STATE OF MINNESOTA
IN COURT OF APPEALS
A12-0914

State of Minnesota,
Respondent,

vs.

John Donald Hewitt, Jr.,
Appellant.

Filed April 1, 2013
Affirmed
Cleary, Judge

Hennepin County District Court
File No. 27-CR-11-30877

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

Michael O. Freeman, Hennepin County Attorney, Michael Richardson, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Lydia Villalva Lijó, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Hooten, Presiding Judge; Cleary, Judge; and Smith, Judge.

U N P U B L I S H E D O P I N I O N

CLEARY, Judge

Appellant challenges his conviction of felony domestic assault under Minn. Stat. § 609.2242, subd. 4 (2010), arguing that the district court's finding that he threw a knife

at the victim was clearly erroneous and that the evidence was insufficient to support his conviction because the state failed to prove that he intended to cause fear of imminent bodily harm or death. We affirm.

FACTS

In August 2011, appellant John Hewitt, Jr. was visiting the apartment of N.V., with whom he had maintained an on-and-off relationship for six years. Appellant became upset with N.V., and the two had an argument. Then, while N.V. was making breakfast and her young son J.V. was eating, appellant began throwing a hunting knife at the walls in the apartment. After J.V. finished eating breakfast, appellant did not say anything but continued to throw the knife at the walls. At some point after breakfast, N.V. took J.V. into his bedroom and sat on the bed with him. N.V. maintains that appellant threw the knife at her while she was sitting on the bed in J.V.'s room. Appellant maintains that he was only throwing the knife at the walls and that he was doing it to channel his anger and frustration.

N.V. believed that she was having an anxiety attack so she called her mother, who lived in the same apartment building, to take her to Ridgeview Medical Center. When N.V. and her mother were outside the apartment building, appellant was on the deck of the apartment and yelled at N.V. to "[d]ie b---h." After N.V. left, appellant ransacked the apartment, leaving it in disarray.

West Hennepin Public Safety officers responded to Ridgeview Medical Center on a call of possible domestic abuse. The officers interviewed N.V., who explained what had occurred at the apartment. N.V. told the officers that she was not fearful of appellant

when he was throwing the knife, but admitted that she went to Ridgeview Medical Center immediately after the incident because she was having an anxiety attack.

Appellant was charged with felony domestic assault under Minn. Stat. § 609.2242, subd. 4. A bench trial was held in January 2012. At trial, N.V. testified that, when appellant threw the knife at her when she was sitting on the bed in J.V.'s room, the knife "hit the wall but he was like throwing it at me but it hit a different wall." She also testified that appellant told her she is a bad mother and should kill herself. N.V. admitted that, when she spoke with the officers at Ridgeview Medical Center, she told them that she was not scared when appellant was throwing the knife. She explained that she did not like to tell people that she was afraid of appellant, but that she was actually afraid of appellant during the incident. She also testified that during the incident she was having a "really bad anxiety attack," was crying, and could not stay calm. Appellant testified at trial that he did not intend to frighten N.V. when he threw the knife at the walls and that throwing a knife was one way that he controlled his anger.

The district court found appellant guilty of felony domestic assault. The court noted in its findings of fact that it found N.V.'s testimony that appellant threw the knife at her to be credible. The court further noted that it did not find appellant's exculpatory testimony—that he did not intend to cause N.V. to fear imminent bodily harm or death—to be credible. This appeal follows.

D E C I S I O N

I

Appellant first argues that the district court's factual finding that he threw the knife at N.V. is not supported by the evidence.

We review the district court's factual finding for clear error. *State v. Mogler*, 719 N.W.2d 201, 209 (Minn. App. 2006) (citing *State v. Buchanan*, 431 N.W.2d 542, 552 (Minn. 1988)). "Findings of fact are not clearly erroneous if there is reasonable evidence to support them." *State v. Colvin*, 645 N.W.2d 449, 453 (Minn. 2002). "Findings of fact are clearly erroneous only if the reviewing court is left with the definite and firm conviction that a mistake has been made." *State v. Gomez*, 721 N.W.2d 871, 883 (Minn. 2006) (quotation omitted). "We defer to the trier of fact on credibility assessments and reverse only if the trier has committed clear error." *State v. Doren*, 654 N.W.2d 137, 141 (Minn. App. 2002), *review denied* (Minn. Feb. 26, 2003).

During the trial, N.V. testified:

> [Appellant] started packing his stuff and he had a long – he had a hunting knife. I don't remember where he got it but he was throwing it at the walls and he would throw it at the walls and then would sto[p.] . . . And me and my son were sitting on the bed, in my son's room, and it is right by the doorway and he was packing a suitcase and that is when he took the hunting knife and he threw it and it hit the wall but he was like throwing it at me but it hit a different wall.

Shortly after making this statement, N.V. confirmed that appellant threw the knife at her:

> N.V.: . . . But when I was sitting on the bed, and he threw it, I mean, he just – he looked crazy like he was so pissed off about something. I don't even know what it really was.
> PROSECUTOR: That was the point where you were sitting on the bed in your son's room?

