairly and adequately explained the law of the case." *State v. Flores*, 418 N.W.2d 150, 155 (Minn. 1988). "An instruction is in error if it materially misstates the law." *State v. Kuhnau*, 622 N.W.2d 552, 556 (Minn. 2001) (citations omitted).

"The refusal to give a requested jury instruction lies within the discretion of the district court and no error results if no abuse of discretion is shown." *State v. Cole*, 542 N.W.2d 43, 50 (Minn. 1996). "A district court abuses its discretion when its decision is based on an erroneous view of the law or is against logic and the facts in the record." *State v. Hallmark*, 927 N.W.2d 281, 291 (Minn. 2019) (quotation omitted). "It is an abuse of the district court's discretion to refuse to give an instruction on the defendant's theory of the case if there is evidence to support it." *State v. Johnson*, 719 N.W.2d 619, 629 (Minn. 2006) (quotation omitted). "But, if the defense was not prejudiced by a refusal to issue an instruction, there is no reversible error." *Id.* (quotation omitted).

Helget proposed the following instruction:

> If you find that the [s]tate has proven all four elements of [the test-refusal] offense beyond a reasonable doubt, you must then decide whether the [d]efendant's refusal to submit to the chemical test was reasonable. The [d]efendant is not guilty of refusal to submit to testing if the [d]efendant's refusal was reasonable. The burden of proof on this issue and only this issue is on the [d]efendant. The [d]efendant has the burden of proving this defense by the preponderance of the evidence. This means that the [d]efendant must prove that it is more likely true than not true that his refusal to take the test was reasonable. A defendant's confusion may be a reasonable basis for refusal. Law enforcement [is] encouraged to be flexible with defendants in allowing a driver to consent to a chemical test after an initial decision not to do so.[3]

Again, Minnesota's implied-consent laws allow for an affirmative defense that a refusal "was based on reasonable grounds." Minn. Stat. § 169A.53, subd. 3(c). Here, the district court declined to give the reasonable-refusal instruction because no statute or binding caselaw indicates that the reasonable-refusal defense is available in a criminal test-refusal case and because Helget "made no proffer of what was reasonable about any refusal."

Helget concedes that Minnesota's appellate courts have not specifically considered and determined that a reasonable-refusal defense is available in a criminal case. *See State v. Olmscheid*, 492 N.W.2d 263, 266 n.2 (Minn. App. 1992) ("We need not decide here whether or how the issue of 'reasonable grounds for refusal' relates to the elements of the

[3] Helget, in a separate motion, proposed different language for the final two sentences: "For example, a [d]efendant's refusal is reasonable when the officer gives confusing and misleading information to the [d]efendant regarding his rights or if the police have made no attempt to inform a confused [d]efendant of his obligation to submit to testing. The law only requires that the police officer read the printed advisory consent form to the defendant."

crime of refusal."). Helget cites *State v. Johnson*,[4] in support of his assertion that a reasonable-refusal defense is available in criminal cases. 672 N.W.2d 235 (Minn. App. 2003), *rev. denied* (Minn. Mar. 16, 2004). In that case, the defendant argued that "Addison's disease" caused him to refuse testing. *Id.* at 239. The district court instructed the jury on the defense of reasonable refusal using language substantially similar to the language requested by Helget. *Id.* at 242. The *Johnson* defendant argued that the district court's use of an example in that instruction excluded any possibility that a physical, medical, or mental condition could constitute a reasonable refusal. *Id.* at 243. We concluded "that the instruction did not contain an error of fundamental law or controlling principle and that the district court did not abuse its discretion." *Id.*

Although *Johnson* could suggest that the reasonable-refusal defense is available in criminal cases, there is no clear precedent so holding. Even if the defense were available in this case, Helget failed to offer sufficient evidence to justify an instruction regarding the defense. *See State v. Cannady*, 727 N.W.2d 403, 407 (Minn. 2007) (stating that defendants bear the burden of production on affirmative defenses). As discussed, the defense is narrowly construed, and Helget, who did not testify at trial, did not offer evidence that Fay misled him into believing that refusal was acceptable or that he was confused as to his testing obligations. *See Linde*, 586 N.W.2d at 810. Additionally, given the lack of said evidence, we fail to see how the refusal to give the proposed instruction was prejudicial.

