

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0864**

State of Minnesota,
Respondent,

vs.

Richard Raymond Glaser, Jr.,
Appellant.

**Filed May 3, 2021
Affirmed
Gaïtas, Judge**

Ramsey County District Court
File No. 62-CR-19-1494

Keith Ellison, Attorney General, St. Paul, Minnesota; and

John J. Choi, Ramsey County Attorney, Alexandra Meyer, Assistant County Attorney,
St. Paul, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Julie Loftus Nelson, Assistant
Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Cochran, Presiding Judge; Larkin, Judge; and Gaïtas,
Judge.

NONPRECEDENTIAL OPINION

GAÏTAS, Judge

Appellant Richard Raymond Glaser, Jr., seeks reversal of his conviction for
attempted second-degree murder, arguing that the evidence was insufficient to support the

jury's verdict. Because the evidence was sufficient to establish Glaser's guilt beyond a reasonable doubt, we affirm.

FACTS¹

One evening in February 2019, Glaser fought with his girlfriend and then messaged another woman, M.L.P., for a ride. Glaser and M.L.P. had known each other for about six months and had briefly been sexual partners. M.L.P. picked up Glaser in her Volkswagen Jetta and took him to the house of his friend, K.D. Glaser went inside while M.L.P. waited in the car. Eventually, M.L.P. tired of waiting and went to her friend's house, about a block away from K.D.'s house.

Glaser messaged M.L.P. and asked her to return to K.D.'s house because he had left his phone in her car. When M.L.P. returned, they unsuccessfully searched her car for the phone. Glaser and K.D. were also unable to locate the phone inside the house. While searching for the phone, Glaser became increasingly upset. Eventually, Glaser, M.L.P., and K.D. got into M.L.P.'s car—Glaser was in the driver's seat; M.L.P. was in the passenger's seat; and K.D. was in the back seat. Glaser pulled a handgun out of his waist area and set it on his lap. He accused M.L.P. and K.D. of taking his phone, stating that one of them must have it.

Glaser let K.D. leave the car. He then drove to another friend's house with M.L.P. still in the passenger's seat. When they arrived, Glaser left M.L.P. in the car and went inside. He took M.L.P.'s keychain, which included her car key and apartment key, despite

¹ Our summary of the facts is derived from the trial record.

M.L.P.'s request that he leave it with her. He said he would return her keys when he got his phone back.

M.L.P. started the car using a spare key that she kept in the glove compartment. She then drove to the nearby house of J.C., a mutual friend. M.L.P. picked up J.C. and they drove back to the house where Glaser had gone. J.C. said she would help M.L.P. retrieve the keys.

M.L.P. and J.C. entered the house where Glaser had gone. They went into a small bedroom where five people, including Glaser, were smoking methamphetamine. M.L.P. later testified that she was sober at this time and did not use any substances that night because she had to go to work the next day. But J.C., who had come to assist M.L.P. in retrieving her keys, joined the others in smoking methamphetamine, which upset M.L.P. M.L.P. again asked Glaser for her keys, and he again responded that she would get them when he got his phone. Finally, M.L.P. threatened to call the police. When M.L.P. mentioned the police, all the individuals smoking methamphetamine, including Glaser, prepared to leave.

As the group left the house, M.L.P. and J.C. got into M.L.P.'s Jetta, with M.L.P. in the driver's seat and J.C. in the passenger seat. Glaser got into a blue SUV parked across the street from M.L.P.'s car. According to M.L.P., she had a clear view and saw Glaser enter the passenger-side of the SUV. She also observed a White male she did not recognize get into the driver's seat. A White woman also entered the SUV.

M.L.P. did not want Glaser to leave, so she tried to block the SUV with her car while she called 911. As she maneuvered her car, the SUV pulled around her, and the two

vehicles, sliding on ice and snow, collided. After the impact, M.L.P. observed Glaser exit the passenger-side door, reach into his pocket, lift his shirt, grab the gun she saw earlier, and start shooting toward her car. M.L.P. ducked and then drove straight to get away. During this time, M.L.P. was still on the phone with the 911 operator, but hung up as she drove away.