N.V.: Yeah, with my son.
PROSECUTOR: That was the point where you said he threw the knife at you?
N.V.: Yeah and hit the other wall – it hit a different wall.
PROSECUTOR: One of the hallway walls?
N.V.: Yes.

N.V. explicitly stated that appellant was throwing the knife at her and answered questions regarding whether appellant threw the knife at her in the affirmative. The district court had the opportunity to observe N.V. when she testified, and the court noted in its order that it found N.V.'s testimony to be credible. Because we defer to the district court's credibility determinations, and N.V. testified that appellant threw the knife at her, there was reasonable evidence to support the district court's finding.

II

Appellant next argues that there was insufficient evidence to support his conviction because the state failed to prove that he intended to cause fear of imminent bodily harm or death, as required under Minn. Stat. § 609.2242, subds. 1, 4 (2010).

When reviewing a challenge to the sufficiency of the evidence, the same standard of review applies to bench trials, in which the district court is the trier of fact, as to jury trials. *Davis v. State*, 595 N.W.2d 520, 525 (Minn. 1999). When reviewing a claim of insufficient evidence, we conduct a painstaking analysis of the record to determine whether the evidence, when viewed in the light most favorable to the conviction, was sufficient to allow the trier of fact to find the defendant guilty. *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989). We must assume that the trier of fact "believed the state's witnesses and disbelieved any evidence to the contrary." *State v. Moore*, 438

N.W.2d 101, 108 (Minn. 1989). This is especially true when resolution of the matter depends on conflicting testimony. *State v. Pieschke*, 295 N.W.2d 580, 584 (Minn. 1980).

A person commits felony domestic assault if he commits an act against a family or household member "with intent to cause fear . . . of immediate bodily harm or death" or "intentionally inflicts or attempts to inflict bodily harm," and the act occurs "within ten years of the first of any combination of two or more previous qualified domestic violence-related offense convictions." Minn. Stat. § 609.2242, subds. 1, 4. At trial, appellant stipulated that he had the previous qualified domestic violence-related offense convictions required by the statute.

"Direct evidence as to the fact of intent is usually impossible . . . ." *State v. Bouwman*, 328 N.W.2d 703, 705 (Minn. 1982). "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 trier of fact may infer that a defendant "intended the natural and probable consequences of his actions." *State v. Hough*, 585 N.W.2d 393, 396 (Minn. 1998).

"Convictions based on circumstantial evidence warrant particular scrutiny." *State v. Scharmer*, 501 N.W.2d 620, 621 (Minn. 1993). Circumstantial evidence must do more than give rise to suspicion of guilt; it must point unerringly to the defendant's guilt. *Id*. at 622. The circumstantial evidence must form a complete chain that, in view of the evidence as a whole, leads so directly to the guilt of the defendant as to exclude beyond a reasonable doubt any reasonable inference other than guilt. *State v. Jones*, 516 N.W.2d

545, 549 (Minn. 1994). In applying this standard, the reviewing court does not examine all of the evidence in the record, and the inferences to be drawn from all the evidence, but only the inferences that can be drawn from the circumstances proved. *State v. Andersen*, 784 N.W.2d 320, 329 (Minn. 2010).

When viewed in the light most favorable to the conviction, the evidence here demonstrates that appellant was extremely angry at N.V., threw a knife at the walls in N.V.'s apartment, threw a knife at N.V., told N.V. that she should kill herself, and yelled at her "[d]ie b---h." This court has recognized that pointing a weapon at another person demonstrates the requisite intent to cause fear of imminent bodily harm or death. *See State v. Kastner*, 429 N.W.2d 274, 275–76 (Minn. App. 1988) (holding that the defendant displayed the requisite intent by pulling scissors and a screwdriver out of her pocket, pointing them at the victim, and assuming an offensive position), *review denied* (Minn. Nov. 16, 1988); *State v. Soine*, 348 N.W.2d 824, 827 (Minn. App. 1984) (holding that the defendant had the requisite intent when he brandished a knife within striking distance of the victim), *review denied* (Minn. Sept. 12, 1984).

Appellant here not only brandished a knife within striking distance of N.V., but the district court found that he actually threw the knife at her. A natural and probable consequence of throwing a knife at someone is that the person will fear imminent bodily harm or death. Appellant also told N.V. that she should kill herself and yelled at her to "[d]ie b---h." The evidence was sufficient for the district court to reasonably conclude that appellant intended to cause N.V. to fear imminent bodily harm or death.

Appellant also argues that the circumstances proved support a reasonable theory that appellant's intention was not to cause N.V. to fear imminent bodily harm or death. Appellant's argument ignores the district court's finding of fact that appellant threw the knife at N.V. and ignores that the district court did not find appellant's exculpatory testimony regarding his lack of intent to be credible. The circumstances proved do not support a reasonable theory that appellant did not have the requisite intent to cause fear of imminent bodily harm or death under Minn. Stat. § 609.2242, subds. 1, 4.

Affirmed.