[4] Helget cites "*State v. Johnson*, 672 N.W.2d 619, 629 (Minn. 2006)," but this case does not exist. We therefore assume that Helget meant to reference our *Johnson* opinion from 2003.

See Johnson, 719 N.W.2d at 629 (stating that there is no reversible error "if the defense was not prejudiced by a refusal to issue an instruction").

IV.

Helget contends that the evidence was insufficient to support the jury's guilty verdicts on the charged offenses and, therefore, his convictions.

When considering a claim of insufficient evidence, we carefully analyze the record to determine whether the evidence, when viewed in a light most favorable to the conviction, was sufficient to permit the jury to reach its verdict. *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989). We "assume that the jury believed the state's witnesses and disbelieved contrary evidence." *State v. Brocks*, 587 N.W.2d 37, 42 (Minn. 1998). We will not disturb a guilty verdict if the jury, acting with due regard for the presumption of innocence and the requirement of proof beyond a reasonable doubt, could reasonably conclude that the state proved the defendant's guilt. *Bernhardt v. State*, 684 N.W.2d 465, 476-77 (Minn. 2004).

Test Refusal

It is a crime for a person to refuse to submit to a chemical breath test if an officer has probable cause to believe the person was driving a motor vehicle while impaired and the person was lawfully arrested for DWI, so long as the person was informed of certain information required under the implied-consent statute. Minn. Stat. §§ 169A.20, subd. 2(1), .51, subd. 1(b), 2; *State v. Ouellette*, 740 N.W.2d 355, 357 (Minn. App. 2007), *rev. denied* (Minn. Dec. 19, 2007).

As to the probable-cause element, at trial, Fay testified that around 1:00 a.m., he received a report that a pickup was "all over the road." He located the pickup and saw the

driver. The driver parked at a residential address, but it was not the address listed on the pickup's registration. He pulled behind the pickup and turned on his squad car's lights. The driver exited, walked away, and failed to stop when Fay commanded him to do so. Fay testified that when the officers were handcuffing Helget, he "could smell a strong odor of an alcoholic beverage coming from [Helget] or emitting from him, and his eyes were bloodshot and glassy."

Gramentz similarly testified that he could smell alcohol emanating from Helget. Fay testified that, after Helget was moved to the squad car, he refused to cooperate with the officers' command that he enter the car and to verbally respond to their requests for field sobriety tests. Fay testified that Helget later performed field sobriety tests at the LEC and displayed indicia of intoxication during the tests.

As to the advisory and refusal elements, video evidence showed that Fay informed Helget that he was under arrest for DWI and read Helget the implied-consent advisory, which explained that refusal to test is a crime and that a person cannot unreasonably delay the test. Helget said that he understood the advisory. Fay testified that he asked Helget seven times if he would submit to a test, and Helget refused to provide an answer.

On this record, the jury, acting with due regard for the presumption of innocence and the requirement of proof beyond a reasonable doubt, could reasonably conclude that the state proved that Helget was guilty of test refusal.

Obstruction of Legal Process

It is a crime for a person to intentionally obstruct, hinder, or prevent the lawful execution of any legal process, civil or criminal, or apprehension of another on a charge or

conviction of a criminal offense. Minn. Stat. § 609.50, subd. 1(1) (2018). The statute prohibits a person from obstructing and resisting a peace officer's attempt to arrest the person. *State v. Litzau*, 893 N.W.2d 405, 406 (Minn. App. 2017), *rev. denied* (Minn. June 20, 2017). It is not enough that a person's conduct merely interferes with an officer's duties, the conduct must hinder the process or apprehension at issue. *State v. Pederson*, 840 N.W.2d 433, 437 (Minn. App. 2013).

Gramentz's body-camera video showed that Helget refused commands to sit in the squad car and told the officers, "I'm not being detained." Fay testified that Helget did not comply until Gramentz held a taser to his body and threatened to tase him. Helget then refused to slide his feet into the squad car, despite multiple commands to do so. This record was sufficient to allow the jury, acting with due regard for the presumption of innocence and the requirement of proof beyond a reasonable doubt, to reasonably conclude that Helget was guilty of obstruction of legal process.

Affirmed.

