STATE OF MINNESOTA
IN COURT OF APPEALS
A18-2086

State of Minnesota,
Respondent,

vs.

Kristin Ann Altepeter,
Appellant.

Filed October 28, 2019
Affirmed
Reilly, Judge

Polk County District Court
File No. 60-CR-18-1155

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

Gregory Widseth, Polk County Attorney, Scott A. Buhler, First Assistant County Attorney, Crookston, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Benjamin J. Butler, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Slieter, Presiding Judge; Ross, Judge; and Reilly, Judge.

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

REILLY, Judge

In this direct appeal, appellant challenges the sufficiency of the evidence supporting her conviction for malicious punishment of a child. Because sufficient evidence in the record supports the conviction, we affirm.

FACTS

In June 2018, appellant Kristin Ann Altepeter was caring for children at her in-home daycare in Crookston. While playing outdoors, a four-year-old child ran to play on the monkey bars. Appellant's son previously placed a heavy wooden table on top of the monkey bars to mow the lawn, and appellant therefore did not consider the monkey bars safe for the children. Appellant told the child that he could not play on the monkey bars, prompting the child to stick his tongue out at appellant and run away. Later, the child attempted to climb the monkey bars again and appellant instructed him to get down. When the child attempted to climb the monkey bars a third time, appellant "held onto [the child's] arms" and kneeled down to speak to him. When appellant let go of the child, she noticed bruises on the child's arms near his elbows.

The child's aunt picked him up at daycare later that afternoon. Appellant showed the bruises to the child's aunt and explained that she told the child not to go on the monkey bars. Appellant stated that the child "stuck his tongue out at her a couple of times, so she was trying to make him look at her." The child's aunt reported the incident to his mother, who took the child to the hospital emergency room. A Crookston police officer met with the family at the hospital and noticed bruises on both of the child's arms around the elbow area that "[a]ppeared consistent with a handmark [or] fingerprints." The officer took photographs of the child's injuries, which were entered into evidence at trial. The police officer also interviewed appellant at her home. Appellant told the officer that "to prevent [the child] from walking away, she grabbed each of his arms and kneeled down to his level to tell him to stop playing on the monkey bars."

The state charged appellant with one count of gross-misdemeanor malicious punishment of a child in violation of Minn. Stat. § 609.377, subd. 2 (2018). At trial, the state presented evidence from the child's aunt, the child's mother, and the police officer. Appellant testified in her own defense. She also presented witness testimony from three other parents who continued to send their children to appellant's daycare after the state filed charges against her. The jury returned a guilty verdict and the district court imposed a stayed sentence. This appeal follows.

D E C I S I O N

I. Standard of Review

Appellant challenges the sufficiency of the direct evidence underlying her malicious-punishment conviction. Direct evidence is evidence that is "based on personal knowledge or observation and that, if true, proves a fact without inference or presumption." *State v. Harris*, 895 N.W.2d 592, 599 (Minn. 2017) (quotation omitted). When the conviction is based on direct evidence, "it is the traditional standard, rather than the circumstantial-evidence standard, that governs." *State v. Horst*, 880 N.W.2d 24, 39 (Minn. 2016). Because the state presented direct evidence, we employ the traditional standard of review.

When reviewing the sufficiency of the evidence under the traditional standard, this court undertakes a "painstaking analysis of the record" to determine whether the evidence, when viewed in a light most favorable to the conviction, is sufficient to support the conviction. *State v. DeRosier*, 695 N.W.2d 97, 108 (Minn. 2005) (quotation omitted). We will not disturb the verdict if the fact-finder, "acting with due regard for the presumption

of innocence and the requirement of proof beyond a reasonable doubt, could reasonably conclude that the defendant was guilty of the charged offense." *State v. Ortega*, 813 N.W.2d 86, 100 (Minn. 2012). We review de novo whether an appellant's conduct satisfies the statutory definition of an offense. *State v. Hayes*, 826 N.W.2d 799, 803 (Minn. 2013).

II. Sufficient Evidence Supports Appellant's Conviction

Minnesota law provides that "[a] . . . caretaker who, by an intentional act or a series of intentional acts with respect to a child, evidences unreasonable force or cruel discipline that is excessive under the circumstances is guilty of malicious punishment of a child" and may be sentenced to imprisonment of not more than one year or payment of a fine, "[i]f the punishment results in less than substantial bodily harm." Minn. Stat. § 609.377, subds. 1, 2 (2018). "'Unreasonable force' or 'cruel discipline' should be read as alternatives." *State v. Broten*, 836 N.W.2d 573, 577 (Minn. App. 2013), *review denied* (Minn. Nov. 12, 2013) (recognizing that "or" is disjunctive). Thus, appellant's conduct satisfies the statutory definition of malicious punishment of a child if her actions constituted *either* "unreasonable force" *or* "cruel discipline." *See* Minn. Stat. § 609.377, subd. 1; *Broten*, 836 N.W.2d at 577.

