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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1410**

State of Minnesota,
Respondent,

vs.

Delorien Robert Daniel Chatman,
Appellant.

**Filed July 29, 2019
Affirmed
Reyes, Judge**

Hennepin County District Court
File No. 27-CR-17-21393

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

Michael O. Freeman, Hennepin County Attorney, Jonathan P. Schmidt, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

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

Considered and decided by Rodenberg, Presiding Judge; Bjorkman, Judge; and Reyes, Judge.

UNPUBLISHED OPINION

REYES, Judge

In a direct appeal from his convictions of first- and second-degree assault and unlawful possession of a firearm, appellant argues that (1) the state did not present

sufficient evidence to prove identity for all three convictions; (2) the state did not present sufficient evidence to prove that he had the requisite intent for second-degree assault; and (3) the district court abused its discretion in sentencing. We affirm.

FACTS

On the evening of August 22, 2017, appellant Delorian Robert Chatman traveled to downtown Minneapolis. After getting into an altercation with an unknown man, appellant pulled out a firearm and shot toward the man. The bullet missed the man and struck M.P., who had been waiting at a nearby bus stop. After the shooting, appellant ran from the scene. Surveillance footage captured appellant downtown, and multiple eyewitnesses observed the altercation and shooting, allowing law enforcement to identify appellant as the shooter. M.P. sustained injuries but survived.

Appellant is not eligible to possess a firearm due to prior felony convictions. The state charged appellant with one count of unlawful possession of a firearm, one count of second-degree assault against the unknown man, and one count of first-degree assault against M.P. A jury found him guilty on all counts. The district court sentenced appellant to 60 months for the unlawful-possession conviction, 60 months for the second-degree-assault conviction, and 160 months for the first-degree-assault conviction, to be served concurrently. This appeal follows.

DECISION

I. The state presented sufficient evidence of identity to sustain all three convictions.

Appellant argues that the state presented insufficient evidence to sustain his convictions because there is a reasonable alternative hypothesis that he was not the shooter. We disagree.

When reviewing a claim of insufficient evidence, we carefully review the record “to determine whether the evidence and reasonable inferences drawn therefrom, viewed in a light most favorable to the verdict, were sufficient to allow the jury to reach its verdict.” *Lapenotiere v. State*, 916 N.W.2d 351, 360-61 (Minn. 2018) (quotation omitted). When the challenged conviction is based on circumstantial evidence, we apply a two-step analysis. *State v. Harris*, 895 N.W.2d 592, 598-601 (Minn. 2017). First, we identify the circumstances proved “by resolving all questions of fact in favor of the jury’s verdict,” in deference to the jury’s credibility determinations. *Id.* at 600. Second, we “independently consider the reasonable inferences that can be drawn from the circumstances proved.” *Id.* at 601. The circumstances proved must, as a whole, “be consistent with a reasonable inference that the accused is guilty and inconsistent with any rational hypothesis except that of guilt.” *Id.* We assume “the jury believed the state’s witnesses and disbelieved any evidence to the contrary.” *State v. Moore*, 438 N.W.2d 101, 108 (Minn. 1989).

To convict appellant of unlawful possession of a firearm, the state had to prove that appellant possessed a firearm and that he was ineligible to possess a firearm. *See* Minn. Stat. § 624.713, subd. 1(2) (2016). To convict appellant of second-degree assault, the state

had to prove that appellant assaulted the unknown victim with a weapon. *See* Minn. Stat. § 609.222, subd. 1 (2016). And to convict appellant of first-degree assault, the state had to prove that appellant assaulted M.P. and inflicted great bodily harm on him. *See* Minn. Stat. § 609.221, subd. 1 (2016).

The state proved the following circumstances: On the evening of August 22, 2017, a man got off the light-rail train in downtown Minneapolis and went to a CVS on 11th Street and Hennepin Avenue. Surveillance-video footage shows a man wearing a blue backpack, glasses, a grey hooded sweatshirt, jeans, red and black shoes, and his hair in dreadlocks. Law enforcement identified appellant as the man in the CVS through a search warrant, which allowed law enforcement to obtain pharmacy records that showed appellant went to the CVS to fill a prescription. Video footage shows that appellant left the CVS and walked north on Hennepin Avenue to Sixth Street. He then turned left on Sixth Street and began walking with another man northwest on Sixth Street toward Target Field.

