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**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-0114**

State of Minnesota,
Respondent,

vs.

William Heins,
Appellant.

**Filed March 25, 2008
Affirmed in part, reversed in part, and remanded
Stoneburner, Judge**

Anoka County District Court
File No. K5065398

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

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John M. Stuart, State Public Defender, G. Tony Atwal, Assistant Public Defender, Suite 300, 540 Fairview Avenue North, St. Paul, MN 55104 (for appellant)

Considered and decided by Peterson, Presiding Judge; Stoneburner, Judge; and Wright, Judge.

UNPUBLISHED OPINION

STONEBURNER, Judge

On appeal from convictions of fleeing a peace officer in a motor vehicle and driving while impaired, appellant argues that the evidence is insufficient to support the

jury's determination that he was the driver of the vehicle. Appellant also asserts that the district court erred in determining the duration of his sentence for fleeing a peace officer in a motor vehicle. We affirm in part, reverse in part, and remand to the district court for resentencing.

FACTS

At approximately 8:00 p.m. on May 18, 2006, Anoka County Sheriff's Deputy Rob Young attempted to execute a traffic stop of a white Dodge Intrepid after observing it traveling approximately 70 miles per hour in a 55 mile-per-hour zone and passing another vehicle on the right shoulder. Young pursued the vehicle for two to three miles, with the vehicle reaching speeds of 85 miles per hour and driving erratically, until Young's sergeant ordered him to terminate the chase for public-safety reasons. The vehicle continued down Lake Drive at a high rate of speed. During the pursuit, Young was able to get within one car length of the vehicle twice and obtain the license plate number. Young identified the driver as a male and the passenger as a female, but did not see their faces.

Kay Ciccone was preparing to watch television at her residence on Lake Drive when she heard a noise in her backyard. She went out to her screened-in porch to find the source of the noise and saw a man she did not know standing in her yard about 20 to 30 feet away. The man asked her for help. Before Ciccone could answer, a woman with a blond ponytail ran out from under the porch and into the wooded area behind the home. The man ran after the woman into the wooded area. Frightened, Ciccone called her

brother, who lived next door, and he told her that a strange car was in the driveway. Ciccone's brother then called the police.

At approximately 8:47 p.m., Young received a call reporting that the car he had pursued earlier was in a driveway on Lake Drive and that the two occupants of the vehicle had run into the woods. Young responded to the scene and requested a helicopter and a canine unit to search the wooded swamp behind Ciccone's house.

The canine unit arrived, and officer Mark McDonough took the police dog to the driver's seat of the Intrepid to pick up a scent to allow the dog to track the driver. The dog followed the scent into the wooded swamp. While following the scent, the dog encountered a female at the edge of the waterline. She was taken into custody and identified as Sarah Adrians. The dog continued to track the driver and apprehended a man, later identified as appellant William Heins.

Heins appeared intoxicated, with slurred speech and very poor balance. Young transported Heins to the hospital and Heins submitted to a blood test. The test results revealed mid-range levels of methamphetamine and amphetamine in his system, indicating that he had consumed methamphetamine within the previous 24 hours.

Officers found a wristband with Adrians's name in the passenger area of the vehicle. The vehicle also contained a large amount of personal property, including tools, stereo equipment, clothing, and other personal effects that took up the back-seat area and the trunk. Heins was not the registered owner of the vehicle, and the police department was unsuccessful in locating anyone who would claim ownership. Heins was charged with fleeing a police officer in a motor vehicle and second-degree DWI.

At trial, Ciccone testified that Heins looked similar to the man she had seen in her backyard. Young testified that he suspected that Heins and Adrians were the driver and passenger that he had pursued earlier. A jury found Heins guilty of both charges. The district court sentenced Heins to 25 months in prison for the fleeing conviction, imposed consecutively to any prior offenses, and a 365-day concurrent sentence for the DWI conviction. This appeal followed.

D E C I S I O N

I. Sufficiency of Evidence

In considering a claim of insufficient evidence, we carefully review the record to determine whether the evidence, when viewed in the light most favorable to the conviction, is sufficient to allow the jurors to have reached the verdict that they did. *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989). “[A] conviction based entirely on circumstantial evidence merits stricter scrutiny than convictions based in part on direct evidence.” *State v. Jones*, 516 N.W.2d 545, 549 (Minn. 1994). “While it warrants stricter scrutiny, circumstantial evidence is entitled to the same weight as direct evidence.” *State v. Bauer*, 598 N.W.2d 352, 370 (Minn. 1999). The circumstantial evidence must form a complete chain that, in view of the evidence 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. *Jones*, 516 N.W.2d at 549. “[A] jury is in the best position to evaluate circumstantial evidence, and [] their verdict is entitled to due deference.” *Webb*, 440 N.W.2d at 430.

Heins argues that the evidence at trial was insufficient to establish that he was the driver of the Intrepid. We disagree. Heins does not dispute that he was in the Intrepid, but asserts that there could have been a third person in the car who was the driver. But Young observed only two people in the vehicle, a male driver and a female passenger, and Ciccone saw only a dark-haired man and blond-haired woman run into the woods.

Furthermore, evidence that the police dog tracked the scent from the driver's seat and the ground immediately adjacent to the driver's door of the vehicle to Heins corroborates the evidence that Heins was the driver. *See State v. Scharmer*, 501 N.W.2d 620, 622 (1993) (stating that evidence of dog tracking "should be used only to corroborate other evidence and is not sufficient standing alone to support a conviction" (quotation omitted)). McDonough testified that the dog is trained to track scents of specific individuals and is able to distinguish among the scents of different people. McDonough testified that the dog was trained to follow the original track to its conclusion and that if Adrians had been the driver, the dog would have stopped when she was located. McDonough explained that the dog will also not start on a secondary track, but will continue on the primary track until its conclusion. And, after Heins was apprehended, the helicopter did not reveal any additional heat signatures in the swamp. From this evidence, there is no reasonable inference other than that Heins was driving the Intrepid. The verdict is amply supported by the evidence.

II. Sentencing

Both parties agree that the district court erred by failing to reduce Heins's criminal history to zero before calculating the permissive consecutive sentence for his fleeing

conviction. Under the Minnesota Sentencing Guidelines, consecutive sentences are permissive, and not a departure from the guidelines, in cases involving a felony conviction for fleeing a peace officer in a motor vehicle, as defined in Minn. Stat. § 609.487, subd. 3 (2006). Minn. Sent. Guidelines II.F. “For each offense sentenced consecutive to another offense(s), other than those that are presumptive, a zero criminal history score . . . shall be used in determining the presumptive duration.” *Id.*

When sentencing Heins, the district court erred by imposing a consecutive sentence of 25 months based on Heins’s seven criminal-history points, instead of one year and a day based on a criminal-history score of zero. Accordingly, we reverse and remand for resentencing in accordance with the guidelines.

Affirmed in part, reversed in part, and remanded.