STATE OF MINNESOTA
IN COURT OF APPEALS
A06-2205

State of Minnesota,
Respondent,

vs.

Grant Lee Erickson,
Appellant.

Filed March 18, 2008
Affirmed
Kalitowski, Judge

Sherburne County District Court
File No. K8-04-568

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

Kathleen A. Heaney, Sherburne County Attorney, Arden Fritz, Assistant County Attorney, Government Center, 13880 Highway 10, Elk River, MN 55330 (for respondent)

John M. Stuart, State Public Defender, Leslie J. Rosenberg, Assistant Public Defender, 540 Fairview Avenue North, Suite 300, St. Paul, MN 55104 (for appellant)

Considered and decided by Kalitowski, Presiding Judge; Minge, Judge; and Connolly, Judge.

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

KALITOWSKI, Judge

On appeal following his conviction of fleeing a peace officer in a motor vehicle, appellant Grant Lee Erickson argues that (1) the evidence was insufficient to show he intended to flee; and (2) the district court erred by failing to instruct the jury on the definition of intent. We affirm.

D E C I S I O N

I.

Appellant argues that the state failed to provide sufficient evidence at trial to support his conviction of fleeing a peace officer. Specifically, appellant argues that the state's evidence failed to prove that he had the intent to flee the officers following him on March 9, 2004. We disagree.

When assessing the sufficiency of evidence, our 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," was sufficient to permit the fact-finder to reach the verdict that it did. *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989). The verdict should stand "if the jury, acting with due regard for the presumption of innocence and for the necessity of overcoming it by proof beyond a reasonable doubt, could reasonably conclude that [a] defendant was proven guilty of the offense charged." *Bernhardt v. State*, 684 N.W.2d 465, 476-77 (Minn. 2004) (quotation omitted).

Here, to convict appellant of fleeing a peace officer in a motor vehicle, the state was required to prove beyond a reasonable doubt that: (1) appellant fled or attempted to

flee a peace officer while operating a motor vehicle; (2) the peace officer was acting in the lawful discharge of his duties; and (3) appellant knew or reasonably should have known that he was fleeing a peace officer. Minn. Stat. § 609.487, subd. 3 (2002). The statute provides that "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." *Id.*, subd. 1 (2002).

Only "upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged" may an accused be convicted. *In re Winship*, 397 U.S. 358, 364, 90 S. Ct. 1068, 1073 (1970). Thus, in order to convict appellant of fleeing a peace officer in a moving vehicle, the state was required to prove beyond a reasonable doubt that appellant had the "intent to attempt to elude a peace officer" when he acted. Minn. Stat. § 609.487, subd. 1.

A defendant's testimony as to his intentions is not binding on the jury if the "natural and probable consequences of his actions" demonstrate a contrary intent. *State v. Cooper*, 561 N.W.2d 175, 179 (Minn. 1997). And when assessing the sufficiency of evidence, this court operates from the assumption that the fact-finder "believed the state's witnesses and disbelieved any evidence to the contrary." *State v. Moore*, 438 N.W.2d 101, 108 (Minn. 1989). This assumption is particularly applicable when resolution of the matter depends largely on conflicting testimony. *State v. Pieschke*, 295 N.W.2d 580, 584 (Minn. 1980); *State v. Poganski*, 257 N.W.2d 578, 581 (Minn. 1977).

Intent can be proved by circumstantial evidence. *State v. Roehl*, 409 N.W.2d 44, 46 (Minn. App. 1987). Although a conviction based on circumstantial evidence warrants stricter scrutiny on review, "circumstantial evidence is entitled to the same weight as direct evidence." *State v. Bauer*, 598 N.W.2d 352, 370 (Minn. 1999). Furthermore, a jury verdict is entitled to deference because the jury is in the best position to evaluate circumstantial evidence. *Webb*, 440 N.W.2d at 430. This court will reverse a conviction due to lack of sufficient evidence only when it seriously doubts that the appellant is guilty. *State v. Roberts*, 350 N.W.2d 448, 451 (Minn. App. 1984).

Appellant argues that because he took no evasive actions, there is insufficient evidence to establish his intent to flee a peace officer. But there was circumstantial evidence from which the jury could have inferred appellant's intent to flee. The arresting officer followed appellant for approximately ten miles with his emergency lights, siren, and spotlight activated. In addition, appellant continued driving for almost two miles after his tires had been punctured by a second officer's stop sticks. And a third officer joined the pursuit before appellant went into a ditch, striking an embankment, causing appellant's vehicle to stop.

