STATE OF MINNESOTA
IN COURT OF APPEALS
A16-1236

State of Minnesota,
Respondent,

vs.

Hassan Saleem McKeever,
Appellant.

Filed July 10, 2017
Affirmed
Hooten, Judge

Ramsey County District Court
File No. 62-CR-15-8572

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

John J. Choi, Ramsey County Attorney, Thomas R. Ragatz, Assistant County Attorney, St. Paul, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Jenna Yauch-Erickson, Assistant Public Defender, St. Paul, Minnesota (for appellant)

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

U N P U B L I S H E D O P I N I O N

HOOTEN, Judge

Appellant argues that the evidence is insufficient to sustain his convictions because his convictions are based on the uncorroborated and incredible testimony of a single

eyewitness. Appellant also argues that his conviction of attempted second-degree murder is not supported by sufficient evidence because the state failed to prove that he had the specific intent to kill the victim. We affirm.

FACTS

Appellant Hassan Saleem McKeever and C.B. met in late September or early October 2015 and began a romantic relationship. On the morning of October 19, 2015, C.B. was at a hotel with McKeever and a few other friends when she saw McKeever in possession of a gun that "looked like a police gun." C.B. went to work later that day and met up with one of her friends, T.A., when she got off work. Sometime around midnight, C.B. and T.A. met up with McKeever and a few other individuals, and the group drove to an apartment building in order to hang out and drink alcohol. Around 3:30 a.m. or 4:00 a.m., C.B. and T.A. left the third floor apartment where the gathering was being held to tell McKeever, who was outside the front of the building, that they were ready to get a ride home. An argument ensued, resulting in McKeever pushing C.B. to the ground and C.B. and T.A. leaving on foot. After receiving a phone call from McKeever asking them to return, C.B. and T.A. walked back to the apartment building, and C.B. began climbing the stairs with McKeever while T.A. remained behind.

As they walked up the stairs, C.B. and McKeever began arguing, and McKeever punched C.B. in the face, shattering her jaw. When she heard C.B. scream, T.A. ran up the stairs and found McKeever standing by C.B. Because she was at least a flight of stairs behind C.B. and McKeever, T.A. did not see McKeever punch C.B. McKeever told T.A.

to get C.B. out of there. C.B. and T.A. fled down the stairs and into the alley behind the apartment building.

As C.B. stood in the alley, she heard a gunshot and turned toward the back door of the apartment building. T.A. ran when she heard the gunshot and hid inside a garage. The back of the building was illuminated by a porch light, and C.B. saw McKeever standing there with a gun. C.B. heard a few more gunshots and fell after being shot in the leg. C.B. yelled, "Hassan, stop," and McKeever ran from the scene.

Law enforcement responded to the scene, and C.B. identified "Hassan" as her assailant. C.B. did not know McKeever's last name, but was able to tell the responding officers the name of a woman with whom he was associated. After searching for the woman's name on his squad computer, one of the responding officers learned that McKeever was associated with the woman and identified him as a suspect.

T.A. emerged from her hiding spot when she heard law enforcement arrive and told the officers that an individual known to her as "Lil' Bo" had punched C.B. in the face in the stairway, that Lil' Bo's first name was Hassan, and that, while she was in the alley and garage, she heard a number of gunshots and C.B. scream, "Hassan, stop!"

The officers were approached by the owner of a house across the alley from the apartment building who reported that his house had been damaged by the gunfire. The gunfire broke two windows of the house, and the officers were able to recover two bullets from the residence. The officers and the homeowner also noted that there were three fresh pock marks on the outside of the residence where bullets had struck the exterior cinderblock.

C.B. was ultimately transported to the hospital by ambulance, where she was diagnosed with a fractured jaw, which required surgery and impaired her ability to eat and speak. C.B. was also treated for the gunshot wound to her leg. A few days after the incident, police administered a photo lineup to C.B., and she identified McKeever as the person who had fractured her jaw and shot her.

McKeever was initially charged with second-degree assault and possession of a firearm by an ineligible person. The state subsequently amended the complaint and added charges of attempted second-degree intentional murder and first-degree assault. Following a jury trial, the jury found McKeever guilty of all four counts. The district court sentenced McKeever to concurrent sentences of 240 months for the attempted murder conviction and 60 months for the possession of a firearm by a prohibited person conviction. This appeal followed.