Viewing the evidence in the light most favorable to the jury's verdict, we conclude that there is sufficient evidence to permit the jury to find appellant guilty of malicious punishment because she used unreasonable force on the child.[1] The statute does not define

[1] Appellant argues that her actions were not "cruel" and were not motivated by a desire to discipline the child. Because we determine that sufficient evidence supports a finding of "unreasonable force," we need not address this issue. *See Broten*, 836 N.W.2d at 577

the term "excessive." "In the absence of statutory definitions, we may consider dictionary definitions to determine the meaning of a statutory term." *State v. Alarcon*, 932 N.W.2d 641, 646 (Minn. 2019). "[E]xcessive" is defined as "[e]xceeding a normal, usual, reasonable, or proper limit." *The American Heritage Dictionary* 618 (5th ed. 2011). Here, appellant was acting as a caretaker for the child, who was four years old. The child attempted three times to climb the monkey bars, which appellant considered unsafe. Appellant told the child to stay away from the monkey bars. When he attempted to go back to the monkey bars a third time, appellant testified that she held onto the child's arms with her hands, kneeled down to his eye-level, and told him that he could not play on the monkey bars that day. Appellant then sent the child into a timeout. Appellant noticed that the child had bruises on his arm where she held him. Sufficient evidence in the record supports a determination that appellant's actions were excessive.

Appellant argues that her conduct does not constitute a crime under the malicious-punishment statute because she did not exert "force" on the child. Appellant argues that her conviction must be overturned because the only "force" relevant to the malicious-punishment statute is "force used in the course of punishment," and she was not attempting to punish the child. We previously rejected this argument in *State v. Murray*, No. A16-2053, 2017 WL 6567651, at *1 (Minn. App. Dec. 26, 2017), *review denied* (Minn. Mar. 20, 2018).[2] The defendant in *Murray* was convicted of malicious punishment for inflicting

(recognizing that "unreasonable force" and "cruel discipline" are alternative theories of criminal liability).

[2] While this caselaw is unpublished and therefore of limited value, Minn. Stat. § 480A.08, subd. 3(c) (2018), it is persuasive in this case, *see State v. Zais*, 790 N.W.2d 853, 861

great bodily harm on a child. *Id*. at *1-3. On appeal, the defendant argued that the evidence was insufficient to prove beyond a reasonable doubt that he engaged in discipline or punishment, which he claimed was "necessary to satisfy the statutory definition of the offense." *Id*. at *4. We rejected this argument, stating:

> To the extent that [defendant's] argument assumes that, to satisfy the applicable statute, the state must prove "punishment," his argument is based on [an] incorrect premise. As a matter of law, proof of "punishment" is unnecessary because it is not included in the operative language of the statute. [Defendant] relies on a pattern jury instruction, which defines "unreasonable force" to mean "such force used in the course of *punishment* as would appear to a reasonable person to be excessive under the circumstances." The pattern jury instruction . . . is a resource for district court judges and attorneys . . . [but the instructions] are not, in and of themselves, binding law. . . . The plain language of section 609.377, subdivision 1, does not require the state to prove that [defendant] "punished" [the child].

Id. (citations omitted).

Here, in its closing instructions to the jury, the district court defined "[u]nreasonable force" as "such force used in the course of punishment as would appear to a reasonable person to be excessive under the circumstances." The district court's jury instruction mirrors the pattern jury instructions. *See* 10 *Minnesota Practice*, CRIMJIG 13.85, .86 (2018) ("Unreasonable force is such force used in the course of punishment as would appear to a reasonable person to be excessive under the circumstances."). As we recognized in *Murray*, jury instruction guides are a resource for the district courts but do

(Minn. App. 2010) (stating that unpublished cases, although not precedential, may have persuasive value), *aff'd*, 805 N.W.2d 32 (Minn. 2011).

not create binding law. *See State v. Kelley*, 734 N.W.2d 689, 695 (Minn. App. 2007) ("[CRIMJIGS] merely provide guidelines and are not mandatory rules; jury instruction guides are instructive, but not precedential or binding on this court."), *review denied* (Minn. Sept. 18, 2007).

