STATE OF MINNESOTA
IN COURT OF APPEALS
A12-2144

State of Minnesota,
Respondent,

vs.

Rebecca Lee Treptow,
Appellant.

Filed November 4, 2013
Affirmed
Worke, Judge

Anoka County District Court
File No. 02-CR-12-1107

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

Anthony C. Palumbo, Anoka County Attorney, M. Katherine Doty, Assistant County Attorney, Anoka, Minnesota (for respondent)

Theodore D. Sampsell-Jones, Special Assistant Public Defender, William Mitchell College of Law, St. Paul, Minnesota (for appellant)

Considered and decided by Kalitowski, Presiding Judge; Worke, Judge; and Connolly, Judge.

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

WORKE, Judge

Appellant challenges her convictions of second-degree assault, terroristic threats, and intentionally pointing a gun at another, arguing that the evidence failed to prove that

she intended to cause the victim to fear immediate bodily harm or death, or that she intended to terrorize the victim. She also raises evidentiary issues pro se. We affirm.

FACTS

On February 8, 2012, N.H. was driving her vehicle in the left lane of a highway. Appellant Rebecca Lee Treptow's vehicle was ahead of N.H.'s vehicle, and N.H. honked at appellant when she saw appellant's vehicle swerve toward the ditch. Appellant then switched to the right-hand lane, and as N.H. passed appellant's vehicle, appellant pointed a handgun at N.H. N.H. thought she was going to be shot and dialed 911 to report appellant's conduct.

When appellant exited the highway, N.H. followed while giving appellant's license-plate number and vehicle description to police dispatch. As she turned around in a cul de sac, appellant rolled down her window and asked N.H. why she was following her, and N.H. asked appellant why she had pointed a gun at her. Both vehicles returned to the highway, and N.H. saw police pull over appellant's vehicle. N.H. later returned to where police had intercepted appellant's vehicle and identified appellant in a show-up.

Appellant admitted to police that there was a gun in her vehicle on the passenger side, and a loaded black handgun was found "on the front passenger's floorboard area between the purse and center console bump area that separates the front seats." Appellant was charged with felony offenses of second-degree assault and terroristic threats, and the misdemeanor offense of intentionally pointing a gun at another.

At her jury trial, appellant testified to a different version of the driving incident, stating that she changed lanes because N.H. was tailgating her; she attempted to evade

N.H. by exiting the highway; she and N.H. were never side-by-side on the highway; the gun fell out of her purse when she was searching for her cell phone; she told N.H. to stop following her when N.H. blocked her vehicle in the cul de sac; she never pointed a gun at N.H.; and she flagged down police to report N.H.'s driving conduct.

Appellant was convicted of the three charged offenses. This appeal followed.

D E C I S I O N

Sufficiency-of-evidence claims

Appellant argues that the evidence was insufficient to prove that she committed second-degree assault or terroristic threats. In considering an insufficient-evidence claim, this court

> view[s] the evidence in the light most favorable to the verdict and assume[s] that the fact finder rejected any evidence inconsistent with the verdict. The verdict will not be overturned if the facts in the record and the legitimate inferences drawn from them would permit the jury to reasonably conclude that the defendant was guilty beyond a reasonable doubt.

State v. Smith, 835 N.W.2d 1, 6 (Minn. 2013) (quotations omitted). The state must prove every element of an offense beyond a reasonable doubt. *State v. Montgomery*, 707 N.W.2d 392, 400 (Minn. App. 2005).

A person who "assaults another with a dangerous weapon" is guilty of second-degree assault. Minn. Stat. § 609.222, subd. 1 (2010). "Assault" is "an act done with intent to cause fear in another of immediate bodily harm or death[.]" Minn. Stat. § 609.02, subd. 10(i) (2010). "With intent to" means "that the actor either has a purpose to do the thing or cause the result specified or believes that the act, if successful, will cause

that result." *Id.*, subd. 9(4) (2010). "Intent may be proved by circumstantial evidence, including drawing inferences from the defendant's conduct, the character of the assault, and the events occurring before and after the crime." *In re Welfare of T.N.Y.*, 632 N.W.2d 765, 769 (Minn. App. 2001); *see State v. Schweppe*, 306 Minn. 395, 401, 237 N.W.2d 609, 614 (1975) (stating that intent is a "subjective state of mind usually established only by reasonable inference from surrounding circumstances").

A conviction based on circumstantial evidence receives "heightened scrutiny" on review for sufficiency of evidence. *State v. Al-Naseer*, 788 N.W.2d 469, 473 (Minn. 2010). In evaluating circumstantial evidence for sufficiency to convict, an appellate court first identifies the circumstances proved, deferring to the fact-finder'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." *State v. Andersen*, 784 N.W.2d 320, 329-30 (Minn. 2010). The appellate court then "examine[s] independently the reasonableness of all inferences that might be drawn from the circumstances proved[,]" including "inferences consistent with a hypothesis other than guilt." *Id.* "Circumstantial evidence must form a complete chain" that leads only to an inference of guilt beyond a reasonable doubt and "exclu[sion] beyond a reasonable doubt [of] any reasonable inference other than guilt." *Al-Naseer*, 788 N.W.2d at 473 (quotation omitted).

Appellant asserts that the evidence of her pointing a gun at N.H. is weak and that N.H.'s conduct in following appellant did not show that she actually feared being harmed by appellant. We reject these arguments. The fact-finder evaluates the credibility of witnesses, and by its verdict the jury adopted N.H's version of the facts. *See State v.*

Hough, 585 N.W.2d 393, 396 (Minn. 1998) (upholding second-degree-assault conviction when the defendant shot seven times into victim's home, rejecting defendant's testimony that he intended only to scare the victim, stating "[a] factfinder evaluates the credibility of witnesses and need not credit a defendant's exculpatory testimony"). N.H. testified that she saw appellant point a gun at her, and a handgun was found in appellant's vehicle within her reach. Appellant challenged N.H.'s version of the facts, including references to the effects of her recent wrist surgery and physical inability to point a gun, tinted windows in appellant's vehicle that may have affected N.H.'s visibility, and a suggestion that N.H. may have confused appellant's wrist splint with a gun.

