STATE OF MINNESOTA
IN COURT OF APPEALS
A23-1931

State of Minnesota,
Respondent,

vs.

Esteban J Ramos, Jr.,
Appellant.

Filed October 28, 2024
Affirmed
Connolly, Judge

Kandiyohi County District Court
File No. 34-CR-22-53

Keith Ellison, Attorney General, Ed Stockmeyer, Assistant Attorney General, St. Paul, Minnesota; and

Shane Baker, Kandiyohi County Attorney, Willmar, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Jennifer Workman Jesness, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Frisch, Presiding Judge; Connolly, Judge; and Cochran, Judge.

NONPRECEDENTIAL OPINION

CONNOLLY, Judge

Appellant challenges his convictions of attempted second-degree intentional murder and unlawful possession of a firearm. He first argues that the state's circumstantial evidence of intent was insufficient for the jury to find him guilty of attempted second-

degree intentional murder. He next argues that defense counsel was ineffective by conceding appellant's guilt without his consent or acquiescence. Because there was sufficient circumstantial evidence to support the jury's verdicts and appellant acquiesced in the concession of guilt, we affirm.

FACTS

At the time of the offenses, appellant had an outstanding "high risk" arrest warrant. On January 15, 2022, the Willmar Police Department received an anonymous tip that appellant was at J.T.'s residence, possessed a firearm, and that appellant and J.T. were in a Jeep vehicle. Officer Schaefbauer was on duty that evening and attempted to locate appellant with that information.

Officer Schaefbauer testified that between 8:00 and 8:30 p.m., he located J.T. driving a Jeep with a male passenger. Officer Schaefbauer knew J.T.'s driver's license was revoked, so he initiated a traffic stop. J.T. pulled over, immediately exited the vehicle, and looked into the vehicle towards the passenger seat area. The officer had dealt with J.T. "numerous times" before, including when J.T. had other passengers in the vehicle who had high-risk warrants. Officer Schaefbauer had never seen J.T. behave in this manner before. Based on J.T.'s behavior, Officer Schaefbauer was concerned that appellant was the passenger in the vehicle.

Officer Schaefbauer asked J.T., "is [appellant] in the vehicle?" Before J.T. could answer, appellant exited the vehicle and ran through J.T.'s property along the side of J.T.'s house. The officer pursued appellant on foot.

As Officer Schaefbauer chased appellant, he saw appellant make "multiple target glances" back. Officer Schaefbauer testified that a "target glance" occurs when a person who is being pursued looks back over their shoulder to see where the pursuer is. Appellant ran around the corner of a garage, which caused Officer Schaefbauer to lose sight of appellant. Officer Schaefbauer feared appellant would attempt to ambush him around the corner. Rather than follow appellant directly around the garage, Officer Schaefbauer ran slightly away from the garage. The officer wanted to "throw off" appellant by appearing where appellant did not expect him.

When Officer Schaefbauer was angled around the corner of the garage, appellant was 25 feet away from him. Appellant was in "a kneeling position" in the driveway. Officer Schaefbauer saw appellant manipulating "something" at chest-level and then extend his arms out. Then Officer Schaefbauer heard a gunshot and saw a circular muzzle flash. Officer Schaefbauer believed the gun was pointing at him because he could see the entire muzzle flash, rather than just a "side portion" of the muzzle flash like he had previously seen in training when he was not directly in front of a firearm. At trial, the officer testified that a kneeling position allows for greater stability and shooting accuracy.

Officer Schaefbauer attempted to pivot away from appellant, but fell in the deep snow. Appellant then ran away and the officer ran back to his squad car. When the officer returned to the car, J.T. was still at the car. Officer Schaefbauer testified to the comments J.T. made to him while they were at the car:

> Q: And what did [J.T.] tell you?
> A: At that time, [J.T.] advised me that [appellant] wanted us to shoot him, and that he had made comments that he was not going back to prison - basically saying, "get ready for a fight."

After more law enforcement personnel came to the scene, law enforcement followed appellant's footprints to locate him. Appellant's footprints went west, then south, then circled north toward pine trees. Officer Schaefbauer testified it looked like appellant "was setting up a secondary ambush," because, had appellant been in the trees, law enforcement would have had their backs to appellant if they followed appellant's footprints.

