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**STATE OF MINNESOTA
IN COURT OF APPEALS
A10-177**

State of Minnesota,
Respondent,

vs.

Mohamed A. Negatu,
Appellant.

**Filed December 7, 2010
Affirmed
Lansing, Judge**

Ramsey County District Court
File No. 62-CR-09-10984

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

Susan Gaertner, Ramsey County Attorney, Mitchell Rothman, Assistant County Attorney, St. Paul, 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 Connolly, Presiding Judge; Lansing, Judge; and
Wright, Judge.

UNPUBLISHED OPINION

LANSING, Judge

In this appeal from conviction of second-degree assault, Mohamed Negatu challenges the sufficiency of the evidence on the element of intent. Because we conclude that sufficient evidence supports the district court's finding that Negatu intended to place RR in fear of immediate bodily harm or death, we affirm.

F A C T S

Mohamed Negatu was convicted of second-degree assault following a July 2009 incident in which he made repeated threatening statements and discharged a firearm that was pointed toward RR. RR and his family were weekend guests of RR's sister, who lived in the same apartment building as Negatu. After spending the evening with relatives, RR returned to his sister's apartment building about 10:45 p.m. As he entered the parking area, he noticed a man, later identified as Negatu, looking out a third-floor window of his sister's building. Because RR and his family intended to depart the next morning, he backed his sport utility vehicle up to the building's back entrance to begin packing the SUV for his family's trip home. While walking to the building's entrance, he heard someone from the window say, "You don't belong here." RR entered the building without responding.

Using the back entrance, RR made three trips from his sister's apartment to the SUV. On his second trip RR saw the same man standing at the building's front entrance that he had earlier seen looking out the third-floor window. The man asked him, "Didn't I tell you you don't belong here?" RR replied, "I don't even know you," and returned to

the apartment. After he had packed items into the SUV on his third trip, he saw the man standing at the building's front entrance with a white sheet wrapped around his head. It was about midnight and no one else was in the well-lit parking lot. The man said, "Didn't I tell you you don't belong around here?" RR did not respond. The man then lifted his right arm with his right hand extended, pointing toward RR. While RR continued looking at the man, he heard a gunshot. RR ducked and ran around the SUV. He testified at trial that he was "super scared" and was "panikin', freakin' out." He immediately ran back into the building and into his sister's apartment. RR told his sister what had happened, and, at trial, she testified that RR's voice was elevated and he seemed upset.

RR called the police, and when the officers arrived they created a perimeter. One of the first responding officers interviewed RR. RR recounted the incident, gave a description of the man, and identified the window from which he first saw him. The police later determined that the window was located in apartment twenty-one, which was Negatu's apartment. During the police interview, RR pointed out a man walking into the parking lot who he thought was the man involved in the incident.

A second officer stationed at the edge of the parking lot as part of the perimeter stopped the man. The man identified himself as Negatu. Initially Negatu said that he lived in apartment twenty-two but later admitted that he lived in apartment twenty-one. Negatu said he wanted to go home; was uncooperative when the officer explained that, for safety reasons, he could not; and he resisted the officer's efforts to move him from the

open parking lot to a safer area. As a result the officer sprayed him with mace, handcuffed him, and restrained him in the squad car.

The officers conducted a showup in which RR identified Negatu. A .40 caliber bullet casing was found near the front steps of the building, close to where Negatu stood when he discharged the firearm. In a search of Negatu's apartment, officers recovered a sheet and a .40 caliber Smith & Wesson handgun. Subsequent testing revealed that the firearm contained a magazine with four live rounds, an empty chamber, and a palm impression matching Negatu's.

At trial an officer testified that during an in-custody interrogation Negatu told officers that he saw five men in the parking lot, that he thought they were gang members, and that he believed they had a gun. Negatu said that because he was scared he discharged the firearm into the air.

After a trial to the court, Negatu was found guilty of second-degree assault. Negatu appeals his conviction challenging the sufficiency of the evidence on the element of intent.