M.L.P. drove her car about three blocks before hitting a snowbank. Still fearful about being shot, M.L.P. and J.C. ran away from M.L.P.'s car in opposite directions. M.L.P. then called 911 again. She told the operator that she was "shot at." But M.L.P. did not name Glaser in either 911 call. In the first call, she identified the shooter as "a friend" and said she did not know his "government name." In the second call, she stated that "two [W]hite males and one female" shot at her.

A witness also called 911. The witness reported that she saw a "little Volkswagen" and a black SUV, that two shots were fired, and that the black SUV then drove off. When asked which car the shots were fired from, the witness said, "I don't know. . . I was trying to duck," and that she "was just trying to drive off without getting shot." The witness described the person she saw as short, "Asian," and wearing a black hoodie and tan pants. According to the witness, this man jumped out of the SUV and tried to open the passenger side door of the Volkswagen, and then returned to the SUV and got into the driver's seat.

When M.L.P. and J.C. returned to the Jetta, two police officers had arrived. The officers questioned M.L.P. about the incident in the presence of J.C. M.L.P. did not immediately identify Glaser as the shooter. She later explained that she was afraid of Glaser and that she feared J.C. would tell Glaser that she had identified him. When J.C.

walked away from the police, M.L.P. immediately identified Glaser as the shooter. The police took M.L.P.'s car as evidence. The vehicle had shattered glass and bullet holes, including a bullet hole in the driver's headrest.

A few days later, an investigator interviewed Glaser about the shooting. In a *Mirandized* statement, Glaser told the investigator that M.L.P. was jealous of his girlfriend and she had hoped they would have sex and use drugs that night. Much of Glaser's summary of the events matched M.L.P.'s account: he messaged her, she picked him up, they went to K.D.'s house, M.L.P. left, then Glaser told her to come back, and they moved on to another house. According to Glaser, he left in an SUV with a male friend. He said that they drove away and he went home. Glaser admitted to using meth that night, but denied being involved in the shooting. He initially denied there had been any shooting—"There was a little bit of yelling and sh-t . . . about the keys and my phone, but other than that, there was no altercation. There wasn't." After the investigator told Glaser that a neighbor had heard gunshots, Glaser denied shooting anyone. He said, "I don't have a gun. I never had a gun. I'm telling you I never had a gun. Yeah. They never caught me with no guns."

Following Glaser's statement, the state charged him with second-degree assault with a dangerous weapon (count one), Minn. Stat. § 609.222, subd. 1 (2018). The state later amended the complaint, adding charges of attempted second-degree murder (count two), Minn. Stat. §§ 609.19, subd. 1(1), .17, subd. 1 (2018), and possession of a firearm by an ineligible person (count three), Minn. Stat. § 624.713, subd. 2(b) (2018).

Glaser had a jury trial. At the trial, the state presented the testimony of M.L.P., a neighbor who heard the gunshots, both responding police officers, the investigator who interviewed Glaser, and a 911 call-center clerk. The state also introduced photos of M.L.P.'s car, a bullet fragment removed from M.L.P.'s car, the 911 calls, and footage from the responding officers' body-worn cameras.

While M.L.P. was on the witness stand, she believed that the driver of the SUV entered the courtroom and she immediately notified the prosecutor. The court recessed while the state investigated this information. The prosecutor ultimately determined that the person who entered the courtroom had been in prison on the day of the shooting, so he could not have been the driver of the SUV. But the district court allowed Glaser's counsel to cross-examine M.L.P. about her mistaken belief that the driver had entered the courtroom.

K.D. testified on behalf of Glaser. According to K.D., once Glaser smoked methamphetamine, he said that he no longer cared about his missing phone. K.D. testified that M.L.P. also smoked methamphetamine. He heard nothing about keys that night. But he did notice that M.L.P. seemed upset that Glaser would not leave with her. K.D. testified that he never saw Glaser with a gun. He observed the Jetta and SUV collide, and after the two vehicles drove off, he heard gunshots but could not see the vehicles or shooter.

The jury found Glaser guilty of the three charged offenses. Following the verdicts, the district court sentenced Glaser to 190 months in prison for attempted second-degree murder.

Glaser appeals.

