STATE OF MINNESOTA
IN COURT OF APPEALS
A12-1137

State of Minnesota,
Respondent,

vs.

Rashaun Lamar Huguley,
Appellant.

Filed May 28, 2013
Affirmed
Kirk, Judge

Hennepin County District Court
File No. 27-CR-10-45441

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

Michael O. Freeman, Hennepin County Attorney, Michael Richardson, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Davi Axelson, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Ross, Presiding Judge; Bjorkman, Judge; and Kirk, Judge.

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

KIRK, Judge

On appeal from his convictions of terroristic threats and possession of a firearm by an ineligible person, appellant argues that the evidence is legally insufficient to support his convictions. We affirm.

D E C I S I O N

In September 2010, respondent State of Minnesota charged appellant Rashaun Lamar Huguley with two counts of terroristic threats and one count of being an ineligible person in possession of a firearm. The charges stemmed from an incident that occurred at a bar on the night of July 4 and the early morning of July 5, 2010. The district court held a jury trial in February and March 2012, and several witnesses testified about the events of that night. One witness testified that he heard a man tell several people on the bar's patio that he was going to "shoot the place up," and two witnesses testified that a man came toward them holding a gun while they were standing near the parking lot of the bar. Following the trial, the jury found appellant guilty of all three counts. Appellant challenges all three of his convictions, but he does not challenge the sufficiency of the evidence on the statutory elements; instead, his sole argument is that the evidence is insufficient to prove beyond a reasonable doubt that he was the armed suspect at the bar on the night of the incident.

When reviewing the sufficiency of the evidence supporting a conviction, 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). In doing so, this court assumes "that the jury believed all of the state's witnesses and disbelieved any evidence to the contrary." *State v. Chambers*, 589 N.W.2d 466, 477 (Minn. 1999). This 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).

In cases that depend primarily on conflicting testimony, it is particularly important to assume that the jury believed the state's witnesses because it is the jury's exclusive function to weigh the credibility of witnesses. *State v. Pieschke*, 295 N.W.2d 580, 584 (Minn. 1980). A "jury is free to accept part and reject part of a witness's testimony." *State v. Mems*, 708 N.W.2d 526, 531 (Minn. 2006). "Inconsistencies or conflicts between one witness and another do not necessarily constitute false testimony or serve as a basis for reversal." *Id.*; *see also Pieschke*, 295 N.W.2d at 584 ("Even inconsistencies in the state's case will not require a reversal of the jury verdict."). In addition, a conviction can be based solely on testimony from one credible witness. *State v. Bliss*, 457 N.W.2d 385, 390 (Minn. 1990). A witness's "[i]dentification testimony need not be positive and certain" and it is sufficient if the witness testifies "that it is her opinion, belief, impression, or judgment that the defendant is the person she saw commit the crime." *State v. Hill*, 312 Minn. 514, 519-20, 253 N.W.2d 378, 382 (1977).

Appellant argues that the evidence establishes that he does not match the description of the suspect that the witnesses gave to police. He argues that the suspect

"appeared at the bar at 2:05 a.m., some 41 minutes [after appellant left the bar], accompanied by several others, had no facial hair, but was severely intoxicated," and had "Brooklyn" tattooed across his chest and a skull or cross tattooed on his shoulder. Appellant contends that he, in contrast, left the bar alone at 1:24 a.m., was not intoxicated, had a goatee, and does not have "Brooklyn" tattooed across his chest or a skull or cross tattooed on his shoulder.

During his testimony, a witness, D.O., identified appellant as the man he heard on the patio at the bar making threats to shoot up the bar. He described appellant as African American, big, barrel-chested, approximately five feet nine inches tall, with a goatee and multiple tattoos, including tattoos of writing on his neck and chest. D.O. testified that appellant was wearing a "wife-beater shirt" and that he heard appellant say he had a "Brooklyn" tattoo and a "New York" tattoo. D.O. further testified that he reported the incident to the manager, J.W., and the bartender, J.O., and then watched J.O. run appellant's credit card to pay for appellant's drinks. During her testimony, J.O. confirmed that D.O. told her that a man was making threats at the bar, the man he pointed out came up to the bar shortly afterward, she closed the man's bar tab at 1:24 a.m., and gave him a receipt to sign. J.O. identified the receipt, which had appellant's name on it.

