STATE OF MINNESOTA
IN COURT OF APPEALS
A24-0020

State of Minnesota,
Respondent,

vs.

Joshua Shaine Defoe,
Appellant.

Filed January 13, 2025
Affirmed
Halbrooks, Judge[*]

Itasca County District Court
File No. 31-CR-22-1672

Keith Ellison, Attorney General, Peter Magnuson, Assistant Attorney General, St. Paul, Minnesota; and

Jacob Fauchald, Itasca County Attorney, Todd S. Webb, Chief Assistant County Attorney, Grand Rapids, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Suzanne M. Senecal-Hill, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Ross, Presiding Judge; Harris, Judge; and Halbrooks, Judge.

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

NONPRECEDENTIAL OPINION

HALBROOKS, Judge

In this direct appeal from the judgment of conviction of felony driving while impaired (DWI)–test refusal, appellant argues that (1) the evidence is insufficient to prove beyond a reasonable doubt that he refused to submit to a chemical test and (2) the district court erred in denying his motion to suppress evidence following a *Franks* hearing.[1] Because we conclude that the evidence is sufficient to sustain appellant's conviction and the district court did not err in denying his motion to suppress, we affirm.

FACTS

On July 4, 2022, Officer Z. with the Nashwauk Police Department was on routine patrol when he saw a white Jeep with no license plates fail to come to a complete stop at a stop sign. Earlier that day, Officer Z. had received information via his squad-car computer that a white Jeep without license plates had driven off from a gas station without paying for its gas. Officer Z. activated his emergency lights to pull the Jeep over, but the Jeep accelerated. Officer Z. followed the Jeep as it ran through multiple stop signs in Nashwauk, at times reaching speeds approaching 100 miles per hour. The Jeep eventually crossed the

[1] In *Franks v. Delaware*, the United States Supreme Court held that a defendant may attack a facially valid warrant affidavit on the basis that the factual allegations therein contain a "deliberate falsehood or . . . reckless disregard for the truth" that affects the probable-cause determination. 438 U.S. 154, 171-72 (1978). If a defendant makes a "substantial preliminary showing" of misrepresentations or omissions of material facts made knowingly or with reckless disregard for the truth, they are entitled to an evidentiary hearing at which they must establish their allegations by a preponderance of the evidence. *Id.* at 155-56; *see also State v. Andersen*, 784 N.W.2d 320, 326 (Minn. 2010) (considering misrepresentations and omissions under *Franks* framework).

centerline of a two-lane highway and drove into the oncoming-traffic lane before turning left onto a snowmobile trail and stopping at the top of a hill.

Officer Z. saw a man exit from the driver's door of the Jeep and run toward the nearby woods. Additional law-enforcement officers arrived on the scene within minutes of Officer Z.'s arrival. One of those officers entered the woods to look for the driver while Officer Z. made contact with a passenger who had exited the Jeep. The passenger told Officer Z. that the driver was wearing a white shirt and blue jeans. The officer who entered the woods located a man wearing a white shirt and blue jeans, who was later identified as appellant, Joshua Shaine Defoe, placed him under arrest, and escorted him back to the location of the Jeep. The Officer Z. subsequently noted, when speaking with Defoe, that his eyes were glassy and bloodshot and that his demeanor quickly vacillated between calm and agitated. Officer Z. did not note these observations in his incident report or his probable-cause-to-detain form.

A deputy with the Itasca County Sheriff's Office transported Defoe to jail and Officer Z. met them there. Once at the jail, Officer Z. received text messages from two other officers who were investigating the Jeep at the scene. The text messages contained pictures of the interior of the Jeep, which showed multiple hypodermic needles located in the glove compartment and one between the front passenger seat and the center console. The officers told Officer Z. that the Jeep contained a loaded hypodermic needle but did not specify the location of that needle within the car nor state whether it was depicted in any of the photographs. One of the officers later testified at trial that the loaded hypodermic

needle was found in the backseat of the Jeep inside a backpack that was next to a prescription bottle that had Defoe's name on it.

