STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0062

State of Minnesota,
Respondent,

vs.

Curtis Jay French,
Appellant.

Filed March 31, 2014
Affirmed
Schellhas, Judge

Beltrami County District Court
File No. 04-CR-11-771

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

Timothy R. Faver, Beltrami County Attorney, David P. Frank, Assistant County Attorney, Bemidji, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Benjamin J. Butler, Assistant Public Defender, St. Paul, Minnesota (for appellant)

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

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

SCHELLHAS, Judge

Appellant challenges two convictions of first-degree assault and his sentences, arguing that (1) the district court abused its discretion by admitting expert testimony,

(2) his convictions are not supported by sufficient evidence, and (3) the district court abused its discretion by imposing consecutive 120-month sentences. We affirm.

FACTS

Respondent State of Minnesota charged appellant Curtis French with two counts of first-degree assault under Minn. Stat. § 609.221, subd. 2(a)–(b) (2010), alleging offenses committed against Bemidji Police Officer Nathan Brouse and Beltrami County Sheriff's Deputy Charles Nelson. French moved to exclude the expert testimony of Brainerd Police Officer Troy Schreifels regarding whether French used deadly force against Brouse and Nelson, arguing that Schreifels was not an expert and his testimony would not be helpful to the jury. The district court denied French's motion.

French moved for a directed verdict at the close of the state's case in chief, arguing that the evidence was insufficient to prove that he had the requisite intent to support a conviction of first-degree assault. The district court denied his motion. French waived his right to testify. The jury found French guilty of both counts, and the court imposed consecutive 120-month sentences.

This appeal follows.[1]

[1] French argued in his brief that the district court erred when it sentenced him by denying him supervised release. Before oral argument, the district court amended the warrant and order of commitment to reflect that French is eligible for supervised release. At oral argument, French withdrew this argument.

D E C I S I O N

Expert Testimony

Over French's objection, the district court permitted Officer Schreifels to testify as an expert. The court concluded that Schreifels's testimony would help the jury analyze whether or not French used deadly force. French argues that the court abused its discretion by allowing Schreifels to testify as an expert witness because the testimony did not help the jury. We disagree that the court abused its discretion.

Minnesota Rule of Evidence 702 permits "a witness qualified as an expert by knowledge, skill, experience, training, or education, . . . [to] testify . . . in the form of an opinion or otherwise" "[i]f scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue." "[E]xpert testimony is inadmissible if the jury is in as good a position to reach a decision as the expert." *State v. Sontoya*, 788 N.W.2d 868, 872 (Minn. 2010) (quotation omitted). But "[t]estimony generally is admissible under Rule 702 if it is helpful to the trier of fact." *State v. Dao Xiong*, 829 N.W.2d 391, 396 (Minn. 2013). "An expert's opinion as to a criminal defendant's intent involves a mixed question of law and fact and, therefore, is inadmissible." *Id.* "An expert opinion is helpful if the members of the jury, having the knowledge and general experience common to every member of the community, would be aided in the consideration of the issues by the offered testimony." *Id.* (quotations omitted). "Expert testimony is not helpful if the expert opinion is within the knowledge and experience of a lay jury and the testimony of the expert will not add precision or depth to the jury's ability to reach conclusions." *State v. Obeta*, 796 N.W.2d 282, 289

(Minn. 2011) (quotations omitted). "The decision to admit expert testimony generally rests within the sound discretion of the district court." *Dao Xiong*, 829 N.W.2d at 395.

At the time of trial, Schreifels worked as an adjunct instructor at two colleges and had been employed as a police officer by the Brainerd Police Department for 16 years. Schreifels had training in the use of force and how to assess whether or not a citizen used deadly force, and he instructed police officers and college students about what level of force was warranted by different circumstances based on an assessment of the risk posed by a suspect or citizen. Schreifels testified that citizens deploying weapons against officers pose risks of death and great bodily harm and that French's knife attack on Brouse and Nelson exposed them to risks of great bodily harm or possibly death. Schreifels opined that French's use of force, based on factors including French's weight, the length of the knife, and the officers' limited ability to retreat, would have justified Brouse in discharging his weapon, even though French was handcuffed. Schreifels did not claim to know French's intent, testifying that he did not "know what [French] was thinking." During cross-examinations of Brouse and Nelson, French repeatedly emphasized that his hands were cuffed behind his back at the time that he wielded the knife. Schreifels's expert testimony may have been helpful to the jury in considering whether a knife-wielding handcuffed person could pose a risk of death or great bodily harm to others.

