STATE OF MINNESOTA
IN COURT OF APPEALS
A09-16

State of Minnesota,
Respondent,

vs.

Devin Charles Belcourt a/k/a Devin Charles Neeland,
Appellant.

Filed February 2, 2010
Affirmed
Peterson, Judge

Clearwater County District Court
File No. 15-CR-08-347

Lori Swanson, Attorney General, James B. Early, Assistant Attorney General, St. Paul, Minnesota; and

Jeanine R. Brand, Clearwater County Attorney, Bagley, Minnesota (for respondent)

Marie L. Wolf, Interim Chief Appellate Public Defender, Sara L. Martin, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Wright, Presiding Judge; Peterson, Judge; and Ross, Judge.

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

PETERSON, Judge

In this appeal from convictions of attempted first-degree burglary and attempted trespass, appellant argues that (1) he was denied his right to a fair trial by an impartial

jury of his peers when the district court denied his *Batson* challenge and (2) the evidence was insufficient to prove that he intended to commit a crime inside the victim's home. We affirm.

FACTS

At approximately 5:15 a.m. on May 23, 2008, the victim awoke to the sound of his dog barking. The victim heard someone coming up on the deck outside the sliding glass door between his bedroom and the deck. He then heard the door opening, and as the wind blew the floor-length curtains open, he saw a dark boot and dark pants leg in the air as if about to step into the bedroom. But the victim's dog "really went nuts then," and the foot did not pass over the threshold into the residence, and the door slammed shut. With a pistol in his hand, the victim went into the backyard and found a person unsnapping the tarp over the victim's boat and "digging in the boat inside of that tarp." The person refused to take his hand out from under the tarp until the victim chambered a round in his pistol. The person did not explain why he opened the victim's door or unsnapped the boat's tarp, but he did say that he was intoxicated. The victim confirmed that the person smelled of alcohol and was "really drunk."

The victim, who was a teacher, recognized the intruder as a former student but did not recall his name. The victim assumed that there was no police officer on duty in town, and he told the intruder to go home. The victim went back into his house and dialed 911. He told the 911 dispatcher that he knew who the intruder was, but he could not come up with a name. The victim went to the local school and, using a yearbook, identified the

intruder. At approximately 8:40 a.m., the victim called the police and said that the intruder was appellant Devin Charles Belcourt.

The police went to appellant's father's house, where appellant was found asleep. Appellant was disoriented and needed assistance standing up, and appellant's father told the police that appellant had arrived home stumbling early in the morning and that he "fell right on his face." Appellant was arrested and charged with attempted first-degree burglary.

Jury Voir Dire

The charge was tried to a jury. During jury voir dire, several potential jurors stated that they knew appellant or witnesses. Two potential jurors knew appellant from school, but neither knew him well. Both stated that their acquaintance with appellant would not affect their decisions as a juror. One of appellant's former schoolmates was peremptorily struck. Two other potential jurors were friends of appellant's parents. They stated that their relationships with appellant's family would influence their decisions, and they were excused by the district court.

Venire member M.O. stated that she knew appellant, but not well. She stated that she lived down the road from appellant's family about 20 years earlier and that her children "would play with him sometimes and they'd fight sometimes," but that she had not had any contact with him in recent years. M.O. stated that her acquaintance with appellant would not affect her ability to be a fair juror. She also stated that she knew appellant's father, and when asked how she knew him, she responded: "I've known him on and off for years. Native people know each other." M.O. maintained that this

relationship would not affect her ability to make an impartial decision in the case. Appellant's attorney questioned M.O., and she again stated that she could be fair to both sides. The prosecutor did not ask M.O. any questions, but the record indicates that the prosecutor twice attempted to have M.O. stricken for cause.

The state peremptorily struck M.O, and she was excused from the jury. Appellant asserted a *Batson* challenge, arguing that M.O. was stricken from the jury based upon her race. Appellant is Native American, and M.O. was the only potential juror who identified herself as Native American. After hearing argument from both parties, the district court ruled that appellant had not articulated circumstances giving rise to an inference that the exclusion was based on race and denied appellant's challenge.

