STATE OF MINNESOTA
IN COURT OF APPEALS
A08-2017

Enrique Villareal, Jr., petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

Filed August 25, 2009
Affirmed
Kalitowski, Judge

Kandiyohi County District Court
File No. 34-CR-05-1557

Marie L. Wolf, Interim Chief Appellate Public Defender, Susan J. Andrews, Assistant State Public Defender, 540 Fairview Avenue North, Suite 300, St. Paul, MN 55104 (for appellant)

Lori Swanson, Attorney General, Peter R. Marker, Assistant Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101-2134; and

Boyd Beccue, Kandiyohi County Attorney, 415 Southwest Sixth Street, P.O. Box 1126, Willmar, MN 56201 (for respondent)

Considered and decided by Hudson, Presiding Judge; Kalitowski, Judge; and Muehlberg, Judge.[*]

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

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

KALITOWSKI, Judge

Appellant Enrique Villareal, Jr. argues that the evidence of intent was insufficient to support his conviction of attempted first-degree murder. Appellant also argues pro se that he was denied effective assistance of counsel. We affirm.

D E C I S I O N

After a four-day bench trial, appellant was convicted of the attempted first-degree murder of a peace officer. Appellant filed a postconviction petition claiming that there was insufficient evidence of intent to support his conviction of attempted first-degree murder. The district court denied appellant's postconviction claim, and appellant brought this appeal.

I.

Appellant argues that the evidence corroborating the testimony of his accomplice was insufficient to establish that appellant acted with the intent to kill the Clara City police chief. We disagree.

This court applies the same standard of review to bench trials and jury trials when determining whether the evidence was sufficient to sustain a conviction. *Davis v. State*, 595 N.W.2d 520, 525 (Minn. 1999). We review a postconviction determination only to decide whether there is sufficient evidence to support the postconviction court's findings, and will not disturb a decision absent an abuse of discretion. *Jihad v. State*, 594 N.W.2d 522, 524 (Minn. 1999). In considering a claim of insufficient evidence, this court's review is limited to a painstaking analysis of the record to determine whether the

evidence, when viewed in the light most favorable to the conviction, is sufficient to allow the fact-finder to reach the verdict that it did. *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989). "In reviewing the sufficiency of evidence in a criminal case, we are limited to ascertaining whether, given the facts in the record and the legitimate inferences that can be drawn from those facts," the fact-finder could reasonably conclude that the defendant was guilty of the charged offense. *Bernhardt v. State*, 684 N.W.2d 465, 476 (Minn. 2004) (quotation omitted). We will not disturb the verdict if the fact-finder, "acting with due regard for the presumption of innocence and for the necessity of overcoming it by proof beyond a reasonable doubt, could reasonably conclude that a defendant was proven guilty of the offense charged." *Id.* (quotations omitted).

Under Minnesota law, a conviction cannot be based on accomplice testimony "unless it is corroborated by such other evidence as tends to convict the defendant" of the crime. Minn. Stat. § 634.04 (2006). "We review circumstantial evidence corroborating an accomplice's testimony in the light most favorable to the verdict." *State v. Bowles*, 530 N.W.2d 521, 532 (Minn. 1995). "Corroborating evidence is sufficient if it restores confidence in the accomplice's testimony, confirming its truth and pointing to the defendant's guilt in some substantial degree." *State v. Ford*, 539 N.W.2d 214, 225 (Minn. 1995) (quotation omitted). Corroborating evidence need not corroborate every point of the accomplice's testimony. *State v. England*, 409 N.W.2d 262, 264 (Minn. App. 1987).

A conviction for attempted first-degree murder of a peace officer requires proof beyond a reasonable doubt that the defendant acted "with intent to effect the death of that

person." Minn. Stat. § 609.185(a)(4) (2006). The phrase "with intent to" requires that the actor has a purpose to do the thing or cause the result specified or believes that the act, if successful, will cause that result. Minn. Stat. § 609.02, subd. 9(4) (2006). The determination of intent is a question for the fact-finder and may be inferred from a defendant's words or acts in light of the totality of the circumstances. *State v. Raymond*, 440 N.W.2d 425, 426 (Minn. 1989). Intent is generally proved through circumstantial evidence from which the fact-finder can draw reasonable inferences, and the fact-finder may infer that a person intends the natural and probable consequences of his actions. *State v. Cooper*, 561 N.W.2d 175, 179 (Minn. 1997).

Appellant argues that although he "may have shot in the direction of [the chief's] car and managed to hit it," the low light, the speed of the vehicles, appellant's intoxicated state, and the evidence indicating that appellant, who is right-handed, shot the gun using his left hand "simply do not add up to specific intent to kill."

