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**STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0094**

State of Minnesota,
Respondent,

vs.

Ron Wesley Epps,
Appellant.

**Filed December 30, 2013
Affirmed
Schellhas, Judge**

Hennepin County District Court
File No. 27-CR-12-28071

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Susan L. Segal, Minneapolis City Attorney, Dawn M. Knutson, Assistant City Attorney,
Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Stephen L. Smith, Assistant
Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Schellhas, Presiding Judge; Stauber, Judge; and
Bjorkman, Judge.

UNPUBLISHED OPINION

SCHELLHAS, Judge

Appellant challenges his convictions of consuming alcohol in public under
Minneapolis, Minn., Code of Ordinances (MCO) § 364.40 (2012), and loitering with an

open bottle of alcohol under MCO § 364.45 (2012). Appellant argues that the evidence was insufficient to support his convictions. We affirm.

FACTS

In late August 2012, appellant Ron Epps stood at a bus stop at Seventh Street and Nicollet Avenue in Minneapolis, carrying a paper bag. Two Hennepin County deputy sheriffs arrested Epps after observing him drink from a Budweiser beer can located in the paper bag. The deputies testified that they knew the can was a Budweiser can because of its red and white coloring, and that they observed Epps trying to consume the beer quickly when he noticed them approaching. After Epps's arrest, the deputies poured the contents of the beer can into a container for testing and placed the container in an evidence locker. A forensic scientist with the Bureau of Criminal Apprehension offered unchallenged testimony that she tested a sample of the contents of the container and that it consisted of 3.76% ethyl alcohol by weight—a level consistent with beer.

Epps testified that the deputies approached him because he was urinating. He was waiting for a particular bus line that runs infrequently. He did not have any beer; he had a sealed bottle of vodka in his paper bag.

A jury convicted Epps on both alcohol-related charges. This appeal follows.

DECISION

Epps argues that the evidence was insufficient to support his convictions of consuming alcohol in public and loitering with an open bottle of alcohol. Minneapolis City Ordinance section 364.40, in pertinent part, prohibits (1) “consum[ing] intoxicating liquor as defined by Minnesota Statutes, Section 340A.101, Subdivision 14” (2) while

“on a public street, highway, alley, sidewalk, boulevard, or any place frequented by the public” or “on any private property without the consent of the owner of such property.”

Minneapolis City Ordinance section 364.45, in pertinent part, prohibits:

“[(1)] loiter[ing] in any public street, highway, alley, sidewalk, boulevard or any other public property, or on any private property without consent of the owner of such property, [(2)] while in possession of any bottle or other receptacle containing intoxicating liquor or non-intoxicating malt liquor which has been opened, or the seal broken, or the contents partially removed, [(3)] with intent to consume such intoxicating liquor.”

“Intoxicating liquor” is defined as “ethyl alcohol, distilled, fermented, spirituous, vinous, and malt beverages containing more than 3.2 percent of alcohol by weight.” Minn. Stat. § 340A.101, subd. 14 (2012).

When reviewing sufficiency of the evidence, “we view the evidence in a light most favorable to the verdict to determine whether the facts in the record and the legitimate inferences drawn from them would permit the jury to reasonably conclude that the defendant was guilty beyond a reasonable doubt.” *State v. Hanson*, 800 N.W.2d 618, 621 (Minn. 2011) (quotations omitted). Appellate courts “will not disturb the jury’s verdict 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.” *Id.* (quotation omitted).

“‘Direct evidence’ is ‘[e]vidence that is based on personal knowledge or observation and that, if true, proves a fact without inference or presumption.’” *Bernhardt*

v. State, 684 N.W.2d 465, 477 n.11 (Minn. 2004) (quoting *Black's Law Dictionary* 596 (8th ed. 2004)). “‘Circumstantial evidence’ is defined as ‘[e]vidence based on inference and not on personal knowledge or observation’ and ‘[a]ll evidence that is not given by eyewitness testimony.’” *Id.* (quoting *Black's Law Dictionary* 595 (8th ed. 2004)). We review the sufficiency of circumstantial evidence with “closer scrutiny” to determine whether the evidence “form[s] a complete chain that, as a whole, leads so directly to the guilt of the defendant as to exclude beyond a reasonable doubt any reasonable inference other than guilt.” *Hanson*, 800 N.W.2d at 622. We “first identify the circumstances proved. Consistent with our standard of review, we defer to the jury’s acceptance of the proof of these circumstances as well as to the jury’s rejection of evidence in the record that conflicted with the circumstances proved by the State.” *Id.* (citations omitted). We next “examine independently the reasonableness of all inferences that might be drawn from the circumstances proved, including inferences consistent with a hypothesis other than guilt.” *Id.* (quotation omitted).

Here, the state introduced direct evidence to prove that Epps violated MCO § 364.40. The officers testified that they saw Epps (1) drinking a can of beer (2) while on a public street. Scientific testing of the contents of the can showed that the contents consisted of “intoxicating liquor” within the meaning of the ordinance. We conclude that the evidence was sufficient to support Epps’s conviction based on his violation of MCO § 364.40.

The state introduced both direct and circumstantial evidence to prove that Epps violated MCO § 364.45. The officers testified that they saw Epps (1) on a public street

(2) in possession of an open can of beer (3) with intent to consume the beer. Scientific testing of the contents of the can showed that the contents consisted of “intoxicating liquor” within the meaning of the ordinance. The circumstances proved eliminate every rational inference other than that Epps intended to consume intoxicating liquor—in fact, the officers observed Epps consume the beer. We conclude that the evidence was sufficient to support Epps’s conviction based on his violation of MCO § 364.45.

Affirmed.