STATE OF MINNESOTA
IN COURT OF APPEALS
A07-0483

State of Minnesota,
Respondent,

vs.

Brian Cordell Miles,
Appellant.

Filed January 22, 2008
Affirmed
Kalitowski, Judge

Freeborn County District Court
File No. KX-04-677

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

Craig S. Nelson, Freeborn County Attorney, Freeborn County Courthouse, 411 South Broadway, Albert Lea, MN 56007 (for respondent)

John M. Stuart, State Public Defender, Sara L. Martin, Assistant Public Defender, 540 Fairview Avenue North, Suite 300, St. Paul, MN 55104 (for appellant)

Considered and decided by Kalitowski, Presiding Judge; Toussaint, Chief Judge; and Huspeni, Judge.*

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

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

KALITOWSKI, Judge

Following a jury trial appellant Brian Cordell Miles was convicted of fleeing a peace officer in a motor vehicle in violation of Minn. Stat. § 609.487 (2002). Appellant challenges his conviction, arguing that: (1) the state failed to provide sufficient evidence of his intent to flee; (2) the district court deprived appellant of his right to present a complete defense by prohibiting him from calling certain witnesses; and (3) he was denied his right to effective assistance of counsel. We affirm.

D E C I S I O N

I.

Appellant argues that the state failed to provide sufficient evidence to support his conviction of fleeing a peace officer because the state's evidence failed to prove that he intended to flee. We disagree.

When assessing the sufficiency of evidence, an appellate 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," was sufficient to permit the jury 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) (alteration in original) (quoting *State v. McCullum*, 289 N.W.2d 89, 91 (Minn. 1979) (quotation omitted)).

A defendant's testimony as to his intentions does not bind 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 assumes that "the jury believed the state's witnesses and disbelieved any evidence to the contrary." *State v. Moore*, 438 N.W.2d 101, 108 (Minn. 1989).

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 in a motor vehicle; (2) the peace officer was acting in the lawful discharge of his official duties; and (3) appellant knew or reasonably should have known that he was fleeing a peace officer. Minn. Stat. § 609.487, subd. 3 (2002). Furthermore, the statute explicitly defines "[f]lee" as "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).

An accused may be convicted only "upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged." *In re Winship*, 397 U.S. 358, 364, 90 S. Ct. 1068, 1073 (1970). Accordingly, the state was required to prove beyond a reasonable doubt that appellant had "the intent to attempt to elude a peace officer" in order to convict appellant. Minn. Stat. § 609.487, subd. 1. But intent can be proved by circumstantial evidence. *State v. Roehl*, 409 N.W.2d 44, 46 (Minn. App. 1987). And a jury's verdict is entitled to deference because the jury is in the best position to evaluate circumstantial evidence. *Webb*, 440 N.W.2d at 430.

The "acting in the lawful discharge of an official [peace officer] duty" element of this offense is met because the officers at issue were attempting to execute a welfare check of appellant following his threats of suicide. Minn. Stat. § 609.487, subd. 3. Here, appellant claims that there is insufficient evidence to support his conviction for fleeing a peace officer because the record indicates that he only traveled approximately three blocks after being signaled to stop. But it is undisputed that appellant failed to stop his car even after the officer turned on the emergency lights, sounded an air horn, and turned on the sirens. Moreover, there is no authority to support appellant's argument that three blocks is too short a distance to satisfy the "fled or attempted to flee a peace officer" element of the offense. The plain language of the statute defines "flee" as refusal to stop one's vehicle. *Id.*, subd. 1.

Appellant also argues pro se that he lacked the requisite intent for this fleeing offense because his prior encounters with the Albert Lea police led him to fear that they would "batter" him, and this fear motivated him to travel to what he deemed a safe and public location before pulling over and stopping his vehicle. But the evidence presented by the state and appellant's trial testimony undermined this defense.

As stated above, it is undisputed that appellant refused to stop even after the officers signaled for him to do so via emergency lights, an air horn, and siren. Moreover, the incident took place while it was still light on a summer evening on a busy Albert Lea street. And appellant admitted at trial that he only stopped when he did because he was cornered and did not want the officer to ram his car. Finally, although appellant's pro se brief cites a racial profiling complaint that he previously filed against two of Albert Lea's

police officers in support of his "motivated by fear" defense, this complaint was not part of the trial record, and thus cannot be considered on appeal "for the purpose of reversing a judgment." *State v. Larose*, 673 N.W.2d 157, 168 (Minn. App. 2003), *review denied* (Minn. Aug. 17, 2004). We conclude that the state presented sufficient evidence at trial for the jury to reasonably conclude that appellant was guilty of fleeing a peace officer in violation of Minn. Stat. § 609.487 (2002).