D E C I S I O N

I. The evidence is sufficient to support McKeever's convictions.

In assessing the sufficiency of the evidence, we engage in "a painstaking review of the record to determine whether the evidence and reasonable inferences drawn therefrom, viewed in a light most favorable to the verdict, were sufficient to allow the jury to reach its verdict." *State v. Vang*, 847 N.W.2d 248, 258 (Minn. 2014) (quotation omitted). A reviewing court will not disturb the verdict if the jury, "giving due regard to the presumption of innocence and to the prosecution's burden of proving guilt beyond a reasonable doubt, . . . could reasonably have found the defendant guilty of the charged offense." *Id.* (quotation omitted).

A. C.B.'s Testimony

McKeever argues that the evidence is insufficient to support his convictions because the only evidence identifying him as the assailant is C.B.'s uncorroborated and incredible testimony. We disagree.

The Minnesota Supreme Court has held that a conviction may be based on the testimony of a single witness. *State v. Foreman*, 680 N.W.2d 536, 539 (Minn. 2004). Determining the credibility of a witness and the weight to be given to his or her testimony is an issue for the jury. *State v. Johnson*, 568 N.W.2d 426, 435 (Minn. 1997). McKeever acknowledges that a conviction can rest on the testimony of a single credible witness, but argues that the Minnesota Supreme Court has reversed convictions when a witness' testimony was of dubious credibility and was not corroborated by other evidence.

In support of his claim, McKeever cites three cases in which the supreme court reversed a defendant's convictions because the state failed to produce corroborating evidence to support the testimony of a witness whose credibility was at issue. In *State v. Huss*, the testimony of a three-year-old alleged victim was the state's only direct evidence. 506 N.W.2d 290, 292 (Minn. 1993). The supreme court summarized that the child's testimony was "contradictory as to whether any abuse occurred at all, and was inconsistent with her prior statements and other verifiable facts." *Id.* Despite the inconsistencies in the child's testimony, the supreme court indicated that it might not have determined that it was necessary to reverse "absent the repeated use of a highly suggestive book on sexual abuse." *Id.* The supreme court concluded that "on these unusual facts . . . the state did not meet its

burden of proof beyond a reasonable doubt and . . . the conviction should be reversed." *Id.* at 293.

In *State v. Langteau*, only the alleged victim and the defendant gave significant evidence at trial. 268 N.W.2d 76, 77 (Minn. 1978). The supreme court noted that the victim's actions were "unexplained," the defendant's motive in committing the crime was "left a mystery," and no other evidence linked the defendant to the crime. *Id.* Under these circumstances, the supreme court concluded that a new trial was required in the interests of justice. *Id.*

In *State v. Gluff*, the supreme court identified issues regarding the trustworthiness of a witness identification of the defendant. 285 Minn. 148, 151, 172 N.W.2d 63, 65 (1969). The supreme court noted that the witness observed the perpetrator for only 30 seconds before he "leveled a revolver at her" and that "[h]er description to the police was wholly at variance with her later identification" in the line-up. *Id.* The supreme court determined that the witness' identification of the defendant "clearly lacked probative value" and stated that because the identification was not corroborated, the identification, which was the critical issue in the case, was "permeated with doubt." *Id.* The supreme court concluded that a new trial was required in the interests of justice. *Id.* at 153, 172 N.W.2d at 66.

None of these cases, in which the credibility of the witness' testimony was questionable and there was minimal or no corroborating evidence, is factually similar to this case. C.B., who was 19 years old at the time of trial, consistently testified during direct and cross-examination that McKeever punched and shot her. Because she had been in a

three-week romantic relationship with McKeever and had spent hours with him prior to the assaults, she was able to immediately identify her assailant as "Hassan" and give a description to the police. The testimony of the police officers regarding what C.B. reported immediately after the shooting is generally consistent with her testimony at trial. The officers observed blood in the stairwell of the apartment building and the alley, corroborating C.B.'s statement, as well as C.B.'s injuries. T.A. testified that when she heard a scream and ran up the stairs, she saw C.B. and McKeever, and that McKeever told her to get C.B. out of there. T.A. also testified that, as she and C.B. were leaving the building, she heard gunshots and heard C.B. yell, "Hassan, stop!" In sum, C.B. was not the state's only witness and her testimony was corroborated by the officers and T.A.