The jury convicted appellant of attempted first-degree burglary and the lesser offense of attempted trespass. This appeal followed.

D E C I S I O N

I.

Appellant argues that the district court erred by denying his *Batson* challenge to the state's use of a peremptory challenge to strike M.O. from the jury. "Peremptory challenges allow a party to strike a prospective juror that the party believes will be less fair than some others and, by this process, to select as final jurors the persons they believe will be most fair." *State v. Martin*, 773 N.W.2d 89, 100 (Minn. 2009) (quotation omitted). But the Equal Protection Clause of the Fourteenth Amendment prohibits purposeful racial discrimination in jury selection. U.S. Const. amend. XIV, § 1; *Miller-El v. Dretke*, 545 U.S. 231, 238, 125 S. Ct. 2317, 2324 (2005); *Batson v. Kentucky*, 476

U.S. 79, 84, 106 S. Ct. 1712, 1716 (1986). Minnesota has adopted the *Batson* three-step framework for determining whether a peremptory challenge is based on racial discrimination. *Martin*, 773 N.W.2d at 101.

> Under *Batson*: (1) the defendant must make a prima facie showing that the prosecutor executed a peremptory challenge on the basis of race; (2) the burden then shifts to the prosecution to articulate a race-neutral explanation for striking the juror in question; and (3) the district court must determine whether the defendant has carried the burden of proving purposeful discrimination.

Id. (citing *Purkett v. Elem*, 514 U.S. 765, 767, 115 S. Ct. 1769, 1770-71 (1995)); *see also* Minn. R. Crim. P. 26.02, subd. 6(a)(3) (three-step process for evaluating claim that peremptory challenge was based on racial discrimination). In reviewing a *Batson* challenge, a reviewing court must give considerable deference to the district court's finding on the issue of intent because that finding typically will turn largely on a credibility evaluation by the district court. *State v. Gaitan*, 536 N.W.2d 11, 16 (Minn. 1995). The existence of racial discrimination in the exercise of a peremptory strike is a factual determination, which we review for clear error. *Martin*, 773 N.W.2d at 101.

"The party making a *Batson* challenge establishes a prima facie case of racial discrimination by showing that '(1) one or more members of a racial group have been peremptorily excluded from the jury, and (2) circumstances of the case raise an inference that the exclusion was based on race.'" *State v. Campbell*, 772 N.W.2d 858, 863 (Minn. App. 2009) (quoting *Angus v. State*, 695 N.W.2d 109, 116 (Minn. 2005)). The district court found that the first of these requirements was met but that appellant failed to present circumstances raising an inference that the exclusion was based on race.

Therefore, in order to prevail on appeal, appellant must show that the district court's factual finding that the circumstances of the case did not raise an inference that the peremptory strike of M.O. was based on race was clearly erroneous.

Appellant argues that the district court should have been suspicious of the state's strike of the only Native American venire member. Appellant cites the fact that the state asked M.O. no questions during voir dire as proof of discriminatory intent. While these facts are relevant to the court's factual determination, they do not require reversal. *See State v. White*, 684 N.W.2d 500, 508 (Minn. 2004) ("Merely because a member of a racial group has been peremptorily excluded from the jury does not necessarily establish a prima facie showing of discrimination; step one of the *Batson* process also requires that the circumstances of the case raise an inference that the challenge was based upon race."). In deciding whether the circumstances of a case raise an inference of discrimination, the district court may consider "the totality of the relevant facts." *State v. Ferguson*, 729 N.W.2d 604, 613 (Minn. App. 2007), *review denied* (Minn. June 19, 2007). The relevant facts are not only that appellant and M.O. are Native American and that the state did not ask M.O. any questions during voir dire; it is also relevant that M.O. testified that she had known appellant and his father for roughly 20 years. Because, in light of the totality of the relevant facts, appellant has not shown that the circumstances of the case raise an inference of a racial basis for the peremptory strike, appellant has not shown that the district court clearly erred when it found that appellant failed to present a prima facie case of racial discrimination in the state's use of its peremptory challenge.

