STATE OF MINNESOTA
IN COURT OF APPEALS
A09-1497

State of Minnesota,
Respondent,

vs.

Robert Deangelo Richardson,
Appellant.

Filed July 13, 2010
Affirmed
Hudson, Judge

Olmsted County District Court
File No. 55-CR-08-8650

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

Mark A. Ostrem, Olmsted County Attorney, Richard W. Jackson, Jr., Assistant County Attorney, Rochester, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Sharon E. Jacks, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Toussaint, Presiding Judge; Hudson, 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

HUDSON, Judge

On appeal from his conviction of aiding and abetting a drive-by shooting, appellant argues that the evidence is insufficient to support his conviction. Because appellant and the shooter had "just exited" the vehicle prior to the shooting, and the shooter recklessly discharged a firearm at a vehicle, we affirm.

FACTS

During the early morning hours of September 5, 2008, appellant Robert Deangelo Richardson, Ishmael Ewing, and three other men were riding in a Buick Rendezvous (Rendezvous) in Rochester. When the men drove past 1002 Fifth Street Northeast, they saw a green Chevrolet Suburban (Suburban), which they knew to be owned by or associated with a family with whom the men had an ongoing dispute. The Suburban had been involved in a shooting two days earlier in which shots were fired from the Suburban toward some of the occupants of the Rendezvous. The men had discussed finding the Suburban or its occupants while driving earlier. After finding the Suburban, the men drove a distance of approximately one and one-half blocks to a curb on Tenth Avenue Northeast, between Second Avenue Northeast and Third Avenue Northeast, and parked.

The other men in the Rendezvous told appellant and Ewing that "it's y'all turn to do something" and handed loaded handguns to Ewing and appellant. Appellant and Ewing then exited the Rendezvous and alternatively walked and ran directly to the Suburban. Ewing approached the Suburban and saw that no one was inside. Ewing then shot his handgun into the rear of the Suburban five times. Appellant stood near Ewing

but did not fire any shots because apparently he had difficulty operating his handgun. After shooting into the Suburban, Ewing ran directly back to the Rendezvous, with appellant following closely behind. When both men returned, the Rendezvous immediately left the scene.

Appellant was charged with terroristic threats, aiding and abetting a drive-by shooting, possession of a pistol by a person with a prior felony conviction, and possession of a pistol without a permit. After appellant waived a jury trial, his case was tried before an Olmsted County district court judge. The state dismissed the terroristic-threats charge, and appellant was acquitted of possession of a pistol without a permit. Appellant was found guilty of aiding and abetting a drive-by shooting in violation of Minn. Stat. §§ 609.66, subd. 1e(a), .05(1) (2008), and gross-misdemeanor felon in possession of a pistol in violation of Minn. Stat. § 624.713, subd. 1(10)(i) (2008).

The district court found that the state proved beyond a reasonable doubt that appellant committed the crime of aiding and abetting a drive-by shooting because appellant and Ewing had just exited the Rendezvous when the shooting occurred, Ewing recklessly discharged a firearm at a motor vehicle, and appellant's actions furthered the commission of the crime committed by Ewing. This appeal follows.

D E C I S I O N

Appellant argues that the evidence is insufficient to support his conviction of aiding and abetting a drive-by shooting because the state did not prove (1) that Ewing discharged his gun after having "just exited" the vehicle and (2) that Ewing discharged his gun recklessly. Appellant argues that the district court erred in its application of the

law to the facts. Appellant does not dispute that he aided Ewing, but he claims that Ewing did not commit a drive-by shooting according to the statutory definition of the offense.

When determining the sufficiency of the evidence, this court conducts "a painstaking analysis of the record to determine whether the evidence, when viewed in the light most favorable to the conviction, was sufficient to permit the [factfinder] to reach the verdict which [it] did." *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989). The same analysis applies to bench trials and jury trials. *State v. Hough*, 585 N.W.2d 393, 396 (Minn. 1998). This court will not reverse if the factfinder, "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." *State v. Lewis*, 638 N.W.2d 788, 791 (Minn. App. 2002), *review denied* (Minn. Apr. 16, 2002).

Whether a statute has been properly construed presents a question of law, reviewed de novo. *State v. Murphy*, 545 N.W.2d 909, 914 (Minn. 1996). If a statute is unambiguous, it must be given its plain meaning. *State v. Al-Naseer*, 734 N.W.2d 679, 684 (Minn. 2007).

A person is guilty of felony drive-by shooting if "while in or having just exited from a motor vehicle, [that person] recklessly discharges a firearm at or toward another motor vehicle or a building." Minn. Stat. § 609.66, subd. 1e(a) (2008). The penalty may be increased if a person violates subdivision 1e "by firing at or toward a person, or an occupied building or motor vehicle." *Id.*, subd. 1e(b) (2008). A defendant is liable for aiding and abetting if he or she "intentionally aids, advises, hires, counsels, or conspires

with or otherwise procures [another person] to commit the crime." Minn. Stat. § 609.05, subd. 1 (2008). The state must prove that the defendant played a "knowing role" in the crime. *State v. Ostrem*, 535 N.W.2d 916, 924 (Minn. 1995) (quotation omitted). But "active participation in the overt act that constitutes the substantive offense is not required, and a defendant's presence, companionship, and conduct before and after an offense is committed are relevant circumstances from which the [factfinder] may infer criminal intent." *State v. Gates*, 615 N.W.2d 331, 337 (Minn. 2000), *overruled on other grounds by Crawford v. Washington*, 541 U.S. 36, 124 S. Ct. 1354 (2004).