Nevertheless, McKeever contends that the accuracy of C.B.'s identification is suspect for several reasons. First, although C.B. initially identified "Hassan" as her assailant to responding officers, she told medical personnel at the hospital that another person, who was the father of her child, had assaulted her. Second, in various interviews with law enforcement, C.B. identified different individuals as being part of the group that drove to the apartment building. Third, when she spoke to one officer, C.B. gave different details regarding what happened when McKeever shot her than she reported to other officers and testified to at trial. Fourth, C.B. had consumed alcohol while at the gathering.

However, McKeever's attorney cross-examined C.B. and the state's other witnesses about many of these issues. In closing argument, McKeever's attorney highlighted the apparent inconsistencies in C.B.'s story. Specifically, McKeever's attorney noted that C.B. had identified other individuals as being in the vehicle at various points during the

pendency of the case and emphasized that C.B. had told medical personnel that the father of her child had assaulted her. His attorney also noted that C.B. had been drinking and T.A. decided that they should leave the gathering because C.B. was "a little too intoxicated." C.B. acknowledged at trial that she had falsely told medical personnel that her child's father had assaulted her, explaining that she "didn't really want to tell them exactly what happened." But, she consistently told the police during the pendency of the case that McKeever was the perpetrator. Because the jury, in assessing the credibility of C.B. and in acting with due regard for the presumption of innocence and the state's burden of proof beyond a reasonable doubt, could reasonably have concluded that McKeever was guilty of the charges, we will not disturb the verdict.

B. Specific Intent to Kill

McKeever argues that the state failed to prove that he had the specific intent to kill C.B. and that therefore the state's evidence is insufficient to support his attempted murder conviction. We disagree.

"An attempt requires that the actor have specific intent to perform acts and attain a result which if accomplished would constitute the crime alleged." *State v. Noble*, 669 N.W.2d 915, 919 (Minn. App. 2003), *review denied* (Minn. Dec. 23, 2003); *see also* Minn. Stat. § 609.17, subd. 1 (2014). Because intent involves a state of mind, it is generally proved circumstantially by inferences drawn from the person's words or actions in light of the totality of the circumstances. *State v. Cooper*, 561 N.W.2d 175, 179 (Minn. 1997). "A jury is permitted to infer that a person intends the natural and probable consequences of [his or her] actions." *State v. Johnson*, 616 N.W.2d 720, 726 (Minn. 2000). In this case,

where there is no direct evidence of McKeever's state of mind, we must apply the circumstantial evidence test. *Loving v. State*, 891 N.W.2d 638, 643 (Minn. 2017).

When reviewing a conviction based on circumstantial evidence, we engage in a two-step analysis. *State v. Silvernail*, 831 N.W.2d 594, 598 (Minn. 2013). First, we must identify the circumstances proved, deferring "to the jury's acceptance of the proof of these circumstances and rejection of evidence in the record that conflicted with the circumstances proved by the [s]tate." *Id.* at 598–99 (quotations omitted). In deferring to the circumstances proved, we consider only the circumstances that are consistent with the verdict because the jury is in the best position to evaluate the credibility of evidence. *Id.* Next, we "determine whether the circumstances proved are consistent with guilt and inconsistent with any rational hypothesis except that of guilt." *Id.* at 599 (quotations omitted). This analysis requires us to look at the circumstances proved to determine whether they "form a complete chain that, in view of the evidence as a whole, leads so directly to the guilt of the defendant as to exclude . . . any reasonable inference other than guilt." *State v. Al-Naseer*, 788 N.W.2d 469, 473 (Minn. 2010) (quotation omitted). In performing this analysis, "[appellate courts] give no deference to the fact finder's choice between reasonable inferences." *Silvernail*, 831 N.W.2d at 599 (quotation omitted).

