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**STATE OF MINNESOTA
IN COURT OF APPEALS
A16-1305**

State of Minnesota,
Respondent,

v.

Jon Vernon Tuma,
Appellant.

**Filed October 23, 2017
Affirmed
Bjorkman, Judge**

Anoka County District Court
File No. 02-CR-15-6005

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

Anthony C. Palumbo, Anoka County Attorney, Kelsey R. Kelley, Assistant County Attorney, Anoka, Minnesota (for respondent)

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

Considered and decided by Bratvold, Presiding Judge; Bjorkman, Judge; and
Hooten, Judge.

UNPUBLISHED OPINION

BJORKMAN, Judge

Appellant challenges his convictions of third- and fourth-degree assault and theft of a motor vehicle, arguing that the evidence is insufficient and that he was deprived of his constitutional right to effective assistance of counsel. We affirm.

FACTS

On September 13, 2015, at about 1:00 p.m., Anoka County sheriff's deputies responded to a call of a suspicious person in a remote and isolated area in Columbus. When deputies arrived on the scene, they found a black Ford Explorer parked in the middle of the road with the driver's door open. The vehicle had been reported stolen by its owner, T.K., who told police that he had been unloading it at his Minneapolis home when he discovered the vehicle was gone from the driveway.

A canine officer followed a track from the vehicle to a small duffle bag concealed in the woods. Deputies opened the bag and discovered a pill bottle and court documents with appellant Jon Vernon Tuma's name. The vehicle was subsequently removed from the scene.

At about 4:30 p.m., deputies responded to a second call of a suspicious person in the same area and found Tuma, who appeared to be under the influence of drugs, in the caller's driveway. Tuma told the deputies that a friend loaned him a black vehicle, which had apparently been stolen from where he parked it, but he could not remember his name. As the deputies arrested Tuma for unauthorized use of a motor vehicle, Tuma began to struggle and kick. Eventually, the deputies had to hobble his legs.

At the jail, Tuma resisted booking procedures, and it took at least eight deputies and jail personnel to restrain him. During the scuffle, Tuma bit Deputy Christopher Fahey's arm, breaking the skin. Deputy Fahey's pinky finger was also broken as he attempted to subdue Tuma.

The state charged Tuma with third- and fourth-degree assault, theft of a motor vehicle, and obstruction of legal process. Tuma waived his jury-trial rights, and the parties stipulated to submission of the law-enforcement reports, three videos, two photographs, and certified copies of Tuma's prior convictions for impeachment purposes. The parties also stipulated that (1) Tuma was in Anoka County on September 13, 2015; (2) Deputy Fahey suffered substantial bodily harm in the form of a broken finger; (3) Deputy Fahey suffered demonstrable bodily harm in the form of a bite wound; and (4) "[t]he motor vehicle in question is a black Ford Explorer owned by [T.K.], and that [T.K.] did not give anyone permission to drive the motor vehicle on September 13, 2015."

Tuma also testified. A man named Robert dropped him off in the Carlos Avery Wildlife Area so he could scout it out for bow hunting. Tuma removed his cellphone battery to conserve energy and he cached his duffle bag in the woods. Tuma saw a woman outside a house and stopped to apologize for trespassing. He then asked for a drink of water, and she went into the house. A man came out, and Tuma repeated his explanation. The man brought Tuma a glass of water. The man was wearing latex gloves and carried a knife. Tuma thought the man was trying to get his fingerprints, so he wiped the glass off and left. He then encountered the deputies. Tuma has no memory of his arrest and the assault incident, but recalls jail personnel attacking him.

The district court found Tuma guilty of all four charges and imposed concurrent presumptive sentences. Tuma appeals.

D E C I S I O N

I. Sufficient evidence supports Tuma’s convictions.

When considering a claim of insufficient evidence

our review 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. We assume the jury believed the State’s witnesses and disbelieved any evidence to the contrary. And we 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 the defendant was guilty of the charged offense.

State v. Ortega, 813 N.W.2d 86, 100 (Minn. 2012) (quotation and citations omitted). We apply the same standard of review to both jury and court trials. *State v. Palmer*, 803 N.W.2d 727, 733 (Minn. 2011).