The footprints then continued to another garage three houses down from the shooting site. The garage's side door was locked, and the homeowner told law enforcement that door should be unlocked. Law enforcement believed appellant was located in that garage. Law enforcement commanded appellant to come out over a loudspeaker and threw chemical munitions into the garage to gain appellant's compliance. Appellant stepped out of the garage once, ate snow, and went back inside the garage.

Law enforcement pried open the garage door with a mechanical arm. Appellant walked towards the officers with his hands up, but initially did not comply with officer commands. Officers eventually arrested appellant.

When appellant was arrested, appellant was missing the end of his left index finger. Law enforcement found a pool of appellant's frozen, coagulated blood inside the garage. The firearm, a Taurus 410-guage revolver, was also inside the garage and had appellant's blood on it. Appellant told hospital staff that he had shot his finger. Law enforcement also

found a black, leather gun holster inside the Jeep vehicle and two 410-gauge shotgun rounds in appellant's left front pocket.

The gun was loaded with both slug rounds and birdshot rounds. Law enforcement witnesses at trial testified that a slug round is used to "kill big game" and a birdshot round is used for small, moving game, because the shot spreads across an area. Law enforcement found a slug round embedded in the lower corner siding of the first garage where appellant had shot at Officer Schaefbauer.

Respondent State of Minnesota charged appellant with six offenses: (1) second-degree attempted intentional murder, (2) first-degree assault, (3) second-degree assault, (4) unlawful possession of a firearm, (5) intentional discharge of a dangerous weapon, and (6) fleeing a police officer. Respondent dismissed the offense of fleeing a police officer before trial. The jury found appellant guilty on the remaining five counts. At the sentencing hearing, the district court entered convictions for attempted second degree-murder and unlawful possession of a firearm. This appeal follows.

DECISION

I. Sufficient circumstantial evidence supported the jury's finding of guilt on the attempted second-degree intentional murder charge.

Appellant argues that the state's circumstantial evidence of intent failed to eliminate a rational hypothesis that appellant only intended to cause fear in the officer and therefore could not be found guilty of attempted second-degree murder. Appellant's argument is not persuasive.

This court applies a two-step analysis to review the sufficiency of circumstantial evidence. *State v. Silvernail*, 831 N.W.2d 594, 598-99 (Minn. 2013). First, we identify the circumstances proved. *Id.* The circumstances proved are "only those circumstances that are consistent with the verdict." *Id.* at 599. Second, we "determine whether the circumstances proved are consistent with guilt and inconsistent with any rational hypothesis except that of guilt." *Id.* (quotations omitted). We independently consider the reasonable inferences that can be drawn from the circumstances proved, when viewed as a whole. *State v. Harris*, 895 N.W.2d 592, 601 (Minn. 2017).

A criminal defendant is guilty of attempted second-degree intentional murder if the state proves the defendant acted "with intent to effect the death of that person." Minn. Stat. § 609.19, subd. 1(1) (2020); Minn. Stat. § 609.17, subd. 1 (2020). The phrase "[w]ith intent to" is defined in statute as "the actor either 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) (2020). Intent is a state of mind that is frequently proven with circumstantial evidence. *State v. Irby*, 967 N.W.2d 389, 396 (Minn. 2021). Intent may be inferred from events occurring before and after the crime. *State v. Rhodes*, 657 N.W.2d 823, 840 (Minn. 2003).

Applying the first step of our analysis, the circumstances proved at trial show appellant ran from Officer Schaefbauer around the corner of a garage. Appellant took a kneeling position facing Officer Schaefbauer, extended both of his arms, and fired a handgun in Officer Schaefbauer's direction. Kneeling positions provide stability and enhance shooting accuracy. Appellant then ran again. When law enforcement tracked

appellant's footprints through the snow to locate him, they were led into trees that appeared to be a second ambush site. Appellant was eventually found in a locked garage. Appellant fired his gun a second time inside the garage, which resulted in appellant shooting his finger. The handgun was a .410-gauge revolver that contained two fired rounds and three unfired rounds. The two fired rounds included one slug round and one birdshot round. The three unfired rounds included two slug rounds and one birdshot round. Slug shots are used to kill large game animals. Birdshots are used to kill smaller, moving game animals. Based on how the gun was loaded, a slug round was fired first. A slug round was fired at Officer Schaefbauer, which was recovered from the lower corner of the first garage. Appellant had two .410 ammunition rounds in his pocket.

Appellant concedes "[o]ne rational inference based on these circumstances is that [appellant] intended to kill [the officer.]" But appellant argues another rational inference from these circumstances is that appellant only intended to scare off the officer so appellant could run away.