The two men got into an altercation, and the other man punched appellant repeatedly. Multiple eyewitnesses, including M.P., Z.S., D.G., and N.E.-H, observed the altercation. The closest witness to the scene, Z.S., described the man being punched as having a small blue backpack, jeans, red and black Air Jordan shoes, and long dreadlocks. After appellant was on the ground, the other man ran towards Hennepin Avenue. Z.S., D.G., and N.E.-H. then observed appellant stand up, pull out a gun, and shoot at the unknown man. The bullet struck M.P. Z.S. also saw appellant turn around and hold the gun against his stomach.

Just after the shooting, Z.S., N.E.-H., and another witness, M.S., observed appellant run across Sixth Street and continue diagonally towards Fifth Street and First Avenue. He entered a parking lot, crossed it, and continued running toward Fifth Street. Surveillance video again picked up appellant when he entered the parking lot. The video shows a man wearing the same clothes that appellant wore in the CVS and matching the description that eyewitnesses gave to law enforcement. The man in the surveillance footage is traveling in the same direction as the witnesses described the shooter run. Appellant conceded that he ran in the same direction as the man in the surveillance video and wore “the exact same thing” as he did. Law enforcement recovered appellant’s glasses, with his DNA, at the scene of the shooting.

When law enforcement interviewed appellant, he initially claimed that he was not in Minneapolis on the day of the shooting. After law enforcement showed him video footage of him in downtown Minneapolis, he asked, “well do you have a gun, where’s the gun[?]” before learning that officers had not recovered a gun. He appeared surprised when he heard the wrong person was shot, and blurted out “I – I didn’t mean to shoot, umm – I didn’t shot,” and then put his head down on the table. He also asked the officer, “why did it take you so long to come and talk to me?”

The circumstances proved lead to a reasonable hypothesis of guilt. Appellant argues that the reasonable alternative hypothesis inconsistent with guilt is that another person got into a fight and fired the gun. But appellant’s hypothesis relies on circumstances not proved, such as the fact that police did not observe signs that he had been in a physical altercation; that the shooter used his right hand to shoot the gun but appellant is left-handed;

and that the witnesses did not describe the white gloves that appellant claims he wore. These are not circumstances proved. Appellant testified and presented his version of events to the jury, and to the extent that his version of events conflicted with the state's witnesses, we assume the jury believed the state's witnesses.

In order for appellant's alternative hypothesis to be true, there would have needed to be another man at the scene wearing identical clothing as appellant who got into an altercation, shot the gun, and ran off diagonally towards First Avenue and Fifth Street. But witnesses only described one person matching appellant's description and running away. And the surveillance video only picked up one person, not two. Appellant's alternative hypothesis is inconsistent with the circumstances proved and is not reasonable.

II. The state presented sufficient evidence to prove that appellant acted with the requisite intent for second-degree assault.

Appellant argues alternatively that the state failed to present sufficient evidence to show that he intended to cause fear of immediate bodily harm or death in the unknown person. We are not persuaded.

Intent is a product of the mind, based on inference, and is generally proved by circumstantial evidence. *State v. Cooper*, 561 N.W.2d 175, 179 (Minn. 1997). We therefore apply the two-step analysis described above and rely on the same circumstances proved.

In order to convict appellant of second-degree assault, the state had to show that he assaulted the unknown victim with a dangerous weapon. Minn. Stat. § 609.222, subd. 1. Assault is defined as: "an act done with intent to cause fear in another of immediate bodily

harm or death” (assault-fear); *or* “the intentional infliction of *or* attempt to inflict bodily harm upon another” (assault-harm). Minn. Stat. § 609.02, subd. 10 (2016) (emphasis added).

Appellant argues that the jury could only convict him under assault-fear because the state charged appellant with assault-fear, the district court instructed the jury on assault-fear, and the state argued that appellant committed the assault when he pulled out the gun and intended to cause fear in the unknown victim, causing him to run. Appellant argues that taking the extra step of firing the gun at the unknown victim demonstrated his intent to cause assault-harm, not assault-fear.

First, appellant’s contentions that assault-harm was “uncharged and uninstructed” and that the state argued exclusively under an assault-fear theory are factually incorrect. The state charged appellant with second-degree assault without differentiating between assault-fear and assault-harm. Moreover, the district court’s instructions to the jury included both the definition of assault-fear and assault-harm. Finally, in addition to arguing under a theory of assault-fear, the state also argued that when appellant “pulled the trigger at that man, he assaulted that man as well.” In other words, the state submitted that second-degree assault could have been proved under assault-harm or assault-fear.