The circumstances proved relevant to McKeever's attempted murder conviction are as follows. C.B. saw McKeever in possession of a gun the day prior to the incident. C.B. and McKeever argued earlier in the evening, and McKeever pushed C.B. to the ground. Later, while in the stairway of the apartment building, McKeever and C.B. again argued, and McKeever punched C.B. in the face and shattered her jaw. After C.B. and T.A. fled

out the back door of the building, McKeever followed them outside and fired at least five rounds toward C.B., hitting her once in the leg above the knee. McKeever then ran away from the scene.

McKeever contends that although it is reasonable to infer that he attempted to kill C.B., it is also reasonable to infer that he only intended to scare C.B. or to assault her. McKeever supports his argument by noting C.B. was struck in the leg, not a "more vital region of the body." McKeever also notes that none of the circumstances proved indicate that he threatened to kill C.B. or said anything to her at the time of the shooting.

Minnesota courts have upheld the inference of intent to kill in several different cases involving gunshots. In *State v. Oates*, this court found sufficient evidence of intent to kill where the defendant fired up to seven shots in a crowded bar after putting a gun to the head of the intended victim. 611 N.W.2d 580, 587 (Minn. App. 2000), *review denied* (Minn. Aug. 22, 2000). In *State v. Chuon*, a defendant fired at the victim from a distance of six to eight feet, striking him in the shoulder blade. 596 N.W.2d 267, 271 (Minn. App. 1999), *review denied* (Minn. Aug. 25, 1999). This court determined that the defendant's firing a single shot at the victim's torso was sufficient to support a finding of an intent to kill. *Id.* In *State v. Whisonant*, the Minnesota Supreme Court rejected a defendant's argument that there was insufficient evidence to show he intended to shoot an officer or kill him where the defendant fired a "pen gun" at an officer at a distance of 12 feet, even though the officer was only hit by particles from the discharge. 331 N.W.2d 766, 768 (Minn. 1983). In *State v. Berg*, this court found sufficient evidence of intent to kill where the defendant threatened

to kill one of the victims, pointed a gun at that victim, and shot at the victims through a door. 358 N.W.2d 443, 446 (Minn. App. 1984), *review denied* (Minn. Feb. 5, 1985).

Although the inferences that McKeever suggests are inferences that can be made from the evidence, these inferences are not reasonable, considering that McKeever fired multiple shots at C.B. within minutes of their verbal altercation and his physical assault of C.B. The evidence demonstrates that McKeever fired his gun repeatedly at C.B. as she was leaving the building to escape him after their fight and that it was merely fortuitous that only one of the bullets hit C.B. in the leg, rather than in her vital organs. Because the evidence as a whole makes McKeever's suggested alternatives unreasonable, we conclude that the evidence is sufficient to support McKeever's conviction of attempted second-degree murder.

II. McKeever's pro se arguments are without merit.

In his pro se supplemental brief, McKeever raises a number of additional claims. Specifically, McKeever notes that (1) one of the officers who testified indicated that another officer was primarily associated with the case; (2) C.B. was under the influence of alcohol when she was assaulted; (3) C.B. indicated to medical personnel that she was assaulted by her child's father, not McKeever; (4) C.B. was the only person who identified McKeever as her assailant; and (5) he was convicted of possession of a firearm by a prohibited person even though no firearm was recovered. However, because these claims are unsupported by citation to legal authority and no prejudicial error is obvious on mere inspection, we need not consider them. *State v. Bartylla*, 755 N.W.2d 8, 22–23 (Minn. 2008).

Even if we considered the arguments, they are without merit. Most of McKeever's arguments relate to witness credibility. "Assessing witness credibility and the weight given to witness testimony is exclusively the province of the jury." *State v. Pendleton*, 759 N.W.2d 900, 909 (Minn. 2009). McKeever's attorney cross-examined the officer and C.B., and the jury had the opportunity to weigh the testimony. Regarding McKeever's last argument, although a firearm was never recovered, C.B. testified that she saw him in possession of a firearm the previous day and that he shot her. The testimony of a person who perceived something through the senses is direct evidence. *State v. Clark*, 739 N.W.2d 412, 421 n.4 (Minn. 2007). The jury evaluated C.B.'s testimony and determined that it was credible, and we will not disturb its credibility determination on appeal. *State v. Hagen*, 382 N.W.2d 556, 559 (Minn. App. 1986).

Affirmed.