Although appellant never sped up during the incident, the statute specifically provides that refusing to stop one's vehicle is included in the definition of "flee." Minn. Stat. § 609.487, subd. 1. Beyond appellant's failure to increase his speed, the only evidence that appellant did not intend to elude the officers are his own words. And this court must assume that the jury believed the state's witnesses (the officers) and disbelieved the contradictory evidence. *Moore*, 438 N.W.2d at 108. In sum, the state

presented sufficient evidence for the jury to reasonably conclude that appellant was guilty of fleeing a peace officer.

II.

Appellant argues that the district court erred by failing to instruct the jury on the meaning of "intent." We disagree.

The district court has significant discretion in crafting jury instructions. *State v. Broulik*, 606 N.W.2d 64, 68 (Minn. 2000). A jury instruction is erroneous if it "materially misstates the law." *State v. Moore*, 699 N.W.2d 733, 736 (Minn. 2005). Jury 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).

When a party does not object to jury instructions at trial, we consider the issue on appeal only if the challenged omission amounts to plain error affecting substantial rights. *State v. Griller*, 583 N.W.2d 736, 740 (Minn. 1998). To affect substantial rights, the error must be prejudicial; that is, it must be reasonably likely that the instruction had a significant effect on the verdict. *Id.* at 741. If the error was prejudicial, we must assess whether the error should be remedied "to ensure fairness and the integrity of the judicial proceedings." *Id.* at 740.

Appellant relies on *State v. Johnson* for the proposition that a district court's failure to instruct on the meaning of intent is a fundamental error that substantially prejudices a defendant charged with fleeing a peace officer. 374 N.W.2d 285, 288 (Minn. App. 1985), *review denied* (Minn. Nov. 18, 1985). Respondent counters that this

case is controlled by a later case, *State v. Erdman*, which limited *Johnson* to its "peculiar facts." 383 N.W.2d 331, 333 (Minn. App. 1986), *review denied* (Minn. Apr. 24, 1986). Respondent's argument is persuasive.

In *Johnson*, the defendant was driving a pickup truck towing a trailer full of soybeans at about 1:00 a.m. 374 N.W.2d at 286. An officer stopped him and asked to see his driver's license, which the defendant was not carrying. *Id.* The defendant told the officer he had been working all day and night and that if the officer wanted to give him a ticket, he knew where to find him. *Id.* The defendant drove off, supposedly to his farm to get his license, and the officer followed. *Id.* The "chase" that ensued lasted approximately 15 minutes and involved three officers, with the defendant traveling at less than 15 miles per hour. *Id.* at 287. Eventually one of the officers fired three shots into Johnson's tires. *Id.* In reversing, this court emphasized that the defendant's case "rested on his words and actions, along with the surrounding circumstances which challenged the conclusion that he 'intended' to flee the officer." *Id.* at 288.

But *Erdman* limited the holding in *Johnson*. 383 N.W.2d at 333. In *Erdman*, an officer followed the defendant, who was speeding on the highway to his home. *Id.* at 332-33. The officer testified that the defendant "proceeded through [a stop sign] without stopping, fishtailing as he made the turn," and the officer made several attempts to contact the defendant at his house and by telephone. *Id.* at 333. The defendant's sister testified that after the incident, the defendant told her: (1) a trooper had followed him, but because the trooper did not have his lights on, he did not stop, and (2) he heard the trooper knock on his door but did not answer. *Id.* The *Erdman* court stated: "We decline

to extend *Johnson* to these facts and hold that failure to request a specific intent instruction in a prosecution under § 609.487 precludes review of any claimed error on this point." *Id.*

Here, the district court gave the standard jury instruction, as agreed upon by the prosecution and the defense. In light of *Erdman*, we conclude that the district court's failure to sua sponte instruct the jury on the meaning of intent was not plain error.

Finally, we have reviewed the arguments in appellant's pro se supplemental brief and conclude that they are without merit. We reject the majority of appellant's pro se arguments, which essentially mirror those made by his counsel, for the reasons discussed above. In addition, appellant raises the issue of ineffective assistance of counsel. But in light of the request by appellant's counsel to preserve the issue of ineffective assistance of counsel for an evidentiary hearing in the district court, we decline to address the merits of appellant's pro se ineffective-assistance argument.

Affirmed.