DECISION

In a challenge to the sufficiency of the evidence we review the record to determine whether a fact-finder, upon consideration of the facts and any legitimate inferences drawn from the facts, could reasonably find the defendant guilty. *State v. Robinson*, 604 N.W.2d 355, 365-66 (Minn. 2000). The evidence is reviewed in the light most favorable to the conviction. *Id.* at 366. We consider the reasonableness of any inferences that could be drawn. *State v. Al-Naseer*, 788 N.W.2d 469, 473-74 (Minn. 2010). On

elements proved by circumstantial evidence, there must be “no other reasonable, rational inferences that are inconsistent with guilt.” *State v. Andersen*, 784 N.W.2d 320, 330 (Minn. 2010).

The district court found Negatu guilty of second-degree assault. Assault is “an act done with intent to cause fear in another of immediate bodily harm or death.” Minn. Stat. § 609.02, subd. 10(1) (2008). Intent requires a showing that the defendant “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) (2008). The focus of analysis must be the intent of the actor, not the effect on the victim. *State v. Hough*, 585 N.W.2d 393, 396 (Minn. 1998). Intent can be proved by circumstantial evidence that includes the nature of the assault, the surrounding events, and inferences drawn from the defendant’s actions. *In re Welfare of T.N.Y.*, 632 N.W.2d 765, 769 (Minn. App. 2001). A fact-finder may infer that an actor “intends the natural and probable consequences of his actions.” *State v. Cooper*, 561 N.W.2d 175, 179 (Minn. 1997). Intent to place a victim in fear of immediate bodily harm can be established by evidence of threatening statements. *State v. Kastner*, 429 N.W.2d 274, 275 (Minn. App. 1988).

On the issue of placing RR in fear of immediate bodily harm or death, the record demonstrates the following. Negatu’s apartment, twenty-one, is the apartment from which RR initially saw someone watching him; Negatu made repeated threatening statements similar to “you don’t belong here”; the encounter occurred in an empty parking lot around midnight; and Negatu, while wearing a white sheet around his head, raised his right arm, extended it in RR’s direction, and RR heard a gunshot. Negatu

matched the description RR gave to police and RR identified Negatu in a showup. When approached by an officer, Negatu lied about which apartment was his, was defiant, and required restraint. A shell casing found near the steps where Negatu stood when he discharged the firearm matched the type used in the firearm police found in Negatu's apartment, and the firearm was loaded with live rounds of the same brand and caliber as the recovered casing. One round was missing, and the magazine contained a palm print impression that matched Negatu's. In Negatu's apartment the police found clothes and a sheet consistent with RR's description of the assailant's attire.

The inference that Negatu intended to place RR in fear of immediate bodily harm or death is reasonable and consistent with guilt. As the fact-finder, the district court made credibility determinations and weighed the evidence. The district court also considered that the evidence supported and was consistent with RR's testimony. The evidence, viewed in the light most favorable to the verdict, is sufficient for the district court to have reasonably concluded that Negatu intended to place RR in fear of immediate bodily harm or death.

The record does not support other rational inferences that, if true, would be inconsistent with guilt. Negatu asserts that "the evidence established that . . . other people were entering and leaving the parking lot." He contends that this supports the reasonable inference that his threatening statements were not aimed at RR. But RR testified that at the time Negatu discharged the firearm no other people were in the parking lot and no cars were entering or leaving. Negatu's statement that he saw a group of five men in the parking lot is not supported by any independent evidence. It was

therefore reasonable for the fact-finder to find it not credible. *See State v. Stein*, 776 N.W.2d 709, 718-19 (Minn. 2010) (plurality opinion) (stating that theory is not reasonable if it is not supported by facts accepted as true by fact-finder).

Negatu alleges that the state failed to prove the requisite intent because it did not prove that he “*pointed* the gun at RR.” Negatu’s reliance on *T.N.Y.* to support this argument is flawed. The fact that T.N.Y. did not point his firearm “directly at the officers” was not controlling, but was one factor, among many, that we considered in determining that the record was insufficient to sustain a second-degree-assault charge. *See T.N.Y.*, 632 N.W.2d at 770 (holding that juvenile court improperly found intent solely based on effect defendant’s actions had on alleged victim). The inference asserted by Negatu, that his threatening behavior was not directed at RR, is unreasonable based on the record.

Affirmed.