STATE OF MINNESOTA
IN COURT OF APPEALS
A09-1225

State of Minnesota,
Respondent,

vs.

Michael Collins Iheme,
Appellant.

Filed June 8, 2010
Affirmed
Stauber, Judge

Hennepin County District Court
File No. 27CR0837043

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

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

David W. Merchant, Chief Appellate Public Defender, Jessica Merz Godes, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Johnson, Presiding Judge; Stauber, Judge; and Willis, Judge.[*]

[*] Retired judge of the Minnesota Court of Appeals, serving 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

STAUBER, Judge

Appellant challenges his conviction of second-degree murder, arguing that the state failed to prove that he did not act in the heat of passion. Appellant raises additional issues in his pro se supplemental brief. Because there was sufficient evidence for the jury to conclude beyond a reasonable doubt that the state met its burden to prove the absence of heat of passion, and because appellant's pro se arguments are without merit, we affirm.

FACTS

Appellant Michael Collins Iheme was tried for the murder of A.I., his estranged wife. The following evidence was presented to the jury.

On the afternoon of July 24, 2008, A.I. finished her work shift at a skilled-nursing facility. One of A.I.'s coworkers finished her shift at approximately the same time. The coworker left the building and went to her vehicle in the facility's rear parking lot. The coworker's vehicle was one of a line of vehicles parked perpendicular to the lot's western curb. A fence is located approximately fifteen feet beyond the curb.

The coworker sat in her vehicle, which was parked facing the curb and fence. While she listened to the radio and composed a text message on her phone, the coworker heard two gunshots behind her. A.I.'s sedan then sideswiped the driver's side of the coworker's vehicle.[1] The sedan went over the curb and struck the fence. A man, later identified as appellant, walked past the driver's side of coworker's vehicle. He carried a

[1] Photographs of the damage to the coworker's vehicle and the position of other vehicles in the lot indicate that A.I. backed her sedan out of the parking spot directly to the south of her coworker's vehicle, then drove forward, striking the coworker's vehicle.

gun in his hand. Appellant approached the driver's side window of A.I.'s sedan, which was stopped at the fence, and fired "numerous shots."

Two other nursing-facility employees, who were seated in the break area outside the facility, heard the two initial gunshots. They stood up and saw appellant at the driver's side of A.I.'s sedan, which had gone over the curb. Appellant walked from the sedan to the parking lot, then returned to the sedan and fired five or six shots. The employees fled into the nursing facility. From inside, one of them could see appellant pacing and talking on a cell phone before police arrived and arrested him.

The jury heard a recording of appellant's phone call to 911, in which he stated that he had "killed a woman that mess[ed his] life up" and who had "destroyed" him. Appellant also stated that he was "completely confused, completely mentally."

When police arrived, A.I. was in the driver's seat of her sedan. She was wearing a seatbelt and was unresponsive. A.I. was pulled from the vehicle and given medical aid, but she died at the scene from multiple gunshot wounds. A forensic pathologist from the medical examiner's office testified that A.I. had been struck by four or five bullets and had been grazed an additional two times. At least two of the bullets had been fired from a distance of less than five feet.

At the time of the shooting, appellant and A.I. were in the process of dissolving their marriage and were engaged in a custody dispute over their two children. In June and July 2008, appellant wrote several letters to the family court referee and to A.I.'s attorney, accusing A.I. of conducting a longstanding extramarital affair and stating that A.I. had promised "to be faithful and spend the rest of her life with [appellant] good or

bad and even die for [appellant] on a gun point." Appellant also requested that the family court order a DNA test to determine the paternity of appellant and A.I.'s younger child.

Appellant testified in his defense. He described the history of his relationship with A.I., whom he married in Nigeria in 2003.[2] Appellant was reluctant to marry A.I. because of the age difference between them and because he worried that her ultimate goal was to live in the United States, where appellant has citizenship. He was also suspicious that A.I. was "seeing other men or acting out sexually." After their marriage, the couple moved to the United States. They had two children: a son, born in 2005; and a daughter, born in 2006.

After A.I. became a legal permanent resident in April 2006, appellant again became suspicious of her behavior. According to appellant, he discovered in early 2007 that A.I. was having an extramarital affair. Appellant and A.I. separated in August 2007, and appellant filed for dissolution in September 2007.

