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STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0693

State of Minnesota,
Respondent,

vs.

Mohamed Muqtar Jaranow,
Appellant.

Filed March 11, 2019
Affirmed
Reilly, Judge

Stearns County District Court
File No. 73-CR-16-11712

Keith Ellison, Attorney General, Edwin W. Stockmeyer, Assistant Attorney General, St. Paul, Minnesota; and

Janelle Kendall, Stearns County Attorney, St. Cloud, Minnesota (for respondent)

Melvin R. Welch, Minneapolis, Minnesota (for appellant)

Considered and decided by Rodenberg, Presiding Judge; Reilly, Judge; and Bratvold, Judge.

UNPUBLISHED OPINION

REILLY, Judge

Because we determine that there is sufficient evidence to support appellant's convictions of criminal sexual conduct in the second degree, in violation of Minn. Stat.

§ 609.343, subd. 1(e)(i) (2016), and domestic assault by strangulation, in violation of Minn. Stat. § 609.2247, subd. 2 (2016), we affirm.

FACTS

In the early morning hours of December 25, 2016, appellant Mohamed Muqtar Jaranow (Jaranow) and L.A.[1] were involved in a car accident near St. Cloud. As a result of the severe damage to their car, Jaranow and L.A. rented a room at a nearby hotel and checked in around 5:00 a.m. The events that gave rise to this case occurred a short time later.

At trial, the state elicited testimony from the responding police officers and other hotel guests and employees. B.R., the hotel employee working behind the front desk that evening, testified that L.A. approached him around 6:30 a.m. crying and sobbing. L.A. asked B.R. to call 911, stated that she had been choked by her boyfriend, and was "coughing a lot." B.R. invited L.A. behind the front desk to give her some separation in case Jaranow came downstairs. When Jaranow came down to the lobby, Jaranow handed a pair of shoes to L.A and she threw a clipboard at him. Jaranow calmly walked out of the hotel, at which point B.R. locked the door behind him.

According to the first responding officer, when he arrived L.A. was crouched down behind the front desk of the hotel lobby. L.A. was shaking and crying, and stated that she was choked by her husband and her neck was tender. The officer saw some slight redness

[1] L.A. testified at trial that she and Jaranow were culturally married in October 2016 and divorced in December 2016. She referred to him as both her husband and her boyfriend on December 25, 2016.

around L.A.'s neck. L.A. was wearing pajama pants and a winter jacket, and did not appear to have anything on underneath. L.A. told the officer that things became physical. Jaranow wanted to have sex with L.A., and forcefully tried to push L.A.'s legs open. Jaranow ripped off L.A.'s shirt, held her down by her wrists, and choked her twice. L.A. could not breathe for about a second each time Jaranow choked her. Jaranow grabbed L.A.'s vagina over her clothes and stated that it was his and he owned it. During this time, L.A. attempted to use the alarm clock to hit Jaranow.

When the officer inspected L.A. and Jaranow's hotel room, he noticed that the lamp was crooked and the alarm clock plug was pulled out of the wall. He also found several buttons on the floor and on the bed of the hotel room which belonged to the shirt that L.A. identified as the one Jaranow ripped off of her.

K.M., who was a guest in the hotel room across from Jaranow and L.A., testified that she awoke in the early morning hours to the sound of multiple shrill, terrified screams. As the screaming got louder and higher-pitched, she jumped out of bed and hurried to the front of the hotel room. When she opened the door to the hallway she saw L.A. hurrying out of the room. Approximately ten seconds later, Jaranow opened the door and looked up and down the hallway before closing the door. Shortly thereafter, Jaranow exited with a bag in his hands. When K.M. asked Jaranow if L.A. was all right, he answered, "[S]he's fine. I didn't touch her. I didn't put my hands on her."

W.C. stayed in the hotel room adjoining the room occupied by Jaranow and L.A. W.C. testified that he heard "tumbling against the wall," and screaming that sounded

"terrifying" for fifteen to twenty seconds. After the screaming quieted down, W.C. looked out of the door peephole and saw Jaranow walk by his room.

The second responding officer testified that when he arrived on scene, he saw Jaranow sitting outside on a bench. Jaranow told the officer that they would "probably be arresting him after [they] talk[ed] to his wife." Jaranow told the officer that he and L.A. were involved in a car accident, he was planning on leaving, he wanted his cell phone, and he grabbed L.A.'s wrist to pull the phone from her. L.A. left the hotel room screaming. Jaranow did not mention anything about the ripped shirt. When the officer later asked Jaranow about marks on L.A.'s neck, Jaranow speculated that it could have occurred during the car accident. Jaranow also speculated that L.A.'s shirt could have been ripped when he tried to grab the phone from her hands. Jaranow denied that he ever choked L.A. or grabbed her vagina.