As to whether N.H. actually experienced fear from having a gun pointed at her, the offense of second-degree assault is defined with reference to the intent of the actor to cause fear, not the victim's response. This court has stated that "[t]he effect of the defendant's actions on the victim is not determinative. It is sufficient if the [s]tate introduces evidence from which it can be inferred that the accused had the requisite intent[.]" *Soine*, 348 N.W.2d at 826.

The inferences from appellant's conduct are reasonably sufficient to show intent. *See State v. Patton*, 414 N.W.2d 572, 574 (Minn. App. 1987) (upholding second-degree-assault conviction when the defendant brandished a knife within two feet of the victim). In *State v. Cole*, the supreme court held that a defendant's intent to cause fear in the victim, for purposes of second-degree assault, was "carried out" by intentionally pointing a gun at her. 542 N.W.2d 43, 51 (Minn. 1996). Although appellant portrays her conduct as innocuous, the conduct that N.H. described after she honked at appellant does not

support this. The evidence shows that appellant was involved in an incident of road rage that culminated in appellant pointing a gun at N.H. The evidence, as a whole, is "consistent with guilt and inconsistent with any rational hypothesis except that of guilt." *Andersen*, 784 N.W.2d at 330 (quotation omitted).

Appellant also argues that the evidence is insufficient to convict her of terroristic threats because the evidence failed to prove her intent to terrorize N.H. Terroristic threats is defined as "threaten[ing], directly or indirectly, to commit any crime of violence with purpose to terrorize another." Minn. Stat. § 609.713, subd. 1 (2010); *see State v. Smith*, 825 N.W.2d 131, 136 (Minn. App. 2012), *review denied* (Minn. Mar. 19, 2013) (requiring, for terroristic-threats conviction, the state "to prove that appellant threatened [the victim] with the purpose of terrorizing [the victim]"). To terrorize means "to cause extreme fear by use of violence or threats." *Schweppe*, 306 Minn. at 400, 237 N.W.2d at 614.

The evidence is sufficient to support the jury's verdict on this offense. The evidence permitted the jurors to conclude that appellant's action of pointing a gun at N.H. was for the purpose of causing N.H. to fear that appellant might fire the gun at her. N.H. took this threat seriously by calling police.

Pro-se issues

In her pro se brief, appellant argues that "[t]he state's case rested on questionable characters, uncertainty, and skeptical witnesses and testimony." Appellant raises three evidentiary issues and challenges the credibility of a police officer. Generally, an appellate court "will not lightly overturn a district court's evidentiary ruling[s]." *State v.*

Hanks, 817 N.W.2d 663, 667 (Minn. 2012). "We review a district court's decision to admit evidence for an abuse of discretion." *Holt v. State*, 772 N.W.2d 470, 481 (Minn. 2009).

Appellant argues that N.H. did not sufficiently identify appellant or the handgun. N.H. testified that she briefly observed appellant when appellant pointed a gun at her and again observed appellant when they spoke face-to-face in the cul de sac; she also testified that she followed appellant's vehicle until it was intercepted by police. Appellant did not deny that she had had an encounter with N.H. on the highway; appellant's testimony suggested only that N.H., rather than she, was the aggressor in their encounter. This evidence was sufficient to establish appellant's identity. *State v. Lloyd*, 345 N.W.2d 240, 244 (Minn. 1984) (stating that a witness's identification, even after an abbreviated period of observation, is sufficient to support a conviction when the identification is supported by other evidence). Regarding the handgun identification, N.H. testified that appellant pointed a handgun at her, and a handgun was found within reach in appellant's vehicle.

Appellant also challenges the reliability of a police show-up conducted after the stop of appellant's vehicle. Because N.H. identified appellant's vehicle and observed it until it was intercepted by police, and because there was no other individual in the vehicle other than appellant who could have driven it or pointed the gun at N.H., the evidence of the show-up was not essential to appellant's convictions. Under these circumstances, any error in admission of the show-up evidence was harmless beyond a reasonable doubt. *See State v. Anderson*, 657 N.W.2d 846, 852 (Minn. App. 2002) (applying harmless-error rule to erroneously admitted police show-up evidence).

Appellant next argues that the district court abused its discretion by failing to admit into evidence a complete video recording of appellant while she was in police custody in a squad vehicle. Appellant purportedly offered the video to counter N.H.'s testimony about appellant's physical appearance. Before trial, appellant's counsel asked only to "show the beginning of [the video]" so that the jury could see "what [appellant] looked like." In response, the district court limited the viewing time to the beginning of the video, and appellant's attorney said, "I would agree, Your Honor." Under these circumstances, appellant did not seek admission of the complete video and did not object to admission of less than the whole video. The district court did not abuse its discretion by admitting only a portion of the video into evidence.

Finally, appellant points out purported inconsistencies in Officer Michael Blair's trial testimony. However, appellant does not assert how Blair's testimony affected the jury's verdict or argue any error in admission of Blair's testimony. As such, we decline to consider this issue. *See State v. Krosch*, 642 N.W.2d 713, 719 (Minn. 2002) (deeming issues waived when raised in a pro se brief that fails to include argument or citations to legal authority). We also note that the weight of Blair's testimony and his credibility were for the jury. *See Hough*, 585 N.W.2d at 396.

Affirmed.