STATE OF MINNESOTA
IN COURT OF APPEALS
A11-1444

State of Minnesota,
Respondent,

vs.

Mitchell Dale Coauette,
Appellant.

Filed August 20, 2012
Affirmed
Toussaint, Judge*

Polk County District Court
File No. 60-CR-10-1968

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

Greg Widseth, Polk County Attorney, Scott A. Buhler, Assistant County Attorney, Crookston, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Rochelle R. Winn, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Ross, Presiding Judge; Hooten, Judge; and Toussaint, 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

TOUSSAINT, Judge

Appellant Mitchell Dale Coauette challenges his convictions of fleeing a peace officer in a motor vehicle and fourth-degree driving while impaired (DWI), arguing that the evidence is insufficient to support his conviction of fleeing a peace officer in a motor vehicle and that he is entitled to a new trial on the basis of prosecutorial misconduct. Because we conclude that the record contains circumstantial evidence sufficient to sustain appellant's conviction and that there was no prosecutorial misconduct, we affirm.

D E C I S I O N

I.

Appellant first argues that the evidence is insufficient to support his conviction of fleeing a peace officer in a motor vehicle.[1] In an appeal challenging the sufficiency of evidence, we review the record and the legitimate inferences from the record in the light most favorable to the adjudication. *Dale v. State*, 535 N.W.2d 619, 623 (Minn. 1995).

[1] The state invites this court to apply the plain-error standard to appellant's sufficiency-of-the-evidence argument because appellant did not raise this argument to the district court in a motion for judgment of acquittal or a new trial. The state has not identified a Minnesota case that requires a defendant to preserve a sufficiency-of-the-evidence argument in such a manner or supports the application of the plain-error standard in this context. But in *State v. Clow* the state similarly asserted that the appellant failed to preserve a sufficiency-of-the-evidence argument for appeal. 600 N.W.2d 724, 726 (Minn. App. 1999), *review denied* (Minn. Oct. 21, 1999). We rejected the state's contention that the issue was waived and concluded that if an appellant establishes that an error occurred as to the sufficiency of the evidence, such an error *necessarily* satisfies all the remaining elements of the plain-error standard. *Id.* The *Clow* court proceeded by addressing the appellant's sufficiency-of-the-evidence argument directly rather than within the framework of the plain-error standard. *Id.* at 727. Therefore, we similarly address appellant's sufficiency-of-the-evidence argument directly without applying the plain-error framework.

We must assume that the jury believed the witnesses whose testimony supports the conviction and rejected contrary evidence. *State v. Steinbuch*, 514 N.W.2d 793, 799 (Minn. 1994). A conviction based entirely on circumstantial evidence merits stricter scrutiny. *State v. Jones*, 516 N.W.2d 545, 549 (Minn. 1994). The circumstantial evidence must form a complete chain that leads so directly to the guilt of the defendant as to exclude beyond a reasonable doubt any reasonable inference other than guilt. *Id.* The jury, however, is in the best position to evaluate circumstantial evidence, and its verdict is entitled to due deference. *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989).

A driver's flight or attempted flight from a police officer acting in the lawful discharge of an official duty constitutes a felony offense. Minn. Stat. § 609.487, subd. 3 (2008). A driver "flees" when, after being given a signal to stop by a person the driver knows or has reason to know is a police officer, the driver intentionally attempts to elude the officer by refusing to stop, increasing speed, or using any other means. *Id.*, subds. 1, 3 (2008). "[A] jury may infer that a person intends the natural and probable consequences of his actions." *State v. Cooper*, 561 N.W.2d 175, 179 (Minn. 1997). Because intent involves a state of mind, it is ordinarily established circumstantially. *State v. Davis*, 656 N.W.2d 900, 905 (Minn. App. 2003), *review denied* (Minn. May 20, 2003); *see also Davis v. State*, 595 N.W.2d 520, 525-26 (Minn. 1999) (stating that intent may be proved by circumstantial evidence, including defendant's conduct).

This court employs a two-part standard of review to analyze the sufficiency of the evidence when the jury's determination of guilt rests on circumstantial evidence. *State v. Andersen*, 784 N.W.2d 320, 329 (Minn. 2010). First, we identify the circumstances

proved, deferring to the jury's "acceptance of the proof of these circumstances and rejection of evidence in the record that conflict[s] with the circumstances proved by the State." *Id.* (quotation omitted). Next, we examine all reasonable inferences that may be drawn from the circumstances proved, without *any* deference to the jury's credibility determinations or choice between reasonable inferences. *Id.* at 329-30. To sustain appellant's conviction, "the circumstances proved must be consistent with guilt and inconsistent with any rational hypothesis except that of guilt." *Id.* at 330.