Appellant admitted that he approached A.I. on July 24, 2008 while she was in her car and shot her seven times. He testified that he went to A.I.'s workplace to discuss the possibility of a DNA test for the younger child, but when he approached A.I., she told him that the younger child was not his biological daughter. Appellant testified that he felt like the child was "dead" after A.I. made the statement; he was "devastated"; he was not thinking clearly; and he did not feel in control of himself. He testified that he went to his car, unlocked and opened the glove compartment, retrieved his handgun, disengaged the

[2] A.I. was appellant's third wife. According to appellant, his second marriage ended after a DNA test revealed that he was not the biological father of his second wife's child.

gun's safety devices, initially fired two shots, and then followed A.I.'s rolling car, and resumed shooting. He testified that after the gun was empty, he dropped it and called 911. Appellant also testified that he killed A.I. because she told him that he was not the biological father of their younger child.

The jury acquitted appellant of first-degree intentional murder, convicted him of second-degree intentional murder, and acquitted him of first-degree manslaughter. The district court sentenced appellant to 367 months. This appeal follows.

D E C I S I O N

I.

Appellant argues that his conviction of second-degree intentional murder must be reversed because the state did not prove beyond a reasonable doubt that he did not act in the heat of passion. We disagree.

We review a claim that the state has failed to prove the absence of heat of passion as a claim of insufficiency of the evidence. *State v. Quick*, 659 N.W.2d 701, 709 (Minn. 2003). 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 they did. *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989). We assume that "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). Circumstantial evidence is entitled to as much weight as direct evidence, so long as the circumstances proved are consistent with the hypothesis of guilt and inconsistent with any rational or reasonable hypothesis except

that of guilt. *Quick*, 659 N.W.2d at 710. "Even with this stricter standard, the jury determines the credibility and weight of the circumstantial evidence." *Id.*

Second-degree intentional murder may be mitigated to first-degree manslaughter if (1) the killing was done in the heat of passion and (2) a person of ordinary self-control would have been provoked under like circumstances. Minn. Stat. § 609.20(1) (2006); *State v. Van Keuren*, 759 N.W.2d 36, 39–40 (Minn. 2008). "Whether a defendant acted in the heat of passion is a subjective inquiry that focuses on the defendant's emotional state—that is, whether the defendant was actually provoked. But whether a person of ordinary self-control would be provoked under like circumstances requires an objective analysis." *State v. Bird*, 734 N.W.2d 664, 673 (Minn. 2007) (citation omitted). This court looks to the record as a whole to make these determinations. *State v. Nystrom*, 596 N.W.2d 256, 262 (Minn. 1999).

In support of his claim that he killed A.I. in the heat of passion, appellant argues that what A.I. allegedly told him about their younger child's paternity was "shocking and devastating;" he was especially upset because one of his previous wives had conceived a child with another man; his retrieval of the handgun took "moments rather than hours;" and his conduct after killing A.I.—dropping the weapon, calling 911, and remaining at the scene until his arrest—is consistent with heat of passion.

A finding of heat of passion requires "some evidence of [a] victim's acts or words." *State v. Swain*, 269 N.W.2d 707, 715 (Minn. 1978). Here, appellant testified that A.I. provoked him by telling him he was not the biological father of their daughter. But the jury was free to reject appellant's testimony that A.I. made this statement. *See*

State v. Shepherd, 477 N.W.2d 512, 515 (Minn. 1991) (stating that a jury may reject a defendant's testimony elicited in an attempt to prove provocation).

Even if the jury believed that A.I. had informed appellant that he was not the biological father of their daughter, we conclude that sufficient evidence was presented for the jury to conclude beyond a reasonable doubt that appellant did not act in the heat of passion. "The defendant's emotional state at the time of the killing is of primary importance in determining whether the killing occurred in the heat of passion." *Van Keuren*, 759 N.W.2d at 40 (quotation omitted). "Heat of passion must cloud a defendant's reason and weaken his willpower." *Id.* (quotation omitted); *see also State v. Stewart*, 624 N.W.2d 585, 591 (Minn. 2001) (stating that "outrage and loss of self-control" are associated with heat of passion). It requires "some immediate reaction to some current provocation." *Quick*, 659 N.W.2d at 714 & n.4.

Appellant's characterization of A.I.'s alleged statement as "shocking . . . news" is undercut by his testimony that he suspected A.I. of infidelity during their courtship, discovered in 2007 that she was having an affair, and learned in June 2008 from an acquaintance that A.I. had said appellant might not be the biological father of their daughter. The jury also saw numerous letters that appellant wrote in June and July 2008 in an attempt to procure a paternity test regarding the daughter, learned of his earlier procurement of the gun, and heard statements he made to his roommate. The jury could conclude from this evidence that appellant did not act in the heat of passion in response to what A.I. allegedly told him on July 24, 2008. *See Quick*, 659 N.W.2d at 712 (rejecting argument that defendant was provoked by discovering his wife in bed with another man

where defendant "was aware and suspicious of his wife's relationship"); *State v. Carney*, 649 N.W.2d 455, 461–62 (Minn. 2002) (rejecting argument that defendant was provoked by discovering his wife's extramarital affair where evidence showed that defendant "was aware and suspicious of [her] close relationship with [another man] for months").

