STATE OF MINNESOTA
IN COURT OF APPEALS
A08-1737

State of Minnesota,
Respondent,

vs.

Israel Lee Anderson,
Appellant.

Filed May 11, 2010
Affirmed
Collins, Judge[*]

Hennepin County District Court
File No. 27-CR-07-125548

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

Michael O. Freeman, Hennepin County Attorney, Lee W. Barry, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Frederick J. Goetz, Goetz & Eckland P.A., Minneapolis, Minnesota (for appellant)

Considered and decided by Wright, Presiding Judge; Worke, Judge; and Collins, 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

COLLINS, Judge

Challenging his convictions of two counts of second-degree attempted murder and one count of possession of a firearm by an ineligible person, appellant contends there was insufficient evidence to sustain the verdicts on all counts and that the district court erred in admitting certain evidence. Because we conclude there was sufficient evidence to support the verdicts regarding identification and intent, and because the district court did not abuse its discretion in admitting evidence of threats implying appellant's consciousness of guilt, we affirm.

FACTS

Appellant Israel Anderson was in downtown Minneapolis just after bar-closing time on November 26, 2007. Anderson had spent the evening at an establishment that requires patrons to pass through a metal detector before entering. Minneapolis police were executing a traffic diversion plan after bar-closing time and officers saw what appeared to be a fight in a nearby surface parking lot. According to witnesses, the fight involved one person against a number of others.

Officers Paul Albers and Daniel Grosland ran toward the fight scene. Hearing gunshots, Officer Albers turned toward the direction that the shots came from and observed

> a guy with a—like a multicolored striped top and bottom, leaning towards—like in an aggressive shooting stance with what appeared to be a gun in his hand. . . . [T]he sounds were coming from his direction. I had narrowed it down to him. I heard the shot—the three shots while my back was turned.

> When I turned and [drew] my weapon and identif[ied] myself . . . I squared up on him, and he was the only one with [a] blatantly obvious shooting—in a shooting stance. When he turned—when I turned and saw him, I saw his arms recoil two—I believe it was two more times, at least twice more, I heard two more shots, and saw his arms recoiling.

Officer Albers testified that the shooter was approximately 20- to 25-feet away from him, and when he identified himself as a Minneapolis Police Officer, the man turned and fled. Officer Albers never lost sight of the man, though he testified that during the chase he could not always see the man's hands. The man was caught and identified as Anderson. After Anderson had been secured in custody, Officer Albers learned that Officer Grosland had been shot, and he then retraced the path of the chase looking for the gun. No gun was found.

Officer Grosland was shot in the ankle. One shot hit J.H., a civilian, in the leg and another entered his intestines and lodged in his stomach. Both victims survived.

In addition to Officer Albers, several witnesses testified about the shooting. J.H. was in the parking lot during the fight and saw a light-skinned, larger man wearing a patterned dark-colored hooded sweatshirt with matching pants run to a white car. Based on his experience "growing up in the neighborhood," J.H. believed that the man was going to get a gun. J.H. never saw a gun but he heard the shots being fired. At the hospital, J.H. was shown a photo lineup and identified Anderson as the shooter but added that he was not 100% sure. On cross-examination, J.H. was confronted with a statement he gave to the police that night when he said that he never saw the shooter. But in that

same statement J.H. described the shooter as wearing a dark purple hooded sweatshirt and matching pants.

Another witness, K.H., saw the shooter from about 50-yards away but could not see his face. According to K.H., the shooter was wearing all black. In a show-up K.H., did not identify Anderson. The shooting was also witnessed by A.T. from about 65 yards away. A.T. testified that he saw the flare from the gun and the shooter was wearing a black and orange hooded sweatshirt.

At trial, the state produced a jailhouse informant who had been with Anderson in custody at the Hennepin County Adult Detention Facility. The informant testified that he overheard Anderson state that he had been at the bar; that Anderson was supposed to sell someone nine ounces of cocaine; that the buyer tried to rob him but Anderson shot the robber first; and that Anderson then got rid of the gun. According to the informant, Anderson described the gun as a Glock, but an expert testified that the shell casings found at the crime scene could not have come from a Glock gun. The informant also testified that, earlier during Anderson's trial, the two encountered each other in a jail hallway and Anderson said to him: "You dead. The police can get touched, you don't think you can get touched?" The informant understood this to mean that if a policeman can get shot, the informant can get shot too. According to the informant Anderson also stated: "Yeah, and I know your baby mama. That b*tch dead too." Also, two sheriff's deputies testified that they heard Anderson referring to the informant as a "snitch." The defense sought to have the testimony excluded under Minn. R. Evid. 403. The district court admitted the

testimony concluding that the evidence went to consciousness of guilt and was not unfairly prejudicial or unduly confusing of the issues.

