STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0285

State of Minnesota,
Respondent,

vs.

Benjamin Deandre Adams,
Appellant.

Filed February 24, 2014
Affirmed
Schellhas, Judge

Hennepin County District Court
File No. 27-CR-1120871

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

Michael O. Freeman, Hennepin County Attorney, Linda M. Freyer, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Davi E. Axelson, Assistant Public Defender, St. Paul, Minnesota (for appellant)

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

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

SCHELLHAS, Judge

Appellant challenges his conviction of first-degree assault, arguing that (1) the district court erred by denying his motion to suppress evidence and (2) the conviction is not supported by sufficient evidence. We affirm.

FACTS

Respondent State of Minnesota charged appellant Benjamin Adams with two counts of first-degree assault under Minn. Stat. § 609.221, subd. 2 (2010); two counts of second-degree assault under Minn. Stat. § 609.222, subd. 1 (2010); and one count of firearm possession by a prohibited person under Minn. Stat. § 624.713, subd. 1 (2010). Adams moved to suppress all evidence discovered as a result of a police stop of a vehicle on the bases that an informant's description of him was inconsistent with the appearance of those in the vehicle and the police lacked probable cause to arrest him.

Minneapolis Police Officer Tammy Persoon testified at the suppression hearing that the following events occurred on July 8, 2011. Officer Persoon and her partner, Officer Kimberly Heyda, learned through dispatch, based on an identified informant's tip, that a black male was chasing the informant with a handgun near the intersection of Chicago Avenue South and East Franklin Avenue. The informant provided his name, phone number, and a description of the suspect whom he described as "20 to 21 years old, wearing a white hat and a white t-shirt in a blue Blazer." Within minutes the officers approached the intersection and, within a block of it, saw a blue Blazer driving

erratically. Officer Persoon did not see a black male in the vehicle but knew that suspects sometimes try to conceal themselves in vehicles.

Officer Persoon stopped the Blazer, approached the passenger's side, and saw a black male "[c]ompletely slouched down" in the front passenger seat. He wore a white t-shirt with something like "a big graphic" on the front and a light blue hat, and he appeared to be around 28 years old. He was very nervous, sweating profusely, breathing very hard, looking around with really wide eyes, and holding his hands "in fists." Officer Persoon knew that, "when you chase somebody, you breathe very heavily and you sweat." Officer Persoon opened the front passenger door, grabbed Adams's wrist, instructed him to step out of the vehicle, and put him against the Blazer. At that time, although Adams was not free to leave, he "immediately spun around" and slipped from Officer Persoon's grasp, due in part to his profuse sweating. Attempting to grab him, Officer Persoon tore the back of Adams's shirt. Officer Persoon then saw that Adams was holding a handgun that faced the ground next to his leg. Adams turned toward Officer Persoon, raised the gun, "paused at" her, "continued sweeping," turned, and ran away. Police later apprehended Adams, whom Officer Persoon identified in court.

The district court found Officer Persoon's testimony credible, concluded that the stop was valid and the arrest was supported by probable cause, and orally denied Adams's suppression motion. The parties submitted the case to the district court as a stipulated-facts trial under Minn. R. Crim. P. 26.01, subd. 3, and the court found Adams guilty of two counts of first-degree assault against Officers Persoon and Heyda, two

counts of second-degree assault against Officers Persoon and Heyda, and one count of being a prohibited person in possession of a firearm.

This appeal follows.

D E C I S I O N

Suppression Motion

Adams argues that the district court erred by denying his suppression motion. "When [appellate courts] review a pretrial order on a motion to suppress where the facts are not in dispute, as here, [appellate courts] review the decision de novo and determine whether the police articulated an adequate basis for the search or seizure at issue." *State v. Timberlake*, 744 N.W.2d 390, 393 (Minn. 2008) (quotation omitted). "Both the United States and Minnesota Constitutions protect against unreasonable searches and seizures." *Id.* (quotation omitted). "To determine whether this constitutional prohibition has been violated, we examine the specific police conduct at issue." *Id.* "Evidence resulting from an unreasonable seizure must be excluded." *State v. Smith*, 814 N.W.2d 346, 350 (Minn. 2012).

