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Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A24-0727**

State of Minnesota,
Respondent,

vs.

Xavier Lee Hudson,
Appellant.

**Filed June 9, 2025
Affirmed
Larkin, Judge**

Washington County District Court
File No. 82-CR-21-3460

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

Kevin M. Magnuson, Washington County Attorney, Andrew T. Jackola, Assistant County Attorney, Stillwater, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, St. Paul, Minnesota; and

Paul J. Maravigli, Special Assistant Public Defender, Minneapolis, Minnesota (for appellant)

Considered and decided by Schmidt, Presiding Judge; Johnson, Judge; and Larkin, Judge.

NONPRECEDENTIAL OPINION

LARKIN, Judge

Appellant challenges his convictions of aiding and abetting second-degree intentional murder and second-degree assault, arguing that the state did not disprove his

self-defense claim beyond a reasonable doubt. Appellant alternatively argues that the evidence was insufficient to prove the elements of aiding and abetting second-degree intentional murder. We affirm.

FACTS

Respondent State of Minnesota charged appellant Xavier Lee Hudson,¹ a juvenile, with one count of aiding and abetting second-degree unintentional murder while committing a felony, four counts of aiding and abetting second-degree assault with a dangerous weapon, and one count of felony possession of a firearm by an ineligible person. The juvenile court certified Hudson for prosecution as an adult, and this court affirmed the certification order. *In re Welfare of X.L.H.*, No. A21-1449, 2022 WL 1614072, at *1 (Minn. App. May 23, 2022). Later, the state added a charge of aiding and abetting second-degree intentional murder and dismissed the charge of possession of a firearm by an ineligible person. Ultimately, the following charges were tried to a jury: aiding and abetting second-degree intentional murder, aiding and abetting second-degree unintentional murder while committing a felony with a dangerous weapon, four counts of second-degree assault with a dangerous weapon, and four counts of aiding and abetting second-degree assault with a dangerous weapon.

Evidence at trial showed that on June 5, 2021, then seventeen-year-old Hudson attended a high-school graduation party in Woodbury, Minnesota. Hudson arrived at the party in a red car, armed with a semi-automatic handgun. In a statement to police after his

¹ In the complaint, Hudson's middle name was listed as Le'Drew.

eventual arrest for the underlying crime, Hudson described the gun as a “black Glock 19 with a . . . clear 30.”² The red car was parked on the street in front of the party, and Hudson hid his firearm under it, by the front passenger wheel.

A group of teenagers, including brothers AE and EE, and AE’s girlfriend BB, arrived at the party around 10:00 p.m. After they arrived, AE noticed Hudson playing dice with another teenager, JT. AE and his group decided to leave the party.

JT, Hudson, and Enrique Davila approached AE and his group as they were leaving. JT attempted to start a fight with AE, and AE stated that he “doesn’t want to do this.” BB asked Hudson to “stop what’s going on,” and Hudson replied, “if my mans wants his ones, he wants his ones.” BB testified that she understood that to mean that JT wanted to fight AE. JT “smacked” AE’s face, and Davila lifted his shirt and revealed a handgun, which Hudson described to police as a “19X Slide with the black Gen 5 bottom.” One witness testified that Davila merely displayed his handgun; others testified that Davila pulled the gun from his waistband and pointed it at or between members of the group. In addition to displaying his handgun, Davila told AE “don’t try anything.”

Hudson told the police that after JT “smacked” AE, BB pulled out a cell phone and called AE and EE’s stepfather, Keith Dawson.³ Hudson said that during the ensuing call, he heard BB say that “somebody just smacked [AE],” that one of the boys with the person who did it is Hudson, and that Dawson should “hurry up and get here.” Hudson also heard

² Hudson did not testify at trial. But his statement to the police was admitted as evidence against him. All references to Hudson’s statements regarding the underlying crime are obtained from his post-arrest statement to the police.

³ BB testified that EE made the call and handed BB the phone.