Appellant contends that when he was in the kneeling position he "shot the gun at an angle so that it hit one of the bottom panels of the garage siding, away from the officer's position." But if the exact angle of the shooting had been proven, this fact would be inconsistent with the jury's guilty verdict, so we do not consider it. What the proved circumstances do show is that appellant stopped running to take a kneeling position and shoot a firearm in the direction of the officer. Testimony at trial established that a kneeling position enhances shooting accuracy, which tends to support an inference that appellant aimed the loaded firearm in the direction that the officer would have been had he followed

the path that appellant took around the corner of the garage. Instead of hitting the officer, appellant's shot ultimately landed in the corner of the garage. The only rational inference to be drawn from these circumstances is that appellant intended to shoot at the officer. And aiming a gun and firing it towards a person tends to support an inference that one intends to cause the death of that person. *See Stiles v. State*, 664 N.W.2d 315, 320 (Minn. 2003) (concluding that intent can be inferred from "pointing a loaded gun at a person and firing").

The facts of this case are similar to *State v. Whisonant*, where the court held that the state presented sufficient evidence of intent to kill one officer. 331 N.W.2d 766, 768 (Minn. 1983). In that case, the defendant fired a pen gun at two police officers who were investigating a minor car collision in which the defendant was involved. *Id.* When the defendant fired the gun, one officer was twelve feet away and the other officer was twenty-four feet away. *Id.* The jury found the defendant guilty of attempted murder on the officer who was twelve feet away. *Id.* Here, appellant fired a handgun in the direction of a police officer when the officer was twenty-five feet away from appellant, similar to the defendant in *Whisonant*, who fired a pen gun at the officers from a short distance. *Id.* And appellant ran around the corner of the garage, appeared to set-up an ambush on the officer, fired towards the officer, ran again, and appeared to set-up a second ambush for the officer before locking himself in a garage. Setting up two potential ambush sites and shooting a handgun in the direction of a person who is in pursuit creates an inference that one intends to cause the death of his pursuer.

Appellant next contends that his statements regarding not going back to prison support an inference that he was only trying to scare the officer. Intent can be proved by

statements an actor made before and after an incident. *State v. Johnson*, 616 N.W.2d 720, 726 (Minn. 2000). Here, Officer Schaefbauer testified that J.T. told him that appellant made comments that he would not go back to prison. In the transcript, Officer Schaefbauer's testimony also included the quote, "get ready for a fight." This is significant because appellant's statement would support an inference that he intended to fight police and cause harm. But on this record, it is not clear who said the quote, "get ready for a fight." Officer Schaefbauer modified this quote with the phrase, "basically saying, 'get ready for a fight.'" A rational inference can be drawn that Officer Schaefbauer summarized J.T.'s comments about appellant to mean Officer Schaefbauer should "get ready for a fight" with appellant. Given that J.T. and appellant were in the Jeep vehicle together, an inference can be made that J.T. understood that appellant intended to fight with police and told the same to Officer Schaefbauer. Regardless of who the quote is attributed to, the fact that appellant made comments about not going back to prison supports the inference that he intended to cause the death of Officer Schaefbauer, possibly so that he would not be caught by Officer Schaefbauer.

Appellant further contends that the intent to scare the officer is a rational inference because the prosecutor argued that appellant intended to scare the officer in closing statements. But the prosecutor's comments on intent go to support the assault charges, rather than the attempted murder charges, and the jury was free to disregard the evidence in favor of a not guilty verdict on the attempted murder charge.

Therefore, the circumstantial evidence was sufficient to prove beyond a reasonable doubt that appellant intended to cause the death of Officer Schaefbauer and to sustain the jury's finding of guilt.

II. Appellant's counsel was not ineffective when he conceded appellant's guilt of unlawful possession of a firearm.

A defendant who claims ineffective assistance of counsel must show that his attorney's performance fell below an objective standard of reasonableness and that but for the attorney's errors, a reasonable probability exists that the outcome would have been different. *State v. Luby*, 904 N.W.2d 453, 457 (Minn. 2017). Admitting a defendant's guilt, without the defendant's consent or acquiescence, constitutes ineffective assistance of counsel and is grounds for a new trial. *State v. Provost*, 490 N.W.2d 93, 97 (Minn. 1992). We apply a two-step analysis to determine whether defense counsel conceded guilt without authorization. *Luby*, 904 N.W.2d at 457. First, we conduct a de novo review of the record to determine whether defense counsel expressly or impliedly conceded guilt. *Id.* Second, we determine whether the defendant consented to the concession. *Id.* at 459. If the record does not show that the defendant expressly consented, we determine whether defendant acquiesced to the concession. *Id.* "Acquiescence may be implied in certain circumstances, such as (1) when defense counsel uses the concession strategy throughout trial without objection from the defendant, or (2) when the concession was an "understandable" strategy and the defendant was present, understood a concession was being made, but failed to object." *Id.*

