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**STATE OF MINNESOTA
IN COURT OF APPEALS
A16-2056**

State of Minnesota,
Respondent,

vs.

Maurice Carter,
Appellant.

**Filed January 8, 2018
Affirmed
Halbrooks, Judge
Concurring specially, Kirk, Judge**

Hennepin County District Court
File No. 27-CR-15-26238

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

Michael O. Freeman, Hennepin County Attorney, Mark V. Griffin, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

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

UNPUBLISHED OPINION

HALBROOKS, Judge

Appellant challenges his first- and second-degree-assault (fear) convictions, arguing that the district court improperly applied the doctrine of transferred intent. Appellant also

argues the district court erred by imposing a ten-year mandatory minimum sentence for his first-degree assault-of-a-peace-officer convictions because it improperly concluded that he used deadly force against the officers. We affirm.

FACTS

Appellant Maurice Carter arrived in downtown Minneapolis at approximately 1:20 a.m., planning to spend the night with his friends at a club. When Carter was later walking down a sidewalk, an acquaintance, D.D.-R., approached him and asked him whether any of the people in his group had a problem with D.D.-R., or words to that effect. Carter clarified that there were no issues between them. They shook hands and went their respective ways.

A shoot-out erupted in the middle of the block on 5th Street North at 2:34 a.m. when one of Carter's friend's, M.H., confronted D.D.-R. and assumed a fighting stance. A chaotic situation ensued. Carter witnessed M.H. and D.D.-R.'s exchange but turned around and continued walking away from D.D.-R. in a westward direction¹ on 5th Street North. D.D.-R. responded to M.H.'s confrontation by firing his gun multiple times to the south and southeast. D.D.-R.'s bullets traveled into a crowd of bystanders. The streets were full of police officers patrolling the area and pedestrians, who upon hearing D.D.-R.'s gunshots, frantically dispersed in every direction. D.G., one of Carter's friends who was on the east side of D.D.-R. before the shooting, fired his gun in D.D.-R.'s general direction while

¹ As noted by the district court, 5th Street North actually runs northwest and southeast, but much of the district court record and the Minneapolis Police Department describe the street as running east and west. Because this directional language was used throughout the case, we also refer to 5th Street North as running east and west.

running away. Carter had first run away from D.D.-R., but he then returned to 5th Street North. After D.D.-R. stopped shooting, Carter took a few steps toward D.D.-R., raised his gun, and fired five bullets in D.D.-R.'s direction. D.D.-R. ran into an alleyway.

Carter fired his gun in the direction of a group of pedestrians and police officers who were in the middle or near the eastern end of the block on 5th Street North. Officer Yolanda Wilks and Officer Walter Alvarado testified that bullets were coming toward them and that they were without cover while Carter fired. Officer Peter Stanton, in fear, hugged the side of the building that he was standing next to in response to the shots. C.T., a bystander who was shot during the gunfire exchange between D.D.-R. and D.G., laid on the ground and feared for her life while Carter fired. J.B., another bystander, hid behind his pedi-cab while bullets traveled by him. Once Carter stopped shooting, he walked away. The police apprehended him within a short time.

The state charged Carter with eleven counts of first-degree assault of a peace officer under Minn. Stat. § 609.221, subd. 2(a) (2014); two counts of second-degree assault with a dangerous weapon under Minn. Stat. § 609.222, subd. 1 (2014); one count of second-degree riot under Minn. Stat. § 609.71, subd. 2 (2014); one count of reckless discharge of a firearm within a municipality under Minn. Stat. § 609.66, subd. 1(a)(3) (2014); and one count of possession of a pistol in a public place under Minn. Stat. § 624.714, subd. 1(a) (2014).

Carter pleaded guilty to possessing a pistol in a public place, waived his right to a jury trial, and had a bench trial on the remaining charges. At the close of the state's case-in-chief, Carter moved for a judgment of acquittal. The district court acquitted Carter of

eight first-degree assault-of-a-peace-officer counts and the second-degree riot count. After Carter presented his defense, the district court issued a written order convicting Carter of the three remaining counts of first-degree assault (fear) of a peace officer against Officers Wilks, Alvarado, and Stanton; two counts of second-degree assault (fear) with a dangerous weapon against C.T. and J.B.; and the counts of reckless discharge of a firearm and possession of a pistol in a public place.

The district court sentenced Carter to concurrently serve three 120-month sentences for the first-degree-assault convictions, two 36-month sentences for the second-degree-assault convictions, and one 12-month sentence for the possession-of-a-pistol-in-a-public-place conviction. Carter now appeals his three first-degree-assault convictions and two second-degree-assault convictions.

