STATE OF MINNESOTA
IN COURT OF APPEALS
A22-1015

State of Minnesota,
Respondent,

vs.

Paul Casey Mason,
Appellant.

Filed May 30, 2023
Affirmed in part, reversed in part, and remanded
Bryan, Judge

Hennepin County District Court
File No. 27-CR-21-21124

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

Mary F. Moriarty, Hennepin County Attorney, Nicole Cornale, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Richard Schmitz, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Bryan, Presiding Judge; Johnson, Judge; and Hooten, Judge.*

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

NONPRECEDENTIAL OPINION

BRYAN, Judge

In this appeal from the judgment of conviction for simple robbery and felony fifth-degree assault, appellant argues that the district court committed the following three errors: (1) the district court concluded that law enforcement officers had a reasonable and articulable suspicion to conduct an investigatory seizure and pat-down search; (2) even though the district court admitted one of appellant's statements only for impeachment purposes, the district court instructed the jury that it could use that statement for "all purposes"; and (3) the district court entered convictions for both offenses. We conclude the officers had a sufficient basis to stop and conduct a pat-down search of appellant and that appellant does not establish that any error in the challenged jury instruction affected his substantial rights. We agree, however, that the district court erred in entering two separate convictions. Thus, we affirm in part, reverse in part, and remand.

FACTS

On November 15, 2021, respondent State of Minnesota charged appellant Paul Casey Mason with one count of simple robbery in violation of Minnesota Statutes section 609.24 (2020). The complaint was later amended to include a count of fifth-degree assault in violation of Minnesota Statutes section § 609.224, subdivision 4(b) (2020). The charges stemmed from a report of a robbery and assault at a light rail station in Minneapolis on November 12, 2021. In reporting the alleged offense, the victim told law enforcement officers that a Native American male in a white hooded sweatshirt and a Black male in dark clothing punched him and took his backpack. The backpack contained a tablet

computer. The victim also told the officers that after the events occurred at Franklin Avenue, he took a train to the Lake Street station and saw the man wearing the white hooded sweatshirt again approximately five minutes earlier. Multiple officers spread out and tried to locate the suspects. One officer noticed a male in a white hooded sweatshirt, later identified as Mason, turn, and walk away from the light rail station. The officer followed. While walking, the officer noticed Mason turn to look over his shoulder at the officer. The officer yelled for him to stop, but Mason did not do so. Instead, Mason continued walking and turned at the next corner.

The officer eventually caught up to Mason, stopped him, and handcuffed him. Mason asked the officer what he was under arrest for, and two officers explained that he was not under arrest but was being detained under suspicion of assault. The officers also told Mason that they were looking for a stolen tablet. Mason told the officers that anything he had on him came from a trash pile nearby. One of the officers conducted a pat-down search and found a tablet in Mason's pocket. The other officer stated, "winner, winner," and the officer who had conducted the pat-down search responded, "chicken dinner." Mason responded, "no chicken dinner b-tch, that's a f-cking iPad that was right there." Shortly after, officers conducted an in-person identification with the victim, who immediately identified Mason as the man who punched him and took his backpack. Investigating officers then arrested Mason.

Mason filed a pre-trial motion to suppress evidence obtained from the stop and search, alleging that the officers lacked reasonable suspicion to detain him and that the subsequent search of his person was unconstitutional. He also sought to suppress any

statements he made without receiving a *Miranda* warning. The district court held a contested hearing, at which time the officer who stopped and searched Mason testified. The district court admitted various substantive exhibits, including video recordings from an officer's body camera and a surveillance camera at the Franklin Avenue light rail station.

Following the hearing, the district court granted in part and denied in part Mason's motion to suppress evidence. The district court first determined that, based on the totality of the circumstances, the officers had reasonable suspicion to stop Mason and conduct a pat-down search. The district court further determined that the officers did not exceed the scope of the pat-down search when they located and retrieved the tablet. The district court granted the motion to suppress in part, however, because it concluded that Mason was in custody for purposes of *Miranda* when he stated, "no chicken dinner b-tch, that's a f-cking iPad." The district court excluded this statement as substantive evidence but noted it could be used "for impeachment purposes."