Defense counsel conceded guilt

Respondent charged appellant with unlawful possession of a firearm. *See* Minn. Stat. § 624.713, subd. 1(2) (2020) (making persons with a prior criminal conviction for a crime of violence ineligible to possess a firearm). Appellant expressly conceded one element of the offense by stipulating that he was ineligible to possess a firearm. Defense counsel then conceded appellant's guilt on the entire offense during trial by expressly stating appellant possessed the gun. Defense counsel first conceded guilt in opening statements: "[appellant] has a weapon that he shouldn't have." Defense counsel again conceded guilt during closing argument: "[a]nd certainly find [appellant] guilty for the thing that he is guilty of here—possessing the firearm."

Appellant acquiesced to his counsel's concession

On review of the record, we conclude that appellant did not expressly consent to defense counsel's concession. Absent appellant's express consent, we review the record for acquiescence. *Luby*, 904 N.W.2d at 457.

Appellant contends that defense counsel changed strategies, and therefore appellant could not understand defense counsel's strategy in order to object to the concession. Appellant argues defense counsel's first strategy was to pursue a voluntary intoxication defense, then defense counsel argued the shooting was an accident, and finally defense counsel conceded guilt on the unlawful possession of a firearm charge. But this is not accurate. At a pretrial hearing, counsel and the district court, with appellant present, discussed that the defense of voluntary intoxication would only apply to the specific-intent offenses he was charged with (attempted murder, first-degree assault, second-degree

assault). Therefore, appellant would need to pursue another defense theory for the remaining charges of unlawful possession of a firearm and reckless discharge of a firearm.

Defense counsel then pursued a negligent-discharge theory, in addition to the theory that appellant only intended to scare the officer. But pursuing a theory that appellant fired the handgun as a result of a negligent discharge necessarily concedes that appellant possessed the handgun. This strategy started at jury selection. As one example, defense counsel asked potential jurors, "what does it mean to have a negligent discharge?" Defense counsel continued with this theory during opening statements. Defense counsel told the jury, "[appellant] has a weapon that he shouldn't have" and "[appellant] fumbles around with this gun, and boom, it goes off." Finally, defense counsel ended with this strategy in closing arguments by telling the jury, "find [appellant] guilty for the thing that he is guilty of here – possessing the firearm," and "who's to say [appellant's] not dumb enough or reckless or inexperienced enough to accidentally let [the firearm] go off while he's running with it?" Therefore, appellant had numerous opportunities to object to his counsel's concession to guilt when defense counsel maintained the same negligent discharge theory throughout trial. Because appellant did not object to the concession, we conclude that he acquiesced to defense counsel's concession.

Appellant argues his case is similar to *Dukes v. State*, where defense counsel changed strategies during the trial and conceded to the defendant's guilt in closing argument. 621 N.W.2d 246, 254 (Minn. 2001). But unlike in *Dukes*, where the defendant "did not listen to admissions of guilt throughout trial" and the record lacked any indication that the defendant expressly consented to his defense counsel's concession in closing

argument, here, appellant did listen to admissions of guilt throughout trial and could have objected. *Id.* at 254.

Appellant's case is instead similar *Provost*, where defense counsel argued the defendant caused the victim's death from opening statements to closing arguments. 490 N.W.2d at 97. Like the defendant's counsel in *Provost*, who consistently argued the defendant caused the victim's death and the defendant's own testimony did not conflict with the defense counsel's concession, appellant's defense counsel consistently argued that appellant negligently discharged the firearm and did not intend the death of the officer. *Id.* And appellant stipulated that he was ineligible to possess a firearm, which is consistent with defense counsel conceding appellant's guilt of possessing a firearm while ineligible.

In sum, respondent presented sufficient circumstantial evidence of appellant's intent for the jury to find him guilty of attempted second-degree murder and appellant has not met his burden on his ineffective assistance of counsel claim.

Affirmed.