D E C I S I O N

Carter argues that his convictions must be reversed because he did not act with specific intent to cause fear of immediate bodily harm or death to the five victims involved in his convictions. The district court found that Carter intended to cause fear of immediate bodily harm or death to D.D.-R. and applied the doctrine of transferred intent to conclude that Carter intended to cause fear in Officers Wilks, Alvarado, and Stanton, and C.T. and J.B. The district court reasoned that Carter assumed criminal liability for his actions by firing a gun into a crowded area and concluded that it was a natural and probable consequence that “anyone in the area was both in danger and could reasonably fear immediate bodily harm or death.”

We review whether a defendant's conduct meets the statutory definition of an offense de novo. See *State v. Hayes*, 826 N.W.2d 799, 803 (Minn. 2013). A defendant commits assault-fear if he engages in “an act with intent to cause fear in another of immediate bodily harm or death.” *State v. Fleck*, 810 N.W.2d 303, 308 (Minn. 2012) (quotation omitted); see Minn. Stat. § 609.02, subd. 10(1) (2014) (defining assault-fear). Because assault-fear is a specific-intent crime, the defendant must intend to cause a particular result. *Fleck*, 810 N.W.2d at 309. Assault-fear “does not require a finding of actual harm to the victim.” *State v. Hough*, 585 N.W.2d 393, 395 (Minn. 1998).

The defendant's intent, as contrasted with the effect on the victim, becomes the focal point of the inquiry. *Fleck*, 810 N.W.2d at 308. “Intent may be proved by circumstantial evidence, including drawing inferences from the defendant's conduct, the character of the assault, and the events occurring before and after the crime.” *In re Welfare of T.N.Y.*, 632 N.W.2d 765, 769 (Minn. App. 2001). A defendant's intent may also be inferred from the natural and probable consequences of his actions. *Hough*, 585 N.W.2d at 396-97.

In *Hough*, a defendant fired seven bullets into his school principal's home while the principal was inside with his wife and children. *Id.* at 396. At trial, the defendant testified that he only intended to scare his principal, but the district court applied transferred intent to find that he intended to cause fear of immediate bodily harm or death to the wife and children within the home because it “was a highly probable consequence that others in the home would be victims of [the defendant's] actions.” *Id.* (alteration in original).

This court reversed the district court's convictions in *Hough* with respect to the children because we concluded that transferred intent could not be applied to unintended

victims who did not suffer harm. *Id.* at 395. But the supreme court reversed and upheld the district court's convictions. *Id.* at 397. The supreme court concluded that "the doctrine of transferred intent [was] not necessary to resolve this case. Instead, [it] affirm[ed] all of the convictions by looking to the plain language of the statute and to [its] earlier decisions."

Id. at 395. It reasoned:

While the [district] court referred to the doctrine of transferred intent when it convicted [the defendant] for the assaults against [the wife] and the four children, the findings of the [district] court support the conclusion that [the defendant] acted with intent to cause fear of immediate bodily harm or death to all of the occupants of the home. In effect, the [district] court convicted [the defendant] because it found that [he] intended the natural and probable consequences of his actions.

Id. at 396.

Carter argues that we must reverse all five assault-fear convictions because the district court erred by applying the doctrine of transferred intent. Currently, no Minnesota appellate caselaw has applied transferred intent to an assault-fear conviction and the supreme court has expressly declined to apply transferred intent to assault-fear when the appellant's intent could be determined by circumstantial evidence. *Id.* Therefore, like the supreme court in *Hough*, "[w]e conclude that the doctrine of transferred intent is not necessary to resolve this case." *Id.* at 395. Instead, we analyze whether Carter intended to cause fear to the five victims in the street by examining the natural and probable consequences of his actions. *Id.*

Like the family in the house in *Hough*, we conclude that the circumstantial evidence here establishes that Carter intended to cause fear of immediate bodily harm or death to all

five victims. First, Carter was aware that the street was filled with innocent bystanders when he fired his gun. Before the exchange of gunfire started, police officers patrolled the area on foot, bike, and horseback wearing uniforms clearly demonstrating that they were officers. The district court stated that “[e]ven a casual observer would [have been] aware of their presence.” And when the shooting started, video evidence demonstrates that pedestrians stood on the light-rail platform; others stood outside bars that had recently closed; and others walked down the street as they left the area. As discussed by the district court, when Carter fired, “there were several people huddled on the north sidewalk of 5th Street North, fleeing [D.D.-R.], or exposed on the light-rail platform.”