At trial, the victim, three officers, and Mason testified. The victim testified that on November 12, 2021, he left the treatment facility that he was staying at earlier in the day to see a friend, and later that evening, waited for the light rail train at the Franklin Avenue station. In his possession was a red backpack with a black tablet in it. Shortly after 8:00 p.m., two or three men walked up to him, became aggressive, and demanded his backpack, shoes, and coat. One man was wearing a white hooded sweatshirt. Two of the men punched him and took his backpack. After the attack, the victim took a train to the Lake Street station to meet his friend. When he arrived, he saw Mason on the station platform. He asked Mason where his backpack and tablet were, and Mason responded that they were

gone. Five to ten minutes later, the victim met his friend and the two went to the police to report what happened. He reported that he was assaulted and robbed by a person "wearing a white hoodie with his hood on" who was at the Lake Street station a few minutes earlier. The victim also identified Mason as the man who assaulted and robbed him. During his testimony, the jurors watched the surveillance video from the Franklin Avenue station.

Mason also testified. He stated that earlier in the day on November 12, he bought methamphetamine. He then sought out heroin and learned that an individual known as "White Boy" had some. He identified the victim as that individual. Mason traded some methamphetamine with the victim for heroin, injected himself, and "dozed off." When he "came to," he noticed his backpack was missing. He testified that he went looking for the victim and when he found the victim, he requested that the victim return his backpack. Mason then tried to grab his backpack, but the victim started to fight with him. After he got the backpack, he took a train to the Lake Street station and noticed that the backpack had a tablet in it that did not belong to him. He put the tablet in the pocket of his pants, intending to return it. About 45 to 50 minutes later, Mason was walking down the sidewalk when he heard what he thought was a friend shouting his name, but he saw no one. When he turned the corner, he suddenly noticed a police officer coming toward him. The officer told him to put his hands behind his back and he asked her if he was under arrest. He testified that he did not tell the officers about the tablet because he was scared.

At the conclusion of the trial, the district court, among other instructions, told the jury that "[e]vidence of any . . . prior inconsistent statement or conduct should be considered only to test the believability and weight of the witness's testimony. In the case

of the defendant, however, evidence of any statement he may have made may be considered by you for all purposes." The jury found Mason guilty of both counts. The district court entered two convictions, one for fifth-degree assault and a second for simple robbery, and sentenced Mason to 51 months. Mason appeals.

DECISION

Mason initially challenges the denial of his suppression motion, arguing that the district court erred in making certain factual findings and erred as a matter of law. Mason also argues that the district court plainly erred in instructing the jury that his statements could be used for "all purposes." Alternatively, Mason argues that the district court erred in convicting him of both simple robbery and fifth-degree assault. We first conclude that because the officers had reasonable, articulable suspicion of criminal activity to support an investigatory stop and had reasonable concern for their own safety to justify a pat-down search, the district court did not err in denying the motion to suppress. We next conclude that Mason failed to show that the challenged jury instruction affected his substantial rights. Finally, we conclude that the district court erred in entering convictions for both offenses.

I. Decision Denying Mason's Motion to Suppress

We review for clear error the district court's factual findings underlying a decision whether to suppress evidence, *State v. Gauster*, 752 N.W.2d 496, 502 (Minn. 2008), and we review de novo whether an investigative detention or pat-down search is justified by reasonable suspicion, *State v. Diede*, 795 N.W.2d 836, 843 (Minn. 2011). "Findings of fact are clearly erroneous if, on the entire evidence, we are left with the definite and firm conviction that a mistake occurred." *Id.* at 846-47.

A. Constitutionality of the Investigative Detention

The United States and Minnesota Constitutions prohibit "unreasonable searches and seizures." U.S. Const. Amend. IV; Minn. Const. art. I, § 10. Warrantless searches and seizures are generally unreasonable, *State v. Bernard*, 859 N.W.2d 762, 766 (Minn. 2015), and evidence obtained during a warrantless search is inadmissible at trial unless an exception to the warrant requirement applies, *State v. Hummel*, 483 N.W.2d 68, 72 (Minn. 1992). A police officer may conduct a limited stop and detain a suspect without probable cause if "(1) the stop was justified at its inception by reasonable articulable suspicion [of criminal activity], and (2) the actions of the police during the stop were reasonably related to and justified by the circumstances that gave rise to the stop in the first place." *Diede*, 795 N.W.2d at 842 (discussing the framework set forth in *Terry v. Ohio*, 392 U.S. 1, 19-20 (1968)) (quotations omitted).