Officer Z. drafted a search-warrant application to obtain a warrant for a blood or urine test of Defoe. Officer Z. had only been a police officer for about two months at the time and had no prior law-enforcement experience. As a result, he used the Itasca County deputy's e-charging account to submit the warrant application and sought the advice of other officers for approximately three hours before completing his affidavit in support of the warrant application. The relevant portions of his affidavit consist of the following:

> [O]n, 7/4/2022 I tried to stop the white [J]eep [C]ompass that ran through the stop sign of intersection Hwy 169 and State Hwy 65 north . . . . The [d]river of the vehicle was traveling at high rates of speed, swerving onto incoming traffic. [T]he vehicle then stopped on a snowmobile trail near [T]aconite and [C]ounty [R]oad 7. When I exited my squad I saw the male exit the driver door and head southwest through the woods . . . . The male [i]dentif[ied] as Joshua Shaine Defoe . . . . When was being walked out I noticed that his eyes were blood shot watery eyes, also through my controlled substance training his [demeanor] was changing from calm to frustrated . . . . I was advised by [other officers] that there was a loaded hypodermic needle, [d]uring my training and knowledge from other officers that these types of needles are often used with th[is] type of drug use.

A district court issued a search warrant for a blood or urine test of Defoe, but Defoe did not take a test. Respondent State of Minnesota charged Defoe with theft, careless driving, fleeing a peace officer on foot, driving after cancellation, fleeing a peace officer in a motor vehicle, fifth-degree controlled-substance crime, and first-degree felony DWI—test refusal. Defoe moved to suppress any evidence obtained as a result of the search

warrant and requested a *Franks* hearing, arguing that the warrant application contained material misrepresentations or omissions that affected the probable-cause determination.

The district court denied Defoe's motion to suppress, opining that *Franks* was not the proper framework under which to analyze Defoe's motion because the warrant did not result in a test, and therefore produced no evidence. The district court alternatively concluded that, even under *Franks*, it would deny Defoe's motion because any misrepresentations or omissions were the result of Officer Z.'s negligence as a new officer and were not made intentionally or with reckless disregard for the truth. The case proceeded to trial and a jury found Defoe guilty of first-degree test refusal, among other charges. Defoe was sentenced to 62 months in prison for the test refusal in addition to shorter concurrent sentences for his other convictions.

This appeal follows.

DECISION

Defoe challenges his conviction of first-degree DWI—test refusal on the grounds that the evidence is insufficient to sustain his conviction and that the district court erred in denying his motion to suppress statements he made when officers were executing the test warrant.

I. The evidence is sufficient to sustain Defoe's conviction of first-degree test refusal.

In a criminal prosecution, due process requires that the state prove every fact material to the crime charged beyond a reasonable doubt. *State v. Hage*, 595 N.W.2d 200, 204 (Minn. 1999). Pursuant to Minnesota Statutes section 169A.20, subd. 2(2) (2020),

"[i]t is a crime for any person to refuse to submit to a chemical test . . . of the person's blood or urine as required by a search warrant." To convict a defendant of test refusal, "[a]ctual unwillingness to submit to testing must be proved," either by direct or circumstantial evidence. *State v. Ferrier*, 792 N.W.2d 98, 101-02 (Minn. App. 2010), *rev. denied* (Minn. Mar. 15, 2011). "[R]efusal to submit to chemical testing includes any indication of actual unwillingness to participate in the testing process, as determined from the driver's words and actions in light of the totality of the circumstances." *Id.* at 102.[2]

In determining whether the evidence is sufficient to support a conviction, we "carefully examine the record to determine whether the facts and the legitimate inferences drawn from them would permit the jury to reasonably conclude that the defendant was guilty beyond a reasonable doubt of the offense of which he was convicted." *State v. Griffin*, 887 N.W.2d 257, 263 (Minn. 2016) (quotation omitted). We view the evidence in the light most favorable to the verdict and assume that the jury believed the