But a single shot, even one fired from a moving car, may be sufficient to establish intent to kill. *State v. Chuon*, 596 N.W.2d 267, 271 (Minn. App. 1999), *review denied* (Minn. Aug. 25, 1999); *see State v. Whisonant*, 331 N.W.2d 766, 768 (Minn. 1983) (holding that evidence of intent to kill was sufficient where the defendant fired a single bullet from a "pen gun" at a police officer 12 feet away). And this court has held that evidence of shots fired in the direction of a peace officer is sufficient evidence of intent to kill the officer for purposes of section 609.185(a)(4). *See State v. Angulo*, 471 N.W.2d 570, 574 (Minn. App. 1991) (affirming conviction for attempted first-degree murder of

police officer where officers loudly announced their presence and defendant shot in direction of officers), *review denied* (Minn. Aug. 2, 1991).

Appellant argues that his accomplice's testimony that appellant leaned out the passenger-side window and fired at the squad car was not sufficiently corroborated. We disagree. The record indicates, independent of the accomplice's testimony, that: (1) appellant was the passenger in the stolen truck; (2) shots were fired from the passenger's side of the truck; (3) expended cartridges were found in the passenger's side of the truck; (4) several muzzle flashes were observed by police and recorded on the police chief's squad-car video; (5) the chief's squad car was struck by bullets in three places, including the windshield; (6) the truck did not swerve or move erratically in a way that would indicate that appellant and his accomplice were switching positions in the truck; (7) appellant exited the truck from the passenger side of the vehicle; and (8) appellant walked toward a police sergeant while aiming a rifle directly at him before fleeing.

The postconviction court concluded that the

> timing of the initial rounds fired at the squads, the number of rounds that hit the Chief's squad and the location of the hits to the squad, defendant's act of walking toward Sgt. Negen while aiming the loaded rifle and carrying additional ammunition sufficiently corroborated Flores' testimony that defendant leaned out of the pickup and fired at Chief Bradley, intending to kill him.

On this record, we conclude that the postconviction court did not abuse its discretion in determining that the evidence sufficiently corroborated the accomplice's testimony that appellant leaned out of the pickup and fired at the police chief, intending to kill him.

II.

Appellant argues pro se that he was denied effective assistance of counsel. This court will generally not consider matters not argued to and considered by the district court. *Roby v. State*, 547 N.W.2d 354, 357 (Minn. 1996). And an assignment of error in a brief based on "mere assertion" and not supported by argument or authority is waived unless prejudicial error is obvious on mere inspection. *State v. Modern Recycling, Inc.*, 558 N.W.2d 770, 772 (Minn. App. 1997) (quoting *Schoepke v. Alexander Smith & Sons Carpet Co.*, 290 Minn. 518, 519-20, 187 N.W.2d 133, 135 (1971)). Appellant did not present this argument to the district court in his postconviction petition, nor did the district court consider this claim in its order denying appellant's motion for postconviction relief. And in his pro se brief, appellant fails to cite to the record or any legal authority in support of his ineffective-assistance-of-counsel claim. Accordingly, this argument is deemed waived.

Further, appellant's claim fails on the merits because appellant has failed to show that his counsel's performance fell below an objective standard of reasonableness and that there is a reasonable probability that, but for his counsel's error, the result of the proceeding would have been different. *Gates v. State*, 398 N.W.2d 558, 561 (Minn. 1987) (setting forth the elements of a claim for ineffective assistance of counsel).

Appellant alleges several errors but has failed to show that the result of the proceeding would have been different. Appellant argues that he did not understand what his attorney told him about the court proceedings because he did not have an interpreter.

But the record shows that appellant's counsel informed him at the beginning of trial that the court would provide an interpreter and that appellant chose to forego the use of one.

Appellant also argues that his counsel did not explain to him the difference between a bench trial and a jury trial. But the record shows both that appellant provided the district court with a written waiver of his right to a jury trial and that the waiver was completed with the assistance of an interpreter. And when questioned by the court about proceeding with a bench trial, appellant confirmed on the record, with an interpreter present, that he had an opportunity to discuss with his attorney whether he wanted to proceed with a bench trial and stated that he still wished to waive his right to a jury trial.

We conclude that appellant's counsel's performance did not fall below an objective standard of reasonableness and that appellant failed to show a reasonable probability that a jury would not have convicted him. Therefore, appellant's ineffective-assistance-of-counsel claim fails on the merits.

Affirmed.