The first prong of the *Terry* framework requires an officer to have reasonable, articulable suspicion of criminal activity. *Diede*, 795 N.W.2d at 842. "Reasonable suspicion must be based on specific, articulable facts" that provide an officer with "a particularized and objective basis for suspecting the seized person of criminal activity." *Id.* at 842-43 (quotations omitted). The reasonable suspicion standard is "not high." *State v. Timberlake*, 744 N.W.2d 390, 393 (Minn. 2008) (quotations omitted). "While the standard is less demanding than probable cause or a preponderance of the evidence," it still "requires at least a minimal level of objective justification." *Id.* (quotation omitted).

We first conclude that the district court's factual findings regarding Mason's conduct are not clearly erroneous. The body camera recording shows Mason walking

toward the light rail station but turning around and walking quickly in the opposite direction when he saw an investigating officer. The video recording also shows Mason looking over his shoulder at the pursuing officer while continuing to walk away. When the officer told Mason to stop, Mason did not do so, but instead walked and turned at the next corner. We are not left with a definitive or firm conviction that the district court made a mistake when describing this conduct as suspicious.

Other undisputed findings of fact further support the district court's decision. The investigating officers knew that the victim provided a physical description of the suspects, including that one suspect was wearing a white hooded sweatshirt. In addition, they knew that the victim had seen the man wearing a white hooded sweatshirt in the immediate area, just five to ten minutes prior to reporting the crime to officers. Then, just a minute or two after arriving, an officer saw Mason, who matched one suspect's physical description and who was wearing a white hooded sweatshirt. The pursuing officer did not observe anyone else matching the description in the vicinity. These facts, when combined with Mason's evasive conduct, provide a reasonable, articulable suspicion of criminal activity sufficient to justify an investigative detention.

B. Constitutionality of the Pat-Down Search

When a limited investigatory detention is permitted under *Terry*, "police may conduct a carefully limited search of the outer clothing of [the detained] person in an attempt to discover weapons." *State v. Dickerson*, 481 N.W.2d 840, 843 (Minn. 1992) (quoting *Terry*, 392 U.S. at 30), *aff'd* 508 U.S. 366 (1993). In conducting this limited search, the officer must reasonably believe "that such a search is necessary to protect the

officer's safety or the safety of others." *In re Welfare of M.D.R.*, 693 N.W.2d 444, 450 (Minn. App. 2005), *rev. denied* (Minn. June 28, 2005). "The appropriate inquiry is whether a reasonably prudent person in the specific circumstances would believe that his or her safety was in danger." *Id.* at 448 (quotation omitted). Certain types of offenses involve an obvious safety concern, including robbery. *E.g.*, *State v. Payne*, 406 N.W.2d 511, 513 (Minn. 1987) (noting that "there are certain cases in which the right to conduct [a pat-down search] follows directly from the right to stop the person" and listing examples, including "robbery, burglary, rape, assault with weapons, homicide, and dealing in large quantities of narcotics" (quotation omitted)). In addition, evasive movements can also lead a reasonable officer to be concerned for the safety of the public or the officer. *E.g.*, *Dickerson*, 481 N.W.2d at 843.

We conclude that the officers who conducted the pat-down search of Mason had a reasonable belief that the search was necessary to protect the safety of the officers. The officers were investigating allegations of robbery. Pursuant to *Payne*, robbery is an offense that, by its dangerous nature, can justify an officer's safety concern. In addition, like in *Dickerson*, the pursuing officer observed the suspect's evasive conduct, which occurred after Mason noticed the officer following him, and after the officer told him to stop. Under these circumstances, the officers reasonably believed their safety was in danger.[1]

[1] Mason also contests the denial of the motion to suppress under the district court's alternative conclusion that the recovery of the tablet was inevitable. *See State v. Licari*, 659 N.W.2d 243, 254 (Minn. 2003) (explaining the inevitable discovery doctrine). Because we conclude that the investigative detention and the pat-down search were lawful, we need not reach the merits of this argument.

II. Jury Instructions Regarding Mason's Statements

Mason next argues that the district court abused its discretion in instructing the jury that the statement Mason made to the investigating officers during the pat-down search, which had been admitted only for impeachment purposes, could be considered for "all purposes." We conclude that there is not a reasonable likelihood that the instruction had a significant effect on the outcome of the trial.