DECISION

An accused may be convicted only “upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged.” *In re Winship*, 397 U.S. 358, 364, 90 S. Ct. 1068, 1073 (1970). In a criminal trial, the state bears the burden of proving guilt. *See State v. Peterson*, 673 N.W.2d 482, 486 (Minn. 2004). The state can only overcome the presumption of innocence with proof beyond a reasonable doubt of every element of a charged offense. *Id.*

Glaser argues that the evidence at trial was insufficient to support his conviction of attempted second-degree intentional murder. To convict Glaser of attempted second-degree intentional murder, the state was required to prove beyond a reasonable doubt that Glaser performed an act that is “a substantial step toward, and more than preparation for,” the commission of second-degree intentional murder. Minn. Stat. §§ 609.17, subd. 1, .19, subd. 1(1). Specifically, the state had to establish the following elements: (1) Glaser performed an act that is a substantial step toward causing the death of M.L.P., (2) Glaser acted with the intent to kill M.L.P., and (3) Glaser’s act took place in February 2019 in Ramsey County. *See id.*

In considering a claim of insufficient evidence, an appellate court performs “a painstaking analysis of the record to determine whether the evidence, when viewed in the light most favorable to the conviction,” was sufficient to allow the jury to reach a guilty verdict. *State v. Ortega*, 813 N.W.2d 86, 100 (Minn. 2012) (quotation omitted). We assume that “the jury believed the state’s witnesses and disbelieved any evidence to the contrary.” *State v. Caldwell*, 803 N.W.2d 373, 384 (Minn. 2011) (quotation omitted). And

the reviewing 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 that the defendant was guilty of the charged offense.” *Ortega*, 813 N.W.2d at 100.

Glaser’s sole contention is that the state failed to establish beyond a reasonable doubt that he was the individual who fired the gun toward M.L.P. He argues that M.L.P.’s account of the incident—the only eyewitness testimony connecting him to the offense—was unreliable for several reasons.

First, Glaser contends that M.L.P. only had a limited opportunity to observe the shooter due to the position of her car. But the jury had an opportunity to consider this argument. Defense counsel questioned M.L.P. about her ability to view the shooter during cross-examination and challenged her credibility. And in closing argument, defense counsel urged the jury to reject M.L.P.’s testimony as unreliable. The jury clearly concluded otherwise, notwithstanding the defense theory.

Second, Glaser claims that M.L.P.’s identification of him as the shooter was significantly undermined when, mid-trial, M.L.P. misidentified a stranger in the courtroom as the driver of the SUV. Again, however, this evidence was available to the jury in evaluating M.L.P.’s credibility; defense counsel cross-examined M.L.P. about the mistaken identification. Moreover, as the state points out, M.L.P. had only met the driver one time, and thus, her ability to identify him was fundamentally different than her ability to identify Glaser—a person she knew well.

Finally, Glaser argues that the 911 caller identified the shooter as an Asian man, casting serious doubt on M.L.P.'s testimony identifying Glaser. The jury was free to reach its own conclusion about the significance of the 911 call, however, and was given the tools for doing so. During the trial, the jury heard the 911 call, including the caller's description of the shooter. In closing argument, defense counsel argued to the jury that the 911 caller's description of the person who exited the SUV undermined the reliability of M.L.P.'s identification of Glaser.

Assessing the credibility of witnesses and weighing testimony are functions that are exclusive to the fact-finder—in this case, the jury. *See State v. Landa*, 642 N.W.2d 720, 725 (Minn. 2002). On review, we must defer to the jury's credibility determinations. *State v. Porte*, 832 N.W.2d 303, 309 (Minn. App. 2013). Although Glaser identifies the weaknesses in M.L.P.'s identification of him as the shooter, the jury was also aware of these problems. The jury clearly found M.L.P. credible nonetheless. We must defer to the jury's determination about the veracity of her testimony.

Glaser also suggests that a conviction cannot rest on the uncorroborated testimony of a victim. This argument is contrary to law. *See State v. Foreman*, 680 N.W.2d 536, 539 (Minn. 2004) (affirming conviction based on victim's initial account of incident, and observing that there is no requirement for corroboration of a victim's testimony). And in any event, the evidence at trial consisted of more than M.L.P.'s testimony. The state presented M.L.P.'s 911 calls. In video footage from the officers' body-worn cameras, M.L.P. named Glaser as the shooter. And Glaser's own statement to the police contained inconsistencies about the events on the night of the shooting and lacked detail.

Based on our careful review of the record, we conclude that there was sufficient evidence at trial for the jury to convict Glaser of attempted second-degree intentional murder.

Affirmed.