BB say that she was going to send the address to Dawson. Hudson was not happy to hear BB mention his name. He told the police, “I’m like who are you talking to” and “why you just saying my name on the phone that’s not my business.” Hudson also told the police, “I knew something was finna happen, I knew it. Right when she called, right when that girl [BB] got on the phone. Right when she got on the phone [and] was like yes they’re here, yes you know one of them, [Hudson].” Hudson said that at that point, he “knew something” bad was going to happen.

As AE and his group walked to their vehicle, a Kia, Hudson told AE, “I better not see no windows come down or I’m flipping your car.” AE understood this to mean that if the windows were rolled down, Hudson would be “shooting up” the car.

After AE and his group drove away in the Kia, EE spoke with his stepfather Dawson on the phone. Dawson was upset that his stepsons had gone to the party. Dawson drove a white Chevy Tahoe to meet the group. Dawson wanted to confront Hudson, JT, and Davila because “this wasn’t the first incident,” and he wanted to prevent “future violence.” Dawson drove to the party in his Tahoe, and his stepsons and their group followed behind Dawson’s Tahoe in the Kia. The evidence indicates that Dawson was alone in the Tahoe.

When Dawson pulled up to the party location, Hudson and Davila were standing by the red car, which was parked in line with JT’s Dodge Durango. Hudson’s girlfriend was in the red car. Hudson described his reaction to the Tahoe’s arrival as follows:

I see this white . . . Tahoe truck whatever I seen that car and I’m like oh, I seen this car before . . . , like I said . . . a lot of people wanna kill me so . . . I’m like alright I seen this car before and then . . . I’m just trying to think about where . . . did I see this car . . . then [Davila] told me he’s like brother watch

the car bro. They driving slow as hell. And I'm like yeah they is kind of driving slow.

Hudson said that he walked to the front of the red car and sat on its hood, on the front passenger side, and that Davila was standing by the back passenger door. As he watched the Tahoe, he saw a gun pointed out of its window and toward the area where he and Davila were parked.

BB heard Dawson yell toward Hudson, JT, and Davila, "stop messing with my kids." AE, who was driving the Kia, testified that "[Dawson] slowed down, so I hit my brake as I seen him slowing down. And then next thing I heard were just gunshots."

Hudson told police that he heard two initial shots. At that time, Hudson said that he was "pretty much in like the passenger window" of the red car, telling his girlfriend to duck. Hudson continued: "[L]ike[,] I'm not f-cking [F]lash [Gordon] so the first shot I hear . . . , I was in the motion of ducking but . . . the second shot that's when I really ducked." Hudson got down on the ground and took cover behind the red car. Then, he made his way to his gun.

A forensic scientist testified that, based on bullet impacts, at least four shots were fired from inside the Tahoe. Dawson told police that he fired "like 7" shots. A police officer testified that Dawson's gun had "an eight-round magazine capacity with one round being in the chamber," such that "a total of nine rounds could be held by [the] firearm." When the officer recovered the gun, there was "an unspent round in the barrel of the gun, and the magazine was empty." After Dawson's second shot, Hudson retrieved his gun from under the red car and fired a series of five "controlled" shots at the Tahoe. Then, he

stopped shooting. There is no evidence that additional shots were fired from the Tahoe after Hudson's five shots. At that point, Hudson said that Davila began "open firing" at the Tahoe. Hudson resumed shooting, "open firing" as he described it, and shot "probably like 13 more" times. Hudson was lying on the ground, and Davila was standing over him, as they fired at the Tahoe.

Hudson's statement to the police was inconsistent regarding how many shots he fired in total. On the one hand, he told police that he fired five controlled shots, stopped, and then "let off probably like 13 more," which would indicate a total of 18 shots. However, he also unequivocally told police, "I know how many times I shot" and "I shot 19 times."⁴

Hudson and Davila left the scene together in the red car, along with three girls. They went to Hudson's home, where they disposed of the two guns that they had used in the shooting. Then, Hudson and Davila went their separate ways.

Hudson left his home through the back door and started walking down the train tracks alone because he had "just seen a million f-cking cop cars" and he "knew something was bad." Hudson told the police he was near his house when the police arrived. He watched them surround his house, continued to watch them "[d]amn near" all night, and heard them call out his name.