ROSS, Judge (dissenting)

If all it takes to be arrested for and charged with drunk driving is a caller asserting generally that a car was "all over the road" and an officer noticing that the driver smells like he consumed any amount of alcohol, then the Fourth Amendment doesn't do much in Minnesota to prevent unreasonable seizures. I respectfully dissent.

The district court clearly erred when it found that Jesse Helget must have known that it was a police officer who initially said, "Stop," after Helget exited his pickup truck. The district court based its conclusion in part on its finding that "Officer Fay parked his squad car behind the white pickup truck and turned on his emergency lights." The district court elaborated, "It seems likely that [Helget] was aware of the presence of law enforcement in the area," reasoning that, "prior to exiting his squad car, Fay activated his emergency lights." Contrary to these findings, when Officer Fay was asked, "Were your emergency lights on," he plainly testified, "No, they were not." Officer Fay instead said that he turned on only his "takedown light," which he described merely as a bright, white light. His dashcam video bears this out, revealing reflections of only a white light and no red or blue lights, flashing or not. And the officer also testified plainly about whether Helget had been aware he was a police officer when he first asked Helget to stop; after he was asked, "So fair to say, [Helget] probably really doesn't know who you are yet, because you don't have your lights on, right?" Officer Fay answered, "Right." The officer added that, once he caught up to Helget in the backyard, as soon as he yelled, "Stop, police," Helget "stopped, turned around, and stared at [Fay]" from across the yard. The district court's finding that Helget saw the officer's emergency lights, and the finding that Helget

was therefore aware that it was police who asked him to stop after he exited his pickup truck and walked toward the backyard, are contradicted by the only hearing testimony bearing on the findings as well as the video evidence. The findings are clearly erroneous.

The district court compounded these clearly erroneous findings when it based two legal conclusions on them—one of which the majority adopts. The district court construed Helget's responsive behavior of "scaling a fence" into his neighbor's yard to be "unusual" and suggestive of "criminal activity, namely driving while impaired" and "fleeing on foot." I first observe that the district court's describing Helget's crossing the mere three-foot fence as "scaling," rather than, say, simply stepping over it, seems to exaggerate the story a bit. In any event, because the probable-cause conclusions depend entirely on the clearly erroneous premise that Helget's actions resulted from his knowing that it was a police officer who had asked him to stop, the conclusions are necessarily flawed.

The majority adds a timing error. It seems to conclude that Helget's arrest occurred when Corporal Gramentz told Helget that he was "under arrest right now." In fact, the arrest occurred earlier, when Corporal Gramentz grabbed Helget by the arm and handcuffed him. According to the corporal, he approached Helget in the backyard, stood two feet from him, and "could smell an odor of an alcoholic beverage on his breath" as they spoke with each other. The bodycam video and audio footage depict Helget then walking with Corporal Gramentz toward the fence where Officer Fay was waiting, which is when Corporal Gramentz suddenly grasped Helget's left arm, twisted it behind his back, and ordered, "Place your hands behind your back" while pressing Helget against a dog kennel and handcuffing him. The officers then reached inside Helget's pockets searching

for his identification—the kind of intrusive search that exceeds the mere pat down for weapons during an investigative stop but is allowed during an actual arrest. *See State v. Bernard*, 859 N.W.2d 762, 767 (Minn. 2015), *aff'd sub nom. Birchfield v. North Dakota*, 579 U.S. 438 (2016). The officers then walked Helget from the backyard to a squad car and ordered him to get inside. Responding to Helget's repeated but unanswered questions about why the officers had taken him into custody, Corporal Gramentz finally told Helget, "You took off running. You're under arrest for fleeing right now. So that's what you're under arrest for." The officer was not at that moment placing Helget under arrest; he was explaining why he had already arrested Helget.

By this point, the officers had gotten things backwards, offending the Fourth Amendment. The corporal's omnibus-hearing testimony revealed that it was only *after* the officers had already placed Helget under arrest and *after* the corporal later advised Helget why they had placed him under arrest ("for fleeing") that Corporal Gramentz and Officer Fay finally got around to considering whether Helget had broken any law:

> Q: So, now it is your testimony that you and Officer Fay are now having kind of a conversation, or a caucus about the situation about what happened?
> A: After Mr. Helget is in the vehicle, yes. The squad patrol vehicle, yes.
> . . . .
> Q: Okay. Now, you're caucusing with Officer Fay about figuring things out. What were you trying to figure out?
> A: What Officer Fay's observations were.
> Q: Okay. In order to determine what?
> A: If a crime had been committed.

