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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-0009**

State of Minnesota,
Respondent,

vs.

Tabius G. Graham,
Appellant.

**Filed February 19, 2008
Affirmed
Halbrooks, Judge**

Ramsey County District Court
File No. K1-06-506

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

Susan Gaertner, Ramsey County Attorney, Mitchell L. Rothman, Assistant County Attorney, 50 Kellogg Boulevard West, Suite 315, St. Paul, MN 55102 (for respondent)

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

Considered and decided by Minge, Presiding Judge; Halbrooks, Judge; and
Stoneburner, Judge.

UNPUBLISHED OPINION

HALBROOKS, Judge

Appellant challenges his conviction of felony assault of a peace officer under Minn. Stat. § 609.2231, subd. 1 (2004), on the ground that the transfer of bodily fluids, by itself, cannot sustain an assault conviction under the statute. We affirm.

FACTS

Appellant Tabius Graham waived his right to a jury trial and agreed to be tried on stipulated facts before the district court pursuant to *State v. Lothenbach*, 296 N.W.2d 854 (Minn. 1980). The stipulated facts were as follows: On January 28, 2006, in Ramsey County, St. Paul police officers lawfully arrested appellant and placed him in the back of a squad car. While sitting in the squad car, appellant leaned forward and spit through the cage that separated the front seat of the car from the rear seat. Appellant's saliva landed on the hair of one of the officers. Later, after being read his *Miranda* rights and agreeing to give a statement, appellant admitted that his decision to spit on the officer was inappropriate and apologized. The district court convicted appellant of felony assault of a peace officer under Minn. Stat. § 609.2231, subd. 1 (2004). This appeal follows.

DECISION

The relevant statutory language of Minn. Stat. § 609.2231, subd. 1 (2004), reads:

Whoever physically assaults a peace officer licensed under section 626.845, subdivision 1, when that officer is effecting a lawful arrest or executing any other duty imposed by law is guilty of a gross misdemeanor If the assault inflicts demonstrable bodily harm or the person intentionally throws or otherwise transfers bodily fluids or feces at or onto the officer, the person is guilty of a felony

For an assault on a police officer to be deemed a felony under the second sentence of the statute, appellant contends that any transfer of bodily fluids must be in addition to the physical assault criminalized by the first sentence of the provision. The state argues that each sentence in section 609.2231, subdivision 1, criminalizes different conduct, and thus they should be read independently of one another. Statutory interpretation is a question of law, which this court reviews de novo. *State v. Stewart*, 624 N.W.2d 585, 588 (Minn. 2001).

Appellant filed this appeal in January 2007, and both parties' briefs were submitted by mid-May. A month later, on June 26, 2007, this court released a published opinion, addressing the precise issue raised here: whether or not spitting on a police officer while the officer was effectuating an arrest, without more, allows a defendant to be convicted of felony assault under the second sentence of Minn. Stat. § 609.2231, subd. 1. In *State v. Kelley*, 734 N.W.2d 689 (Minn. App. 2007), *review denied* (Minn. Sept. 18, 2007), we held the transfer of bodily fluids alone is enough to warrant felony conviction under the statute, rejecting the contention that such conduct must be in addition to a physical assault.

Affirmed.