

*This opinion is nonprecedential except as provided by  
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A22-0289**

State of Minnesota,  
Respondent,

vs.

Jacob David Jackson Boucher,  
Appellant.

**Filed December 12, 2022  
Reversed  
Wheelock, Judge**

Hennepin County District Court  
File No. 27-CR-20-24356

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

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

Tim Phillips, Law Office of Tim Phillips, Minneapolis, Minnesota (for appellant)

Considered and decided by Wheelock, Presiding Judge; Bratvold, Judge; and Cochran, Judge.

**NONPRECEDENTIAL OPINION**

**WHEELOCK, Judge**

In this direct appeal from the final disposition of a petty-misdemeanor violation of state law prohibiting pedestrians from using a controlled-access highway, appellant argues that the circumstantial evidence was insufficient to support the district court's finding of

guilt. Because the circumstances proved at trial are not inconsistent with a rational hypothesis of innocence, we reverse.

## FACTS

Respondent State of Minnesota charged appellant Jacob David Jackson Boucher with a petty-misdemeanor violation of Minn. Stat. § 169.305, subd. 1(c) (2020), based on Minn. R. 8810.0050 (2019) (order no. 30757), alleging that he had used a “controlled-access highway” as a pedestrian. The district court heard Boucher’s case at a bench trial on February 23, 2022. The following facts summarize the evidence presented at trial.

The state called two law-enforcement officers as witnesses. First, Major Meagher testified that on the evening of November 4, 2020, he was monitoring a large group of demonstrators from a “command center” via cameras on “manned aircraft” that allowed the officers to see what the pilots were seeing and via social-media livestream. He observed the demonstrators enter the eastbound lanes of I-94 via the Cedar Avenue on-ramp in Minneapolis. According to Major Meagher, the group included six lead and five to six trailing vehicles that accompanied the pedestrian demonstrators. Once the demonstration moved onto the interstate, state-patrol officers became concerned that the demonstrators’ presence posed a danger to themselves and motorists on I-94. The state-patrol mobile-response team took action to end the demonstration and arrest the individuals on the highway.

Major Meagher testified that the state patrol first shut down both eastbound and westbound lanes of I-94. Next, officers detained the demonstrators and began to arrest and cite them. Major Meagher testified that

we started from the east, approached the group on the east side of eastbound 94. There was—the group was organized with lead vehicles and trailing vehicles, so we approached the trailing vehicles, asked them to get out of the vehicles, and we towed the vehicles in the rear so we could secure the back area, and we set up processing in that rear back area with troopers, with squad cars, with thermal printers in their squad cars to document the people who were arrested and cited and to issue citations.

Eventually, Major Meagher went to the scene on I-94 to assist in person, where he communicated with other law-enforcement officers and documented the signage posted on the entrance ramps to I-94.

State patrol officer Lt. Gear testified next on behalf of the state. He explained that he was a part of the mobile-response-team unit that responded to I-94 on the evening of November 4. He testified that, as the on-scene supervisor, he oversaw the movement of officers to create a “formation” around the demonstrators, and after the formation was established, his role was to take photos with his smartphone to document the individuals who were being arrested and cited. He described the processing of the demonstrators: individuals were escorted from the encircled group on the highway and brought to a processing area just to the west of the group; part of that process was documenting with a photo, and “that was [his] role at that point.” Lt. Gear testified that he believes that if officers encountered someone in a vehicle assisting the demonstration, that individual would have been detained and placed with the larger group. Lt. Gear testified specifically

that he did not personally see Boucher as part of the group entering the interstate from Cedar Avenue.

Boucher called two fellow demonstrators as witnesses. They each testified that they were occupying a lead or trailing vehicle when the demonstrators entered I-94, but they received citations for using a controlled-access highway as a pedestrian. These witnesses testified that they could not identify all of the other vehicle occupants who were part of the demonstration, and neither of them testified that they observed Boucher in a vehicle at any time during the demonstration on I-94. The pedestrian-using-controlled-access-highway charges were eventually dismissed for both witnesses.<sup>1</sup>

At trial, Boucher argued that the state did not meet its burden of proof beyond a reasonable doubt to establish that he used I-94 as a pedestrian, as he could have been occupying a vehicle or standing on the grassy area on the side of the on-ramp when he was detained and arrested. The officer who arrested Boucher and placed him in the group of detained demonstrators on I-94 did not testify, and none of the witnesses testified to personal knowledge of whether Boucher used I-94 as a pedestrian or was in a vehicle before encountering law enforcement. Furthermore, Boucher introduced into evidence the

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<sup>1</sup> The district court specifically noted in its trial findings that as of the date of Boucher's trial, one of the witnesses who testified at Boucher's trial that she was in a vehicle during the demonstration also had a pending charge of pedestrian using a controlled-access highway from the same demonstration. The district court then noted that (1) the witness was advised of her right not to testify because of her pending charge, but (2) she waived that right and testified at Boucher's trial that she was in a vehicle that evening and was not a pedestrian on I-94, and (3) the state dismissed her case the day after she testified in Boucher's trial.

citation issued to him that night, which included vehicle information—make, model, and license plate number—in addition to his personal information.