Because Mason failed to object, we review the challenged jury instruction for plain error, and "the appellant must show that there was (1) an error; (2) that is plain; and (3) the error affected substantial rights." *State v. Huber*, 877 N.W.2d 519, 522 (Minn. 2016). If any plain-error prong is not satisfied, we need not address the others. *State v. Lilienthal*, 889 N.W.2d 780, 785 (Minn. 2017). But if all three prongs are satisfied, "we may correct the error only if it seriously affects the fairness, integrity, or public reputation of judicial proceedings." *Huber*, 877 N.W.2d at 522-23 (quotations omitted). "An error is plain if it is clear or obvious, which is typically established if the error contravenes case law, a rule, or a standard of conduct." *State v. Webster*, 894 N.W.2d 782, 787 (Minn. 2017) (quotations omitted). And an error is prejudicial and affects a defendant's substantial rights "if there is a reasonable likelihood" that the error "had a *significant* effect on the jury verdict." *State v. Johnson*, 915 N.W.2d 740, 746 (Minn. 2018) (alteration in original) (quotation omitted).

In a pretrial decision, the district court prohibited admission of the following statement as substantive evidence: "no chicken dinner b-tch, that's a f-cking iPad." The district court permitted introduction of the statement for impeachment purposes. At the conclusion of the trial, however, the district court's instructions stated that the jury could

use evidence of Mason's statements for "all purposes." Assuming without deciding that the district court erroneously instructed the jury, we conclude that this purported error did not affect Mason's substantial rights. The trial evidence presented against Mason was substantial. The confrontation that led to Mason punching the victim and taking the backpack at the Franklin Avenue station was caught on surveillance footage and shown to the jury. The victim also testified at trial and identified Mason as the person who committed the assault and robbery. While Mason's testimony conflicted with the victim's testimony, the jury chose to believe Mason's testimony, and we defer to the factfinder's credibility determinations. *See Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988). In addition, multiple officers arrived at the Lake Street station and quickly located Mason in the area. The officers observed Mason's suspicious conduct and retrieved the stolen tablet from Mason's person. Given this evidence, is it unlikely that the jury would have reached a different verdict absent the challenged jury instruction. *See State v. Gomez*, 721 N.W.2d 871, 881 (Minn. 2006) (concluding that the appellant failed to show an error was prejudicial when it was "unlikely that the jury would have reached a different verdict").

III. Entry of Conviction for Fifth-Degree Assault

Mason also argues, and the state concedes, that the district court erred by entering a conviction for fifth-degree assault because it is an included offense of his simple robbery conviction. We agree.

A criminal defendant "may be convicted of either the crime charged or an included offense, but not both." Minn. Stat. § 609.04, subd. 1 (2020). When a "defendant is convicted on more than one charge for the same act," district courts should "adjudicate

formally and impose sentence on one count only." *State v. LaTourelle*, 343 N.W.2d 277, 284 (Minn. 1984). When a district court errs by entering a conviction on both counts, this court remedies the error by reversing and remanding with instructions to vacate the erroneous conviction but to leave the jury's finding of guilt intact. *See, e.g.*, *State v. Crockson*, 854 N.W.2d 244, 248 (Minn. App. 2014), *rev. denied* (Minn. Dec. 16, 2014). Whether the entry of multiple convictions violates section 609.04 is a question of law that we review de novo. *State v. Bonkowske*, 957 N.W.2d 437, 443 (Minn. App. 2021).

Here, the jury found Mason guilty of both fifth-degree assault and simple robbery, and the district court entered convictions for both offenses. Fifth-degree assault, however, is an included offense of simple robbery because "[s]imple robbery is basically a theft accomplished by means of an assaultive act." *State v. Stanifer*, 382 N.W.2d 213, 218-20 (Minn. App. 1986).[2] We therefore reverse and remand to the district court to vacate the conviction for fifth-degree assault, while leaving the findings of guilt for that offense intact, and to correct the warrant of commitment.

Affirmed in part, reversed in part, and remanded.

[2] We observe that Mason was convicted of felony fifth-degree assault rather than misdemeanor fifth-degree assault. *Compare* Minn. Stat. § 609.224, subd. 4(b), *with* Minn. Stat. § 609.224, subd. 1 (2020). Given the arguments as presented to us, we need not address whether any differences between the offenses impacts our analysis.