Here, when viewed in the light most favorable to the verdict, the evidence establishes the following as circumstances proved. Polk County Sheriff's Deputy Randy Lee testified that he activated the emergency lights on his marked patrol car on County Road 46 when he was approximately 200 yards behind appellant's vehicle and that the road was flat and unobstructed. Consistent with his incident report, Deputy Lee testified that appellant subsequently admitted that he first saw the emergency lights around the time that he turned from County Road 46 onto County Road 11. A recording of Deputy Lee's conversation with appellant was played for the jury, during which appellant states that he did not see the emergency lights until he turned onto the gravel road, which is approximately one mile beyond the intersection of County Road 46 and County Road 11. Even if appellant did not see the emergency lights until he turned onto the gravel road, the record demonstrates that appellant continued to drive for approximately one mile at between 75 and 80 miles per hour, turned right onto another road, and continued driving

behind a row of trees. Appellant did not stop until he reached the end of the road,[2] approximately 20 seconds after Deputy Lee had activated the siren on his patrol car. The state also presented evidence that appellant had a motive to flee the police; appellant's conduct violated the conditions of his supervised release from prison, which prohibited him from using alcohol or drugs and required him to be law abiding, and a violation of these conditions could result in revocation of appellant's supervised release. Moreover, although appellant told Deputy Lee that he was driving to the river to go fishing, another officer testified that appellant did not have a fishing license, was driving down a road that lacks public access to the river, and made turns that were not consistent with the most direct route to the river.

The parties disagree as to what reasonable inferences can be drawn from these facts. Appellant argues that these facts are consistent with a theory that appellant did not realize that Deputy Lee was signaling him to stop until Deputy Lee activated his siren. But this theory is not reasonable in light of evidence that appellant continued to drive at a high speed and make evasive turns for approximately two miles after he saw Deputy Lee's emergency lights, continued to drive for approximately 20 seconds after Deputy Lee activated his siren, and turned a corner behind a row of trees before stopping at what essentially was the end of the road. Evidence that conflicts with appellant's explanation that he intended to go fishing and that he had a motive to flee the police casts further

[2] Another officer testified that, although the road continued past the location where appellant stopped his vehicle, the remainder of the road was a "minimum maintenance road" that is difficult to drive on and ends at a barricade.

doubt on the reasonableness of appellant's theory. Indeed, our review of the facts identifies no rational theory that is inconsistent with appellant's guilt.

When viewed in its totality, the circumstantial evidence strongly supports appellant's conviction of fleeing a peace officer in a motor vehicle and is inconsistent with any rational hypothesis except that of guilt. *See State v. Taylor*, 650 N.W.2d 190, 206–07 (Minn. 2002) (upholding conviction based on circumstantial evidence when, viewed as a whole, the evidence led directly to guilt). Accordingly, appellant is not entitled to relief on this ground.

II.

Appellant also argues that the state committed prosecutorial misconduct during its closing argument by referencing appellant's supervised-release status to attack appellant's character and suggest that appellant is not a law-abiding person. Appellant did not object to these statements at trial. We review unobjected-to prosecutorial misconduct under a modified plain-error standard of review, which requires the appellant to demonstrate an error that is plain and the state to demonstrate that the defendant's substantial rights were not affected. *State v. Jones*, 772 N.W.2d 496, 506 (Minn. 2009). In doing so, the state "must show there is no reasonable likelihood that the absence of the prosecutorial misconduct would have significantly affected the verdict of the jury." *Id.* If the state fails to make that showing, we must determine whether the error should be addressed to ensure the fairness and integrity of the judicial proceedings. *Id.*

A district court may not admit evidence of a defendant's other crimes or bad acts to prove the character of the defendant in order to show that the defendant acted in

conformity with the proven character. Minn. R. Evid. 404(b). But evidence of other crimes or bad acts is admissible to show "motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident." *Id.* If the district court admits character evidence for a limited permissible purpose, a prosecutor's use of that evidence for another impermissible purpose constitutes misconduct. *State v. DeWald*, 463 N.W.2d 741, 745 (Minn. 1990). When reviewing a prosecutor's closing argument, we examine the argument "as a whole, rather than just selective phrases or remarks that may be taken out of context or given undue prominence." *State v. Walsh*, 495 N.W.2d 602, 607 (Minn. 1993).