C.H. and P.P., two witnesses who testified that a man came towards them holding a gun, were not able to identify anyone from the photo lineup that a police officer showed them, but their descriptions of the man who threatened them are very similar to D.O.'s description. C.H. described the suspect as African American, between 26 and 30 years old, with tattoos on his arms and chest, and wearing a white shirt. P.P. described the

suspect as African American, about five feet eight inches tall and 180 or 190 pounds, with a "Brooklyn" tattoo on his chest and other tattoos on his body, and wearing a "wife beater" shirt. In addition, during P.P.'s testimony the prosecutor asked him, "So you saw [C.H.] outside; was she alone?" In response, P.P. stated, "No. She was talking to this gentleman here." While the prosecutor did not follow up on P.P.'s statement to clarify that P.P. was identifying appellant as the man who threatened him with a gun, the wording of P.P.'s answer implies that he was referring to appellant. And, during her closing statement, the prosecutor stated that "yesterday, in this courtroom, two of the witnesses, [D.O.] and [P.P.], did identify [appellant] as the man they saw that evening." Appellant's counsel did not object to the prosecutor's statement.

The manager of the bar, J.W., also provided a similar description of the man D.O. pointed out to him as the man who made threatening statements on the patio: African American, approximately five feet nine inches tall and 190 pounds, with tattoos on his arms and neck. In addition, J.W. described the car that the suspect's friend told him was his and that J.W. saw the suspect walk toward with his friend as a two-toned, red and black Chevy Blazer. Similarly, P.P. described the car he saw the suspect enter as a two-toned Chevy Blazer and C.H. described the car as big, "like a Trailblazer." These descriptions are very similar to the appearance of the two-toned red and gray 1988 Chevy Blazer that is registered to appellant and was seized by the police upon his arrest.

Appellant attempts to distinguish the description of the suspect from his own characteristics by asserting that the suspect had "Brooklyn" tattooed on his chest and a skull or cross tattooed on his shoulder. However, while only one witness testified at trial

that the suspect had "Brooklyn" tattooed on his chest, all of the witnesses testified that the suspect had multiple tattoos, including tattoos on his chest and neck. The evidence establishes that appellant has multiple tattoos, including a tattoo of "Brooklyn" on one side of his neck, a tattoo of "New York" on the other side of his neck, and a tattoo of writing across his chest. And the only evidence that the suspect had a tattoo of a skull or cross on his shoulder was a police officer's testimony about the description an unidentified witness gave him at the scene, not the testimony of an eyewitness. Further, one of the police officers testified that it was not unusual for the people who saw the suspect to provide slightly different descriptions of the suspect's multiple tattoos. The inconsistencies in the witnesses' testimony about the placement of appellant's tattoos do not mandate reversal of appellant's convictions. *See Mems*, 708 N.W.2d at 531.

In addition, appellant's argument that the evidence establishes that appellant left the bar at 1:24 a.m. is misleading. J.O. testified that she ran appellant's credit card at 1:24 a.m. and then gave appellant a receipt to sign, not that he left the bar at 1:24 a.m. And J.W. testified that he saw the suspect and his friend walk towards the car the friend had pointed out to him earlier, but that he did not recall actually seeing the car leave. This evidence is consistent with C.H.'s testimony that she saw a car start to pull out of the parking lot, then pull back in to a parking spot, and then she saw the suspect get out of the car and come over to her. Both C.H. and P.P. testified that they talked to the suspect for approximately 15 minutes, and a police officer testified that he responded to a 911 call at approximately 2:00 a.m. The testimony of the state's witnesses is not inconsistent regarding the timeline of events. Finally, while there was some conflicting

testimony about the suspect's level of intoxication and whether or not he had facial hair, these inconsistencies do not require reversal. *See Mems*, 708 N.W.2d at 531.

Moreover, appellant's counsel raised appellant's concerns about the identity of the armed suspect throughout trial, during cross examination of the state's witnesses, and in his closing argument. *See State v. Stauffacher*, 380 N.W.2d 843, 848 (Minn. App. 1986) (stating that the victim's "identification of appellant was tested by appellant through a rigorous cross-examination"), *review denied* (Minn. Mar. 21, 1986). The jury ultimately weighed the credibility of the witnesses before finding that appellant was guilty of all three counts alleged in the complaint. *See Pieschke*, 295 N.W.2d at 584 (stating that "weighing the credibility of witnesses is the exclusive function of the jury").

Accordingly, because the jury, acting with due regard for the presumption of innocence and the requirement of proof beyond a reasonable doubt, could reasonably conclude that appellant was the suspect with the gun at the bar on the night in question, we conclude that the evidence is sufficient to support appellant's convictions.

Affirmed.