The seizure process was hopelessly twisted. Under proper constitutional policing, *first* an officer ponders whether a crime has been committed, and *then*, if the officer has probable

cause to answer affirmatively, he may arrest the offender. In this case, because the arrest occurred before the officers even considered whether they had probable cause to believe any crime occurred, we must decide de novo whether the circumstances objectively established probable cause before the backyard arrest.

The majority does not address the district court's primary conclusion that the officers had probable cause to arrest Helget for fleeing on foot. A person who is not in a vehicle commits the misdemeanor offense of fleeing if, "for the purpose of avoiding arrest, detention, or investigation" by "running, hiding, or by any other means" he "attempts to evade or elude a peace officer" who is discharging an official duty. Minn. Stat. § 609.487, subd. 6 (2018). Officer Fay's uncontradicted testimony and the video footage reveal that, contrary to the district court's findings, the officer never activated his emergency lights and Helget likely did not know a police officer had ordered him to stop. And the record likewise also uncontradictably establishes that Helget stopped immediately once Officer Fay identified himself. Helget could not have walked away and entered his neighbor's yard "for the purpose of" evading a police officer because, according to the officer who testified about it, Helget was unaware he was walking away from police. The circumstances did not establish probable cause to arrest Helget for fleeing.

I am convinced that the same is so regarding the district court's alternative conclusion that the officers had probable cause to arrest Helget for drunk driving. In numerous cases, we have considered whether circumstances like those the officers faced here (an imprecise nighttime complaint about bad driving and the odor of an alcoholic beverage) support an officer's reasonable suspicion *to investigate the driver* for drunk

driving. But we have never suggested what the majority holds today, which is that these circumstances justify leapfrogging reasonable suspicion and landing all the way at probable cause *to arrest the driver* for drunk driving with no further inquiry necessary—no need to closely observe the driver, no need to question the driver, no need to look for clear characteristics of impairment, and no need to administer field sobriety tests.

The circumstances here look much like those we are routinely asked to evaluate to decide whether an officer had reasonable suspicion merely to stop (or expand a stop) to investigate for impaired driving. For example, in *Jobe v. Commissioner of Public Safety*, we held that a police officer had reasonable suspicion to stop a car to investigate for drunk driving because a caller reported to police that there appeared to be a "drunk" in front of him who was "swerving around on the road." 609 N.W.2d 919, 920–21 (Minn. App. 2000). In *City of Minnetonka v. Shepherd*, the supreme court held that a police officer had reasonable suspicion to stop a car to investigate for drunk driving after a gas station attendant reported that he saw an obviously intoxicated driver leave the gas station heading north on a specific street in a specific vehicle. 420 N.W.2d 887, 888 (Minn. 1988). In *State v. Cox*, we held that a police officer had reasonable suspicion to expand the scope of a registration-violation stop when the officer approached the driver and almost immediately noticed signs of the driver's intoxication, smelled the odor of an alcoholic beverage, and saw that the driver had bloodshot, watery eyes. 807 N.W.2d 447, 449, 452 (Minn. App. 2011). In *State v. Klamar*, we held that a state trooper had reasonable suspicion to expand his welfare check to investigate for drunk driving because the trooper noticed the odor of an alcoholic beverage emanating from the driver and the driver's eyes were bloodshot and

watery. 823 N.W.2d 687, 696 (Minn. App. 2012). Many precedential and nonprecedential reasonable-suspicion opinions consider circumstances like these. Given our caselaw, we would readily hold that the officers had reasonable suspicion to detain Helget for a drunk-driving investigation, including observing, questioning, and sobriety testing.