Without record or legal citation, French also asserts that Schreifels's expert testimony was inadmissible because the risk-increase question to which Schreifels testified is "a mixed question of law and fact." We decline to address that argument. *See*

Sontoya, 788 N.W.2d at 876 ("Sontoya does not cite either the record or legal authority to support this claim. Therefore, we decline to consider this issue on its merits."). *But see generally State v. Moore*, 699 N.W.2d 733, 737 (Minn. 2005) ("The question of whether a particular injury constitutes great bodily harm is a question for the jury."); *Bd. of Trs. of First Congregational Church v. Cream City Mut. Ins. Co.*, 255 Minn. 347, 351, 96 N.W.2d 690, 694 (1959) ("[W]hat constitutes an increase of risk is a factual question for the finder of fact unless the increase is obvious.").

We conclude that the district court did not abuse its discretion by admitting Schreifels's expert testimony.

Sufficiency of Evidence

"When the sufficiency of evidence is challenged, we review the evidence to determine whether, given the facts in the record and the legitimate inferences that can be drawn from those facts, a jury could reasonably conclude that the defendant was guilty of the offense charged." *State v. Fairbanks*, 842 N.W.2d 297, 306−07 (Minn. 2014) (quotation omitted). We "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." *State v. Hanson*, 800 N.W.2d 618, 621 (Minn. 2011) (quotation omitted). We "view the evidence in the light most favorable to the verdict and assume that the factfinder disbelieved any testimony conflicting with that verdict." *State v. Chavarria-Cruz*, 839 N.W.2d 515, 519 (Minn. 2013) (quotation omitted). "The weight

and credibility of the testimony of individual witnesses is for the jury to determine." *State v. Moore*, 438 N.W.2d 101, 108 (Minn. 1989).

A person commits first-degree assault by "assault[ing] a peace officer . . . by using or attempting to use deadly force against the officer . . . while the officer . . . is engaged in the performance of a duty imposed by law." Minn. Stat. § 609.221, subd. 2(a). "'[D]eadly force' means force which the actor uses with the purpose of causing, or which the actor should reasonably know creates a substantial risk of causing, death or great bodily harm." Minn. Stat. § 609.066, subd. 1 (2010). French argues that the state did not prove that French acted with the purpose of causing death or great bodily harm because the "circumstances proved support two eminently reasonable alternative theories, both of which are inconsistent with guilt." First, French argues that his actions could demonstrate a purpose "to scare the officers without physically harming them." Second, he argues that the circumstances proved support the reasonable inference that "French's intent was not to kill the officers or to cause them to suffer great bodily harm, but rather was to injure them in some less-serious way." French also argues that the state did not prove that he used deadly force, i.e., that he knew or reasonably should have known that his actions created a substantial risk of causing death or great bodily harm. The arguments are unpersuasive.

"[I]ntent is a state of mind and is, therefore, generally provable only by inferences drawn from a person's words or actions in light of all the surrounding circumstances." *State v. Johnson*, 719 N.W.2d 619, 630–31 (Minn. 2006) (quotation omitted). "If a conviction, or a single element of a criminal offense, is based solely on circumstantial

evidence, such evidence, viewed as a whole, must be consistent with guilt and inconsistent with any other rational hypothesis except that of guilt." *Fairbanks*, 842 N.W.2d at 307. An appellate court "appl[ies] heightened scrutiny when reviewing . . . verdicts based on circumstantial evidence." *State v. Pratt*, 813 N.W.2d 868, 874 (Minn. 2012).

> In identifying the circumstances proved, [an appellate court] defer[s] to the jury's acceptance of the proof of these circumstances and rejection of evidence in the record that conflicted with the circumstances proved by the State. As with direct evidence, [the court] construe[s] conflicting evidence in the light most favorable to the verdict and assume[s] that the jury believed the State's witnesses and disbelieved the defense witnesses. Stated differently, in determining the circumstances proved, [the court] consider[s] only those circumstances that are consistent with the verdict.

State v. Sterling, 834 N.W.2d 162, 175 (Minn. 2013) (quotations omitted).

The circumstances proved are that early on March 12, 2011, Brouse and Nelson responded to a complaint that French was violating a no-contact order regarding T.S., was in or near T.S.'s third-floor apartment, and had pounded on her door. Brouse located French, patted him down, handcuffed him, and took him to a confined first-floor area. As Brouse and Nelson escorted French, he became violent, tried to free his hands, and suddenly broke free from Brouse's grasp and brandished a knife with an eight-inch blade. French thrust the knife at least three times toward Brouse's stomach and groin and swung the knife toward Nelson's stomach, missing Nelson's stomach only because Nelson stepped back. Even after Nelson pinned French's hands to a wall, he repeatedly tried to stab Nelson in the leg and arms. Brouse subdued French by using two Taser darts, Nelson

wrenched the knife from French's hands, and Brouse and Nelson wrestled French to the floor. Afterwards, French told Brouse and Nelson, "'You should have shot me. I'm going to hunt you down.'" A squad-car recording reveals that, in route to the jail, French stated, among other things, "If I was crazy, and if I carried a gun, man, you wouldn't even be alive." We conclude that the circumstances proved are consistent with guilt.

