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Minn. Stat. § 480A.08, subd. 3 (2016).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A16-1603**

State of Minnesota,
Respondent,

vs.

Lance Cedric Carr,
Appellant.

**Filed August 7, 2017
Affirmed
Connolly, Judge**

Hennepin County District Court
File No. 27-CR-15-33629

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

Michael O. Freeman, Hennepin County Attorney, Elizabeth Roosevelt Johnston, Assistant
County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Rachel F. Bond, Assistant Public
Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Ross, Presiding Judge; Schellhas, Judge; and Connolly,
Judge.

UNPUBLISHED OPINION

CONNOLLY, Judge

Appellant challenges his conviction of first-degree assault against a peace officer with deadly force, arguing that the state failed to prove beyond a reasonable doubt that he used or attempted to use deadly force. Because sufficient evidence supports the jury's verdict that appellant was guilty, we affirm.

FACTS

A police officer responding to a noise complaint found that the source of the noise was a parked car. Appellant Lance Carr was inside the car. The officer learned that appellant had an outstanding felony warrant and approached the car in order to arrest him. Appellant exited his car and at first complied with the officer's orders, but when he was in a position to be placed in handcuffs, he began to physically resist the arrest and to fight with the officer. As they struggled, the officer fell to the ground. He then felt a tug on his duty belt, near his handgun, saw appellant's hands on the handgun, and felt appellant manipulate the safety mechanisms on the handgun. The officer rolled onto his side to pin his handgun to the ground.

Appellant then alternated between reaching for the handgun and striking the officer in the head. When the officer began to lose consciousness, he tried to distance himself from appellant by standing up. Both the officer and appellant then fell to the ground. Appellant wrapped his arms around the officer's neck, in a hold similar to a vascular neck restraint. This hold causes unconsciousness; if performed improperly, it can crush the windpipe and cause death. When the officer attempted to maneuver out of the hold,

appellant forced his forehead back, which exposed his neck and allowed appellant to strengthen his hold. During this time, appellant continued to manipulate the holster of the officer's gun. The officer then drew his handgun himself, with the intent of shooting appellant. But the gun first discharged into the ground and then malfunctioned.

Other officers arrived, were alarmed by the officer's "ghostly" appearance, and subdued appellant. The officer was taken to the hospital and treated for his injuries, including possible head trauma. Appellant also was taken to the hospital, where he said that he had been resisting arrest, that he was angry about "current race issues with police officers and black individuals" and that "[the] white boy had what was coming and all police officers have what's coming to them."

At trial, appellant denied attempting to take the officer's handgun, but admitted to putting the officer in a chokehold; he also said he had never received any training on chokeholds. Appellant acknowledged both the potentially lethal danger of using a chokehold and the risk of two people struggling over a firearm.

The jury found appellant guilty of assault of a peace officer with deadly force. This appeal followed.

D E C I S I O N

This court's review of a sufficiency-of-the-evidence claim is limited to "a painstaking analysis of the record to determine whether the evidence, when viewed in the light most favorable to the conviction, was sufficient to permit the jurors to reach the verdict which they did." *State v. Ortega*, 813 N.W.2d 86, 100 (Minn. 2012) (quotation omitted). "[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).

In applying the circumstantial-evidence standard, this court uses a two-step analysis. *State v. Silvernail*, 831 N.W.2d 594, 598 (Minn. 2013). “The first step is to identify the circumstances proved. In identifying the circumstances proved, we defer “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.” *Id.* at 598-99 (quotation and citation omitted). “The second step is to determine whether the circumstances proved are consistent with guilt and inconsistent with any rational hypothesis except that of guilt.” *Id.* at 599 (quotation omitted). 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 inference other than guilt. *Jones*, 516 N.W.2d at 549. A 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). Appellate courts “will not disturb the verdict if the jury, acting with due regard for the presumption of innocence and the requirement of proof beyond a reasonable doubt, could reasonably conclude that a defendant was guilty of the offense charged.” *Bernhardt v. State*, 684 N.W.2d 465, 476-77 (Minn. 2004) (quotation omitted).

“[W]hoever assaults a peace officer . . . by using or attempting to use deadly force against the officer . . . while the person is engaged in the performance of a duty imposed by law, policy, or rule” is guilty of using deadly force against a peace officer. Minn. Stat. § 609.221, subd. 2(a) (2016). “Deadly force” is defined as “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 (2016). Intent is a state of mind generally proved through circumstantial evidence “by drawing inferences from the defendant’s words and actions in light of the totality of the circumstances.” *State v. Cooper*, 561 N.W.2d 175, 179 (Minn. 1997).

Appellant contends that the state failed to prove that he acted with the intent of “killing or causing great bodily harm to [the officer], or that his actions created a substantial risk of causing death or great bodily harm.” Specifically, appellant argues that his effort to take the officer’s handgun was only an *attempt* to use deadly force, not the actual *use* of deadly force. For this argument, he relies on *State v. Trei*, 624 N.W.2d 595, 598-99 (Minn. App. 2001) (reversing dismissal of charge of assaulting police officer against individual who moved towards officer “with knives in hand while uttering words to the effect that he wished to engage [the officer] in combat,” but stopped when the officer drew his gun). Here, appellant did not have knives or other weapons when he approached the officer, but his effort to seize the officer’s firearm was the equivalent of approaching the officer with a weapon. *See State v. Ortiz*, 626 N.W.2d 445, 449 (Minn. App. 2001) (“Bare hands . . . can administer deadly force in many situations.” (quotation omitted)), *review denied* (Minn. June 27, 2001). One such situation is using bare hands to seize an officer’s firearm. *Ortiz* also refutes appellant’s argument that his use of his hands and fists to assault the officer did not rise to the level of deadly force.

Appellant admitted to struggling with the officer over the handgun and to knowing that physically struggling over a firearm creates a substantial risk of death or great bodily

harm. *See State v. Bernardi*, 678 N.W.2d 465, 468-69 (Minn. App. 2004) (holding that accelerating a vehicle toward a police officer constitutes assault when the officer jumped onto the hood of the car, because the driver reasonably should have known his conduct created a substantial risk of causing death or great bodily harm). The use of deadly force requires that the actor *either* use force with the purpose of causing death or great bodily harm *or* use force which the actor should reasonably know creates a substantial risk of bodily harm. Minn. Stat. § 609.066. Appellant need not have actually acted with the purpose of causing death or great bodily harm; acting with force that he should have reasonably known created a substantial risk of causing death or great bodily harm is also “the use of deadly force” within the meaning of the statute.

Moreover, appellant tried to choke the officer to death. Appellant acknowledged at trial the danger of death or great bodily harm that is created by placing a person in a chokehold. While appellant may not have actually inflicted death or great bodily harm on the officer, he had actual knowledge that the choking and beating of the officer created a substantial risk of death or great bodily harm. He acknowledged at trial the danger of death or great bodily harm that is created by placing a person in a chokehold. The officer had a ghostly appearance and lost consciousness multiple times when taken to the hospital. The only reasonable inference to be drawn from the evidence is that appellant used force which he reasonably knew created a substantial risk of great bodily harm. Sufficient evidence supports the jury’s verdict.

Affirmed.