Though L.A. told the responding police officer that she was choked and assaulted by Jaranow, at trial she testified that Jaranow did not assault her. L.A. testified that she and Jaranow began arguing in the hotel room about the car accident that happened earlier that day. L.A. testified that she pushed Jaranow away, screamed at him, and threw the couple's shared cellphone at him. Jaranow left the hotel room and L.A. locked the door behind him. About five minutes later, Jaranow returned to the hotel room. Because L.A. was angry at Jaranow, she made him wait in the hallway for a few minutes before letting him back into their hotel room.[2] L.A. testified that when Jaranow reentered the room he

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[2] An occupant of the hotel, J.M., observed Jaranow in the hallway around 6:00 a.m. knocking on the door calmly asking to be let in.

told L.A. that he was going to leave her. L.A. "lost it," "went crazy," began screaming at Jaranow, and tried to take the hotel phone off of the wall. L.A. yelled that she "didn't need anything from him," to which Jaranow responded that she was wearing his shirt. L.A. testified at trial that based upon this comment, she ripped off the shirt and threw it at him. She then put on her jacket, left the room without her shoes, went downstairs, and told the hotel attendant to call 911 because someone was trying to kill her. L.A. further explained that she told the hotel attendant that someone upstairs tried to kill her, because "in [her] head," she thought somebody else was trying to kill her—not her husband. L.A. testified that what she initially told police "is not what happened," that she attempted several times to "make it right" and "messed up."

Following the three day jury trial, the jury found Jaranow guilty on both counts.

This appeal follows.

D E C I S I O N

I. Sufficiency of the Evidence

Jaranow argues that the evidence is insufficient to support his conviction. In considering sufficiency-of-the-evidence claims, this court must first determine the appropriate standard of review. Generally this court applies the traditional standard of review, which requires "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." *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989). The reviewing court must 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). The

reviewing court will not disturb the verdict if the jury, acting with due regard for the presumption of innocence and the requirement of proof beyond a reasonable doubt, could reasonably conclude the defendant was guilty of the charged offense. *Bernhardt v. State*, 684 N.W.2d 465, 476-77 (Minn. 2004). However, in certain circumstances, this court applies a heightened standard of review. *See, e.g., State v. Porte*, 832 N.W.2d 303, 309 (Minn. App. 2013). The relevant standard of review depends on whether the factfinder reached its conclusion of law based on direct or circumstantial evidence.[3] *State v. Petersen*, 910 N.W.2d 1, 6 (Minn. 2018).

The parties dispute the appropriate standard of review in this case. Jaranow asserts that we should apply the heightened standard of review. However, the state argues that L.A.'s out-of-court statements describing the assault were direct evidence of the events that occurred and therefore the traditional standard of review applies. *See State v. Harris*, 895 N.W.2d 592, 605-06 (Minn. 2017) (providing that when the evidence at issue is direct evidence, the heightened standard of review does not apply); *see also State v. Brazil,* 906 N.W.2d 274, 278 (Minn. App. 2017) ("Testimony provided by a witness, concerning what the witness saw or heard, is considered direct evidence."). Intent is often proven by circumstantial evidence. *State v. Cooper*, 561 N.W.2d 175, 179 (Minn. 1997). However, Jaranow does not directly challenge the element of intent in this appeal. *See State v.*

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[3] Circumstantial evidence is "evidence from which the factfinder can infer whether the facts in dispute existed or did not exist." *State v. Harris*, 895 N.W.2d 592, 599 (Minn. 2017 (quotation omitted). Direct evidence is "evidence that is based on personal knowledge or observation and that, if true, proves a fact without inference or presumption." *Id*. (quotation omitted).

Salyers, 858 N.W.2d 156, 161 (Minn. 2015) (holding that heightened standard of review was not applicable because the challenged element was established by direct evidence). Because Jaranow did not directly challenge the element of intent, we determine that review under the traditional standard of review is appropriate in this case.