We next consider "whether the circumstances proved are consistent with guilt and inconsistent with any rational hypothesis except that of guilt, not simply whether the inferences that point to guilt are reasonable." *Id.* at 176 (quotations omitted). Viewing the circumstantial evidence as a whole, we conclude that the circumstances proved are consistent with only one conclusion—French used or attempted to use deadly force against Brouse and Nelson, and the circumstances proved are inconsistent with any rational hypotheses except that of guilt. *See Fairbanks*, 842 N.W.2d at 307. Any conclusion that French did not know or should not reasonably have known that his actions created such a substantial risk would be irreconcilable with the circumstances proved. *See State v. Bernardi*, 678 N.W.2d 465, 468 (Minn. App. 2004) (acknowledging that requisite intent for assault crime can be established by showing that defendant reasonably should have known that his conduct created a substantial risk of causing death or great bodily harm); *State v. Lindsey*, 654 N.W.2d 718, 723 (Minn. App. 2002) (describing "[t]he . . . mental state . . . found in the phrase 'the actor should reasonably know creates a substantial risk of causing, death or great bodily harm'" (quoting Minn. Stat. § 609.066, subd. 1 (1998)); *State v. Ortiz*, 626 N.W.2d 445, 449 (Minn. App. 2001) ("There is no requirement that the victim actually suffer great bodily harm. Rather, the

force used must be either (1) directed for the purpose of causing great bodily harm or (2) sufficient for the user of force to know he is creating the substantial risk of such harm."), *review denied* (Minn. June 27, 2001). We conclude that the evidence was sufficient to support French's convictions of first-degree assault.

Sentencing

French seeks reversal of his consecutive 120-month sentences on the basis that the imposition of consecutive sentences unfairly exaggerates the criminality of his conduct, which was "essentially a single criminal act." We disagree.

We may review French's sentences to determine whether they are "inconsistent with statutory requirements, unreasonable, inappropriate, excessive, unjustifiably disparate, or not warranted by the findings of fact issued by the district court." Minn. Stat. § 244.11, subd. 2(b) (2010). We "may dismiss or affirm the appeal, vacate or set aside the sentence imposed or stayed and direct entry of an appropriate sentence or order further proceedings to be had as [we] may direct." *Id.*

Generally, an individual can be punished for only one offense when his conduct constitutes more than one crime. Minn. Stat. § 609.035, subd. 1 (2010). But a district court "may impose sentences for multiple crimes arising out of a single behavioral incident if: (1) the crimes affect multiple victims; and (2) multiple sentences do not unfairly exaggerate the criminality of the defendant's conduct." *Wallace v. State*, 820 N.W.2d 843, 851 (Minn. 2012) (quotation omitted). Consecutive sentences for multiple victims of first-degree-assault is permissive under the Minnesota Sentencing Guidelines. *See* Minn. Sent. Guidelines II.F.2.b; VI (2010). We will not disturb a district court's

decision to impose permissive consecutive sentences absent a clear abuse of discretion. *See State v. Vang*, 774 N.W.2d 566, 584 (Minn. 2009) (reviewing permissive consecutive sentences for multiple victims). A "district court abuses its discretion in imposing consecutive sentences when the resulting sentence unfairly exaggerates the criminality of the defendant's conduct." *Id.*

French committed first-degree assault against two victims, and the district court imposed the mandatory minimum sentence of 120 months' imprisonment for each crime. *See* Minn. Stat. § 609.221, subd. 2(b). French cites *State v. Norris*, 428 N.W.2d 61, 71 (Minn. 1988), for the proposition that the court's imposition of consecutive sentences unfairly exaggerated the criminality of his conduct. In *Norris*, the supreme court concluded that the imposition of five consecutive sentences for assaults against different victims, in addition to a life sentence for first-degree murder, unfairly exaggerated the criminality of defendant's conduct. 425 N.W.2d at 63, 71. French has not cited any case in which *Norris* has been applied to the imposition of only two consecutive sentences. French's arguments are unpersuasive.

French also argues that the district court relied on impermissible grounds to impose consecutive sentencing, including French's danger to the community, law enforcement, and T.S., and French's statements at his sentencing hearing. We disagree. The sentencing transcript reveals that French's argument is meritless and frivolous.

We conclude that the district court's imposition of consecutive sentences did not unfairly exaggerate the criminality of French's conduct, and the court therefore did not abuse its discretion.

Affirmed.