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**STATE OF MINNESOTA
IN COURT OF APPEALS
A16-1151**

State of Minnesota,
Respondent,

vs.

Landis Sherel Tate,
Appellant.

**Filed May 22, 2017
Affirmed
Bratvold, Judge**

Hennepin County District Court
File No. 27-CR-14-27731

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

Michael O. Freeman, Hennepin County Attorney, Linda K. Jenny, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Susan Andrews, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Kirk, Presiding Judge; Schellhas, Judge; and Bratvold, Judge.

UNPUBLISHED OPINION

BRATVOLD, Judge

Appellant challenges her conviction for second-degree assault with a dangerous weapon, arguing that the state's circumstantial evidence did not establish that she had the

intent to cause another fear of immediate bodily harm or death. Because the evidence sufficiently supports appellant's conviction, we affirm.

FACTS

Appellant Landis Tate was charged with second-degree assault in violation of Minn. Stat. § 609.222, subd. 1 (2014) for pointing a loaded gun at a police officer. The testimony at Tate's two-day jury trial established the following. According to Tate, her then-husband was a drug-dealer. Their relationship was rocky, and she often stayed at her mother's home, going to their apartment only when her husband was not there.

"Several scary things happened" on September 17, 2014, while Tate was alone at the apartment. First, in the early afternoon, a man tried to break into the apartment through the balcony door. Tate was watching television in the bedroom, heard noises, saw the stranger, and retrieved and loaded a gun from the hall closet. Tate testified that a friend had given her the gun for protection and she kept it at the apartment. Tate did not call for help because she had no phone. Eventually, the man left.

"A few hours" later, Tate heard a knock on the apartment door. Tate grabbed her gun and answered the door. "Shot Baby," who was her then-husband's best friend, was at the door along with two other men. Tate testified that she is afraid of Shot Baby because he is "into drugs and other sorts of stuff that's scary." Tate shut the door quickly and returned to the bedroom to watch television.

Around 5:00 p.m. or 6:00 p.m., Tate started drinking. Sometime after 6:00 p.m., Tate heard another knock on the apartment door. Tate again took her gun with her, opened the door, and saw Shot Baby with another male. Tate was scared because she "had no clue

what his intentions were,” so she shut the door. Tate returned to the bedroom and watched more television. By 10:00 p.m., Tate had consumed a “smaller bottle” of Crown Royal. Sometime later, Tate went outside and fired two rounds from her gun. When asked, Tate testified she did this because “[the gun] was new and I was intoxicated.”

At approximately 3:00 a.m. on September 18, 2014, C.P., an apartment resident, heard loud noises and went to Tate’s apartment to ask her to quiet down. When C.P. knocked on Tate’s door, Tate answered, holding the gun. C.P. immediately returned to his apartment and called 911.

Sergeant Stanger and Officers Johnson, Blaine, and Blanchard responded to investigate. As the officers approached Tate’s apartment, they drew their guns, pointing them at the floor. After knocking and yelling “Police,” the officers heard noises from inside the apartment, specifically, the sound of a gun being racked.¹ The officers said, “Police. Police officers. Drop the gun. Come to the door.” Officer Johnson testified that she heard a female voice say, “The door’s open.” Officer Johnson also testified that she thought Tate was “going to cause us harm.”

Tate opened the door, lifted her gun and brought it “across her body” so it was pointing “directly at” at Officer Johnson, who “jumped to the side,” screamed at Tate to “put the gun down,” and pointed her weapon at Tate’s chest.

Tate closed the apartment door, then opened the door and handed her gun to the officers, handle-first. Officer Johnson took the gun and Tate was arrested. Tate’s gun

¹ “Racking” places a round from the magazine into the chamber so the gun can be fired.

contained a fully-loaded magazine with one round in the chamber. Tate testified that when she answered the door, she intended “to see who was there and make sure I was safe.”

Officer Blaine testified that Tate appeared to be intoxicated because he could smell alcohol “on her breath and her body” and she was slurring some of her speech. Sergeant Stanger also testified that Tate had a “blank, blank look on her face.”

After hearing testimony, the jury was instructed on voluntary intoxication. The judge stated that the jury “should consider whether the defendant was intoxicated and . . . whether the defendant was capable of forming the required intent.” After deliberations, the jury acquitted Tate of first-degree assault (attempted use of deadly force) and found Tate guilty of second-degree assault with a dangerous weapon under Minn. Stat. § 609.222, subd. 1 (2014). The district court denied Tate’s motion for a downward dispositional departure, and committed Tate to the custody of the Commissioner of Corrections for 36 months. This appeal follows.

D E C I S I O N

Tate argues that the evidence was insufficient to support her conviction because, due to the amount of alcohol she consumed that night, “no rational fact-finder could have found that . . . she was capable of forming the requisite criminal intent to support a conviction for second-degree assault.”

When the sufficiency of evidence is challenged, this court thoroughly reviews the record “to determine whether the evidence, when viewed in a light most favorable to the conviction, was sufficient to permit the jurors to reach the verdict which they did.” *State v. Horst*, 880 N.W.2d 24, 40 (Minn. 2016) (quoting *State v. Webb*, 440 N.W.2d 426, 430

(Minn. 1989)). When the jury has acted with due regard for the presumption of innocence and the necessity to overcome that presumption by proof beyond a reasonable doubt, the verdict will not be disturbed. *Bernhardt v. State*, 684 N.W.2d 465, 476 (Minn. 2004). This court assumes that the jury “believed the state’s witnesses and disbelieved any contrary evidence.” *Gulbertson v. State*, 843 N.W.2d 240, 245 (Minn. 2014) (quoting *State v. Welch*, 675 N.W.2d 615, 619 (Minn. 2004)). Credibility determinations are the “exclusive function of the jury,” and this court gives deference to a jury’s credibility determinations. *State v. Pendleton*, 706 N.W.2d 500, 512 (Minn. 2005); *State v. Hagdu*, 681 N.W.2d 30, 34 (Minn. App. 2004) (quotation omitted), *review denied* (Minn. Sept. 21, 2004).