Boucher moved for judgment of acquittal at the close of the state’s case, and the district court denied the motion. The court found Boucher guilty of the petty-misdemeanor offense of using a controlled-access highway as a pedestrian and sentenced him to pay a fine.

Boucher appeals.

### DECISION

On appeal, Boucher argues that the evidence introduced at trial was insufficient to support the district court’s finding of guilt beyond a reasonable doubt. The presumption of innocence in a criminal trial is a fundamental principle. *State v. Peterson*, 673 N.W.2d 482, 486 (Minn. 2004). To uphold this principle, “the state [must] prove every element of a charged offense beyond a reasonable doubt.” *Id.* “Given the presumption of innocence and the state’s burden to prove the offense, a defendant has no obligation to present any evidence and should not be put at risk of providing evidence that fills gaps in the state’s case.” *State v. Slaughter*, 691 N.W.2d 70, 75 (Minn. 2005).

Our court recently decided a similar appeal to Boucher’s in *State v. Olson*, No. A21-1742, 2022 WL 17086778 (Minn. App. Nov. 21, 2022). Olson participated in the same demonstration in which Boucher participated on the evening of November 4, 2020, when a group of more than 600 people walked onto I-94 with lead and trailing vehicles book-ending the pedestrian demonstrators. 2022 WL 17086778, at \*1-2. The district court found Olson guilty of violating Minn. Stat. § 169.305, subd. 1(c). *Id.* Olson appealed and

challenged the sufficiency of the evidence. *Id.* at \*2. We affirmed after examining the circumstantial evidence and concluding that “Olson’s theories of innocence are based on mere conjecture, and they are unreasonable in light of the circumstances proved as a whole.” *Id.* at \*6. The precedential opinion in *Olson* clarified that “a fact-finder is not required to apply [the circumstantial-evidence standard of review] when determining whether the state has proved a defendant’s guilt beyond a reasonable doubt at trial.” *Id.* at \*1.

Much like *Olson*, *Boucher* challenges whether the evidence was sufficient to support the district court’s finding that he had violated Minn. Stat. § 169.305, subd. 1(c), which provides:

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

At trial, the district court took judicial notice of the fact that the commissioner exercised such authority by issuing order no. 30757, which is codified at Minn. R. 8810.0050, and provides as follows:

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

To aid our analysis, we first identify the elements of the offense. The district court reasoned, and the parties do not dispute, that to prove Boucher’s guilt under Minn. Stat. § 169.305, subd. 1(c), the state had to prove the following elements:

1. The highway in question is a “controlled-access highway”;
2. the Commissioner of Transportation prohibited the use of the controlled-access highway by pedestrians;
3. The defendant was a pedestrian on the controlled-access highway;
4. The pedestrian’s use of the controlled-access highway was incompatible with normal and safe flow of traffic; and
5. The incident took place in Hennepin County, Minnesota on the date alleged.

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

For our analysis, we assume that the district court correctly identified the elements of the charged offense because the parties do not contest this aspect of the district court’s findings. And although it is not expressly stated in the district court’s trial findings, we infer that the alleged offense occurred when the demonstrators entered and occupied I-94, *before law enforcement detained and arrested Boucher*. Thus, the state had to prove that the elements of the offense existed at the time the offense occurred.

Returning to the elements of the offense, Boucher does not dispute whether the state established the first, second, and fifth elements of the offense.<sup>2</sup> Our review of the record shows that the state introduced direct evidence of these three elements. Rather, Boucher asserts that the state did not meet its burden to prove the third element: that he was a pedestrian on I-94.<sup>3</sup>

The district court found that Boucher was detained *with* the group of pedestrians on I-94 on the evening of November 4, 2020, but there is no direct evidence in the record to establish that Boucher *used* I-94 as a pedestrian before he was detained and cited. The state’s witness—Lt. Gear—testified that he encountered Boucher on I-94 *after Boucher was detained* with the group of demonstrators. Lt. Gear testified only that he encountered Boucher when he was processed and cited. An inferential step is needed to find that Boucher used I-94 as a pedestrian before law enforcement detained him with the large group of demonstrators. We must therefore evaluate whether the state proved the third element of the offense—that Boucher used I-94 as a pedestrian—by applying the circumstantial-evidence standard of review.

