

*This opinion is nonprecedential except as provided by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
A21-1538**

State of Minnesota,
Respondent,

vs.

Joshua John Larson,
Appellant.

**Filed September 6, 2022
Affirmed
Bjorkman, Judge**

Wilkin County District Court
File No. 84-CR-20-106

Keith Ellison, Attorney General, Peter Magnuson, Assistant Attorney General, St. Paul, Minnesota; and

Joseph Glasrud, Wilkin County Attorney, Breckenridge, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Suzanne M. Senecal-Hill, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Slieter, Presiding Judge; Bjorkman, Judge; and Bryan, Judge.

NONPRECEDENTIAL OPINION

BJORKMAN, Judge

Appellant challenges his harassment conviction, arguing that (1) insufficient evidence supports the conviction and (2) the district court erred by denying his motion to suppress a pretrial photographic identification. We affirm.

FACTS

During the afternoon of March 14, 2020, D.K. and B.K. were sitting in their living room and starting to watch a movie when B.K. heard what she described as someone “hollering.” She told D.K. to turn the volume down, and then he also heard it. They could tell it was men shouting “[l]ike they were mad” but they could not make out the words. And they could tell the noise was coming from north of their home.

Through the kitchen window, D.K. saw a man run across the six-foot-high deck on the west side of their house, up the stairs leading to their upper deck, and across its 20-foot length to a set of French doors. The man, later identified as D.E., grabbed the doors and yelled, “Help me!” and “Let me in!” D.K. then saw three men run up behind and start “beating on” D.E. with their fists. They mostly punched him in the head. The pressure of the assailants pushing D.E. against the French doors caused them to bow in, and D.K. pushed back to keep them from breaking through. Meanwhile, B.K. called 911. After about a minute, D.E. fell down and the others started to leave. But one of the men, the only one who wore glasses, returned to give D.E. a “field goal kick” to the head before leaving. D.E. left several seconds later.

D.K. went out onto the deck and watched the men leave. D.E. left to the south. One of the assailants walked to the northwest down an alley, got in a vehicle, and drove away. The other two assailants ran over to the parking lot of an apartment building across the street to the northeast and got into an Impala; a police car drove past as they approached the parking lot exit.

Officer Eric Doehling was driving the police car, responding to B.K.'s 911 call. He learned from dispatch that two of the suspects were in an Impala in the parking lot. He looked into the Impala as he drove past and saw two men in the front seats. The driver said "sh-t" as he passed by. After the Impala left the parking lot, the officer turned around and followed briefly, then executed a traffic stop. He identified the driver as appellant Joshua Larson. Larson was wearing glasses. Officer Doehling noticed that Larson had red knuckles and a cut on one hand; Larson also "yelped in pain" while being handcuffed.

Within an hour of the incident, Officer Doehling questioned D.K. and B.K. in their home. They recounted their observations to the officer. D.K. specified that it was the man with glasses who returned and kicked D.E. in the head. Officer Doehling showed D.K. a photo he took of Larson in the back seat of the squad car. D.K. identified Larson as the man in glasses who had participated in the assault on D.E.

That evening, D.E. went to a hospital, where he exhibited signs of significant confusion, including expressing a belief that it was April 1985. He sustained a concussion, soft tissue injuries around his eyes, and a fractured left orbital bone as a result of the attack.

As part of his investigation, Officer Doehling obtained a warrant to examine Larson's private Facebook messages. On March 18, four days after the assault, Larson sent a message stating that he "just had to bail out again after dude tried peeling my car and a whole pizza inside it beat his f-cking ass back to 1985 lol that's what he told the people at the hospital he thought it was 1985." Later that day, Larson messaged another person saying he "[b]eat the f-ck outta dude tried peel me for a pz and my whip." The following day, Larson sent another message, stating that he "drilled" someone "probably

30 times all across his ears and dome piece then booted his head into the next millennium shattered his face wit a feild goal kick.” And the next day, Larson referenced D.E. by name, stating that he “[b]eat the f-ck outta” him and “he thinks it’s 1985.”

Respondent State of Minnesota charged Larson with harassment, three assault-related offenses, third-degree riot, and two counts of disorderly conduct. A jury found Larson guilty on all counts. The district court imposed an aggravated sentence of 84 months’ imprisonment for the harassment offense. Larson appeals.