At trial, witness MG testified that she was leaving the graduation party when she saw the white Tahoe slowly drive up the street and begin firing. MG testified that she saw

⁴ Whether Hudson fired an additional 13 or 14 shots after he fired his initial five shots does not change our analysis.

“flashes” coming from the Tahoe and saw Hudson return fire “a couple seconds” after the initial shots. MG estimated there were between 20-25 people outside the party when the shooting began, and she testified that although “everyone” took off running, Hudson stayed and returned fire.

BB testified that she heard two series of gunshots separated by a distinct period of silence. She testified that after the shots, the Kia and Tahoe took off. AE similarly testified that after he heard gunshots, “[Dawson] sped off[,] and I sped off following him.” MM, who lives down the street, recalled seeing the two vehicles speeding past his house at a rate faster than he had ever seen on the block. MM testified that the vehicles returned “a couple of minutes” later and were traveling at approximately 60 miles per hour.

BB testified that gunshots struck the Kia as it sped away. BB heard bullets hit the car and shatter the Kia’s rear window, sending glass “flying everywhere.” DJ, who was in the Kia, testified that he could hear gunshots coming from behind and felt one bullet hit the seat behind him. BB and DJ then heard EE say he had been hit, and BB heard him say that he couldn’t breathe. One of Davila’s bullets had penetrated the Kia and struck EE, causing his death.

After the shooting, the Tahoe and Kia sped down the street and arrived at a dead end. The teenagers were screaming that EE had been shot. They placed EE in the Tahoe, and Dawson drove him to a hospital, where he was pronounced dead.

Hudson’s statement to the police corroborated BB’s testimony that there were two distinct periods of gunfire. Hudson told the police that he initially fired five shots and that he then “hid back behind the car and [Davila] started shooting and I looked back and the

car, the car [was] going slower and I started shooting again . . . probably when I let off probably like 13 more.”

Hudson told police, “[W]hen I start hiding behind the car[,] I heard the [Tahoe] like skirt off[,] and then I heard it stop[,] and then when I heard it stop I, I took my gun out and I started open firing at the . . . white truck. [Davila] was open firing too. We was both shooting at the truck.” Hudson said that Davila kept shooting until the Tahoe was “all the way down the road.” Hudson described Davila’s actions to the police as follows: “this dumb-ss . . . still shooting when [Dawson] . . . like down here like bra. Who the f-ck you think you is? Like . . . American sniper or something like, just let it go bro.” Hudson described Davila’s shots as “consistent as hell.” Hudson clarified that he “let off five shots right away” and then hid behind the red car. At that point, Davila started shooting, and Hudson joined him. Again, there is no evidence that Dawson fired any shots from the Tahoe after Hudson’s first five shots.

Hudson claimed that he never saw the Kia: “[T]here’s no Kia right there ‘cause I didn’t see no f-cking kid I just seen a white truck.” Hudson admitted that he may not have noticed the Kia because he “was really just trying to . . . hit the Tahoe.” The prosecution noted that the road in front of the party location is curved, with a pronounced turn starting at the edge of the property. The prosecution argued that the Kia and the Tahoe must have been a good distance down the road from Hudson and Davila as they shot because bullet holes were found only in the rear of the Kia and Tahoe. There were no bullet defects on the sides of those vehicles.

Bullet casings recovered at the scene indicated that Hudson and Davila fired a total of 40 bullets. Although the bullets were directed at the Tahoe, only two hit the Tahoe. Four struck the Kia. Others struck nearby homes. GC, who lives approximately eight houses away from the scene of the graduation party, testified that three bullets hit his house. He heard what sounded like fireworks and the sound of something hitting his house like he had never heard before. Another neighbor who lived down the street, ZF, was nearly struck by a bullet that entered her bedroom as she lay in bed. As to the length of the period of gunfire, some witnesses testified that it happened in mere seconds. Another testified that it lasted more than one minute.