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<sup>2</sup> The parties do not dispute that Interstate 94 in Hennepin County is a controlled-access highway on which pedestrian use is prohibited under the statute and rule.

<sup>3</sup> Neither Boucher nor the state focused on the fourth element in their briefs or argument to this court. We assume without deciding that if the state proved that Boucher used I-94 as a pedestrian, then the fourth element would also be proved given the record establishing that any person who used I-94 as a pedestrian during the demonstration that evening used the controlled-access highway in a manner incompatible with the normal and safe flow of traffic.



We apply the same standard of review to evaluate the sufficiency of the evidence in bench trials as in jury trials. *State v. Palmer*, 803 N.W.2d 727, 733 (Minn. 2011). We “carefully examine the record to determine whether the facts and the legitimate inferences drawn from them would permit the [fact-finder] to reasonably conclude that the defendant was guilty beyond a reasonable doubt.” *State v. Griffin*, 887 N.W.2d 257, 263 (Minn. 2016) (quotation omitted).

We review a conviction with “heightened scrutiny,” however, when the conviction is based on circumstantial evidence. *State v. Al-Naseer*, 788 N.W.2d 469, 473 (Minn. 2010). Circumstantial evidence is evidence that requires a fact-finder to “infer whether the facts in dispute existed or did not exist.” *State v. Harris*, 895 N.W.2d 592, 599 (Minn. 2017) (quotation omitted). Circumstantial evidence differs from direct evidence in that it “always requires an inferential step to prove a fact.” *Id.*

When a conviction is based on circumstantial evidence, we apply a two-step circumstantial-evidence standard of review. *Loving v. State*, 891 N.W.2d 638, 643 (Minn. 2017). First, we identify the circumstances proved at trial. *State v. Andersen*, 784 N.W.2d 320, 329 (Minn. 2010). Second, we “determine whether the circumstances proved are consistent with guilt and inconsistent with any rational hypothesis except that of guilt.” *State v. Silvernail*, 831 N.W.2d 594, 599 (Minn. 2013) (quoting *Palmer*, 803 N.W.2d at 733).

Our inquiry is “not simply whether the inferences that point to guilt are reasonable,” because appellate courts “give no deference to the fact finder’s choice between reasonable inferences.” *Id.* (quotations omitted). Rather, the “[c]ircumstantial evidence must form a

complete chain that . . . leads so directly to the guilt of the defendant as to exclude beyond a reasonable doubt any reasonable inference other than guilt.” *State v. Taylor*, 650 N.W.2d 190, 206 (Minn. 2002); *see also Bernhardt v. State*, 684 N.W.2d 465, 477 (Minn. 2004) (stating that circumstantial evidence “must point unerringly” to guilt (quotation omitted)). At the same time, the circumstantial-evidence standard does not allow this court to reverse a conviction “on the basis of mere conjecture.” *Andersen*, 784 N.W.2d at 330 (quotation omitted).

We consider the circumstantial evidence “as a whole” when completing this step of the analysis. *Silvernail*, 831 N.W.2d at 599; *see also Andersen*, 784 N.W.2d at 332 (“[W]e do not review each circumstance proved in isolation. Instead, we must consider whether the circumstances presented are consistent with guilt and inconsistent, *on the whole*, with any reasonable hypothesis of innocence.” (quotation omitted)).

To apply the circumstantial-evidence standard, we first identify the circumstances proved at trial. In doing so, we defer to the fact-finder’s “acceptance of the proof of these circumstances and rejection of evidence in the record that conflicted with the circumstances proved by the State.” *Andersen*, 784 N.W.2d at 329 (quoting *State v. Stein*, 776 N.W.2d 709, 714 (Minn. 2010) (plurality opinion)). In other words, we review conflicting evidence in the light most favorable to the state. *See id.* at 330; *State v. Tscheu*, 758 N.W.2d 849, 858 (Minn. 2008).

The following circumstances were proved at trial:

- A group of more than 600 demonstrators entered I-94 from the Cedar Avenue on-ramp on the evening of November 4, 2020.