[2] The state argues that the "actual unwillingness" standard from *Ferrier* is no longer controlling in light of our supreme court's decision in *State v. Schwartz*. 957 N.W.2d 414 (Minn. 2021). In *Schwartz*, the supreme court affirmed our holding that a DWI offense under Minnesota Statutes section 169A.20, subd. 1(7) (2020) (driving or operating a vehicle while under the influence of a controlled substance listed in Schedule I or II), "is a strict-liability offense that does not require the State to prove knowledge as an element of the crime." *Id.* at 417; *see also State v. Schwartz*, 943 N.W.2d 411, 413 (Minn. App. 2020). The state contends that test refusal under Minnesota Statutes section 169A.20, subd. 2(2) is also a strict-liability offense because it appears in another subdivision of the same statute as the DWI at issue in *Schwartz* and similarly does not include an express knowledge requirement. We disagree. *Schwartz* construed a DWI offense under Minnesota Statutes section 169A.20, subd. 1(7), while *Ferrier* construed a test refusal under Minnesota Statutes section 169A.20, subd. 2(2). Because it did not address test refusal, *Schwartz* has no effect on *Ferrier*'s precedential value.

state's witnesses and disbelieved contrary evidence. *State v. Moore*, 846 N.W.2d 83, 88 (Minn. 2014).

Our standard of review for sufficiency of the evidence differs depending on whether a conviction relies on direct or circumstantial evidence. *State v. Hokanson*, 821 N.W.2d 340, 353 (Minn. 2012). "[D]irect evidence is evidence that is based on personal knowledge or observation and that, if true, proves a fact without inference or presumption." *State v. Harris*, 895 N.W.2d 592, 599 (Minn. 2017) (quotation omitted). Circumstantial evidence is "evidence from which the fact[-]finder can infer whether the facts in dispute existed or did not exist." *Id.* (quotation omitted). "[C]ircumstantial evidence always requires an inferential step to prove a fact that is not required with direct evidence." *Id.*

When the officers entered Defoe's cell with the warrant for a blood or urine test, the following exchange occurred:

> OTHER OFFICER #1: See if he would like to do blood or urine.
> OTHER OFFICER #2: Let's go boys. Hey, we got to ask you something. Are you up?
> OTHER OFFICER #1: Josh, are you up?
> OTHER OFFICER #2: Josh—
> DEFOE: Yeah.
> OTHER OFFICER #1: Okay.
> OFFICER Z.: Hey, I'm Officer Z. with Nashwauk Police Department. I have a search warrant for you and your car. Um, I believe that you were under the influence while you were driving. So, I have a blood or urine test that we can do. And if you refuse it's a crime and it's another offense to the DWI—DUI. So, do you wish to take something? Blood or urine?
> [Brief silence.]
> OTHER OFFICER #2: Josh?
> DEFOE: What?
> OTHER OFFICER #2: He's asking you a question—
> DEFOE: —No.

OTHER OFFICER #1: Okay.
OFFICER Z.: No?
OTHER OFFICER #2: No.
OTHER OFFICER #1: He said no.
OFFICER Z.: Okay.
OTHER OFFICER #1: Thanks, boys.

Defoe argues that his groggy answer of "No" cannot be attributed to being in response to Officer Z.'s question because he was asleep and was asked multiple questions. He contends that his "No" was instead in response to the other officer and for that reason it cannot be direct evidence of his test refusal. He argues that the circumstantial-evidence standard applies because the interaction between Defoe and the officers requires inferences that his "No" was in response to Officer Z.'s question about taking a blood or urine test and that he was awake enough to fully respond. We disagree.

The exchange involved two questions—one asking Defoe whether he was awake and the other asking whether he would take a test—and two answers—"Yeah" that Defoe was awake and "No" that he did not wish to take a test. No inference is required for this exchange to show that when asked whether he wished to take a blood or urine test, Defoe responded, "No." On this record, which includes an audio recording of the exchange, we conclude that the direct-evidence standard applies.

When a conviction is supported by direct evidence, "we limit our review to a painstaking analysis of the record to determine whether the evidence, when viewed in a light most favorable to the conviction, was sufficient to permit the jurors to reach the verdict which they did." *State v. Horst*, 880 N.W.2d 24, 40 (Minn. 2016) (quotation omitted). Here, the evidence is sufficient to support the jury's guilty verdict on the test-

refusal charge. The jury heard both the recording of the interaction between the officers and Defoe in the jail cell and the trial testimony from Officer Z. and the Itasca County deputy, who were both present during the interaction.