The jury found Anderson guilty on all counts, and the district court entered convictions of two counts of second-degree attempted murder (intentional) and possession of a firearm by an ineligible person. This appeal followed.

D E C I S I O N

I.

Anderson first argues that there was insufficient evidence to support the verdicts. In considering a claim of insufficient evidence, an appellate 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 (or the judge sitting without a jury) 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 the defendant was guilty of the charged offense. *Bernhardt v. State*, 684 N.W.2d 465, 476-77 (Minn. 2004).

Identification Evidence

Anderson argues that the evidence supporting his identification as the shooter was insufficient. The identification of the defendant must be proved beyond a reasonable doubt. *State v. Armstrong*, 311 Minn. 541, 543, 249 N.W.2d 176, 178 (1976). Whether identification evidence is sufficient is a question for the jury. *State v. Otten*, 292 Minn. 493, 494, 195 N.W.2d 590, 591 (1972). "Identification testimony need not be positive and certain; it is enough for a witness to testify that it is his opinion, belief, impression, or judgment that the defendant is the person he saw commit the crime." *Id*. (quotation omitted). There are several factors used to evaluate the weight of identification testimony, including

> the opportunity of the witness to see the defendant at the time the crime was committed, the length of time the person committing the crime was in the witness' view, the stress the witness was under at the time, the lapse of time between the crime and the identification, and the effect of the procedures followed by the police as either testing the identification or simply reinforcing the witness' initial determination that the defendant is the one who committed the crime.

State v. Burch, 284 Minn. 300, 315-16, 170 N.W.2d 543, 553-54 (1969). It is the jury's function to determine the weight and credibility of individual witnesses. *State v. Bliss*, 457 N.W.2d 385, 390 (Minn. 1990).

Anderson argues that the identification testimony was insufficient in light of the conflicting testimony about the clothing worn by the shooter and the facts that (1) Officer Albers only thought Anderson was holding a gun, he did not see the gun itself, nor did he see any muzzle flashes, (2) no gun was found on Anderson or near the path of the foot

chase, (3) J.H. only saw someone who he was not 100% sure was Anderson go to a car for what J.H. only assumed was the purpose of getting a gun, (4) no one had Anderson in their view for a long period of time, and (5) the general chaotic nature of the scene precluded a reliable identification. But despite Anderson's assertions, this purportedly conflicting testimony does not compel a conclusion that Anderson was not the shooter or prevent the jury from resolving the conflicts in favor of a finding that he was the shooter.

First, although J.H. acknowledged that he was not totally certain of his identification, he identified Anderson as the person who ran to the white car immediately before the shooting and who he believed was going there to get a gun. Second, Officer Albers testified that, after hearing the first shots, he turned and saw Anderson in a shooting stance, heard two more shots, and saw Anderson's arms recoil with each shot. The fact that no gun was found is not dispositive. Officer Albers testified that he was not able to see Anderson's hands throughout the ensuing chase, and the state argued that the gun could have been successfully discarded.

The resolution of conflicting testimony is the province of the jury. *Bliss*, 457 N.W.2d at 390. It was for the jury to determine whether to credit Officer Albers's testimony even though he saw no muzzle flashes and no gun was found. It is also within the jury's role as fact finder to evaluate whether the various descriptions of the suspect's clothing are reconcilable, considering such factors as the distance from which each witness viewed the shooter and the lighting at the scene. *Burch*, 284 Minn. at 315-16, 170 N.W.2d at 553-54. The district court properly instructed the jury regarding the evaluation of identification testimony. Reviewing the evidence in the light most

favorable to the verdicts, the state presented sufficient identification evidence to allow a reasonable jury to find that the state had proved Anderson was the shooter beyond a reasonable doubt.

Intent

Anderson also challenges the sufficiency of the evidence supporting the element of intent. Conviction of the crime of second-degree (intentional) attempted murder requires the state to prove that the defendant attempted to cause "the death of a human being with intent to effect the death of that person or another . . . ." Minn. Stat. §§ 609.17, subd. 1, 609.19, subd. 1(1) (2006). Intent may be inferred from the actions of the defendant in light of the surrounding circumstances. *State v. Andrews*, 388 N.W.2d 723, 728 (Minn. 1986). "This court has held that a single shot, even one fired from a moving car, may be sufficient to establish an intent to kill." *State v. Oates*, 611 N.W.2d 580, 587 (Minn. App. 2000) (citing *State v. Chuon*, 596 N.W.2d 267, 271 (Minn. App. 1999), *review denied* (Minn. Aug. 25, 1999)), *review denied* (Minn. Aug. 22, 2000).