Tate was convicted of second-degree assault. “Whoever assaults another with a dangerous weapon” is guilty of second-degree assault. Minn. Stat. § 609.222, subd. 1. Second-degree 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) (2014). A dangerous weapon is “any firearm, whether loaded or unloaded.” *Id.* subd. 6 (2014).

“[A]ssault-fear . . . is a specific intent crime,” which requires “that 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) (2014); *State v. Fleck*, 810 N.W.2d 303, 312 (Minn. 2012). “The intent inquiry is made under an objective standard.” *State v. Collins*, 580 N.W.2d 36, 44 (Minn. App. 1998) (quotation omitted), *review denied* (Minn. July 16, 1998). Voluntary intoxication is a defense to specific-intent crimes. *Fleck*, 810 N.W.2d at 312; *see* Minn. Stat. § 609.075 (2014).

Generally, intent is proven by circumstantial evidence. *State v. Davis*, 656 N.W.2d 900, 905 (Minn. App. 2003), *review denied* (Minn. May 20, 2003). This court applies heightened scrutiny when reviewing the sufficiency of circumstantial evidence, using a two-step analysis. *State v. Al-Naseer*, 788 N.W.2d 469, 473–74 (Minn. 2010). First, the court identifies the circumstances proved by the state, deferring to the jury’s acceptance of the state’s proof and rejection of contrary evidence. *Id.* at 473. Second, the court “determine[s] whether the circumstances proved are consistent with guilt and inconsistent” with any other reasonable hypothesis. *State v. Silvernail*, 831 N.W.2d 594, 599 (Minn. 2013) (quotation omitted). A jury “is in the best position to evaluate circumstantial evidence” and its “verdict is entitled to due deference.” *Webb*, 440 N.W.2d at 430.

We begin our analysis of the circumstances proved with deference to the jury’s acceptance of evidence consistent with its verdict. *Al-Naseer*, 788 N.W.2d at 473. The evidence proves the following circumstances. On September 17, 2014, Tate was alone at an apartment she shared with her then-spouse, whom she described as a drug dealer. During the daytime hours before her encounter with police, Tate retrieved her gun from a closet, loaded it, kept it at her side while watching an intruder try to enter the apartment, and later she answered the door holding a loaded gun two times. Tate kept this gun at the apartment for her own protection.

Starting about 5:00 p.m., Tate began consuming a significant quantity of alcohol. Around 10:00 p.m., Tate went outside the apartment building and fired two rounds from her gun. At about 3:00 a.m. on September 18, 2014, C.P. knocked on Tate’s apartment door

to ask her to quiet down; Tate answered the door, again holding her loaded gun, and C.P. fled. Responding to C.P.'s 911 call, the police knocked on Tate's apartment door.

Standing inside the closed door, Tate racked her gun. Officers then announced their presence saying, "Police," and instructed Tate to put down the gun and open the door. Tate opened the door, holding the gun at her side, then brought up the gun and pointed it at Officer Johnson. Tate closed the door, then opened it, and handed her gun to Officer Johnson. Tate smelled like alcohol and slurred some of her speech.

Tate argues that her testimony "had the ring of truth to it" when she stated she did not know law enforcement was at the door and that she had her gun because she was afraid. But the jury, relying on the evidence, their perceptions, experiences, and common sense rejected Tate's claim. *See Collins*, 580 N.W.2d at 44 (discussing how jurors may consider a defendant's conduct in determining whether the defendant formed specific intent). Evidence that a defendant was intoxicated does not compel a conclusion that the defendant could not form specific intent. *State v. Olson*, 298 Minn. 551, 552–53, 214 N.W.2d 777, 778 (1974) (affirming conviction for assault with a dangerous weapon over defendant's contention that he was too intoxicated to form the requisite intent). Tate's ability to lucidly describe her actions and her reasons for holding the gun while answering the door belie her claim that she was too intoxicated to form intent. *See State v. Torres*, 632 N.W.2d 609, 617 (Minn. 2001) (holding district court did not abuse its discretion in denying appellant's request for a voluntary-intoxication jury instruction when appellant could "describe[] the actions of all participants lucidly and precisely, without any reference to his own

intoxication”). Further, credibility determinations lie solely with the jury and this court will not reweigh the evidence. *Pendleton*, 706 N.W.2d at 511–12.

Tate suggests that another reasonable inference would be that she was suicidal at the time. But Tate’s actions throughout the day contradict that contention. Tate testified that she purposely answered the door with a loaded gun after someone tried breaking into the apartment and after Shot Baby came to the apartment. While Tate did not recall answering the door when C.P. knocked, evidence established that Tate again opened the door holding a loaded gun. She did the same thing when police knocked on her door, even though they identified themselves as police.

We conclude that a reasonable jury may only infer that Tate, who, in a single day, evening, and night, answered the door four times holding a loaded gun, intended to frighten whoever was on the other side. Thus, reviewing the reasonableness of all inferences that might be drawn from the circumstances proved, we conclude that there is no reasonable hypothesis other than Tate’s intent to cause fear in another and the evidence credited by the jury could only rationally lead to an inference of specific intent. The circumstantial evidence is therefore sufficient to sustain Tate’s conviction for second-degree assault.

Affirmed.