When viewed in a light most favorable to the verdict, Defoe saying "No" after Officer Z. asked him if he wanted to take a blood or urine test is sufficient to sustain his test-refusal conviction. Defoe did not present any evidence supporting his argument that his "No" was not in response to Officer Z.'s question or that he was not awake enough to understand it.[3] And even if he had, we must assume that the jury disbelieved that argument. *See Moore*, 846 N.W.2d at 88. Because the view of the evidence most favorable to the verdict is that Defoe's "No" was in response to Officer Z.'s question concerning his willingness to sustain a test, the evidence is sufficient to support Defoe's conviction under the direct-evidence standard.

But even assuming, arguendo, that the circumstantial-evidence standard applies, the evidence is still sufficient to sustain Defoe's conviction. When a conviction is based on circumstantial evidence, we apply a heightened two-step standard of review. *State v. Silvernail*, 831 N.W.2d 594, 598 (Minn. 2013). Under this standard, we first identify the circumstances proved. *Id.* In doing so, "we defer to the jury's acceptance of the proof of [the] circumstances and rejection of evidence in the record that conflicted with

[3] We note that Officer Z.'s question was the second in a series of questions Defoe was asked; Defoe was asked if he was awake prior to being asked Officer Z.'s question and answered in the affirmative.

the circumstances proved by the State." *Id.* at 598-99 (quotation omitted). This means that "we consider only those circumstances that are consistent with the verdict." *Id.* at 599.

"The second step is to determine whether the circumstances proved are consistent with guilt and inconsistent with any rational hypothesis except that of guilt." *Id.* (quotation omitted). In this step, we conduct an independent examination of the reasonableness of all inferences that could be drawn from the circumstances proved, including ones consistent with a hypothesis other than guilt. *Andersen*, 784 N.W.2d at 329 (quotation omitted). We do not give deference to the fact-finder's choice between reasonable inferences. *Silvernail*, 831 N.W.2d at 599. "[I]f any one or more circumstances found proved are inconsistent with guilt, or consistent with innocence, then a reasonable doubt as to guilt arises." *State v. Al-Naseer*, 788 N.W.2d 469, 474 (Minn. 2010) (quotation omitted). However, a rational hypothesis other than guilt cannot "rely on mere conjecture" or speculation; there must be evidence in the record to support it. *State v. Tscheu*, 758 N.W.2d 849, 858 (Minn. 2008); *see also Al-Naseer*, 788 N.W.2d at 480.

The circumstances relevant to test refusal proved in this case consist of the following: (1) the officers obtained a facially valid warrant for a blood or urine test for Defoe; (2) three officers, including Officer Z., went into Defoe's cell after midnight; (3) one of the officers asked Defoe if he was awake, to which he replied, "Yeah"; (4) Officer Z. then asked Defoe if he wished to take a blood or urine test and informed him that refusing to do so would be a crime; (5) when Defoe did not immediately respond, another officer called his name and said, "He's asking you a question"; (6) Defoe then responded, "No"; and (7) Defoe did not take a urine or blood test.

Defoe concedes that these circumstances are consistent with a rational hypothesis of guilt. But he contends that they are insufficient to sustain his conviction because they are also consistent with rational hypotheses other than guilt, i.e., that he had fallen back asleep after Officer Z.'s question or that his "No" was in response to the other officer. Defoe asserted these theories through cross-examination of the officers and his counsel's closing argument. But the fact that both are theoretically possible is insufficient to classify them as rational hypotheses other than guilt. *See Tscheu*, 758 N.W.2d at 860-61. We still view any circumstantial evidence in a light most favorable to the verdict and assume that the jury disbelieved anything set forth contradicting the verdict. *Moore*, 846 N.W.2d at 88. To the extent that Defoe is arguing that this is a rational hypothesis other than guilt, we must assume the jury disbelieved that contention. Therefore, even if the evidence here is circumstantial, it would still be sufficient to support Defoe's conviction.