Second, Carter’s bullets traveled toward or past all five victims. Officer Stanton stood on the same sidewalk and walked toward Carter. But upon hearing the gunfire, Officer Stanton hugged a nearby building in fear. C.T. laid on the ground in front of Carter as he fired, and J.B. hid behind his pedi-cab at the end of the block to avoid being shot. Officer Wilks and Officer Alvarado crouched behind J.B. without cover as Carter fired his gun. Although we do not analyze the effect on the victim in an assault-fear case, we may infer the defendant’s intent based on his conduct and the natural and probable consequences of his actions. *See Hough*, 585 N.W.2d at 395-97 (stating that a defendant’s intent may be inferred from the natural and probable consequences of his actions); *T.N.Y.*, 632 N.W.2d at 769 (stating that we do not focus on the effect of the victims in an assault-fear case, but we may look at the defendant’s conduct as circumstantial evidence of his intent). Therefore, we agree with the district court that the “natural and probable consequence of firing five bullets down a crowded public sidewalk with countless people already running

in every direction in a panic is that those present, within range, will continue to fear immediate bodily harm or death.”

Carter contends that we cannot apply *Hough*’s analysis because the district court explicitly found that he had no intent to cause fear of immediate bodily harm or death to the police officers when it stated that he did not intend “to target” the officers. Carter relies on the emphasized language in the following paragraph from the district court’s order:

The State has also proved beyond a reasonable doubt Mr. Carter used deadly force against Officers Wilks, Alvarado, and Stanton. *Though it cannot be proved he fired with the specific intent to target one or more officers, Mr. Carter did fire in their direction with an illegal gun at a person he intended to shoot.* Officer Stanton in particular saw Mr. Carter’s gun raised at him, and was in personal, direct danger of Mr. Carter’s shots. Officers Wilks and Alvarado, without seeing Mr. Carter, were conscious of the shots coming in their direction and were well within the zone of danger caused by Mr. Carter firing from the opposite end of the block in their general direction. Thus, the State has proven beyond a reasonable doubt Mr. Carter used deadly force against the officers on September 12, 2015.

(Emphasis added.)

We disagree with Carter’s interpretation of this language. Whether Carter “intended to cause fear” in another involves a broader analysis than whether Carter “intended to target” the officers with his gun. The supreme court’s decision in *State v. Rieck* supports this distinction. 286 N.W.2d 724 (Minn. 1979). In *Rieck*, a defendant threw a firebomb toward a house, intending to silence a teenager. The intended victim was not home, but five other family members were present. The supreme court upheld the defendant’s sentence for each victim because it concluded that he “knew, or should have known, that

there would be multiple victims.” *Id.* at 727. Likewise, in *Hough*, the defendant testified that he only intended to scare the principal, implying that he did not intend to target others within the home. 585 N.W.2d at 396-97. But the supreme court upheld Hough’s convictions against the other family members because it determined that the district court’s findings supported the conclusion that Hough acted with the intent to cause fear of immediate bodily harm or death to all the occupants in the home based on the natural and probable consequences of his actions. *Id.* at 397.

The same reasoning applies here. Carter may only have intended to target D.D.-R., but he also “knew, or should have known” that he would cause fear in the other bystanders by firing his gun down a crowded street. Just like the defendant in *Hough* did not intend to target the other family members within the home, Carter did not intend to target the peace officers. Therefore, we do not agree with Carter that the district court’s order explicitly found that Carter lacked the intent to cause fear to the peace officers.²

² The placement of the district court’s discussion also supports our conclusion that the district court did not conclude that Carter had no intent to cause fear by stating he did not intend to “target” the officers. The district court discussed that the state had to demonstrate that Carter satisfied the four following elements to be convicted of assault-fear: (1) Carter committed the act with intent to cause fear of immediate bodily harm or death in the victim; (2) the victim was a peace officer at the time of the assault and was engaged in the performance of a duty imposed by law, police or rule; (3) Carter used, or attempted to use, deadly force against the victim; and (4) Carter’s act took place on September 12, 2015 in Hennepin County. The district court had already concluded that the state demonstrated the first factor—that Carter intended to cause fear of immediate bodily harm to the peace officers—in previous paragraphs of its order. It only mentioned that Carter did not intend to target the officers to discuss whether the state demonstrated that the third factor, the use of deadly force, was satisfied.

Thus, we find that the evidence sufficiently supports a finding that Carter acted with the requisite intent to cause fear of immediate bodily harm against the five victims here. When an assailant fires numerous shots from a gun into a crowded downtown street, we may infer that the assailant intends to cause fear of immediate bodily harm or death to those put in danger by the gunfire. As noted by the district court, it was a natural and probable consequence that Carter's actions would endanger the bystanders and officers within the line of fire. We cannot excuse Carter's behavior simply because he claims that he only intended to cause fear in D.D.-R. when the natural and probable consequences of his actions support a finding of intent. Therefore, we affirm the three first-degree-assault and two second-degree assault convictions.