Tuma first contends the evidence is not sufficient to sustain his two assault convictions. “Assault” is defined as “the intentional infliction of or attempt to inflict bodily harm upon another.” Minn. Stat. § 609.02, subd. 10(2) (2014). Although a defendant’s action must be intentional, “assault-harm is a general-intent crime.” *State v. Fleck*, 810 N.W.2d 303, 309 (Minn. 2012). A general-intent crime “simply prohibits a person from intentionally engaging in the prohibited conduct.” *Id.* at 308. It does not require an intent to cause a specific result. *Id.* To establish third-degree assault, the state must prove that the victim suffered substantial bodily harm. Minn. Stat. § 609.223, subd. 1 (2014). Fourth-

degree felony assault, which is specific to law enforcement and first-responder personnel, requires a showing that the victim sustained demonstrable bodily harm. Minn. Stat. § 609.2231, subd. 1 (2014).

The parties stipulated that Deputy Fahey suffered substantial bodily harm and demonstrable bodily harm. Tuma argues the state did not prove that he intended to or actually inflicted bodily harm. We are not persuaded because direct evidence supports his assault convictions. *See Bernhardt v. State*, 684 N.W.2d 465, 477 n.11 (Minn. 2004) (stating that direct evidence is based on personal knowledge and observation). While Tuma asserts that he does not remember the incident, the law-enforcement reports and other stipulated evidence show Tuma bit Deputy Fahey with enough force to break the skin and broke Fahey's finger while struggling with him and resisting restraints. Tuma's actions were observed by several other deputies. Even if Tuma did not intend to harm Deputy Fahey, he deliberately engaged in the biting, kicking, twisting, and struggling conduct that led to the injuries.

Tuma next asserts that insufficient circumstantial evidence supports his motor-vehicle theft conviction. *See id.* (stating that circumstantial evidence is based on inference and not on personal knowledge, direct observation, or eyewitness testimony). We review the sufficiency of circumstantial evidence under a two-step process. *State v. Silvernail*, 831 N.W.2d 594, 598 (Minn. 2013). First, we identify the circumstances proved, deferring to the fact-finder's acceptance of the state's proof and rejection of other evidence. *Id.* at 598-99. In doing so, we "consider only those circumstances that are consistent with the verdict." *Id.* at 599. Second, we "determine whether the circumstances proved are

consistent with guilt and inconsistent with any rational hypothesis except that of guilt,” without deferring to the fact-finder’s choice between reasonable inferences. *Id.* (quotations omitted).

The district court found that (1) deputies observed an abandoned vehicle with its driver’s door open, left in the middle of the road in an isolated area; (2) the vehicle had been stolen earlier that day; (3) the owner had not given anyone permission to use the vehicle; (4) a canine tracked a scent from the vehicle to an abandoned duffle bag that contained personal items belonging to Tuma; (5) Tuma was found in the same area and told deputies that his vehicle had been stolen; and (6) Tuma told deputies that a friend loaned him the vehicle but he was unable to describe it or name the friend.

Tuma contends this evidence is insufficient to sustain his conviction and, even if it were, the evidence is also consistent with the rational hypothesis that a friend dropped him off at the wildlife area. We disagree. The district court rejected Tuma’s testimony on this point. Accordingly, it is not part of the circumstances proved. *Id.* at 598-99. Based on our careful review of the record, we conclude that the circumstances proved are only consistent with guilt: Tuma arrived at the wildlife area in a stolen vehicle that he did not have permission to drive or use.

II. Tuma’s ineffective-assistance-of-counsel claim lacks merit.

Generally, a claim of ineffective assistance of counsel that requires evidence outside of the trial record or additional fact-finding should be raised in a postconviction proceeding. *Andersen v. State*, 830 N.W.2d 1, 10 (Minn. 2013). But such a claim may be considered in a direct appeal if it is based solely on the trial record. *Id.* To sustain an

ineffective-assistance-of-counsel claim, a defendant “must demonstrate that (1) his counsel’s performance fell below an objective standard of reasonableness, and (2) that a reasonable probability exists that the outcome would have been different but for counsel’s errors.” *Id.* “[T]here is a strong presumption that counsel’s performance was reasonable.” *Id.* And we generally do not review ineffective-assistance-of-counsel claims that are based on matters of trial strategy. *Id.* This includes the extent of counsel’s investigation and the selection of evidence to present to the jury. *Id.*

Much of Tuma’s argument centers on whether his trial lawyer adequately prepared for trial or wrongly rejected his suggestions for a defense strategy. Tuma summarizes his claims by saying that his lawyer “ignored [his] demands,” raised an “ineffective defense” of intoxication, “disobey[ed] [his] demands,” did not get his consent for her trial strategy, failed to contact him in a timely fashion, and did not include him in strategic planning. These are largely matters of trial strategy, and we will not second-guess counsel’s decisions. And a review of the record does not support Tuma’s contention that his lawyer was unprepared or uncommunicative. In sum, Tuma’s claim of ineffective assistance of counsel is meritless.

Affirmed.