After the shooting, Hudson did not approach police to explain that he acted in self-defense. Instead, Hudson stayed outside while police surrounded his house and called out his name. Later, he and some family members drove to Florida in a rented car. He was arrested over a week later when he returned to Minnesota. In his statement to the police, Hudson said, “I, it was wrong, should have left it alone, shouldn’t a shot.” Hudson expressed remorse that EE was killed. Hudson said that he wished “it wouldn’t a been him.” Hudson also said, “I wish . . . the dad would have died. . . . I wish he would have passed away.” Hudson claimed that he “was really just trying to hit . . . the Tahoe.”

Hudson’s theory at trial was that he acted in self-defense, and the district court instructed the jury accordingly. The jury rejected Hudson’s self-defense claim, finding him guilty of all charges. The district court entered judgments of conviction for aiding and abetting second-degree intentional murder and two counts of second-degree assault with a

dangerous weapon. The court sentenced Hudson to serve consecutive prison terms of 375 months, 36 months, and 36 months for the offenses.

Hudson appeals.

DECISION

I.

Hudson contends that the state failed to disprove his self-defense claim beyond a reasonable doubt.

Minn. Stat. § 609.06, subd. 1(3) (2020), establishes a right to self-defense. *See State v. Devens*, 852 N.W.2d 255, 258 (Minn. 2014) (analyzing the 2012 statute). “In Minnesota, a person may act in self-defense if he or she reasonably believes that force is necessary and uses only the level of force reasonably necessary to prevent the bodily harm feared.” *Id.*; *see* Minn. Stat. § 609.06, subd. 1(3) (stating that “reasonable force may be used upon or toward the person of another without the other’s consent . . . when used by any person in resisting or aiding another to resist an offense against the person”).

A self-defense claim has four elements:

- (1) the absence of aggression or provocation on the part of the defendant;
- (2) the defendant’s actual and honest belief that he or she was in imminent danger of death or great bodily harm;
- (3) the existence of reasonable grounds for that belief; and
- (4) the absence of a reasonable possibility of retreat to avoid the danger.

State v. Basting, 572 N.W.2d 281, 285 (Minn. 1997). In addition, the “degree of force used in self-defense must not exceed that which appears to be necessary to a reasonable person under similar circumstances.” *Id.* at 286.

“A defendant has the burden of going forward with evidence to support a claim of self-defense.” *Id.* “Once it is raised, the state has the burden of disproving one or more of these elements beyond a reasonable doubt.” *Id.* An argument that the state failed to prove, beyond a reasonable doubt, that a defendant did not act in self-defense is a challenge to the sufficiency of the evidence supporting a guilty verdict. *See State v. McKissic*, 415 N.W.2d 341, 344 (Minn. App. 1987).

The standard of review applicable to a sufficiency challenge depends on whether the guilty verdict was based on direct or circumstantial evidence. *State v. Harris*, 895 N.W.2d 592, 598-601 (Minn. 2017). When reviewing a sufficiency challenge based on direct evidence, our review “is limited to a [close] analysis of 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.” *See State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989). We assume that the fact-finder disbelieved any testimony contrary to the verdict. *State v. Blevins*, 10 N.W.3d 29, 39 (Minn. 2024). And we defer to the fact-finder’s credibility determinations. *See State v. Buchanan*, 431 N.W.2d 542, 547 (Minn. 1988) (“The jury determines the credibility and weight to be given the testimony of witnesses.”). We will not disturb the jury’s guilty verdict if, acting with due regard for the presumption of innocence and the requirement of proof beyond a reasonable doubt, the jury could have reasonably concluded that the defendant was guilty of the charged offense. *Bernhardt v. State*, 684 N.W.2d 465, 476-77 (Minn. 2004).

An appeal of conviction based on circumstantial evidence is subject to a heightened standard of review. *State v. Salyers*, 858 N.W.2d 156, 160 (Minn. 2015). But we do not apply that heightened standard if a guilty verdict was based on direct evidence. *Id.* at 161.