DECISION

I. Sufficient evidence supports Larson’s harassment conviction.

When considering a challenge to the sufficiency of the evidence, we examine the record to determine “whether the facts and the legitimate inferences drawn from them” would reasonably permit the jury to conclude that the defendant was guilty beyond a reasonable doubt. *State v. Waiters*, 929 N.W.2d 895, 900 (Minn. 2019) (quotation omitted). We view the evidence in the light most favorable to the verdict and assume the jury disbelieved any contradictory evidence. *Id.*

To prove harassment, the state was required to show that Larson (1) followed, monitored, or pursued D.E.; (2) knew or had reason to know that doing so would cause D.E., under the circumstances, to feel frightened, threatened, oppressed, persecuted, or intimidated; and (3) caused this reaction on the part of D.E. Minn. Stat. § 609.749, subds. 1, 2(2) (Supp. 2019).

Larson’s sufficiency challenge appears to relate only to the first offense element—that he followed or pursued D.E. But the evidence, viewed in the light most favorable to

the verdict, establishes precisely that: Larson and his compatriots chased D.E. up the steps to a private deck and along its 20-foot length to catch up to and beat him. *See The American Heritage Dictionary of the English Language* 681, 1431 (5th ed. 2018) (defining follow as “come or go after” or “go after in pursuit” and pursue as “follow in an effort to overtake or capture” or “chase”). Larson contends this evidence is insufficient because it does not establish that he “followed or pursued [D.E.] for longer than the mere seconds on the . . . deck.” In short, he argues that he did not pursue D.E. long or far enough to constitute harassment. We are not persuaded for two reasons.

First, neither the statute nor caselaw requires a pursuit of any particular duration or distance. Larson points to *State v. Stockwell*, 770 N.W.2d 533, 541-42 (Minn. App. 2009), in which this court concluded that the defendant’s act of closely following the victim’s car for “several blocks” was sufficient to establish harassment. But this court’s determination that “several blocks” of following sufficed in that case to prove harassment does not mean that a pursuit of similar duration or distance—or any particular duration or distance—is necessary. Rather, what makes a pursuit harassment is its nature, not its length or duration. The pursuit must be of a nature that the actor knows or should reasonably know would cause the subject to feel frightened or intimidated. *See* Minn. Stat. § 609.749, subd. 1 (defining “harass” to require such knowledge); *Stockwell*, 770 N.W.2d at 542 (noting that the following was “dangerously close,” continued to the victim’s workplace despite opportunities for defendant to pass the victim’s vehicle, and culminated in defendant accosting and threatening the victim). Larson does not dispute that the nature of the pursuit here—a high-speed foot chase by three angry, yelling men—satisfies this requirement.

Second, Larson understates the evidence on this issue. As noted above, D.K. and B.K. testified that Larson and his compatriots chased D.E. up the steps to their deck and along its 20 feet to their French doors. But the evidence also establishes facts that point to the longer pursuit that Larson suggests is required. D.K. and B.K. heard “hollering” several moments before D.E. appeared on their deck—long enough for one to remark on it, the other to turn down the television volume and register the noise, and both to walk to the other room to peer out. They perceived that noise as coming from north of their home. Larson’s vehicle was parked in a lot across the street northeast of the home. And Larson’s later Facebook message indicated that he “[b]eat the f-ck outta” D.E. because D.E. attempted to steal his vehicle. These facts collectively support the reasonable inference that Larson and the others chased D.E. not simply onto the deck but all the way from the parking lot across the street.

In sum, viewing the evidence as a whole and in favor of the verdict demonstrates that Larson harassed D.E. by pursuing him in a manner that he knew or reasonably should have known would have caused, and actually did cause, D.E. to feel frightened, threatened, and intimidated.

II. The district court did not err by denying the motion to suppress evidence that D.K. identified Larson as the assailant who kicked D.E.

Larson contends that the photo identification procedure was impermissibly suggestive in violation of his due-process rights. Because the relevant facts are not in dispute, the district court’s decision is a question of law and we “independently review the

facts and determine, as a matter of law, whether the evidence need be suppressed. *State v. Jones*, 977 N.W.2d 177, 189 (Minn. 2022) (quotation omitted).

