This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).

STATE OF MINNESOTA
IN COURT OF APPEALS
A22-0133

State of Minnesota,
Respondent,

vs.

Jermaine Kershawn Perry,
Appellant.

Filed November 28, 2022
Affirmed
Connolly, Judge

Ramsey County District Court
File No. 62-CR-20-3732

Keith Ellison, Attorney General, St. Paul, Minnesota; and

John Choi, Ramsey County Attorney, Jeffrey A. Wald, Assistant County Attorney, St. Paul, Minnesota (for respondent)

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

Considered and decided by Connolly, Presiding Judge; Segal, Chief Judge; and Johnson, Judge.

NONPRECEDENTIAL OPINION

CONNOLLY, Judge

Appellant challenges his conviction for fourth-degree assault of a police officer. He argues that the evidence is insufficient to support his conviction because the state did not

prove beyond a reasonable doubt that appellant had the specific intent to transfer saliva onto a police officer. Because we see sufficient evidence, we affirm.

FACTS

On April 30, 2020, at around 7:20 p.m., police were called to the scene of a male who was possibly experiencing a mental health crisis or under the influence of drugs. The caller also reported that the male was rolling around in the street next to a damaged vehicle. The male was later identified as appellant Jermaine Perry.

Two police officers, J.T. and A.B., were involved in this incident. J.T. arrived first and saw appellant standing in the street next to an SUV with a broken front window and talking to himself. When J.T. asked appellant to approach him, appellant balled his fists, continued to talk to himself, and stared at J.T. A.B. then arrived. He noticed that appellant appeared to be impaired and possibly under the influence of something. The officers were concerned for appellant's safety, so they handcuffed him. The officers then patted appellant down for weapons and identified him by using an identification card they found in his wallet.

After the officers identified appellant, they learned that there was a "pick up and hold" order for him, so they placed him under arrest. During the arrest, appellant said to A.B., "I'll smack your ass," and he likewise told J.T. to "Hurry up, before I smack your ass." In light of appellant's profane threats, J.T. testified that he suspected appellant might try to assault him or A.B.

While waiting to get appellant into the police car, J.T. claimed that he saw appellant look at him and begin to gather spit in his mouth. J.T. warned A.B. that appellant might

spit on them. Appellant then turned, thrust his body toward J.T., and spit on J.T.'s forehead and hairline. A.B. could see the spit on J.T.'s face. A.B. testified that he thought appellant tried to spit on him or J.T. a second time. The officers then put a spit hood on appellant. J.T., once in the police car, used some sort of napkin or paper towel to wipe appellant's spit off his face.

Respondent State of Minnesota charged appellant with fourth-degree assault of a police officer under Minn. Stat. § 609.2231, subd. 1(c)(2) (2020). After a rule 20 evaluation,[1] appellant was found competent to stand trial. Following a jury trial, appellant was found guilty of fourth-degree assault of a police officer by the intentional transfer of bodily fluids. At his sentencing hearing, the district court stayed imposition of sentence and placed appellant on probation for three years.

DECISION

A. General or Specific Intent

Appellant contends that fourth-degree assault of a police officer under Minn. Stat. § 609.2231, subd. 1(c)(2), is a specific-intent crime, not a general-intent crime. A general-intent crime occurs when "a statute simply prohibits a person from intentionally engaging in the prohibited conduct." *State v. Fleck*, 810 N.W.2d 303, 308 (Minn. 2012). A specific-intent crime, in contrast, "requires an intent to cause a particular result." *Id.* (quotation

[1] *See* Minn. R. Crim. P. 20.01 (stating that defendant is incompetent to stand trial if he lacks ability to consult defense counsel or is mentally ill or mentally deficient and therefore incapable of understanding the proceedings or participating in the defense).

omitted). As applied here, appellant argues that the statute requires the state to prove that appellant intended to spit *on* J.T., not just that appellant intended to spit.

