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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0213**

State of Minnesota,
Respondent,

vs.

Michael Brett Judy,
Appellant.

**Filed December 18, 2017
Affirmed
Schellhas, Judge**

St. Louis County District Court
File No. 69 DU-CR-16-3272

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

Mark S. Rubin, St. Louis County Attorney, Gary W. Bjorklund, Assistant County Attorney, Duluth, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Michael W. Kunkel, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Larkin, Presiding Judge; Schellhas, Judge; and Hooten, Judge.

UNPUBLISHED OPINION

SCHELLHAS, Judge

Appellant challenges his conviction of felony domestic assault, arguing that the evidence was insufficient to support the conviction. We affirm.

FACTS

On August, 21, 2016, while appellant Michael Judy and K.H. were living together, the two of them, along with Judy's mother, stepfather, uncle, and sister, traveled to northern Minnesota. That evening they stayed together in a two-room motel suite. They planned for Judy to sleep on a cot in the main room, K.H. and Judy's sister to sleep on a sofa bed next to Judy's cot, and Judy's mother, stepfather, and uncle to sleep in the other room.

Late in the evening, K.H. obtained Wi-Fi access on her cellphone. This upset Judy, who suspected K.H. was communicating with other individuals on her phone. After briefly leaving the motel room, Judy returned and laid down on his cot. He then grabbed at K.H. in an attempt to pull her toward the cot. Judy's sister grabbed K.H. to prevent her from being pulled onto Judy's cot or falling off the sofa bed. Judy told K.H., "You need to come talk to me," and told his sister to "get away."

Judy's sister was able to get between Judy and K.H., at which point Judy began wrestling his sister in an attempt to get to K.H. After Judy released his sister from his grip, he used a knife to cut K.H.'s spare clothing. While cutting the clothing, Judy continued to say to K.H., "You better come talk to me. Better get up, come talk to me now. . . . Give me your phone." Judy's sister told him that she had K.H.'s phone and that he needed to leave, and told K.H. to get Judy's stepfather. As K.H. and Judy's sister moved toward the bedroom door, K.H.'s cellphone fell out of Judy's sister's pocket. Judy's sister reached for the phone, but Judy stabbed it with his knife. At this point, K.H. was able to leave the room to seek assistance from Judy's stepfather. Judy left the motel room but eventually returned. Someone called the police, and they arrested Judy.

Respondent State of Minnesota charged Judy with felony domestic assault and fourth-degree criminal-damage to property. After a court trial, the district court found Judy guilty as charged and sentenced him on both counts.

This appeal of Judy's conviction of felony domestic assault follows.

D E C I S I O N

A person commits felony domestic assault when he or she commits an act with intent to cause fear in another of immediate bodily harm or death 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 (2016). “A person commits the offense of assault-fear through ‘an act done with intent to cause fear in another of immediate bodily harm or death.’” *State v. Fleck*, 810 N.W.2d 303, 308 (Minn. 2012) (quoting Minn. Stat. § 609.02, subd. 10(1) (2010)). “[T]he assault-fear statute is violated when one engages in an act “with the intent” to cause fear in another of immediate bodily harm or death.” *Id.*

“In an assault-fear crime, the intent of the defendant, as contrasted with the effect upon the victim, becomes the focal point for inquiry.” *Id.* (quotation omitted). “Although specific intent is sometimes used to refer to the ‘mental state of intent,’ the most common usage of specific intent is to designate a special mental element which is required above and beyond any mental state required with respect to the *actus reus* of the crime.” *Id.* (quotations omitted) (emphasis in original). An assault-fear offense is a specific-intent crime. *Id.* at 309.

The district court found Judy guilty of felony domestic assault based on Judy's display of a knife while making physical demands on K.H., his destruction of K.H.'s

articles of clothing by cutting them in her presence, and his destruction of K.H.'s cellphone with the knife. Judy argues that the evidence was insufficient to prove beyond a reasonable doubt that he acted with the specific intent to cause K.H. fear of immediate bodily harm or death. We disagree.

When considering an insufficiency-of-the-evidence claim, appellate courts “make a painstaking review of 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.” *State v. Brown*, 732 N.W.2d 625, 628 (Minn. 2007). The reviewing court must assume that “the [fact-finder] believed the state’s witnesses and disbelieved any evidence to the contrary.” *State v. Moore*, 438 N.W.2d 101, 108 (Minn. 1989). The reviewing court will not disturb a verdict “if the jury, acting with due regard for the presumption of innocence and for the necessity of overcoming it by proof beyond a reasonable doubt, could reasonably conclude that a defendant was proven guilty.” *Bernhardt v. State*, 684 N.W.2d 465, 476–77 (Minn. 2004) (quotation omitted). This standard of review applies to both bench trials and jury trials. *State v. Palmer*, 803 N.W.2d 727, 733 (Minn. 2011).

The state must prove every element of a charged offense. *See State v. Struzyk*, 869 N.W.2d 280, 289 (Minn. 2015) (“It is axiomatic that it is the State’s burden to prove every element of the charged offense.”). “Intent is generally proved by inferences drawn from a person’s words or actions in light of all the surrounding circumstances.” *Nelson v. State*, 880 N.W.2d 852, 860 (Minn. 2016) (quotation omitted). Appellate courts apply “a separate standard of review to challenges to the sufficiency of circumstantial evidence.” *State v.*

Harris, 895 N.W.2d 592, 598 (Minn. 2017). “Under that standard, we identify the circumstances proved and independently consider the reasonable inferences that can be drawn from those circumstances, when viewed as a whole.” *Id.* “As the fact finder, the [court] is in a unique position to determine the credibility of the witnesses and weigh the evidence before it.” *Id.* at 600. “[The fact-finder] is free to accept part and reject part of a witness’s testimony.” *Id.* (quotation omitted).

“[T]he first step of [the] circumstantial-evidence test . . . requires an appellate court to winnow down the evidence presented at trial by resolving all questions of fact in favor of the [fact-finder]’s verdict, resulting in a subset of facts that constitute the circumstances proved.” *Id.* (quotation omitted). “In determining the circumstances proved, we disregard evidence that is inconsistent with the [fact-finder]’s verdict.” *Id.* “The second step is to independently consider the reasonable inferences that can be drawn from the circumstances proved, when viewed as a whole.” *Id.* “We give no deference to the [fact-finder]’s choice between reasonable inferences at this second step.” *Id.* “To sustain the conviction, the circumstances proved, when viewed as a whole, must be consistent with a reasonable inference that the accused is guilty and inconsistent with any rational hypothesis except that of guilt.” *Id.*

In this case, the circumstances proved are as follows: Judy has a history of assaultive behavior, including an assault against his sister that involved the use of a knife; Judy raised his voice throughout the subject incident; Judy grabbed K.H. and attempted to pull her over to his cot; when Judy’s sister intervened, Judy wrestled with her, while trying to reach K.H.; Judy wielded a knife in close proximity to K.H.; Judy used the knife in

K.H.'s presence to damage her clothing and cellphone; and while damaging K.H.'s cellphone, Judy continued to demand that K.H. obey his commands.

When viewed as a whole, the circumstances proved are consistent with a reasonable inference that Judy intended to cause K.H. fear of immediate bodily harm, and they are inconsistent with any rational hypothesis except that of guilt. We therefore conclude that the evidence was sufficient to convict Judy of felony domestic assault.

Affirmed.