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Minn. Stat. § 480A.08, subd. 3 (2006).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A06-2190**

State of Minnesota,
Respondent,

vs.

Marc Alan Demarais,
Appellant.

**Filed March 25, 2008
Affirmed
Collins, Judge***

Anoka County District Court
File No. K2 05 4232

Lori Swanson, Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101-2134; and

Robert M.A. Johnson, Anoka County Attorney, Marcy S. Crain, Andrew Ronald Karl Johnson, Assistant County Attorneys, Anoka County Government Center, 2100 Third Avenue, 7th Floor, Anoka, MN 55303 (for respondent)

John M. Stuart, State Public Defender, 540 Fairview Avenue North, Suite 300, St. Paul, MN 55104; and

Bryan J. Leary, John C. Conard, Assistant Public Defenders, 433 Jackson Street, Suite 120, Anoka, MN 55303 (for appellant)

Considered and decided by Worke, Presiding Judge; Kalitowski, Judge; and
Collins, Judge.

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

UNPUBLISHED OPINION

COLLINS, Judge

On appeal from convictions of (1) fleeing a police officer resulting in death, and (2) fleeing a police officer resulting in great bodily harm, appellant argues that evidence that he initially fled from two police cars, but that both officers terminated the pursuit two blocks before appellant collided with another vehicle, was insufficient to support either conviction because the resulting death and great bodily harm did not occur “in the course of fleeing.” Because there is sufficient evidence to support appellant’s convictions, we affirm.

FACTS

The vehicle driven by appellant Marc Demarais crashed into a minivan, killing the driver and severely injuring the passenger. Appellant was subsequently charged with fleeing a peace officer in a motor vehicle resulting in death, in violation of Minn. Stat. § 609.487, subd. 4(a) (2004); fleeing a peace officer in a motor vehicle resulting in great bodily harm, in violation of Minn. Stat. § 609.487, subd. 4(b) (2004); and lesser offenses. He pleaded not guilty, and the case was tried.

At trial, Officer Andy Knutson testified that while on patrol on April 28, 2005, he observed a vehicle traveling at a high rate of speed approaching his squad car from the opposite direction. Knutson testified that he made a U-turn, activated his siren and flashing lights, and pursued the vehicle. According to Knutson, the driver of the vehicle accelerated to speeds of 60 miles per hour or more and frequently changed course while driving through a picket fence, several residential lawns, and ten stop signs without

slowing. Knutson testified that because the driver failed to slow down while being pursued, he turned off his flashers and siren and slowed to normal speed in order to alleviate risks to himself and others. Although he had discontinued the high-speed chase, Knutson continued on watch for the vehicle and made radio contact with other law-enforcement units regarding the vehicle's last known location and direction of travel. Shortly thereafter, he arrived at the scene of the crash.

Sergeant Lenny Austin also testified at trial. He said he heard the radio communication from Officer Knutson and drove to the area of pursuit. He came upon the described vehicle being driven fairly fast with its right front tire blown out. Austin turned on his flashing lights and siren and got behind the vehicle in pursuit. After about two blocks the driver accelerated and ran a stop sign. At that point, out of concern about potential liability for the city, Austin deactivated his flashing lights and siren, slowed his speed and radioed that he was terminating the chase because it was too fast and dangerous. Nonetheless, he continued on, watching for the vehicle in hopes of sneaking up on it.

The crash occurred about two blocks from where Austin's high-speed chase ended. A witness saw appellant's vehicle rapidly approach and enter the intersection without slowing before colliding with the minivan. Other witnesses described the noise of the crash as sounding like a train, or like a dumpster full of construction debris dropped from 30 feet. Accident reconstruction analysis offered at trial indicated that appellant's vehicle was travelling at "highway speed" or more at the time of the crash.

Investigator Matthew Markham testified that, after hearing the radio transmissions, he responded to the area of the pursuit and came upon the crash site. According to Markham, someone there pointed out the driver of the vehicle, who was running away. Markham gave chase and apprehended the person, appellant, a short distance from the scene.