Respondent also argues that the intent element "requires the State to prove that a defendant intended to spit on a police officer." Therefore, the parties agree that the issue here is whether there was sufficient evidence that appellant intended to spit on J.T.

In any event, this court has already resolved this issue in a precedential opinion. *State v. Cogger*, 802 N.W.2d 407, 411 (Minn. App. 2011) (holding that "felony fourth-degree assault of a police officer by the intentional transfer of bodily fluids is a general-intent crime."), *rev. granted* (Minn. Oct. 18, 2011) and *rev. denied* (Minn. Mar. 28, 2012). Appellant counters that *Cogger* is no longer good law because it (1) has been superseded by statute and (2) relied on caselaw that has been overruled, namely *State v. Kelley*, 734 N.W.2d 689 (Minn. App. 2007), *rev. denied* (Minn. Sept. 18, 2007). But neither assertion is accurate.

First, *Cogger* has not been superseded by statute. The language in the 2010 statute at issue in *Cogger* is the same as the language in the 2020 version. *Compare* Minn. Stat. § 609.2231, subd. 1 (2010), *with* Minn. Stat. § 609.2231, subd. 1(c)(2) (2020). So, the 2016 amendment to Minn. Stat. § 609.2231, subd. 1, did not supersede what the court held in *Cogger*. *See Comm'r of Revenue v. Dahmes Stainless, Inc.*, 884 N.W.2d 648, 658 (Minn. 2016) ("An entire decision is not necessarily 'superseded' simply because a statute relied upon in the decision has been amended. Rather, specific points of law may be superseded while other points remain good law.").

Second, the overruling of *Kelley* by the Minnesota Supreme Court is not pertinent to the issues in this appeal. The *Cogger* court cited *Kelley* only for the proposition that "this court has previously held that the conduct of spitting at a police officer is by itself a felony offense."[2] *Cogger*, 802 N.W.2d at 411 (quotation omitted). Neither party here argues that spitting on a police officer is not by itself a felony offense.[3]

In sum, Minn. Stat. § 609.2231, subd. 1(c)(2), requires only a general intent that a defendant intended to "throw[] or otherwise transfer[] bodily fluids or feces at or onto the officer."

B. Sufficiency of the Evidence

Appellant argues that the evidence is insufficient to support his conviction for fourth-degree assault of a police officer because it did not prove beyond a reasonable doubt that appellant intended to spit onto J.T. We disagree.

When evaluating the sufficiency of the evidence, this court "carefully examine[s] the record to determine whether the facts and the legitimate inferences drawn from them would permit the factfinder to reasonably conclude that the defendant was guilty beyond a reasonable doubt." *State v. Waiters*, 929 N.W.2d 895, 900 (Minn. 2019) (quotation omitted). If the state relied on circumstantial evidence to prove an element of an offense,

---

[2] The Minnesota Supreme Court overruled *State v. Kelley* on this point in *State v. Struzyk*. 869 N.W.2d 280, 289 (Minn. 2015) ("Because the transfer of bodily fluids . . . enhances a gross-misdemeanor physical assault into a felony, a physical assault must be an element of felony fourth-degree assault of a peace officer (transfer of bodily fluids).").

[3] Minn. Stat. § 609.2231, subd. 1, was amended in 2016. Under the current version of the statute, it is unambiguous that the "transfer of bodily fluids," by itself, constitutes fourth-degree assault against a police officer. Minn. Stat. § 609.2231, subd. 1(c)(2).

this court applies a heightened standard of review. *See State v. Harris*, 895 N.W.2d 592, 601-03 (Minn. 2017) (discussing circumstantial-evidence standard); *State v. Al-Naseer*, 788 N.W.2d 469, 471 (Minn. 2010) (stating that "the heightened scrutiny applies to any disputed element of the conviction that is based on circumstantial evidence").