II. The district court did not err in denying Defoe's motion to suppress under the *Franks* framework.

Both the United States and Minnesota Constitutions protect against unreasonable searches and seizures by the government. U.S. Const. amend. IV; Minn. Const. art. I, § 10. "If a search warrant is not supported by probable cause, then it is unreasonable." *State v. Wiggins*, 4 N.W.3d 138, 145 (Minn. 2024). The existence of probable cause is determined by a review of the warrant application and supporting affidavits. *Id.* "Probable cause exists when there is a fair probability that . . . evidence of a crime will be found in a particular place." *Onyelobi v. State*, 932 N.W.2d 272, 281 (Minn. 2019) (quotation omitted).

Appellate courts give great deference to the issuing judge's determination of probable cause at the time of the warrant's issuance. *State v. Rochefort*, 631 N.W.2d 802, 804 (Minn. 2001). To determine whether probable cause exists for a warrant, appellate courts assess whether, under the totality of the circumstances, the issuing judge had a substantial basis for determining that there was a fair probability that contraband or evidence of a crime would be found in a particular place. *State v. Zanter*, 535 N.W.2d 624, 633 (Minn. 1995). A search-warrant affidavit is presumed valid. *State v. McGrath*, 706 N.W.2d 532, 540 (Minn. App. 2005), *rev. denied* (Minn. Feb. 22, 2006). But the presumption is overcome if the affidavit is a "product of deliberate falsehood or reckless disregard for the truth." *Id.* "A search warrant is void, and the fruits of the search must be excluded, if the application includes intentional or reckless misrepresentations of fact material to the finding of probable cause." *State v. Moore*, 438 N.W.2d 101, 105 (Minn. 1989) (citing *Franks*, 438 U.S. at 171-72).

To invalidate a warrant under the *Franks* framework, a defendant must "show that (1) the affiant deliberately made a statement that was false or in reckless disregard of the truth, and (2) the statement was material to the probable cause determination." *Andersen*, 784 N.W.2d at 327 (quotation omitted). "A misrepresentation or omission is material if, when the misrepresentation is set aside or the omission supplied, probable cause to issue the search warrant no longer exists." *Id.* Under this framework, "the court must determine that the police deliberately or recklessly misrepresented facts, because innocent or negligent misrepresentations will not invalidate a warrant." *Moore*, 438 N.W.2d at 105.

We review a district court's determinations of whether misstatements or omissions were intentional or in reckless disregard of the truth under a clearly erroneous standard and its determinations on materiality de novo. *Andersen*, 784 N.W.2d at 327. Under the clearly erroneous standard, we will uphold findings of fact so long as we find "reasonable evidence" in the record to support them and are not "left with the definite and firm conviction that a mistake has been made." *State v. Evans*, 756 N.W.2d 854, 870 (Minn. 2008) (quotations omitted).

We first address the district court's decision on the applicability of *Franks*. After holding a *Franks* hearing, the district court determined that *Franks* was not the correct framework under which to analyze Defoe's motion because no test occurred. As a result, no evidence resulted from use of the warrant. Both parties contend on appeal that *Franks* does apply. We agree. Although it is true that no test was obtained as a result of the warrant, the statutory provision under which Defoe was charged specifically requires a search warrant for the test. Therefore, Defoe's refusal was a consequence of the warrant and evidence of the crime of which he was found guilty. *See* Minn. Stat. § 169A.20, subd. 2(2). Because Defoe's statements constituting his refusal resulted from the warrant, *Franks* applies. We therefore review the *Franks* analysis the district court conducted as an alternative analysis in its order.