Reasonable Suspicion for Stop

"[A]n officer may, consistent with the Fourth Amendment, conduct a brief, investigatory stop when the officer has a reasonable, articulable suspicion that criminal activity is afoot." *Timberlake*, 744 N.W.2d at 393 (quotation omitted). "[T]he reasonable suspicion standard is not high." *Id.* (quotation omitted). "That standard is met when an officer observes unusual conduct that leads the officer to reasonably conclude in light of his or her experience that criminal activity may be afoot." *Id.* (quotation omitted). "The

reasonable suspicion standard can also be met based on information provided by a reliable informant." *Id.* An appellate court "presume[s] that tips from private citizen informants are reliable," "especially . . . when informants give information about their identity so that the police can locate them if necessary." *Id.* at 394 (quotation omitted).

Officer Persoon testified that she observed the vehicle's driver engage in erratic driving, which she described as follows:

> The vehicle was slowing in the middle of the street and then speeding up. And then all of a sudden it just veered very quickly to the right into a parked position . . . . And then we were directly behind it, and it just veered back out into the driving lane [right in front of our squad car without signaling and] continu[ed] southbound in front of us.

The district court concluded that the stop of the vehicle was valid "not because [the officer] could stop a blue Blazer, but . . . because of the driving conduct." The court concluded that the erratic-driving conduct that the officer observed created a reasonable suspicion that justified the initial stop. The court stated that "[the officers had] a particular rational objective basis for suspecting criminal activity." We agree. *See State v. Richardson*, 622 N.W.2d 823, 826 (Minn. 2001) ("Even observing a motor vehicle weaving within its own lane in an erratic manner can justify an officer stopping a driver.").

We conclude that the officers' stop of the vehicle was supported by reasonable, articulable suspicion of criminal activity and that the district court did not err by denying Adams's suppression motion on this basis.

Probable Cause to Arrest

The district court found that probable cause supported the officers' arrest of Adams because he "approximate[ly] match[ed]" the informant's description of the suspect, he was profusely sweating, and he was in the blue Blazer, supporting the reasonable inference that he was the man "running after somebody with a gun." Adams argues that the circumstances were insufficient to establish probable cause to believe that he was the suspect who chased the informant with a gun. We disagree.

"Probable cause for an arrest exists when the police reasonably could have believed that a crime has been committed by the person to be arrested." *State v. Jenkins*, 782 N.W.2d 211, 221 (Minn. 2010). "The reasonableness of the actions of the police is an objective inquiry based on the collective knowledge of the officers." *Id.* "A district court's finding that police had probable cause to make an arrest will not be set aside unless it is clearly erroneous." *State v. Loving*, 775 N.W.2d 872, 881 (Minn. 2009).

> A warrantless arrest is reasonable if supported by probable cause. Probable cause to arrest exists when a person of ordinary care and prudence, viewing the totality of circumstances objectively, would entertain an honest and strong suspicion that a *specific* individual has committed a crime. Probable cause requires something more than mere suspicion but less than the evidence necessary for conviction.

State v. Williams, 794 N.W.2d 867, 871 (Minn. 2011) (quotation and citations omitted).

Here, after stopping the Blazer based on the informant's tip and the erratic-driving conduct, Officer Persoon saw Adams "[c]ompletely slouched down" in the front passenger seat; although, contrary to the informant's description, he appeared to be around 28 years old and wore a light blue hat, he appeared to be "very nervous,"

"sweating profusely," "breathing very hard," looking around with really wide eyes, and holding his hands "in fists." Officer Persoon knew that, "when you chase somebody, you breathe very heavily and you sweat."[1]

We conclude that the district court's finding that probable cause existed to arrest Adams was not clearly erroneous, and that the court therefore did not err by declining Adams's suppression motion.

Sufficiency of the Evidence

Adams asks this court to reverse his convictions of first-degree assault on the basis that they are not supported by sufficient evidence.[2]

The district court found Adams guilty of first-degree assault under section 609.221, subdivision 2. A person violates section 609.221, subdivision 2(a), 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." A person attempts to commit a crime by "do[ing] an act which is a substantial step

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[1] Because the record is silent as to the temperature on the day of the arrest, Adams asks this court to take judicial notice that the high temperature was 91 degrees. He argues that this circumstance is an alternative explanation for his sweating. We decline to take judicial notice. An appellate court may judicially notice facts as to "the general character" of a season. *Sieber v. Great N. Ry.*, 76 Minn. 269, 271, 79 N.W. 95, 96 (1899). But "[c]riminal cases are not normally the appropriate setting for judicial notice." *In re Welfare of P.W.F.*, 625 N.W.2d 152, 154 (Minn. App. 2001) (quotation omitted). Moreover, even if the heat on the day of the incident was the sole cause of Adams's sweating, the temperature would not explain Adams's nervousness, hard breathing, wide eyes, and clenched fists.