Hudson argues that “[e]very facet of self-defense was proven by the evidence in this case” and that the state “did not disprove any of those elements.” Because direct evidence sufficiently establishes that Hudson’s use of force was unreasonable, we reject his sufficiency challenge without discussing the other elements of his self-defense claim.

Reasonable Use of Force

“[T]he concept of reasonableness is a critical part of self-defense.” *State v. Glowacki*, 630 N.W.2d 392, 399 (Minn. 2001). “To find that a defendant acted in self-defense, a jury must . . . find that the defendant reasonably believed that force was necessary and that the defendant used only the level of force reasonably necessary to prevent the harm feared.” *Id.*

“The degree of force used in self-defense must not exceed that which appears to be necessary to a reasonable person under similar circumstances.” *Basting*, 572 N.W.2d at 286. “It is a general rule that the legal excuse of self-defense is available only to those who act honestly and in good faith.” *State v. Johnson*, 152 N.W.2d 529, 532 (Minn. 1967). “[E]ven absent a duty to retreat, the key inquiry will still be into the reasonableness of the use of force and the level of force under the specific circumstances of each case.” *Glowacki*, 630 N.W.2d at 402.

Hudson argues that he used a reasonable degree of force because he had “just been shot at repeatedly, without warning” in a drive-by shooting and he was attempting to “ward

off” the suspect vehicle. Hudson relies on several cases in which police officers fired multiple shots in response to a threat. He argues that “it is entirely reasonable to gauge the reasonableness of [his] actions against the actions police would take in similar circumstances to avoid great bodily harm or death.” Hudson asks why a citizen would not be entitled to use the same amount of force that a licensed police officer may use.

Hudson’s argument is not persuasive because a police officer’s use of deadly force in the line of duty is assessed under a reasonable-peace-officer standard. Minn. Stat. § 609.066, subd. 1a(3) (2020) (“[T]he decision by a peace officer to use deadly force shall be evaluated from the perspective of a reasonable officer in the same situation”); *see* Minn. Stat. § 609.06 (2020) (generally distinguishing between a public officer executing any duty imposed on the public officer and others). Because the statutes governing the use of force establish standards that apply specifically to peace officers—as opposed to a civilian—we do not compare Hudson’s actions to those of a licensed peace officer when assessing whether his use of force was reasonable.

As to the relevant circumstances of this case, Dawson told police that he fired “like 7” shots. Hudson told the police that after Dawson fired two shots, he took cover behind the red car. Next, he retrieved his gun and fired five controlled shots in response. Then, Hudson stopped shooting and hid back behind the red car. At oral argument to this court, Hudson acknowledged that it “isn’t clearly established” that any shots were fired from the Tahoe after Hudson’s first five shots. Nonetheless, Davila began shooting after Hudson’s five shots. Hudson described Davila as “open firing” at the Tahoe. Hudson told police he

resumed shooting after Davila opened fire, and described his own shooting as “open firing” at the Tahoe “like 13 more” times as it drove away.

As the shooting occurred, approximately 20 to 25 party guests ran from the scene to escape the gunfire. And the shooting occurred in a residential neighborhood, where two homes were struck by bullets. Finally, the Tahoe was driving away when Davila and Hudson opened fire, as shown by the fact that all of the bullet damage to the Tahoe and Kia was in the rear area of the vehicles.

Given the circumstances, the evidence was sufficient for the jury to conclude that Hudson used an unreasonable amount of force in response to Dawson’s attack. We therefore will not disturb the jury’s guilty verdicts.

II.

Hudson alternatively contends that the jury’s finding of guilt for aiding and abetting second-degree intentional murder was not supported by sufficient evidence of intent.

Minnesota’s aiding and abetting statute, Minn. Stat. § 609.05, subd. 1 (2020), provides that “[a] person is criminally liable for a crime committed by another if the person intentionally aids, advises, hires, counsels, or conspires with or otherwise procures the other to commit the crime.” To obtain a conviction for aiding and abetting second-degree intentional murder, the state had to prove (1) that Davila committed second-degree intentional murder, (2) that Hudson knew that Davila was going to commit murder, and (3) that Hudson intentionally aided Davila to commit that crime. *See State v. Isaac*, 9 N.W.3d 812, 815 (Minn. 2024) (describing elements).

