

*This opinion is nonprecedential except as provided by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
A23-1816**

State of Minnesota,
Respondent,

vs.

Clyde Harry Barr, III,
Appellant.

**Filed November 25, 2024
Affirmed
Bentley, Judge**

Itasca County District Court
File No. 31-CR-22-338

Keith Ellison, Attorney General, Lisa Lodin, Assistant Attorney General, St. Paul, Minnesota; and

Jacob Fauchald, Itasca County Attorney, David Schmit, Assistant County Attorney, Grand Rapids, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Steven P. Russett, Assistant Public Defender, St. Paul, Minnesota (for appellant)

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

NONPRECEDENTIAL OPINION

BENTLEY, Judge

In this direct appeal from a judgment of conviction for fleeing a police officer in a motor vehicle and for possessing a firearm as an ineligible person, appellant Clyde Harry

Barr III argues (1) that his fleeing conviction must be reversed for insufficient evidence that he was driving the vehicle and (2) that his original sentence of 198 days' incarceration for the firearm-possession conviction should be reinstated because the district court unlawfully amended that sentence to 364 days. We conclude that there was sufficient evidence to support Barr's conviction for fleeing a police officer. And, even though the district court erred in changing Barr's sentence for the firearm-possession conviction, the revised sentence has expired and we no longer have authority to correct the error. We affirm.

FACTS

The following facts were introduced at a bench trial. At around 10:30 p.m. on February 8, 2022, a patrol deputy in Itasca County pursued a speeding truck that had a homemade license plate. The deputy knew of a report that Barr was driving a vehicle with a homemade plate displaying Barr's initials and year of birth. The deputy also knew that Barr's driving privileges had been revoked. The deputy activated his squad car's lights and siren to signal that the truck should pull over. It did not.

After about seven minutes, the truck collided with a snowbank. The deputy testified that, as he approached the truck, he "was able to see out [his] window that the driver's door of the vehicle came open" before "Barr[] came out" and lay down in the snow. Another person then left the vehicle through the same door and started to run away. Squad car footage played at trial shows two people leaving through the driver's door, one after the other. Barr complied with the deputy's commands, and the deputy ultimately subdued the other passenger as well. Both individuals were placed under arrest. While processing the

truck, the deputy and other officers found loaded firearms. At the time, Barr was prohibited from possessing firearms because of a prior conviction.

The district court found Barr guilty on two counts: felony fleeing a police officer in a motor vehicle, Minn. Stat. § 609.487, subd. 3 (2020), and gross-misdemeanor ineligible person in possession of a firearm, Minn. Stat. § 624.713, subd. 1(10)(i) (2020). He was also charged with three other misdemeanors or gross misdemeanors, but those charges were dismissed and are not at issue on appeal.

At sentencing, the district court imposed a sentence of 366 days' incarceration for the felony conviction. That sentence was stayed for three years, during which time Barr would be on supervised probation. As a condition of probation, the court ordered that Barr serve 198 days' incarceration, which was satisfied through his credit for time served in pretrial detention. For the gross-misdemeanor conviction, the court ordered that Barr serve a concurrent sentence of 198 days' incarceration. Because of Barr's credit for time served, the district court noted that the gross-misdemeanor sentence amounted to "an executed sentence" and that Barr was "not on probation on that file." In short, Barr was placed on probation for the felony conviction, and his sentence for the gross-misdemeanor conviction was executed and satisfied.

At a subsequent probation-violation hearing, Barr stated that he wished to execute his stayed felony sentence. The district court revisited both sentences, absent any objection by Barr, who represented himself. Regarding the gross-misdemeanor sentence, the court mistakenly recalled that Barr had been sentenced to 365 days, and then amended that sentence to 364 days because of an intervening change in the law. *See* 2023 Minn. Laws,

ch. 52, art. 6, §§ 5-6, at 105. The court then “vacate[d] the stays of execution on both counts.” It ordered Barr to serve 366 days for the felony count and 364 days for the gross-misdemeanor count, acknowledging Barr’s credit for two hundred days served on both counts. As a result, the duration of the felony sentence remained the same and changed only in its disposition, but the gross-misdemeanor sentence effectively increased from 198 days to 364 days.

Barr appeals.

DECISION

I

Barr challenges his conviction for fleeing a police officer in a motor vehicle, arguing that the evidence is insufficient to support the conviction. When reviewing a challenge to the sufficiency of the evidence based on direct evidence, appellate courts must carefully review the record “to determine if the evidence is sufficient to permit the [fact-finder] to reach the conclusion that it did.” *State v. Alton*, 432 N.W.2d 754, 756 (Minn. 1988). In doing so, the reviewing court “view[s] the evidence in the light most favorable to the . . . verdict and assume[s] that the [fact-finder] believed all of the state’s witnesses and disbelieved any evidence to the contrary.” *State v. Chambers*, 589 N.W.2d 466, 477 (Minn. 1999). If the district court could have concluded beyond a reasonable doubt that Barr was guilty of the offense, we will not disturb the finding of guilt. *See Alton*, 432 N.W.2d at 756; *see also State v. Jones*, 977 N.W.2d 177, 187-88 (Minn. 2022) (applying the same standard of review for jury and bench trials when evaluating the sufficiency of the evidence).

Barr contends that the evidence was insufficient to establish that he, and not the other individual who exited the truck, was the driver. Specifically, Barr argues that the deputy's identification of Barr as the driver was based on a "fleeting or limited observation" as the deputy's car pulled up, so the state was required to corroborate the deputy's identification testimony with other evidence.