[2] The record contains a sentencing order, dated November 14, 2012, that reflects only one conviction of a first-degree assault charge and that the remaining charges were dismissed. We therefore review the sole conviction of first-degree assault.

toward, and more than preparation for, the commission of the crime." Minn. Stat. § 609.17, subd. 1 (2010). "'[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). The district court found that Adams attempted to use deadly force against the officers.

Adams argues that the evidence was insufficient to prove that he "intended to cause . . . the officers to die or to suffer great bodily harm." An appellate court reviews sufficiency-of-the-evidence challenges "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*, ___ N.W.2d ___, ___, 2014 WL 463055, at *8 (Minn. Feb. 5, 2014) (quotation omitted). "[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 the evidence is wholly circumstantial, we must first identify the circumstances proved by the State, deferring to the jury's acceptance of the State's proof of those circumstances and rejection of any evidence in the record to the contrary." *Fairbanks*, 2014 WL 463055, at *8. "We then independently examine 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). "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." *Id.*

In this case, the state proved the following circumstances. On July 8, 2011, Officer Persoon opened the front passenger door of a stopped vehicle in which Adams was a passenger, grabbed Adams's wrist, and told Adams to step out of the vehicle. Adams stood up, spun around, and struggled to pull free from Officer Persoon's grasp. She grabbed Adams's t-shirt, but Adams broke free, tearing the t-shirt. Officer Persoon saw a handgun in Adams's hand and began to draw her firearm. Adams began to flee; a police dog pursued him; and Adams turned around, paused, and swept his gun "in an arcing motion," pointing it at Officers Persoon and Heyda. As he did so, Officer Heyda "began grabbing for [her] weapon" and ducked down to make herself a smaller target because she "feared that [Adams] was going to shoot" her. When Adams pointed the gun at Officer Persoon, he paused and looked directly at her, making her "fear for [her] safety." The officers were "[a]fraid for their lives." Adams pointed a loaded, operable gun at the officers. Adams fled through an alley. The police recovered from the alley a black nine-millimeter handgun that had one live cartridge in its chamber, nine live cartridges in its magazine, the safety "in the safe position," and the magazine "not fully inserted into the grips."

The issue here is whether the only reasonable inference from the circumstances proved is that Adams used or attempted to use deadly force against Officers Persoon and Heyda with the purpose of causing at least great bodily harm. *See* Minn. Stat. §§ 609.221, subd. 2(a); .066, subd. 1; *see also* Minn. Stat. § 609.02, subd. 8 (2010) ("'Great bodily

harm' means bodily injury which creates a high probability of death, or which causes serious permanent disfigurement, or which causes a permanent or protracted loss or impairment of the function of any bodily member or organ or other serious bodily harm."). Based on our independent review of the circumstances proved and the reasonable inferences that might be drawn from the circumstances proved, we conclude that the circumstances proved lead unerringly to the conclusion that the evidence in the record is sufficient to establish Adams's guilt beyond a reasonable doubt.

Adams also argues that the evidence was insufficient to prove that he "*created* a substantial risk of causing[] the officers to die or to suffer great bodily harm." (Emphasis added.) But Adams misreads section 609.066, subdivision 1. The statute provides that an actor's force is deadly when it is force which the actor "*should reasonably know creates* a substantial risk of causing[] death or great bodily harm." (Emphasis added.) We review challenges to the sufficiency of direct evidence by viewing "the evidence in the light most favorable to the State and will assume that the jury believed the State's witnesses and disbelieved contrary evidence." *State v. Hokanson*, 821 N.W.2d 340, 353 (Minn. 2012) (quotations omitted), *cert. denied*, 133 S. Ct. 1741 (2013). We will "sustain a criminal conviction" when "the direct evidence, when so viewed, would permit the jury to reasonably conclude that the State has proven the fact in question beyond a reasonable doubt." *Id.*

Here, while fleeing the police, Adams pointed his loaded gun at Officers Persoon and Heyda, paused when he pointed it at Officer Persoon, and caused both officers to fear for their lives. We conclude that sufficient direct evidence shows that Adams used force

that he should reasonably have known created a substantial risk of causing at least great bodily harm.

Affirmed.