Moreover, the district court's instructions, when read as a whole, follow the language in Minnesota Statutes sections 609.06, subdivision 1(6) (2018), and 609.377, subdivision 1. Minnesota law recognizes that "reasonable force" may be used upon another person in certain circumstances, including "when used by a . . . teacher, or other lawful custodian of a child . . . , in the exercise of lawful authority, to restrain or correct such child." Minn. Stat. § 609.06, subd. 1(6). The district court instructed the jury that a caretaker may use reasonable force on children in certain situations, stating:

> The defendant is not guilty of a crime if [she] used reasonable force upon or toward [the child] without his consent when circumstances existed, or when [she] reasonably believed circumstances existed, as follows: When used by a caretaker of a child in the exercise of lawful authority to restrain or correct the child. The burden of proof is on the State to prove beyond a reasonable doubt that such a circumstance did not exist and that the defendant did not reasonably believe it to exist.

District courts have "considerable latitude" in selecting the exact language of jury instructions and we review the instructions as a whole to determine if they "fairly and adequately explain the law." *Gulbertson v. State*, 843 N.W.2d 240, 247 (Minn. 2014) (citations omitted). The district court defined "unreasonable force" and explained that appellant could not be found guilty of the charged offense if she used "reasonable force" to restrain or correct the child. The court's instructions mirrored the language in section

609.06, permitting the use of reasonable force in certain circumstances, and section 609.377, criminalizing unreasonable force, and adequately explained the law applying to the case. *See Gulbertson*, 843 N.W.2d at 247-48 (presuming that juries follow instructions given by court).

Appellant argues that she acted reasonably by placing her hands on the child's arms to speak with him. "Generally, a reasonableness determination is properly made by the finder of fact." *State v. Glowacki*, 630 N.W.2d 392, 403 (Minn. 2001) (noting that a reasonableness determination is properly made by jury if evidence could allow a reasonable mind to draw an adverse inference). "However, when no reasonable mind could draw an adverse inference, the question may be decided as a matter of law." *Id*. In this case, reasonable minds could disagree about whether appellant used reasonable force in restraining the child. As such, it was within the province of the jury to make a reasonableness determination. *See id*. While appellant argues that she grabbed the child's arms to prevent him from injuring himself and not as a means of punishment, the jury "as the sole judge of credibility," was free to accept or reject her testimony and conclude that she used unreasonable force in holding the child by his arms. *State v. Poganski*, 257 N.W.2d 578, 581 (Minn. 1977); *see also Harris*, 895 N.W.2d 600 ("As the fact finder, the jury is in a unique position to determine the credibility of the witnesses and weigh the evidence before it.").

Appellant argues that the state focused on the bruises on the child's arms, suggesting that the bruises alone demonstrated unreasonable force. We rejected a similar argument in *State v. Jackson*, holding that the state was not required to prove that the defendant intended

to cause bruising on a child. No. A17-2029, 2018 WL 6034969, at *2 (Minn. App. Nov. 19, 2018). We cited to *State v. Fleck*, 810 N.W.2d 303, 309-10 (Minn. 2012) for the proposition that a general-intent crime requires only a showing that the defendant intended to do the physical act, and not that the defendant intended to cause a particular result. *Id.* at *2 (applying *Fleck* in the context of a malicious-punishment-of-a-child case). The *Jackson* court noted that the malicious-punishment statute "provides that an individual is guilty of malicious punishment of a child if he 'by an intentional act or a series of intentional acts with respect to a child, evidences unreasonable force.'" *Id.* (citing Minn. Stat. § 609.377, subd. 1 (2016)). Here, appellant admitted that she intentionally held the child by his arms, and the bruises appeared on his arms where she held him.[3] On the record presented at trial, the evidence is sufficient to sustain appellant's conviction.

Affirmed.

[3] This is not a case in which appellant accidentally inflicted harm on the child, as appellant admitted in her testimony that she intentionally grabbed the child. *See, e.g., State v. O'Brien*, No. A15-0596, 2016 WL 363453, at *1 (Minn. App. Feb. 1, 2016) (affirming malicious-punishment and domestic-assault convictions where defendant admitted causing child's injuries by "tickling" him and injuries that "looked like a hand print [or] fingerprints" appeared on child's neck). This is also not a case in which the child suffered from a physical condition causing him to bruise easily. *See, e.g., State v. Myers*, 2012 WL 4856161 at *5 (Minn. App. 2012) review denied (Minn. Dec. 18, 2012) ("[Defendant] presented no evidence showing that the bruises would not have appeared but for the [child's] anemia.").