As a general matter, eyewitness testimony "need not be positive and certain to support a conviction." *State v. Landa*, 642 N.W.2d 720, 725 (Minn. 2002). And a single eyewitness's uncorroborated testimony may be sufficient. *State v. Gluff*, 172 N.W.2d 63, 64-65 (Minn. 1969). But if the observation is "fleeting or limited," the state must provide additional corroborating evidence. *State v. Outlaw*, 748 N.W.2d 349, 357 (Minn. App. 2008), *rev. denied* (Minn. July 15, 2008). In determining whether an observation is fleeting or limited, courts consider the duration of the observation, the distance between the eyewitness and the subject, and the conditions for observation. *See, e.g., id.* (considering in its fleeting-or-limited-observation analysis that the witnesses had a "good opportunity to view the intruder," that they were within "two to three feet from the intruder," and that one witness was "face-to-face with him 'for awhile'"); *Gluff*, 172 N.W.2d at 65 (concluding that an observation was fleeting where a witness saw an intruder "for only a matter of some 30 seconds" before becoming "riveted on the gun" that the intruder pointed at her); *State v. Thompson*, 414 N.W.2d 580, 583 (Minn. App. 1987) (concluding that an observation "from close range, with adequate lighting, for ten to thirteen seconds . . . was more than a fleeting opportunity for identification"), *rev. denied* (Minn. Jan. 15, 1988).

Here, the deputy's observation of Barr was neither fleeting nor limited. After the truck collided with the snowbank, the deputy came to a stop on the road nearby and saw "that the driver's door of the vehicle came open" and Barr "came out and was in the snow." The deputy then testified that "a second male party . . . had come out of the vehicle, kind of almost over the top of [Barr], and started running to the north into the swamp area." The deputy observed that Barr looked like he "almost . . . was tryin' to do a pushup to stand up and . . . keep goin'," but Barr remained in the snow and was apprehended. And when Barr cross-examined the deputy, the deputy again testified that, "as I'm comin' up, I'm visually looking and can see you come out, and then the second party come out."

Where, as here, the eyewitness had "ample chance to see" the identified individual from a close distance and remained with the individual for at least a matter of minutes, the observation is not fleeting nor limited and does not require corroboration. *Caldwell v. State*, 347 N.W.2d 824, 829 (Minn. App. 1984); *State v. Johnson*, 811 N.W.2d 136, 150 (Minn. App. 2012), *rev. denied* (Minn. Mar. 28, 2012); *Thompson*, 414 N.W.2d at 583.

In any event, other evidence at trial corroborated the deputy's testimony. Barr's testimony that he owned the truck serves as "corroborating evidence to support the reliability of the[] identification[]." *Landa*, 642 N.W.2d at 726; *see also State v. Bonin*, 2023 WL 3444930, at *3 (Minn. App. May 15, 2023) (explaining that evidence of vehicle ownership "provided the [fact-finder] with additional reasons to believe that [an officer] had accurately identified [the defendant] as the driver of the vehicle" on the date in

question).¹ Moreover, the state admitted evidence supporting Barr's motive to commit the crime of fleeing an officer in a motor vehicle. Barr was on probation for a prior felony conviction, so he was at risk of being charged with a felon-in-possession offense if pulled over. *See State v. Oates*, 611 N.W.2d 580, 586-87 (Minn. App. 2000) (holding that motive to commit a crime supplies corroboration for eyewitness identifications).

Because there was sufficient evidence that Barr was driving the truck, we affirm Barr's conviction for fleeing a police officer in a motor vehicle.

II

Next, Barr seeks reinstatement of his original 198-day sentence for the gross-misdemeanor conviction for possession of a firearm as an ineligible person. He argues that the district court exceeded its authority when it resentenced him to 364 days' incarceration after a lawful 198-day sentence was imposed and executed. Barr did not raise this issue in the district court, but "a defendant cannot waive the right to appeal an illegal sentence." *State v. Maurstad*, 733 N.W.2d 141, 145 (Minn. 2007). Nevertheless, although we agree the sentence was amended in error, Barr's challenge is now moot.

A district court's "discretion to sentence . . . vanishes once the sentence is executed." *Reesman v. State*, 449 N.W.2d 489, 490 (Minn. App. 1989). As of the date of the probation-violation hearing, Barr had already executed his sentence on the gross-misdemeanor conviction, and indeed, he had already served the entirety of that sentence.

¹ Nonprecedential opinions are not binding authority except as law of the case, but they may be cited for their persuasive value. Minn. R. Civ. App. P. 136.01, subd. 1(c).

At the probation-violation hearing, the district court no longer had authority to modify the sentence.

Yet, for a related reason, the expiration of Barr's revised sentence is fatal to his appeal. Barr served the amended 364-day sentence concurrently with his 366-day sentence on the felony count. As the state observes in its brief, and Barr does not dispute, those prison terms have now expired. In light of that expiration, both this court and the district court lack the authority "to modify even what may be an unauthorized sentence." *State v. Hannam*, 792 N.W.2d 862, 864-65 (Minn. App. 2011) (quoting *Martinek v. State*, 678 N.W.2d 714, 718 (Minn. App. 2004)). Therefore, we will not disturb Barr's gross-misdemeanor sentence on appeal. *See State v. Eller*, 780 N.W.2d 375, 384 (Minn. App. 2010).

Affirmed.