In *Oates* we sustained the finding of intent to kill when the evidence demonstrated that the defendant fired "up to seven shots, in close quarters in a crowded bar, after putting a gun to the head of the intended victim." *Id*. We relied in part on *Chuon*, in which the defendant's single shot to the victim's torso, fired from a moving car, and for the sole purpose of retaliating for a challenge against a gang, was sufficient to support a finding of intent to kill. 596 N.W.2d at 271.

The supreme court has also upheld a finding of intent in a case substantially similar to the present case. *State v. Whisonant*, 331 N.W.2d 766 (Minn. 1983). There, the state presented evidence that

> without any justification, defendant fired a pen gun containing a single .38-caliber bullet at two police officers who stopped to investigate a minor collision defendant's car had had with a parked vehicle. One of the two officers was only 12 feet from defendant at the time of the shooting and he testified that he felt particles from the discharge hit him on the face and arms. The other officer, who was 24 feet away but in the line of fire, felt the displacement of air caused by the shooting.

331 N.W.2d at 768. The jury acquitted Whisonant of the charges that he assaulted and attempted to kill the latter officer, but found him guilty of the same charges with respect to the officer who was standing 12-feet away. *Id.* On appeal, the supreme court held that the "defendant's intent was inferable from his conduct and the surrounding circumstances" and affirmed the first-degree attempted-murder conviction. *Id*.

Anderson argues that the evidence was insufficient to support a finding of intent because there was no evidence that the shooter was shooting at a particular person and there was testimony that the bullets ricocheted off the ground before hitting anyone. But viewing the evidence presented at trial in the light most favorable to the verdicts, there is sufficient evidence to support an inference of intent. There is evidence that Anderson was present at the scene of the fight, was involved in a drug deal, retrieved a gun from his car, assumed an aggressive shooting stance, shot multiple times in the direction of a crowd of people, and fled from police leaving two people shot approximately 20- to 25-feet from where he had been standing. A reasonable juror could infer intent from this

evidence, and similar evidence has been held sufficient to meet the intent requirement in *Whisonant*. *Id*. In sum, we hold that Anderson's sufficiency-of-the-evidence challenges are unavailing.

II.

The second issue is whether the district court abused its discretion in admitting evidence of purported threats by Anderson against a witness. Evidentiary rulings are reviewed for clear abuse of discretion. *State v. Amos*, 658 N.W.2d 201, 203 (Minn. 2003). Anderson objected to the introduction of the threat evidence arguing that it was irrelevant and, alternatively, that any relevance was outweighed by the danger of unfair prejudice and confusion of issues. Under Minn. R. Evid. 403, relevant evidence may be excluded "if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury."

The district court admitted the evidence, ruling that it was relevant to consciousness of guilt and that its probative value was not outweighed by any rule 403 factor. "[E]vidence of threats to witnesses may be relevant in showing consciousness of guilt." *State v. Harris*, 521 N.W.2d 348, 353 (Minn. 1994). In *Harris*, the supreme court upheld the admission of the testimony of a witness that on two occasions while in jail the defendant "threatened him with physical harm for testifying in this case." *Id*. at 353 n.6. As here, the testimony in *Harris* was corroborated by a sheriff's deputy. *Id*. Anderson argues that the term "snitch" is so vague as to have little probative value and that the statement "the police can get touched, you don't think you can get touched?" does not reveal consciousness of guilt. But the district court acted within its discretion in

admitting the evidence because the informant's testimony can reasonably be understood to go to Anderson's admission and consciousness of guilt as articulated in *Harris*, and the deputies' references to Anderson calling the informant a "snitch" can reasonably be considered to support the credibility of the informant's testimony.

Because we review the district court's evidentiary rulings for an abuse of discretion, *Amos*, 658 N.W.2d at 203, and because the district court is in the best position to evaluate any potential for unfair prejudice, *State v. Mayhorn*, 720 N.W.2d 776, 783 (Minn. 2006), we hold that the district court did not abuse its discretion in admitting the disputed testimony as relevant evidence in establishing Anderson's consciousness of guilt.

Affirmed.