But the circumstances fall far short of those that our courts have been asked to evaluate to consider probable cause to arrest for drunk driving. Those cases invariably involve much more than a nighttime accusation of bad driving and the odor of alcohol. For example, in *Costillo v. Commissioner of Public Safety*, the supreme court held that

> there was objective probable cause present that Costillo had driven while under the influence: (a) the officers had reason to believe that Costillo had rear-ended [another] car, (b) the officers had reason to believe Costillo had given a false name and had intentionally fled the scene, (c) one of the officers observed that Costillo's eyes were 'really bloodshot,' that he had a 'strong' odor of alcohol on his breath and that his speech was slurred, and (d) the officers observed belligerent conduct on Costillo's part.

416 N.W.2d 730, 733 (Minn. 1987). The *State v. Paul* court similarly held that probable cause of drunk driving existed when the officer "observed [the driver] roll through several stop signs, exceed the speed limit, and 'fishtail' on a highway," and he "smelled alcohol on [the driver], heard his slurred speech, saw his watery eyes and flushed face, watched him experience difficulty standing, and was the subject of [the driver's] alcohol-induced gregariousness." 548 N.W.2d 260, 264 (Minn. 1996). And in *State v. Kier*, we held that probable cause justified an arrest for drunk driving because the officer "observed a strong odor of an alcoholic beverage coming from the driver's breath," the driver "had blood-shot watery eyes and slurred speech," and "the events recorded on [the officer's] in-dash camera

prior to [the] arrest would unquestionably lead a person of ordinary care and prudence to entertain an honest and strong suspicion that [the driver] was driving under the influence of alcohol." 678 N.W.2d 672, 678 (Minn. App. 2004). I have found no case, and the majority cites none, where a caller's generalized accusation that a car was "all over the road" and the officer's smelling alcohol on the driver's breath qualifies as probable cause that the driver was operating while impaired. Indeed, if this is all it takes to achieve probable cause, what lesser circumstances remain to fit the lower standard of reasonable suspicion? None. The majority speculates that the caller's "all over the road" report means that Helget was "likely" operating "in violation of traffic laws," but as far as the record goes, this is a conjectural hunch rather than a fact known or even reported to police.

I don't suggest that extremely erratic driving and the strong odor of an alcoholic beverage can never support probable cause to arrest, especially when other indicia of impairment exist. For example, in *State v. Grohoski*, we found probable cause based on the officer's observing the driver operating "his motorcycle at extreme speed" and seeing "him cross the center of the road on a curve" before stopping him and observing "that his eyes were bloodshot and watery," that he had the "odor of alcohol about his person," and that he performed field sobriety tests "slowly and deliberately and with varying degrees of success" while he "swayed when he tilted his head back and closed his eyes." 390 N.W.2d 348, 351 (Minn. App. 1986), *rev. denied* (Minn. Aug. 27, 1986). Unlike the observed driving in *Grohoski*, here the caller apparently did not inform the police (and the record does not inform us) what the report of "all over the road" meant. Was Helget weaving slightly within his lane? Weaving radically within the lane? Weaving in and out of the

lane? Something more? Something less? Lacking more information, we simply cannot say that Helget's driving even began to establish probable cause of alcohol-based impairment. When considering whether a caller's report meets even the lower standard of reasonable suspicion, "If the police chose to stop on the basis of the tip alone, the anonymous caller must provide at least some specific and articulable facts to support the bare allegation of criminal activity." *Olson v. Comm'r of Pub. Safety*, 371 N.W.2d 552, 556 (Minn. 1985). I believe that the imprecise report and odor of alcohol here support no more than reasonable suspicion to detain and investigate. The officers chose instead to arrest first and investigate later. In doing so, they did not honor the Fourth Amendment with proper, constitutional policing.

And the circumstances do not support their decision to arrest under our objective standard of review, including the additional circumstances the majority references. The majority construes Helget's stepping over the three-foot fence and claiming that he was in his own yard rather than his neighbor's as "evasive behavior or confusion stemming from intoxication." Crossing the short fence was not "evasive behavior" because, as I have indicated, the record contradicts the premise that Helget knew it was a police officer who had asked him to stop. And nothing in the video evidence or officer's testimony suggests that Helget was at all confused. To the extent that representing that he was in his own yard rather than his neighbors was intended to avoid interacting with police, again, at most this raises suspicion but falls far short of establishing probable cause to arrest.

We should reverse based on the unconstitutional arrest and not reach the test-refusal issue. I do not think this is a particularly close case.