The admission of pretrial identification evidence implicates a defendant's right to due process if the identification procedure was "unnecessarily suggestive" so as to give rise to "a substantial likelihood of irreparable misidentification." *State v. Hooks*, 752 N.W.2d 79, 83-84 (Minn. App. 2008). But suppression is not required, despite use of a suggestive procedure, if the totality of the circumstances shows that the witness's identification "has an adequate independent origin" and, therefore, "is considered to be reliable." *State v. Taylor*, 594 N.W.2d 158, 161 (Minn. 1999) (quotation omitted). We consider five factors to determine whether an identification is reliable despite suggestive procedures: (1) the witness's opportunity to view the suspect at the time of the crime, (2) the witness's degree of attention, (3) the accuracy of the witness's prior description of the suspect, (4) the "level of certainty" that the witness demonstrated at the photo display, and (5) the time between the crime and the confrontation. *State v. Ostrem*, 535 N.W.2d 916, 921 (Minn. 1995).

The district court denied Larson's pretrial motion to suppress evidence that B.K. and D.K. identified him in Officer Doehling's photo, reasoning that the identification procedure was unnecessarily suggestive (a point the state conceded) but the identifications were otherwise reliable. After revisiting the issue during trial, the court ultimately permitted the officer to testify only about D.K.'s identification. Because the suggestive nature of the identification procedure is undisputed, our analysis of this issue focuses on

the five reliability factors. *State v. Jones*, 556 N.W.2d 903, 912 (Minn. 1996). We address each in turn.

Regarding the first factor, D.K. had a good opportunity to view Larson. The assault took place during the afternoon, with plenty of light, and D.K. was just on the other side of the French doors from the assailants. *See Ostrem*, 535 N.W.2d at 922 (holding opportunity to see suspect “during daylight hours from relatively close range” was sufficient). As the district court cogently observed, D.K. had “a front row seat.” And while the assault lasted only about a minute, D.K. could clearly see Larson as he returned to kick D.E. in the head.

Second, D.K. paid a high degree of attention because the incident was happening on his own deck and made him concerned for his safety. While Larson asserts that D.K.’s concern for his safety could have undermined his attention, he identifies no evidence that it actually did so. To the contrary, the record reflects that D.K. sought to relate the details of the incident contemporaneously to B.K. so that she could inform the 911 dispatcher and went out onto his deck after D.E. and the assailants left so that he could see where they went.

Third, D.K. was accurate in the limited identifying information he provided to law enforcement before being presented with Larson’s photo. He reported that he saw a man with glasses kick the victim in the head and get into an Impala with another man immediately after leaving the scene. This information was both accurate and sufficient under the circumstances to lead police to stop the Impala and connect Larson to the incident.

Fourth, D.K. articulated and demonstrated a high level of certainty in his identification. He testified that he was “nine out of ten certain” about his identification. Larson challenges that assessment, pointing to the fact D.K. testified that he identified Larson in the back of a squad car, rather than in a photo of Larson in the back of a squad car. We are not persuaded. The noted discrepancy is relatively minor, particularly considering the officer’s corroborating testimony that D.K.’s tone of voice when identifying Larson in the photo was “confident.”

Fifth, less than an hour passed between the time of the assault and the identification. This time frame is markedly short relative to other identifications that have been upheld. *Id.* (48 hours); *State v. Lushenko*, 714 N.W.2d 729, 733 (Minn. App. 2006) (three hours).

Overall, these factors weigh heavily in favor of concluding that D.K.’s identification was independently and reliably formed. Because the identification did not result from an improper procedure, the district court did not err by declining to suppress it.

Moreover, admission of a “tainted pre-trial identification” does not require a new trial if the error was harmless beyond a reasonable doubt. *Jones*, 556 N.W.2d at 913. That is the case here. D.K. watched Larson, the only assailant who wore glasses, get into an Impala that crossed paths with Officer Doehling’s marked police car. Officer Doehling saw Larson react to his car with apparent surprise and concern, and stopped him shortly thereafter. He noticed that Larson, who was wearing glasses, bore signs of a recent altercation, including red knuckles, a cut on one hand, and a sore wrist. And Larson’s own Facebook messages bragged about the assault and expressly indicated that he kicked D.E.

On this record, any error in admitting the identification evidence was undoubtedly harmless.

Affirmed.