II.

Appellant concedes that he was on the victim's property and that he opened the victim's door, but he argues that because the state failed to prove that he intended to commit a crime inside the victim's home, the evidence was insufficient to find him guilty of attempted first-degree burglary. 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 jurors to reach the verdict that they did. *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989). The reviewing court must assume "the jury believed the state's witnesses and disbelieved any evidence to the contrary." *State v. Moore*, 438 N.W.2d 101, 108 (Minn. 1989). This is especially true when resolution of the matter depends mainly on conflicting testimony. *State v. Pieschke*, 295 N.W.2d 580, 584 (Minn. 1980). The reviewing court will not disturb the verdict if the jury, acting with due regard for the presumption of innocence and the requirement of proof beyond a reasonable doubt, could reasonably conclude that the defendant was guilty of the charged offense. *Bernhardt v. State*, 684 N.W.2d 465, 476-77 (Minn. 2004).

To convict a defendant of attempted first-degree burglary, the state must establish that the defendant intended to commit some independent crime, other than trespass, after illegal entry into a building. *State v. Colvin*, 645 N.W.2d 449, 452 (Minn. 2002) (citing *State v. Larson*, 358 N.W.2d 668, 670 (Minn. 1984)); *see also* Minn. Stat. § 609.582, subd. 1 (2006) (elements of first-degree burglary). In the context of attempted burglary, proof of intent to commit a crime may rest on permissible inferences from the evidence

presented at trial, and "this intent must generally be proved from the circumstances surrounding the defendant's acts." *State v. Ring*, 554 N.W.2d 758, 760 (Minn. App. 1996), *review denied* (Minn. Jan. 21, 1997).

"[A] conviction based entirely on circumstantial evidence merits stricter scrutiny than convictions based in part on direct evidence." *State v. Jones*, 516 N.W.2d 545, 549 (Minn. 1994). "While it warrants stricter scrutiny, circumstantial evidence is entitled to the same weight as direct evidence." *State v. Bauer*, 598 N.W.2d 352, 370 (Minn. 1999). The circumstantial evidence must 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 beyond a reasonable doubt any reasonable inference other than guilt. *Jones*, 516 N.W.2d at 549. A jury, however, is in the best position to evaluate circumstantial evidence, and its verdict is entitled to due deference. *Webb*, 440 N.W.2d at 430.

Appellant argues that because the evidence shows that he was extremely intoxicated, a reasonable inference other than that he intended to commit a crime after entering the victim's home is that he had no plan whatsoever for doing anything after he entered the home. But although there was evidence that appellant was intoxicated, the victim testified that after he recognized appellant as one of his former students, he said to appellant, "I know you," and appellant "kind of nodded and put his head down to the ground." The victim also testified that he asked appellant what he was up to now and where was he living, and appellant pointed in the southwest direction and said that he lived just a couple of blocks away. This testimony indicates that appellant was not so intoxicated that he did not know where he was.

The victim also testified that as appellant was about to step into the victim's house, the victim's dog started barking very aggressively, and appellant did not enter the house. This testimony supports the reasonable inference that appellant could make a reasoned decision either not to deal with the dog or not to continue in the situation when the barking could serve as an alarm to people in the house. Finally, after turning away from the victim's house, appellant unsnapped the tarp covering a boat and reached into the boat, which supports a reasonable inference that he was attempting to take something from the boat and that his intention from the beginning of the incident was to commit a crime. Based on the victim's testimony and the reasonable inferences that it supports, we conclude that the evidence is sufficient to support the jury's verdict that appellant is guilty of attempted first-degree burglary.

Affirmed.