Moreover, the jury could have concluded that, based on appellant's behavior after A.I.'s alleged statement, appellant was not acting in the heat of passion. *See Carney*, 649 N.W.2d at 461 (noting that a defendant's behavior before, during, and after a crime is relevant to whether the crime was committed in the heat of passion). Appellant testified that he went to his own car, which photographs show was parked 17 spaces south of where A.I.'s sedan went over the curb. He testified that he unlocked and opened the glove compartment, retrieved the handgun, and "put the gun off the safety." He then approached A.I., who was seatbelted in her sedan, fired two shots, and followed the sedan to the fence. Two witnesses testified that appellant returned to the parking lot, then walked back to the sedan and fired at least five more shots. Even assuming that the jury believed appellant's testimony that he retrieved the gun from his car after talking with A.I., the time that it took for appellant to retrieve the gun, as well as the pause between the first two and final five shots, would allow the jury to conclude that appellant did not kill A.I. in the heat of passion.

We conclude that there was sufficient evidence for the jury to conclude that appellant did not act in the heat of passion when he killed A.I. Because we reach this conclusion, we do not reach the issue of whether a person of ordinary self-control would have been provoked under like circumstances. *See Stewart*, 624 N.W.2d at 591.

II.

Appellant raises several issues in his pro se supplemental brief. We address each of these issues in turn.

A. Sufficiency of the evidence supporting second-degree intentional murder

Appellant challenges the sufficiency of the evidence supporting his conviction of second-degree intentional murder.

Minnesota law provides that "[w]hoever . . . causes the death of a human being with intent to effect the death of that person or another, but without premeditation," is guilty of second-degree intentional murder. Minn. Stat. § 609.19, subd. 1(1) (2006). "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." Minn. Stat. § 609.02, subd. 9(4) (2006). "Intent is an inference drawn by the jury from the totality of circumstances." *State v. Fardan*, 773 N.W.2d 303, 321 (Minn. 2009) (quotation omitted).

A jury may conclude that a defendant acts with intent to kill where he aims a loaded gun and fires multiple shots. *State v. Jackman*, 396 N.W.2d 24, 30 (Minn. 1986); *see also State v. Brown*, 758 N.W.2d 594, 602 (Minn. App. 2008) (concluding that evidence was sufficient to support conviction of attempted second-degree murder where appellant admitted to retrieving a loaded gun from his locked glove compartment, exiting his vehicle, and firing multiple shots at the victim from a distance of six to eight feet), *review granted* (Minn. Feb. 25, 2009). Here, appellant admitted to retrieving a loaded

gun from the locked glove compartment of his car, disengaging the gun's safety devices, and shooting A.I. seven times while she sat in her car. At least two shots were fired from less than five feet away. Appellant's conviction of second-degree intentional murder is supported by sufficient evidence.

B. Police reports

Appellant makes an unclear argument regarding several police reports. As appellant acknowledges, these reports are not part of the district court record. Because an appellate court cannot presume error in the absence of an adequate record, we decline to consider this issue. *See Custom Farm Servs., Inc. v. Collins*, 306 Minn. 571, 572, 238 N.W.2d 608, 609 (1976).

C. Presentence investigation (PSI) report

Appellant argues that his conviction should be reversed because the PSI report contains several inaccuracies. Appellant does not cite any legal authority to support his assertion that inaccuracies in a PSI report allow this court to reverse a conviction. We therefore decline to reach this issue. *See State v. Modern Recycling, Inc.*, 558 N.W.2d 770, 772 (Minn. App. 1997) (treating as waived an assignment of error in brief based on mere assertion and unsupported by argument or authority); *see also State, Dep't of Labor & Indus. v. Wintz Parcel Drivers, Inc.*, 558 N.W.2d 480, 480 (Minn. 1997) (declining to reach issues in absence of adequate briefing). We likewise decline to reach appellant's inadequately briefed ineffective-assistance argument, which appears to be related to the PSI report.

D. Alleged attack by victim

For the first time on appeal, appellant asserts that A.I. attempted to run him over with her car. Because an appellate court generally does not consider matters not argued to and considered by the district court, we decline to reach this issue. *See Roby v. State*, 547 N.W.2d 354, 357 (Minn. 1996).

Affirmed.