II.

Appellant argues that the district court deprived him of his right to present a complete defense by prohibiting him from calling witnesses whose testimony would have corroborated his defense theory. We disagree.

Although district courts are generally afforded broad discretion on evidentiary rulings, this grant of discretion is limited by a criminal defendant's right to "fundamental fairness," including "a meaningful opportunity to present a complete defense." *State v. Richards*, 495 N.W.2d 187, 191 (Minn. 1992) (quotation omitted). In determining whether the district court's exclusion of defense evidence in this case constituted prejudicial error, this court evaluates whether "the error was harmless beyond a reasonable doubt." *State v. Post*, 512 N.W.2d 99, 102 (Minn. 1994) (quotation omitted).

Here, the record indicates that when the state made a motion in limine to bar the testimony of appellant's two witnesses, defense counsel did not make an offer of proof as to the evidence's relevance. Appellant similarly has failed to articulate the substantive relevance of the excluded testimony on appeal.

Moreover, the record indicates that the district court's exclusion of the testimony of the two witnesses who allegedly would corroborate appellant's fear of the police was harmless beyond a reasonable doubt. Appellant's testimony about the Albert Lea Police Department and its officers consisted of nothing more than opinions lacking foundation and specificity. Because appellant failed to testify about any particular incident in which he was threatened or assaulted by police, there was nothing of substance for the two excluded witnesses to corroborate. In addition, the state presented strong rebuttal evidence that undermined appellant's "motivated by fear" theory of defense. Accordingly, the district court's exclusion of the two witnesses' testimony was harmless beyond a reasonable doubt.

III.

Appellant argues that his attorney's failure to object to damaging character and impeachment evidence admitted at trial constituted ineffective assistance of counsel. But because choice of trial strategy provides a reasonable explanation for defense counsel's allegedly deficient conduct, we disagree.

An appellant bears the burden of proof on an ineffective-assistance-of-counsel claim. *State v. Miller*, 666 N.W.2d 703, 716 (Minn. 2003). To prove ineffective assistance of counsel, an appellant must show (1) that his attorney's representation "fell below an objective standard of reasonableness," and (2) "that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Gates v. State*, 398 N.W.2d 558, 561 (Minn. 1987) (quoting *Strickland v. Washington*, 466 U.S. 668, 688, 694, 104 S. Ct. 2052, 2064, 2068 (1984)).

And when a defendant raises an ineffective-assistance-of-counsel claim on direct appeal rather than at a postconviction proceeding, he faces a heavier burden because an appellate court "do[es] not have the benefit of all the facts concerning why defense counsel did or did not do certain things." *State v. Zernechel*, 304 N.W.2d 365, 367 (Minn. 1981). Accordingly, to prevail on his ineffective-assistance-of-counsel claim here, appellant must establish that nothing defense counsel could have said at the postconviction hearing would have justified his allegedly incompetent behaviors. *State v. Tienter*, 338 N.W.2d 43, 44 (Minn. 1983).

Here, appellant offered testimony regarding his prior crimes and contacts with the criminal justice system in support of his defense that, due to these previous encounters, he feared being beaten and harassed by the police. As a result, the state rebutted appellant's testimony with additional evidence of these contacts that challenged the legitimacy of appellant's claims of harassment and threats by Albert Lea's peace officers. We conclude that appellant's choice of a defense, which involves trial strategy, explains defense counsel's initial elicitation of this evidence. And appellant's hindsight objection to the tactics used by his attorney at trial is not enough to establish ineffective assistance. *State v. Berry*, 309 N.W.2d 777, 785 (Minn. 1981); *State v. McLane*, 346 N.W.2d 688, 690 (Minn. App. 1984). Moreover, contrary to appellant's argument, defense counsel was not ineffective by failing to object to the prosecution's introduction of additional rebuttal evidence. The prior-crime evidence was appropriately admitted as relevant and probative to rebut appellant's theory of defense once the chosen trial strategy opened the door.

We conclude that the record here does not indicate that appellant's attorney's performance fell below an objective standard of reasonableness. Accordingly, appellant's ineffective-assistance-of-counsel claim fails.

Affirmed.