The elements of second-degree intentional murder include the death of a human being, caused by another person, with intent to effect the death of that person or another, but without premeditation. Minn. Stat. § 609.19, subd. 1(1) (2020). “With intent to” means “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) (2020).

Hudson argues that the state did not present sufficient evidence that Davila intended to cause a death or that Hudson knew that Davila intended to do so. “Intent is a specific element of section 609.05” *State v. Charlton*, 338 N.W.2d 26, 30 (Minn. 1983). “The intent element of a crime, because it involves a state of mind, is generally proved circumstantially” *State v. Davis*, 656 N.W.2d 900, 905 (Minn. App. 2003), *rev. denied* (Minn. May 20, 2003). “[I]ntent may be determined from outward manifestations,” and “it may be inferred that a person intends the natural consequences of his actions.” *State v. Lundstrom*, 171 N.W.2d 718, 724-25 (Minn. 1969). Thus, a defendant’s statements regarding his intent are not binding on the jury if his acts demonstrated a contrary intent. *Id.*

Because the state relied on circumstantial evidence to prove Hudson’s knowledge and intent, “we apply a heightened two-step standard of review.” *Isaac*, 9 N.W.3d at 815. “Under the first step, we identify the circumstances proved.” *Id.* (quotation omitted). “In doing so, we winnow down the evidence presented at trial by resolving all questions of fact in favor of the fact-finder’s verdict.” *Id.* (quotation omitted). “This step preserves the fact-finder’s credibility findings and recognizes that the fact-finder is in a unique position to determine the credibility of the witnesses and weigh the evidence before it.” *Id.* (quotations

omitted). “[W]here circumstances are uncontroverted, come from a state witness, and are not necessarily contradictory to the verdict, they constitute circumstances proved.” *State v. German*, 929 N.W.2d 466, 473 (Minn. App. 2019).

The state proved the following circumstances at trial.

- Hudson and Davila brought loaded semi-automatic handguns to a high-school graduation party.
- Hudson, Davila, and JT approached AE at the party.
- JT challenged AE to a fight, and Davila showed AE his gun.
- AE told JT he was not going to fight him and told Hudson to “get your friends.”
- BB, who was with AE’s group, asked Hudson to “stop what’s going on.”
- Hudson replied, “if my mans wants his ones, he wants his ones,” indicating that JT wanted to fight AE.
- JT “smacked” AE’s face.
- BB spoke to Dawson on a cell phone from the party, told him what had happened, and that Hudson was present.
- Hudson suspected something bad might happen after he heard BB report that AE had been smacked, refer to Hudson by name, and indicate that she would send “the address.”
- As AE and his group were leaving the party, Hudson told AE, “I better not see no windows come down or I’m flipping your car.” AE understood this to mean that Hudson would be “shooting up” the car if the windows were rolled down.

- Dawson was upset that his stepsons had attended the party.
- Dawson announced his intent to go to the party because “this wasn’t the first incident” and he wanted to stop “future violence.”
- Dawson drove to the party, in a Tahoe, and AE and his group followed behind the Tahoe in the Kia.
- As the two vehicles approached the party, Hudson and Davila were standing near the red car.
- The red car was parked in line with JT’s Durango.
- Hudson saw the Tahoe approach.
- The Kia was following behind the Tahoe.
- When the Tahoe pulled up near Hudson, Dawson yelled “stop messing with my kids.”
- Dawson then fired shots from inside the Tahoe.
- Dawson told police that he fired “like 7” shots.
- Dawson fired toward the Durango, which was next to the red car where Hudson and Davila were standing.
- The Tahoe sped off, with the Kia trailing close behind.
- Most of the party guests ran from the gunshots, but Hudson took cover behind the red car.
- Hudson grabbed his gun from under the red car and returned fire at the Tahoe “within a couple seconds.”