Appellant and Ewing had "just exited" the vehicle before the shooting

Appellant argues that he and Ewing had not "just exited" the vehicle prior to Ewing shooting at the Suburban and, therefore, they did not commit a drive-by shooting. The district court found that "[t]he drive-by shooting occurred within sufficient geographical and temporal proximity to Ewing and [appellant's] presence in the Buick Rendezvous [such] that . . . the shooting occurred when they had just exited from a motor vehicle."

A person is guilty of a drive-by shooting if he or she recklessly discharges a firearm "while in or having just exited from a motor vehicle." Minn. Stat. § 609.66, subd. 1e(a). The term "just exited" is not defined in the statute but was addressed by this court in *State v. Lewis*, 638 N.W.2d at 791. In *Lewis*, this court determined that the defendant had "just exited" his vehicle when he drove to a park, jumped out of his vehicle, ran to a basketball court, and began shooting within one or two minutes after exiting the vehicle. *Id.* at 791. This court concluded that "the phrase 'having just exited'

means having exited 'only a moment ago,'" and that "[t]he phrase requires the completed act of exiting from a motor vehicle followed closely by the act of shooting." *Id.* The act of shooting need not be simultaneous with the act of exiting, but the act of shooting "must immediately follow the act of exiting" the vehicle. *Id.* The *Lewis* court concluded that the testimony that the defendant ran from his vehicle to the basketball court, opened fire, and returned to his vehicle and drove away was "more than sufficient" to support the drive-by shooting conviction. *Id.* at 791-92.

Appellant argues that the shooting did not "immediately follow" the exit of the vehicle and, therefore, the "just exited" element was not satisfied. Here, appellant and Ewing were not in a vehicle when Ewing shot the Suburban. Instead, appellant and Ewing exited the Rendezvous and walked and ran to the Suburban. The record shows that appellant and Ewing traveled a distance of approximately 788 feet, moving directly from the Rendezvous to the Suburban. When they reached the Suburban, Ewing looked in the vehicle, saw that no one was inside, and opened fire.

As in *Lewis*, the shooting here occurred very shortly after the defendants exited their vehicle. Appellant and Ewing left the Rendezvous for the sole purpose of carrying out the shooting. They proceeded directly from their vehicle to the Suburban, opened fire, and returned directly to the Rendezvous. The fact that appellant and Ewing may have walked part of the way to the Suburban, rather than running, does not negate the fact that they exited the vehicle for the sole purpose of shooting at the Suburban and proceeded directly to do just that. Nor does the fact that Ewing looked into the vehicle in anticipation of shooting into it create a significant break in the timeline. The exit from

the Rendezvous was followed "very closely" by the act of shooting, and the shooting itself took only a couple of seconds. The pair then immediately ran back to their vehicle, arriving at the Rendezvous within about a minute and a half. We acknowledge that the timeline here is arguably on the outer edges of the "just exited" requirement. Nevertheless, we conclude that the elapsed time frame for the entire incident was within the basic time frame sanctioned in *Lewis* and, therefore, we likewise conclude that appellant had "just exited" the vehicle when the shooting occurred. *See Lewis*, 638 N.W.2d at 791-92.

Ewing, accompanied by appellant, "recklessly" discharged a firearm at another motor vehicle

Appellant argues that the evidence does not support the finding that Ewing discharged his firearm "recklessly." The district court found that "the discharge of the firearm at the Chevrolet Suburban was reckless or in reckless disregard of the danger it presented to persons and property."

A person is guilty of drive-by shooting if he or she recklessly discharges a firearm at or toward another vehicle. Minn. Stat. § 609.66, subd. 1e(a). The term "reckless" is not defined in Minnesota's criminal code. *See* Minn. Stat. § 609.02 (2008). But the Minnesota Supreme Court has held that, with respect to felony weapons offenses, "[a] person acts recklessly when he consciously disregards a substantial and unjustifiable risk that the element of an offense exists or will result from his conduct . . . . The reckless actor is aware of the risk and disregards it." *State v. Engle*, 743 N.W.2d 592, 594 (Minn. 2008) (quotation omitted).

The drive-by shooting statute clearly contemplates that a person may be guilty of drive-by shooting when discharging a firearm at an unoccupied vehicle. The drive-by shooting statute states that a person who recklessly discharges a firearm "at or toward another motor vehicle or a building" has committed drive-by shooting and may be sentenced to a prison term of up to three years, or a payment of not more than $6,000, or both. Minn. Stat. § 609.66, subd. 1e(a). The statute goes on to state that a "person who violates this subdivision by firing at or toward a person, or an occupied building or motor vehicle" may be subject to a sentence of up to ten years, or payment of not more than $20,000, or both. *Id.*, subd. 1e(b). Reading parts (a) and (b) together, it is clear that a person may be guilty of drive-by shooting by recklessly discharging a firearm at property alone, including an unoccupied motor vehicle. *See* Minn. Stat. § 645.16 ("Every law shall be construed, if possible, to give effect to all its provisions.").

Here, appellant and Ewing both carried firearms, and Ewing shot a handgun five times into a parked Suburban. The Suburban was parked in a fully developed and occupied residential neighborhood. At least three residents heard the gunshots from within their homes. One of the residents described the shots as being close to the front of his house. Appellant, Ewing, and the other persons in the immediate vicinity could have been injured when Ewing discharged his firearm. Therefore, the risk of injury to others was substantial, unjustifiable, and consciously ignored by appellant and Ewing. Furthermore, the risk of damage to property was also substantial, unjustifiable, and consciously ignored. Ewing deliberately discharged his firearm directly into the back of the Suburban, causing significant damage to the vehicle. In our view, shooting a

handgun at a parked car in a fully developed residential neighborhood constitutes reckless discharge of a firearm.

Viewing the evidence in a light most favorable to the verdict, it is sufficient to support appellant's conviction.

Affirmed.