Defoe's argument at the *Franks* hearing was twofold. First, he argued that Officer Z.'s initial observations of his bloodshot and watery eyes and vacillating demeanor were intentional or reckless misrepresentations because neither Officer Z. nor any other responding officer included those observations in a report. Second, Defoe argued that

Officer Z.'s statement about the loaded hypodermic needle found in the Jeep was an intentional or reckless omission because he did not include the specific location of the needle inside the car. At the *Franks* hearing, Officer Z. testified that he noticed Defoe's vacillating demeanor and watery, bloodshot eyes when interacting with him. While the Itasca County deputy did not testify that he made similar observations, he also indicated that he was not paying attention to Defoe's appearance or demeanor because he was not the charging officer and was merely transporting Defoe to the jail. Officer Z. testified that he did not know why he did not include information about the specific location of the loaded hypodermic needle inside the car in his warrant affidavit.

In its *Franks* analysis, the district court stated that Defoe "failed to prove by a preponderance of the evidence that Officer Z. *intentionally* or *recklessly* included misrepresentations—or omissions—of fact in his supporting affidavit in the search warrant application." The district court found that Officer Z.'s omission of details concerning the location of the loaded hypodermic needle in the warrant affidavit and the inclusion of his observations of Defoe's eyes and demeanor in the warrant affidavit, but not in his report or probable-cause form, were the result of negligence. The district court did not address materiality. Defoe argues that the district court's finding of negligence is clearly erroneous and that the omissions and misrepresentations were material. We address each aspect of Defoe's *Franks* motion in turn.

A. Omission—Loaded Hypodermic Needle

Defoe asserts that Officer Z. intentionally or recklessly omitted details of the precise location of the loaded hypodermic needle in the Jeep. Defoe points to inconsistencies

between Officer Z.'s testimony that he received the information about the loaded hypodermic needle via photographs texted to him by on-scene officers and the Itasca County deputy's testimony that he was the one who received the information about the contents of the Jeep via a phone call from on-scene officers. Defoe also argues that Officer Z. testified that he had seen a screenshot of the security video of Defoe leaving the gas station without paying on the day of the incident, even though law enforcement did not receive the video until the following day.[4]

Defoe contends that both of these inconsistencies show the recklessness with which Officer Z. conducted the investigation with regard to the needle and as a whole. But Defoe points to no evidence showing that both officers could not have separately received information about the Jeep's contents. And he does not explain how any misrepresentations or inconsistent testimony Officer Z. may have provided about his observations regarding Defoe's suspected involvement in the gas station drive-off are relevant to the omission of information about the specific location of the loaded hypodermic needle (or the observations of Defoe's physical indicia of impairment).

Defoe also contends that the district court's characterization of Officer Z.'s omission as negligent is clearly erroneous because Officer Z. waited approximately three hours to complete the warrant affidavit so that he could seek the advice of more experienced officers. This too is unconvincing. Officer Z. testified that it was the first warrant affidavit he ever completed and that he did not know why he did not include the

[4] Officer Z. testified at trial that he was mistaken in having thought he saw a screenshot that day.

specific location about the needle. Under these facts, the district court's determination that the omission was merely negligent is not clearly erroneous.

B. Misrepresentation—Observations of Defoe

Second, Defoe claims that Officer Z. intentionally or recklessly misrepresented his observations of Defoe's vacillating demeanor and bloodshot and watery eyes because Officer Z. did not include them in either the probable-cause statement or the report he made of the incident. Additionally, no other officer included these observations in their reports. But Officer Z. testified at the *Franks* hearing that he made these observations when speaking with Defoe on the scene. The district court clearly found this testimony credible, and we defer to the district court's credibility determinations. *State v. Barshaw*, 879 N.W.2d 356, 366 (Minn. 2016). Moreover, Defoe provided no actual evidence that Officer Z.'s observations of Defoe were misrepresentations. And with respect to recklessness or intentionality, Defoe relied on the same arguments that he asserted concerning the omission of the loaded hypodermic needle. As previously discussed, the district court's determination that Officer Z.'s omissions were not reckless or intentional is not clearly erroneous.

Because the district court's findings with respect to either aspect of Defoe's *Franks* motion are not clearly erroneous, we need not reach the issue of materiality. *See Moore*, 438 N.W.2d at 105 (courts need not decide materiality if there was no intentional or reckless misrepresentation or omission). We conclude that the district court did not err in denying Defoe's motion to suppress under a *Franks* framework.

Affirmed.