In order to prove second-degree criminal sexual conduct, the state needed to establish that: (1) Jaranow intentionally touched the clothing over the immediate area of L.A.'s intimate parts; (2) this contact occurred without the consent of L.A.; (3) Jaranow committed the act with sexual or aggressive intent; (4) Jaranow caused personal injury to L.A.; (5) Jaranow used force or coercion to accomplish the act; (6) Jaranow's act took place on or about December 25, 2016 in Stearns County. Minn. Stat. § 609.343, subd. 1(e)(i); *see also* 10 *Minnesota Practice*, CRIMJIG 12.13 (2018). In order to prove domestic assault by strangulation, the state needed to establish that: (1) Jaranow assaulted L.A.; (2) L.A. was a member of Jaranow's family or household; (3) the assault was committed by strangulation; and (4) Jaranow's act took place on or about December 25, 2016 in Stearns County. Minn. Stat. § 609.2247, subd. 2; *see also* 10 *Minnesota Practice*, CRIMJIG 13.132 (2018).

Jaranow does not contend that the evidence of any particular element was insufficient, and instead, requests that this court reweigh the evidence. For example, Jaranow argues that the evidence corroborates L.A.'s in-court testimony instead of her out-of-court statements. We reject the invitation to act "as a kind of 13th juror." *State v. Robinson*, 536 N.W.2d 1, 2 (Minn. 1995). Under the traditional standard of review, this court must "view the evidence in the light most favorable to the jury's verdict, assuming

the jury believed the state's [evidence] and disbelieved any evidence to the contrary. *Moore*, 438 N.W.2d at 108. We also note that even under the heightened standard of review, we "assume that the jury resolved any factual disputes in a manner that is consistent with the jury's verdict." *State v. Moore*, 846 N.W.2d 83, 88 (Minn. 2014) (citing *State v. Andersen*, 784 N.W.2d 320, 329 (Minn. 2010)). This is because "[t]he jury is in the best position to weigh the credibility of the evidence and thus determine which witnesses to believe and how much weight to give their testimony." *State v. Hughes*, 749 N.W.2d 307, 312 (Minn. 2008). Therefore, under either standard of review, we must review assuming that the jury believed L.A.'s out-of-court statements instead of her in-court testimony.

We determine that L.A.'s out-of-court statements were clearly sufficient to allow the jury to conclude that Jaranow assaulted L.A. L.A. told police that Jaranow had repeatedly choked her to the point where she could not breathe, ripped her shirt open, and placed his hand on her vagina outside of her clothing and said that it belonged to him. Though L.A. recanted and testified before the jury that the assault did not occur, the jury is entitled to believe L.A.'s out-of-court statements and discredit her contrary trial testimony. *State v. Pieschke*, 295 N.W.2d 580, 585 (Minn. 1980) (holding that the evidence was sufficient to convict based on two recanting witness's out-of-court statements).

Moreover, L.A.'s statement was not the only evidence before the jury. There was testimony that L.A. ran down to the front desk counter, without her shoes, and told the attendant to call the police because someone was trying to kill her. She appeared distraught and was "coughing a lot." On the 911 call, L.A. can be heard in the background saying "you are not going to get away with this." Multiple witnesses heard L.A.'s screams and

described them as "terrifying." The officers found buttons on the floor of the hotel room, consistent with L.A.'s initial version of events. Additionally, the hotel room appeared disheveled with the room light askew and the alarm clock cord pulled from the wall. Based upon our thorough review of the record, we determine under either the heightened or traditional standard of review the state presented sufficient evidence to support Jaranow's convictions.

II. Out-of-Court Statements

Before trial, the state moved to admit evidence of L.A.'s multiple out-of-court statements describing the assault because the state believed that L.A. intended to testify that the assault did not occur. The district court admitted L.A.'s prior statements as substantive evidence of Jaranow's guilt under Minn. R. Evid. 807 and admitted the 911 call on which the victim's allegations can be heard as an excited utterance under Minn. R. Evid. 803(2). Jaranow contends that the evidence was insufficient to convict because L.A.'s out-of-court statements were "not consistent with the evidence adduced at trial, and it was an abuse of the district court's power to admit those statements at trial." Jaranow does not elaborate further on why the district court's admission of the out-of-court statements was an abuse of discretion. The state argues that this "conclusory assertion, made without argument or citation to authority, cannot serve as the sole basis to trigger appellate scrutiny of whether that evidence was admissible." *State v. Krosch*, 642 N.W.2d 713, 719 (Minn. 2002). "Evidentiary rulings rest within the sound discretion of the [district] court and will not be reversed absent a clear abuse of discretion. On appeal, the appellant has the burden of establishing that the [district] court abused its discretion and

that appellant was thereby prejudiced." *State v. Amos,* 658 N.W.2d 201, 203 (Minn. 2003) (citation omitted). We determine that Jaranow did not adequately brief the argument and did not meet his burden to show prejudice, and his argument is therefore unavailing.

Affirmed.