This court reviews the sufficiency of circumstantial evidence by conducting a two-step analysis. *State v. German*, 929 N.W.2d 466, 472 (Minn. App. 2019). First, we identify the circumstances proved by the state. *State v. Silvernail*, 831 N.W.2d 594, 598 (Minn. 2013). We "assume that the [fact-finder] resolved any factual disputes in a manner that is consistent" with the verdict. *State v. Moore*, 846 N.W.2d 83, 88 (Minn. 2014). Second, we "determine whether the circumstances proved are consistent with guilt and inconsistent with any rational hypothesis other than guilt." *Loving v. State*, 891 N.W.2d 638, 643 (Minn. 2017) (quotation omitted). We will uphold the verdict if the circumstantial evidence forms "a complete chain" which leads "directly to the guilt of the defendant as to exclude beyond a reasonable doubt any reasonable inference other than guilt." *State v. Petersen*, 910 N.W.2d 1, 7 (Minn. 2018) (quoting *Al-Naseer*, 788 N.W.2d at 473). Therefore, we must determine whether the evidence was such that the jury could make no reasonable inference other than that of appellant's guilt.

Here, appellant admits that the circumstances proved by the state support a "reasonable inference" that appellant intended to spit on J.T. Appellant nonetheless argues that his conviction must be reversed because the state failed to disprove the "reasonable theory" that appellant, in effect, accidentally spat on J.T.

But the state easily met its burden. The following circumstances proved show that appellant intended to spit on J.T.: (1) appellant was acting erratically; (2) he was unable or unwilling to properly communicate with the officers; (3) he cursed at and threatened the officers not once, but twice; (4) the officers lawfully arrested him; (5) he was seen gathering saliva in his mouth; and (6) he thrust his body toward and spat directly on the forehead of J.T., who was standing right next to him. Therefore, given these circumstances, the only reasonable conclusion is that appellant intended to spit on J.T.

In contrast to this case, *State v. Adan*, No. A15-0075, 2015 WL 6829818 (Minn. App. Nov. 9, 2015), demonstrates when the "accident defense" should apply. Nonprecedential opinions are not binding, but they may be persuasive. *City of St. Paul v. Eldredge*, 788 N.W.2d 522, 526-27 (Minn. App. 2010), *aff'd*, 800 N.W.2d 643 (Minn. 2011). In *Adan*, this court reversed Adan's conviction for fourth-degree assault of a police officer because it was a reasonable hypothesis that Adan was trying to spit at another inmate, not at the officer who was walking right behind that inmate. *Adan*, 2015 WL 6829818, at *3-4. Adan had been arguing with the other inmate, who spat at him right before Adan spat. *Id.* Here, unlike in *Adan*, no one other than the officers was present for appellant to have intentionally spat at; no one spat at appellant; and appellant specifically threatened the officers, and not anyone else.

Appellant's case more closely resembles *State v. Blevins*, No. A18-0534, 2019 WL 510016 (Minn. App. Feb. 11, 2019), *rev. denied* (Minn. Apr. 24, 2019). In *Blevins*, this court upheld Blevins's conviction for fourth-degree assault of a police officer because the "evidence that Blevins's goal was to spit on [the officer], and the absence of evidence

supporting Blevins's asserted innocent purpose" made it "unreasonable to infer that Blevins had any purpose other than spitting at or onto [the officer]." *Blevins*, 2019 WL 510016, at *4. The evidence that Blevins intended to spit on the officer was that "Blevins had (1) threatened to spit on corrections officers, (2) locked eyes with [the officer], (3) spat, and (4) laughed when the spit landed on [the officer]." *Id.* Here, as in *Blevins*, the state's evidence renders the "accident defense" unreasonable.

Because the only reasonable conclusion from these circumstances is that appellant intended to spit on J.T., the jury's verdict, which is "entitled to due deference," should not be disturbed. *State v. Smith*, 619 N.W.2d 766, 769 (Minn. App. 2000), *rev. denied* (Minn. Jan. 16, 2001). "The evidence as [a] whole need not exclude all possibility that the defendant is innocent; it must only make such a theory seem unreasonable," which is certainly the case here. *Id.* at 770.

Affirmed.