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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1493**

State of Minnesota,
Respondent,

vs.

Philip Anthony Zehrer,
Appellant.

**Filed July 16, 2018
Affirmed
Kalitowski, Judge***

Stearns County District Court
File No. 73-CR-17-1503

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

Cynthia R. Kirchoff, St. Cloud City Attorney, Lacy E. Schumacher, Assistant City
Attorney, St. Cloud, Minnesota (for respondent)

Philip A. Zehrer, St. Cloud, Minnesota (pro se appellant)

Considered and decided by Smith, Tracy M., Presiding Judge; Bratvold, Judge; and
Kalitowski, Judge.

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to
Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

KALITOWSKI, Judge

Appellant, pro se, challenges his conviction of petty-misdemeanor violations of the ordinances governing open burning and recreational burning. Because the evidence supports appellant's conviction, we affirm.

FACTS

In October 2016, two police officers and a fire captain went to the home of appellant Philip Zehrer on a report of a fire burning without a permit. When they arrived, they saw tree branches and leaves burning with no one around, no means of extinguishing the fire, and no food cooking on the fire. Appellant was charged with and ticketed for open burning and burning a recreational fire.

Appellant moved to dismiss, but he did not appear at the hearing on that motion. Another date was set for both the hearing and the trial. Appellant's double-jeopardy and probable-cause issues were found to be without merit, and his motion was denied. At trial, he testified that he had been burning wood to make charcoal on which to cook food and that he did not need a permit.

The district court found appellant guilty, concluded that the two charges were part of the same incident, and sentenced him on the open-burning charge to pay a \$200 fine with \$87 in fees and surcharges.

DECISION

This court will not disturb a verdict if the factfinder, 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. *Bernhardt v. State*, 684 N.W.2d 465, 476-77 (Minn. 2004). A reviewing court must assume the factfinder believed the state's witnesses and disbelieved any conflicting evidence, particularly when resolution of the matter depends on conflicting testimony. *State v. Pieschke*, 295 N.W.2d 580, 584 (Minn. 1980).

The relevant statutes say that “[a]n operational permit is required for the kindling or maintaining of an open fire or fire on any public street, alley, road, or other public or private ground”; that “[a] minimum of one portable fire extinguisher complying with a minimum 4-A rating or other approved on-site fire-extinguishing equipment, such as dirt, sand, water barrel, garden hose or water truck, shall be available for immediate utilization”; and that “[a]n unattended recreational fire is a violation of this ordinance.” St. Cloud, Minn., Code of Ordinance, § 300:50, subds. 3, 7 (2007).

Evidence at trial supports the district court's conclusion that appellant violated these ordinances. The fire captain testified:

When we arrived at the scene [i.e., appellant's address], there was actually nobody in the yard. We walked towards the back yard where we saw the smoke coming from, noticed the fire, called out, announced that we were with the . . . Fire Department, and then we did see [appellant] coming from the back alley into his yard.

. . . .

When we announced ourselves, and we saw [appellant] coming from the alley towards the back of his property, basically he started asking us to get off his property, it was private property He was walking towards us with a stick. At that time, I just directed my crew to turn around and . . . walked over to the front of his property and he continued to follow us to the side of his house”

Asked why he and his crew turned back, the fire captain answered,

[Appellant’s] fast motion, just basically walking straight at us with a stick, not knowing what his intentions were, not . . . having a two-way conversation, [it] was basically get off of the private property, we saw [appellant], and he wasn’t in [the] mood to talk to us, so we just got off right away.

The fire captain described the fire as “in a charcoal grill. There was a tree log and some branches on top of it. There was no grate and it was open, no cover on it.” He answered “No” when asked whether there was food on the fire and whether he observed anything near the fire to extinguish it.

The police officer, when asked if he identified the person who had chased the fire captain off the property with a stick, testified:

We did [identify appellant] after talking to him for some time. He initially did not let us talk to him, told us to get off his property. After being informed that we were just going to give him a citation and leave, and if he didn’t identify himself he was going to go to jail, he complied, got off the ladder, and gave us his I.D.

. . . .

We advised him that he was going to be issued a citation for the burning, Open Burning, and Burning Without a Permit due to what the Fire Department had told us and that they requested he put out his fire.

. . . .

It was a Weber . . . grill with a large log that's not meant for cooking or anything of that sort and a bunch of branches, and . . . there were no grates in the grill, or anything else to cook on.

The police officer also answered, "No" when asked whether he saw any food or any fire extinguishers, sand, or water near the grill, although he added that appellant "did walk over to a bucket and get water eventually." Finally, he testified that appellant had been issued citations because he was in violation of the ordinances for Open Burning and Burning Recreational Fires.

From this evidence, the district court could reasonably have concluded that appellant was guilty of the offenses charged. Appellant has provided no basis for reversal.

Affirmed.