- Hudson fired a series of five “controlled” shots at the Tahoe and then stopped shooting.
- After those five shots, Hudson once again took cover behind the red car.
- No shots were fired from the Tahoe after Hudson’s five controlled shots.
- After Hudson stopped shooting, Davila opened fire on the Tahoe, and Hudson joined him, “open firing” on the Tahoe.
- Together Davila and Hudson fired 40 shots at the Tahoe. Hudson fired 19 of those shots.
- As they shot at the Tahoe, Hudson was lying on the ground and Davila was standing above him.
- Davila kept shooting until the Tahoe was “all the way down the road.”
- In his statement to police, Hudson compared Davila’s shooting to “American sniper,” noting that Davila kept firing even though the Tahoe was “all the way down the road” and he said that Davila’s shots were “consistent as hell.”
- The shots from Hudson and Davila struck the rear-ends of the Kia and the Tahoe.
- Shots hit two nearby homes.
- A bullet from Davila’s gun penetrated the back of the Kia and struck EE, causing his death.
- The exchange of gunfire lasted more than one minute.
- After the shooting, Hudson left the scene with Davila in the red car.

- The gun that Hudson used belonged to Hudson, and the gun that Davila used belonged to Davila.
- Hudson and Davila went to Hudson's house after the shooting, left both of the guns there, and then went their separate ways.
- Hudson spent nearly the entire night hiding outside near his house and watched as a "million cop cars" surrounded it.
- Hudson did not approach the police to claim that he shot in self-defense or respond as police called his name.
- Hudson fled to Florida after the shooting in a rented vehicle.
- After his arrest, Hudson gave a statement and claimed that he "was really just trying to hit . . . the Tahoe."
- Hudson told police that "it was wrong," that he "should have left it alone," and that he "shouldn't a shot."
- Hudson also told police, "I wish . . . [Dawson] would have died. . . . I wish he would have passed away."

Having identified the circumstances proved, we apply the second step of circumstantial-evidence review. At this step, we "consider whether the reasonable inferences that can be drawn from the circumstances proved, when they are viewed as a whole and not as discrete isolated facts, are consistent with the hypothesis that the accused is guilty and inconsistent with a hypothesis the accused is not guilty." *Isaac*, 9 N.W.3d at 817-18 (quotation omitted). "If the circumstances proved when viewed as a whole[]

support a reasonable inference that is inconsistent with guilt, [then] the evidence is not sufficient to support the conviction[,] and we must reverse.” *Id.* at 818 (quotation omitted). “A defendant must point to evidence in the record that is consistent with a rational theory other than guilt.” *Id.* (quotation omitted).

Hudson told police that after Dawson shot in his direction and he returned fire with five controlled shots, he stopped firing and hid behind the red car. Then, Davila opened fire on the Tahoe. Hudson then resumed shooting and opened fire with Davila, and they shot another 35 rounds at the Tahoe as it drove away. Hudson told police that Davila continued to shoot at the Tahoe as it drove “all the way down the road.” These circumstances reasonably indicate that Davila intended to kill the shooter in the Tahoe, that Hudson had knowledge of Davila’s intent, and that Hudson intended his simultaneous shots to aid Davila. That conclusion is buttressed by Hudson’s statement that he wished Dawson “would have died.”

In addition, Hudson left the scene with Davila, in the red car. Hudson and Davila went to Hudson’s house, where Hudson disposed of both his gun and Davila’s gun. Those circumstances show “a close association with the principal offender before and after the crime, a lack of objection or surprise under the circumstances, and flight from the scene of the crime with the principal offender,” which are factors from which the requisite mental state for a conviction of aiding and abetting can be inferred. *Isaac*, 9 N.W.3d at 815 (quotation omitted).

Hudson argues that the circumstances proved also support a reasonable inference of innocence. Specifically, he asserts that the circumstances show that he was merely trying

to ward off Dawson's attack. Hudson notes that all but one of his and Davila's shots struck "the lower parts of the vehicles," that the shooting lasted "mere seconds," and that Davila and Hudson's shooting was "in rapid response to being shot at 7-8 times." He asserts that he and Davila "were reacting immediately to get [Dawson] to stop shooting at them," that "they were firing wildly, given that fewer than a third of their shots actually hit the vehicles," that "they were consistently aiming low since that is where all but one of their shots struck the vehicle," and that "their intent was to ward off the attacking vehicle, to make sure it drove away."