II.

Carter also argues the district court erred in sentencing him pursuant to Minn. Stat. § 609.221, subd. 2(b) (2014), which imposes a mandatory minimum sentence of ten years of incarceration for a person convicted for assaulting a peace officer under Minn. Stat. § 609.221 subd. 2(a). Subdivision 2(a) states that “[w]hoever assaults a peace officer . . . by using or attempting to use deadly force against the officer . . . while the person is engaged in the performance of a duty imposed by law” may not be sentenced to imprisonment for more than 20 years. Carter argues that even if the district court properly determined that he assaulted the police officers, he cannot be sentenced under subdivision 2(a) because he did not use deadly force “against the officers” given that he did not intend to target them.

We are not persuaded. Minn. Stat. § 609.066 (2014) defines deadly force as “[t]he intentional discharge of a firearm . . . in the direction of another person.” The district court determined that Carter intentionally discharged his firearm and that bullets traveled in the direction of Officers Alvarado, Wilks, and Stanton. Therefore, Carter used deadly force against the officers by firing his bullets in their direction. Carter’s actions met the other requirements of Minn. Stat. § 609.221 subd. 2(a), because Carter assaulted the police officers by engaging in an act with the intent to cause fear of immediate bodily harm or death when he fired his gun down the crowded street. The district court also found that the officers were engaged in the performance of a duty imposed by law, and Carter does not challenge this finding. Therefore, the district court properly applied the ten-year mandatory minimum sentence to Carter’s three first-degree assault-of-a-peace-officer convictions.

Affirmed.

KIRK, Judge (concurring specially)

I concur in the majority's decision. However, I would affirm based on the district court's application of the doctrine of transferred intent. The doctrine of transferred intent allows for there to be an unintended victim of a specific-intent crime. *State v. Hall*, 722 N.W.2d 472, 477-78 (Minn. 2006) (noting that intent can be transferred in first-degree premeditated murder cases); *State v. Bakdash*, 830 N.W.2d 906, 913-14 (Minn. App. 2013) (discussing that "Minnesota caselaw has consistently applied the doctrine of transferred intent to specific-intent crimes"), *review denied* (Minn. Aug. 6, 2013). "[T]he applicability of transferred intent depends upon whether the intended harm is different or substantially similar to the unintended harm." *Bakdash*, 830 N.W.2d at 913. Here, the specific-intent crime is assault-fear. As the majority notes, the doctrine of transferred intent has not ultimately been dispositive in the final appellate decision in an assault-fear case. But on these facts, I believe that the doctrine is dispositive.

I do not agree with the majority that the supreme court's analysis in *State v. Hough*, 585 N.W.2d 393 (Minn. 1998), and in *State v. Rieck*, 286 N.W.2d 724 (Minn. 1979), applies to this case. In both *Hough* and *Rieck*, the defendant intended to cause fear of bodily harm or death in a specific individual, but acted in such a way that he did not know whether the intended victim would be affected at all, or whether multiple victims would be affected. *See Hough*, 585 N.W.2d at 394 (noting that defendant fired seven shots into the house where his intended victim lived with his wife and children); *Rieck*, 286 N.W.2d at 725 (noting that the defendant threw a firebomb at the intended teenage victim's house where she lived with her family). In both of these cases, the defendant targeted a dwelling

that, at the time of the incident, may, or may not, have contained the intended victim and additional people. *Hough*, 585 N.W.2d at 394; *Rieck*, 286 N.W.2d at 725. Those defendants did not know who was present in the targeted dwellings and did not see their intended victims before they acted to cause fear, and thus, the supreme court reached the conclusion that the defendants intended to cause fear in all persons in those dwellings. *Hough*, 585 N.W.2d at 396-97; *Rieck*, 286 N.W.2d at 727.

The majority's approach treats this case as though Carter was "flock shooting" when he fired his gun—as though he intended to cause fear in or to hit whomever was on the street in the group of people. The facts of this case are substantially different than that situation. Here, the record shows that Carter fired into a crowded street, in the direction that D.D.-R. ran, with the specific intent to cause fear in, or harm, to D.D.-R. But because there were many people in the zone of danger, the fear or harm experienced by those people was substantially similar to the fear or harm Carter intended for D.D.-R. There is no dispute that the civilians and law enforcement officers in the zone of danger were fearful during the shooting. On this record, when Carter acted to cause fear in or harm to D.D.-R., it was a highly probable consequence that the civilians and law enforcement officers present in the crowded street would feel the same fear or harm. Therefore, I would conclude, as the district court did, that the doctrine of transferred intent applies, and I would affirm Carter's convictions on that basis.