STATE OF MINNESOTA
IN COURT OF APPEALS
A12-2042

State of Minnesota,
Respondent,

vs.

Malo Dashaunta Gomez,
Appellant.

Filed December 9, 2013
Affirmed
Toussaint, Judge[*]

Hennepin County District Court
File No. 27-CR-11-29016

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

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

Melissa Sheridan, Assistant State Public Defender, Eagan, Minnesota (for appellant)

Considered and decided by Stoneburner, Presiding Judge; Hooten, Judge; and Toussaint, 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

TOUSSAINT, Judge

Appellant Malo Dashaunta Gomez challenges the sufficiency of the evidence to support his convictions of attempted first-degree intentional murder of two peace officers, arguing that the circumstantial evidence fails to prove that he intended to kill or harm either officer. Because we conclude that the circumstances proved are consistent only with a rational hypothesis that appellant intended to kill the officers when he discharged a firearm in the direction of an occupied squad car, we affirm.

D E C I S I O N

Appellant discharged a semiautomatic weapon from a distance of approximately 100-120 feet in the direction of an occupied police squad car late in the evening near Penn and Lowry Avenues in Minneapolis. He fired nine shots, four of which hit the squad; the two officers sitting in the squad were not injured. A jury found appellant guilty of two counts of attempted first-degree murder of a peace officer and two counts of first-degree assault with a dangerous weapon; the district court merged the assault counts for sentencing with the attempted-murder convictions.

We review the sufficiency of the evidence to support a conviction by determining whether legitimate inferences drawn from the record evidence would allow a fact-finder to conclude that the defendant was guilty beyond a reasonable doubt. *State v. Pratt*, 813 N.W.2d 868, 874 (Minn. 2012). We will not overturn a guilty verdict if the jury, giving due regard to 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. *Bernhardt v. State*, 684 N.W.2d 465, 476-77 (Minn. 2004).

To convict appellant of attempted first-degree murder of a peace officer, the state was required to prove that he acted "with intent to effect the death of that person or another." Minn. Stat. § 609.185 (a)(4) (2010); *see also* Minn. Stat. § 609.17, subd. 1 (2010) (stating that a person is guilty of an attempt to commit a crime if that person, with criminal intent, takes "a substantial step toward, and more than preparation for, the commission of the crime"). Attempted first-degree murder is a specific-intent crime. *State v. Bakdash*, 830 N.W.2d 906, 912 (Minn. App. 2013) (citing *State v. Moore*, 458 N.W.2d 90, 94 (Minn. 1990) ("First degree murder, like an attempted crime, is a specific intent crime."). "[A] specific-intent crime requires an intent to cause a particular result." *State v. Fleck*, 810 N.W.2d 303, 308 (Minn. 2012) (quotation omitted), *review denied* (Minn. Aug. 6, 2013).

Because intent is a state of mind, it is generally proved by circumstantial evidence. *Davis v. State*, 595 N.W.2d 520, 525-26 (Minn. 1999). In determining whether the evidence is sufficient to sustain a conviction based on circumstantial evidence, this court performs a two-step analysis. *State v. Hayes*, 831 N.W.2d 546, 552-53 (Minn. 2013). First, we identify the circumstances proved, deferring to the jury's acceptance of that proof, recognizing that the jury is "in the best position to weigh the credibility of the evidence and thus determine which witnesses to believe and how much weight to give their testimony." *State v. Andersen*, 784 N.W.2d 320, 329 (Minn. 2010) (quotation omitted), *review denied* (Minn. Aug. 6, 2013). We then independently engage in an

examination of the reasonableness of all inferences that may be drawn from those circumstances, including inferences of both innocence and guilt. *Andersen*, 784 N.W.2d at 329. In this examination, all of "the circumstances proved must be consistent with guilt and inconsistent with any rational hypothesis except that of guilt." *Id.* at 330. But we will not overturn a guilty verdict based only on conjecture. *Hayes*, 831 N.W.2d at 553.

Appellant argues that the circumstantial evidence is insufficient to support his convictions because the circumstances proved are consistent with an alternative rational hypothesis that he intended only to discharge the gun, not to kill or harm the officers. But the Minnesota Supreme Court has in several cases "noted that pointing a loaded gun at a person and firing it is likely to cause death, and leads to an inference of intent." *Stiles v. State*, 664 N.W.2d 315, 320 (Minn. 2003); *see, e.g.*, *State v. Johnson*, 322 N.W.2d 220, 223 (Minn. 1982) (concluding that the evidence established an intent to kill when the defendant fired shots at a police officer in a squad car, even though the shot used was not powerful enough to penetrate the windshield); *see also State v. Angulo*, 471 N.W.2d 570, 574 (Minn. App. 1991) (affirming a conviction for attempted first-degree murder of a peace officer when the defendant shot in the direction of officers who had announced their presence), *review denied* (Minn. Aug. 2, 1991).

Here, the state proved the circumstances that appellant, who was standing in a vacant lot, discharged a firearm in the direction of an illuminated police squad car, where two uniformed peace officers were completing paperwork on a traffic stop. Appellant fired nine shots, four of which struck the squad; one of those shots struck the driver's-

side door, where an officer was seated. These circumstances are consistent with an inference that appellant intended to kill the officers. *See State v. Kendell*, 723 N.W.2d 597, 606-07 (Minn. 2006) (noting that the manner of killing, including firing multiple gunshots, can support an inference of premeditation and intent). Appellant argues that no evidence was inconsistent with his statement to police that he was merely "bored and . . . fired the gun up" and that he did not intend to hurt or kill the officers because he believed they had left the squad to attend to the stopped vehicle. But both officers testified that the squad's interior lights were lit at the time of the shooting, and the jury was free to discredit the contents of appellant's statement and find it unbelievable. *State v. Kutchara*, 350 N.W.2d 924, 926 (Minn. 1984). Because the circumstances proved do not support an alternative rational hypothesis other than appellant's guilt, we conclude that the evidence is sufficient to support his convictions.

Affirmed.