At oral argument to this court, Hudson's attorney acknowledged that it "isn't clearly established" that any shots were fired from the Tahoe after Hudson returned five controlled shots. But counsel asserted that it would be "absurd" to assume "that there was no way any more shots could come from the Tahoe" as it drove away and that the threat from the Tahoe therefore continued as it drove away. That assertion is unavailing because when determining the circumstances proved, we view the evidence in the light most favorable to the verdict. In that light, there is no evidence that shots were fired from the Tahoe as it drove away after Hudson's first five shots. Thus, Dawson's attack ended when he drove away after Hudson's first five shots. At that point, there was no attack to ward off.

Hudson similarly fails to view the evidence in the light most favorable to the verdict when it comes to his assertion that all of the shots were fired in mere seconds, which could suggest that Davila did not have time to form the intent to kill. Hudson acknowledges that some of the state's witnesses testified that the entire shooting lasted one minute or more, but he describes that testimony as "patently absurd." Viewing the record in the light most

favorable to the verdict—as we must—we are bound to conclude that the shooting lasted one minute or more.

In short, Hudson’s hypothesis of innocence is inconsistent with the circumstances proved and unsupported by the record. It is therefore unreasonable. *See Isaac*, 9 N.W.3d at 818 (“A defendant must point to evidence in the record that is consistent with a rational theory other than guilt.” (quotation omitted)).

Moreover, Hudson’s hypothesis of innocence is not supported by the caselaw on which he relies. For example, Hudson argues that his conduct is similar to that of the defendant in *Johnson*, 152 N.W.2d at 529. Johnson was convicted of second-degree manslaughter and challenged the sufficiency of the evidence on appeal. *Id.* at 529-30. In that case, a stranger threatened Johnson with a pitchfork, and “[w]hen it appeared to [Johnson] that [the stranger] was not going to stop, [Johnson] fired several shots into the ground in front of” the stranger. 152 N.W.2d at 530. A bullet ricocheted from the ground, hit the stranger, and killed him. *Id.* at 532. The supreme court described the circumstances as “the unfortunate meeting of two men who had never before met, with no reason to do each other harm and with little, if any, provocation which would be expected to give rise to the sudden and inexplicable consequences that followed.” *Id.* at 533.

In addition, the supreme court noted that “[t]he jury, viewing the senseless and unnecessary consequences of this fatal meeting, were reluctant to find that there was conduct of a criminal nature on the part” of Johnson and “volunteered the suggestion that the court should be lenient in its sentence.” *Id.* The supreme court stated that the jury’s

“recommendation of leniency indicated doubt as to the culpability of [Johnson’s] conduct” and ultimately granted Johnson a new trial. *Id.*

This case is nothing like *Johnson*. It does not involve “the unfortunate meeting of two men who had never before met, with no reason to do each other harm and with little, if any, provocation which would be expected to give rise to the sudden and inexplicable consequences that followed.” *Id.* In addition, the *Johnson* defendant fired a few shots at the ground in front of the stranger, in a rural area, and there is no indication that a large group of uninvolved people were nearby. *See id.* at 530-31. Here, Hudson and Davila fired 40 shots at an occupied vehicle as it drove down a suburban residential street, while approximately 20 to 25 party guests ran from the gunfire. And they continued to fire at the Tahoe as it drove away. Finally, unlike the circumstances in *Johnson*, nothing in the record indicates that the jury expressed any doubt regarding Hudson’s guilt.

In sum, the circumstances proved, viewed as a whole, support a reasonable inference of guilt and are inconsistent with Hudson’s hypothesis of innocence. We therefore do not disturb the jury’s guilty verdict on the charge of aiding and abetting second-degree intentional murder.

Affirmed.