- The group included individuals who were pedestrians and individuals who occupied about 12 vehicles, some of which were at the front of the group and the rest of which trailed the group.
- The state patrol shut down all lanes of traffic on that section of I-94 and encircled the group of demonstrators.
- Officers created a “formation” to detain demonstrators that included pedestrian demonstrators who were standing on I-94 and the on-ramp and some of the driver and passenger demonstrators from the vehicles that accompanied the march.
- At least two of the vehicle occupants were encircled and cited by law enforcement.
- Boucher was detained in the group of demonstrators and received a citation.
- Boucher’s citation included a vehicle make, model, and license plate number.
- Lt. Gear credibly testified that as a part of the arrest process, he encountered Boucher standing on I-94 after Boucher had been detained by other law-enforcement officers.

We turn next to the second step of our inquiry, determining whether the circumstances proved at trial are consistent with a rational hypothesis of guilt and inconsistent with any rational hypothesis of innocence. The circumstances proved are consistent with guilt in that it is reasonable to infer that Boucher was detained with the group of demonstrators who walked onto I-94 because he used I-94 as a pedestrian during the demonstration. But Boucher argues that there is another reasonable inference inconsistent with guilt that can be drawn from the circumstances proved—that is, that he

was an occupant of one of the lead or trailing vehicles and did not use I-94 as a pedestrian before being detained and cited by law enforcement.

Although the district court found that “it is a more reasonable and credible explanation” that Boucher was a pedestrian on I-94 when he was arrested, we need not accept the district court’s choice between reasonable inferences. *See Silvernail*, 831 N.W.2d at 599. The alleged violation with which the state charged Boucher took place *before* he was detained, arrested, and cited. The circumstances proved include that officers detained and cited demonstrators from vehicles in the same group as the pedestrian demonstrators. Boucher’s citation included vehicle information for a 2018 Jeep Wrangler along with his personal information.

We conclude that the circumstances proved are also consistent with the rational hypothesis other than guilt that Boucher was occupying a vehicle when he was detained and that he exited the vehicle onto the controlled-access highway at the direction of law enforcement. The circumstantial evidence here does not “form a complete chain that . . . leads so directly to the guilt of the defendant as to exclude beyond a reasonable doubt any reasonable inference other than guilt.” *Taylor*, 650 N.W.2d at 206. Thus, the record evidence was insufficient to support the district court’s finding that Boucher used I-94 as a pedestrian.

The record evidence in Boucher’s case is materially different from the record evidence in Olson’s case. Boucher’s citation included vehicle information, and the record evidence established both that the state’s law-enforcement witnesses conceded that officers placed pedestrians and vehicle occupants into the same detention group on the interstate

and that law enforcement detained and cited at least two vehicle occupants. The district court's findings noted that Boucher's citation was introduced into evidence "to show that law enforcement recorded vehicle information for Defendant Boucher, suggesting that he may have been in a vehicle and was not a pedestrian." Still, the district court found that there was "insufficient evidence to support this theory of the case." We disagree. The record evidence supports the reasonable alternative hypothesis that Boucher was a driver or passenger in a vehicle while participating in the demonstration, persuading us that Boucher's reasonable alternative hypothesis is not mere conjecture.

The state's brief to this court addressed the alternative rational hypothesis that Boucher was a vehicle occupant by making a statistical argument: "[I]f up to 48 of those people had arrived in vehicle, it is not a rational inference in light of all the evidence that Appellant was a passenger in a vehicle. Forty-eight people of the more than 600 protesters would make up just 8% of the total group." While the state's statistical analysis may be accurate, it supports and does not eliminate the reasonable alternative hypothesis that Boucher was a vehicle occupant before law enforcement detained and cited him.

While the evidence here may be close to the evidence in *Olson*, it is not the same. Our concern that even one innocent person is wrongly convicted warrants holding fast to a principled review of the circumstantial evidence in this case. The state has the burden to prove all elements of Boucher's alleged offense beyond a reasonable doubt. As noted above, we conclude that the third element of this offense required the state to prove that Boucher used I-94 as a pedestrian *before* he was encircled by law enforcement and detained

with other demonstrators. Based on the circumstantial evidence as a whole, we conclude that the state failed its burden of proof.

Because we conclude that the circumstances proved from the evidence at trial did not exclude a reasonable inference consistent with Boucher's innocence, we do not address whether the district court erred in its interpretation of Minn. Stat. § 169.305, subd. 1(c), which stems from Boucher's argument that he could have been detained from the grassy area on the side of the I-94 on-ramp.

**Reversed.**