STATE OF MINNESOTA
IN COURT OF APPEALS
A16-1144

State of Minnesota,
Respondent,

vs.

Wardell Andrewin,
Appellant.

Filed March 6, 2017
Affirmed
Connolly, Judge

Hennepin County District Court
File No. 27-CR-14-25540

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

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

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

Considered and decided by Connolly, Presiding Judge; Larkin, Judge; and Reyes, Judge.

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

CONNOLLY, Judge

Appellant challenges his conviction of two counts of second-degree assault, arguing that the state did not prove the intent element of the crime and that the district court erred in rejecting appellant's self-defense argument. Because we see proof of intent and no error in the district court's decision, we affirm.

FACTS

William Mims Sr. (the father) and his wife lived in a boarding house; their son, William Mims Jr. (the son) often stayed with them. Appellant Wardell Andrewin lived in the same boarding house.

On the morning of August 19, 2014, appellant, thinking that a woman he knew was concealed in the building, yelled that the Mimses should open their apartment door. The Mimses ignored him until the father had to leave the apartment to use the restroom. Appellant then pushed past the father into the apartment.

Appellant was holding a knife, and he accused the Mims family of concealing the woman. The son forced appellant out of the apartment and back into the hallway, where they fought. The son got appellant's knife away from him, and appellant left the building. The son went to work.

That afternoon, the son returned to the boarding house to check on his father. Appellant was outside in his car; he and the son argued, but they but did not fight. While the son was with the father in the apartment, someone knocked on the door and, when they answered the door, told them that a man outside wanted to speak to the son. The son and

the father went outside; the father was not using a cane or walker as he generally did, but was carrying a piece of metal pipe. Because he walked more slowly than the son, the son approached appellant's car first.

The car, with its engine running, was in the street next to some parked cars. As the son walked toward the car, he and appellant began arguing. The father followed and caught up with the son; they both remained on the sidewalk, 10 to 15 feet from appellant's car.

After a few minutes, they turned to return to their apartment. Appellant then drove his car off the road and onto the sidewalk, going towards them. The son jumped on a low wall; the father attempted to jump, but was unsuccessful.

Appellant drove over a small tree and into the father, hitting him at about 20 miles per hour. The collision fractured and dislocated the father's shoulder, fractured his femur, and caused other injuries. Appellant then drove back onto the street and left. The son helped the father back into the house; the police and an ambulance were called.

Later that afternoon, appellant returned to the boarding house. He threatened the son, using language to the effect of "one down, one to go." The police found appellant a few blocks away, and the son identified appellant and his car as the driver and car that had hit the father. Appellant was charged with one count of second-degree assault, dangerous weapon, substantial bodily harm in regard to the father and one count of second-degree assault, dangerous weapon in regard to the son.

After an evaluation, appellant was found competent to stand trial. He waived his right to a jury trial, and following a court trial, was found guilty on both counts. The district court rejected his self-defense argument. His motion for a downward dispositional

departure was denied, and he was sentenced to concurrent terms of 57 months in prison for each offense.

On appeal, appellant argues that his conduct did not meet the "intent" element of second-degree assault, *see* Minn. Stat. § 609.02, subd. 10 (2016), and that the district court erred in not permitting him to go forward with his self-defense argument.

D E C I S I O N

1. Intent

The district court concluded that:

> [Appellant] intended to attempt to inflict or inflict bodily harm upon both the father and the son. [His] intent is evident in his deliberate act of driving up over the curb in his car at the two men; this was not an attempt at retreat. It was mere aggression.
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> . . . .
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> . . . [Appellant's] four-door sedan . . . is wider than a sidewalk. It is clear from the evidence presented (and common sense) [that appellant's] vehicle was going to strike whatever was in its path, and that path included the place where the two men stood. Additionally, [appellant's] continuing threats to the son that day after the fact and [his] volunteered statements regarding the father show his actions conformed to his intent. This was not a retreat. This was not an accident. [Appellant] accomplished exactly what he intended.

Thus, the district court concluded that appellant's acts in driving over the curb and down the sidewalk towards the men and his statement that, after striking the father, he was "one down" and had "one to go" were direct evidence of his intent to inflict bodily harm. "[W]hen a disputed element is sufficiently proven by direct evidence alone, . . . it is the traditional standard, rather than the circumstantial-evidence standard, that governs." *State v. Horst*, 880 N.W.2d 24, 39 (Minn. 2016). The traditional standard limits review to "a

painstaking analysis of the record to determine whether the evidence, when viewed in a light most favorable to the conviction, was sufficient to permit the [factfinder] to reach the verdict which [it] did." *Id.* at 40 (quotation marks omitted). In *Horst*, analogously, an accomplice's statement to witnesses that "I want [the victim] dead" was direct evidence of her intent: "[t]he [factfinder] did not need to draw any inferences about the purpose of her actions." *Id.*

Appellant concedes that the evidence supports the inference that he intended to assault both men, but argues that his conviction must be reversed because there is another reasonable inference: that appellant was in fear of the son, who had fought with him and won that morning. But appellant's argument misstates the facts. He says, "When [appellant] attempted to return to his residence, he was met by both [the father] and [the son,] both of whom were angry and one of whom had a weapon." But appellant was not "met by" the father and the son; he sent a messenger to their apartment saying he wanted to see them. They came outside and walked, remaining on the sidewalk, towards appellant's car; the son was ahead of the father, and he and appellant began another argument. Appellant says that, during this argument, he "became concerned for his safety and decided to flee the scene," but appellant was arguing from a car with the engine running while his opponent was on foot. Had appellant wanted to flee, he would have driven, on the street, away from the son and the father; he would not have driven towards them, off the street onto the sidewalk.

The district court's conclusion that appellant intended to inflict or attempt to inflict harm on the father and the son is supported by the evidence.

2. Self-Defense

A claim of self-defense must include 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 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. Radke, 821 N.W.2d 316, 324 (Minn. 2012) (footnote omitted).

The district court concluded that:

> [Appellant] has not demonstrated he acted in self-defense. . . . [He] returned to the residence and initiated contact with the father and the son. When he and the son engaged in argument, [appellant] did not retreat to avoid the danger even though there were several reasonable possibilities of retreat. The evidence shows [that] neither the father nor the son ever left the sidewalk. [Appellant] could have rolled up his window. He could have driven down [the street they were on], keeping parked cars between himself and the two men. He could have beeped his horn to gain the attention of others that afternoon. He could have also reversed his car a few feet and retreated [to the adjoining street]. The offer of proof simply does not support a claim of self-defense where there were multiple possibilities of reasonable and available methods to retreat.

Appellant offers no support for his position that a driver near or at the intersection of two usable city streets needs to defend himself from a pedestrian by driving onto the sidewalk and knocking down the pedestrian rather than using one of the streets to drive away from the pedestrian.

Appellant intended to assault the father and the son, and the district court did not err in rejecting appellant's self-defense argument.

Affirmed.