The jury returned guilty verdicts. The district court entered judgments of conviction and sentenced appellant to 243 months in prison for fleeing a peace officer in a motor vehicle resulting in death and to a consecutive 21-month sentence for fleeing resulting in great bodily harm. This appeal follows.

D E C I S I O N

In considering a claim of insufficient evidence, this court's review is limited to a "painstaking analysis of the record to determine whether the evidence, when viewed in a light most favorable to the conviction, [is] sufficient to permit the jurors to reach the verdict which they did." *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989). The reviewing court must assume that the jury believed the state's witnesses and disbelieved any contrary evidence. *State v. Moore*, 438 N.W.2d 101, 108 (Minn. 1989). The reviewing court "will not disturb the 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 defendant was guilty of the charged offense. *State v. Alton*, 432 N.W.2d 754, 756 (Minn. 1988).

Appellant concedes his culpability for the lesser-charged offenses of criminal vehicular operation. But appellant contends that there was insufficient evidence to

convict him of fleeing a peace officer under Minn. Stat. § 609.487, subd. 4 (2004). This statute provides:

Whoever flees or attempts to flee by means of a motor vehicle a peace officer who is acting in the lawful discharge of an official duty, and the perpetrator knows or should reasonably know the same to be a peace officer, and who in the course of fleeing causes the death of a human being not constituting murder or manslaughter or any bodily injury to any person other than the perpetrator may be sentenced to imprisonment.

Minn. Stat. § 609.487, subd. 4. The “term ‘flee’ means to increase speed, extinguish motor vehicle headlights or taillights, refuse to stop the vehicle, or use other means with intent to attempt to elude a peace officer following a signal given by any peace officer to the driver of a motor vehicle.” Minn. Stat. § 609.487, subd. 1 (2004).

Appellant argues that because it is undisputed that the police terminated the pursuit two blocks before he collided with the other vehicle, there was no evidence that police were pursuing him at the time of the crash. Appellant thus contends that, as a matter of law, he cannot be convicted of fleeing a peace officer under Minn. Stat. § 609.487, subdivision 4.

We disagree. The pertinent clause of subdivision 4 reads, “who *in the course of fleeing*,” (emphasis added), not, “who *while being pursued*.” Minn. Stat. § 609.487, subd. 4. The operative language defining the term “flee” is, “following a signal given by any peace officer,” not a more restrictive phrase such as, “while being signaled.” *Id.*, subd. 1. The plain text of the statutory definition of “flee” simply does not require pursuit as a condition of “fleeing.” Criminal statutes must be strictly construed, but the rule of strict

construction does not require the narrowest possible construction of the statute. *State v. Zacher*, 504 N.W.2d 468, 473 (Minn. 1993). And this court cannot add further limitations on the term “flee” that the legislature has not chosen to impose. *See generally State v. Koperski*, 611 N.W.2d 569, 573 (Minn. App. 2000).

Because the prerequisites of “fleeing a peace officer” have been met as a matter of law, it then becomes an issue of fact as to whether appellant was fleeing at the time of the crash. Appellant’s intent to flee the police is evident from the fact that after the police officers repeatedly signaled him to stop, appellant increased his speed and drove erratically in an apparent effort to evade the officers. The record reflects that the collision occurred only about two blocks from where the active chase ended. Given that short distance, and evidence of the high rate of speed at which appellant continued to travel, the crash must have occurred within seconds after the end of the chase. We further note that appellant’s continuing intent to elude the police is shown by his flight on foot from the scene. Although the officers had officially terminated the high-speed pursuit a short distance before the crash, it nonetheless occurred while appellant continued in the uninterrupted course of fleeing.

Accordingly, we conclude that there was sufficient evidence as a matter of law to support appellant’s convictions under Minn. Stat. § 609.487, subd. 4(a), (b).

Affirmed.