Here, the district court admitted appellant's supervised-release status and the conditions of appellant's supervised release as evidence of appellant's motive for fleeing the police. During the state's closing argument, the prosecutor told the jury to "[k]eep in mind the defendant is not the average person. He's on supervised release. He has specific conditions . . . that control his behavior, conditions that don't apply to the average law-abiding citizen." Later in the state's closing argument, the prosecutor said that appellant "was running because he knew he was in a lot more trouble than anybody else would be who maybe had had a few too many beers." These statements suggest to the jury that appellant is not a law-abiding person. However, when viewed in context, these statements convey the prosecutor's argument that appellant had a motive to flee the police, which is a permissible use of the evidence of appellant's supervised-release status. Indeed, in the midst of making these statements, the prosecutor reminded the jury of this limited purpose, stating:

> He's got motive to flee from Deputy Lee. A reason to get away because he doesn't want to go back to prison. Now, that's the only reason that I introduced in the evidence in this case relating to the defendant's supervised release . . . . [I]t's simply to demonstrate that he has a motive for fleeing in this case.

Moreover, the prosecutor's fleeting reference to appellant not being an "average law-abiding citizen" is descriptive without being particularly inflammatory. *Cf. DeWald*, 463 N.W.2d at 745 (concluding that prosecutor's use of defendant's criminal history during closing argument to label defendant a "thief," "burglar," and "murderer" constituted misconduct). Therefore, these statements are not plain error.

In the state's rebuttal argument, the prosecutor responded to defense counsel's suggestion that appellant was cooperative after he was apprehended, stating: "When you're caught red-handed, isn't cooperation the best thing for you to do, especially when you're on supervised release and you're gonna have to answer to a probation agent for what you've already been caught for? Of course, fighting, arguing, is only going to make things worse for him." This statement is not made in the context of demonstrating that appellant had a motive to flee; rather, the prosecutor used appellant's parole status in this instance to explain appellant's motive to cooperate. Although the record does not demonstrate that the district court contemplated this precise use of appellant's supervised-release status, it nonetheless is not evidence of *bad* character, only a less-favorable explanation of appellant's good conduct. Therefore, this statement is not plain error.

Even if these statements constituted plain error, reversal under the plain-error standard is not warranted if the state demonstrates that appellant's substantial rights were not affected. *See Jones*, 772 N.W.2d at 506 (articulating plain-error standard as applied to prosecutorial misconduct). When assessing whether the state has met this burden, we consider the strength of the evidence against the defendant, the pervasiveness of the improper conduct, and whether the defendant had an opportunity, or made any efforts, to rebut the improper conduct. *State v. Davis*, 735 N.W.2d 674, 682 (Minn. 2007).

As discussed in Part I, *supra*, the evidence supporting appellant's conviction of fleeing a peace officer in a motor vehicle is substantial, including evidence that appellant continued to drive at a high speed, violate traffic laws, and drive evasively for approximately two miles after Deputy Lee activated his emergency lights; admitted that he saw the emergency lights at least one mile before stopping; and continued to drive for approximately 20 seconds after Deputy Lee activated his siren. In addition, appellant's conviction of fourth-degree DWI is supported by the undisputed results of the Intoxilyzer test indicating that appellant's alcohol concentration was .08 at 9:50 p.m. The prosecutor's statements also were not pervasive. Indeed, the challenged statements comprise less than one transcript page of the state's 13-page closing and rebuttal arguments, and the prosecutor emphasized the limited purpose of the evidence of appellant's supervised-release status.

The district court cautioned the jury that statements of the attorneys are not evidence both at the start of trial and immediately before closing arguments, and similarly cautioned the jury that the evidence of appellant's supervised-release status was admitted

for the limited purpose of demonstrating appellant's motive, both at the time the evidence was introduced and immediately before closing arguments. Moreover, except for the prosecutor's rebuttal statement, appellant exercised his opportunity to address the prosecutor's statements directly during defense counsel's closing argument. In sum, even if the prosecutor's statements constituted misconduct, such error did not affect appellant's substantial rights.

Accordingly, because the challenged statements of the prosecutor do not constitute plain error and did not affect appellant's substantial rights, appellant is not entitled to relief on this ground.[3]

Affirmed.

[3] Because the plain-error test is not satisfied here, we need not address whether the admission of the challenged evidence seriously affected the fairness, integrity, or public reputation of the judicial proceedings. *See State v. Griller*, 583 N.W.2d 736, 740, 742 (Minn. 1998).