Appellant’s argument is also incorrect legally. While caselaw differentiates between the type of intent required for assault-fear and assault-harm, it does not indicate that they are two different crimes. *See State v. Fleck*, 810 N.W.2d 303, 309 (Minn. 2012) (referring to assault-fear as requiring specific intent and assault-harm as requiring general-

intent). Both are different forms of an assault. *Id.* at 312. Further, neither caselaw nor the statute state that assault-fear and assault-harm are mutually exclusive.

Moreover, appellant's assertion that an assault-harm theory cannot support the verdict because the district court did not instruct the jury on assault-harm is misguided. "A reviewing court's limited determination on sufficiency review . . . does not rest on how the jury was instructed." *Musacchio v. U.S.*, 136 S. Ct. 709, 715 (2016). We will not disturb a jury's verdict if the jury could reasonably conclude that the appellant was guilty of the charged offense. *State v. Olhausen*, 681 N.W.2d 21, 25-26 (Minn. 2004). Here, the charged offense is second-degree assault. There are multiple means of committing second-degree assault. And, as appellant concedes, the state's "evidence proved the requisite intent for assault-harm."

Finally, appellant's alternative theory of innocence is that he intended to harm the unknown person, and therefore, he could not have had the requisite intent for assault-fear. We will reverse on sufficiency-of-the-evidence grounds only if the circumstances proved support an alternative hypothesis that is inconsistent with guilt. *Harris*, 895 N.W.2d at 600. But appellant's theory of innocence is not inconsistent with guilt. It is based on another means of completing the elements of the same crime, and instead, it is another theory of guilt. The state presented sufficient evidence to support the intent element of appellant's second-degree-assault conviction.

III. The district court did not abuse its discretion in sentencing appellant.

Appellant argues that the district court's imposition of multiple sentences for first- and second-degree assault unfairly exaggerates the criminality of his conduct and that the sentence for first-degree assault is disproportionate to the offense. We disagree.

The district court sentenced appellant to 60 months in prison for the felon-in-possession conviction, 60 months for the second-degree-assault conviction, and 160 months for the first-degree-assault conviction, to run concurrently. The district court imposed the sentences in that order, using the *Hernandez* method of sentencing appellant for each crime in the order the crimes occurred, adding a criminal-history point for each, and using the score to calculate the subsequent sentences. *See State v. Williams*, 771 N.W.2d 514, 522 (Minn. 2009) (explaining *Hernandez* method). Because appellant had a prior offense involving a firearm, the district court imposed mandatory minimum sentences of 60 months for the felon-in-possession and second-degree-assault convictions pursuant to Minn. Stat. § 609.11, subd. 5(a) (2016).

A. The district court's imposition of a sentence for the second-degree-assault conviction does not unfairly exaggerate the criminality of appellant's conduct.

A district court may impose multiple sentences on convictions arising out of the same behavioral incident when multiple victims are involved, provided that (1) the crimes affect multiple victims and (2) multiple sentences do not unfairly exaggerate the criminality of the defendant's conduct. *State v. Ferguson*, 808 N.W.2d 586, 590 (Minn. 2012). We review the district court's decision to impose multiple sentences with multiple victims for an abuse of discretion. *State v. Cruz-Ramirez*, 771 N.W.2d 497, 512 (Minn. 2009).

Appellant concedes that the district court has the discretion to impose the sentences it did. But he contends that the imposition of a sentence for the second-degree-assault conviction unfairly exaggerated the criminality of his conduct because the first-degree-assault conviction subsumed his actions for second-degree assault. He further contends that this assault was less severe than the typical second-degree assault because the unknown victim beat appellant, and appellant pulled out the gun “arguably to defend himself.”

Caselaw supports imposing multiple sentences for each victim when a defendant has been convicted of multiple assaults. *See, e.g., State v. Montalvo*, 324 N.W.2d 650, 652 (Minn. 1982) (holding that imposing two sentences for two assault convictions involving two victims did not unfairly exaggerate criminality of appellant’s conduct). Here, the district court did not abuse its discretion when it imposed separate sentences for each of appellant’s assault convictions, which involved different victims.

B. Appellant’s guideline sentence for his first-degree-assault conviction is not disproportionate to the offense.

The district court sentenced appellant to 160 months in prison based on a criminal-history score of four. Appellant’s sentence is within the guideline range. *See* Minn. Sent. Guidelines 4.A (providing that guideline range for first-degree assault with criminal-history score of four is 114 to 160 months). We will not generally review a district court’s exercise of discretion in sentencing when the sentence is in the guideline range, and we decline to do so here. *State v. Delk*, 781 N.W.2d 426, 428 (Minn. App. 2010), *review denied* (Minn. July 20, 2010).

Affirmed.