STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0802

State of Minnesota,
Respondent,

vs.

Richard Preston Blackwell,
Appellant.

Filed March 16, 2020
Affirmed
Connolly, Judge

Ramsey County District Court
File No. 62-CR-18-8618

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

Lyndsey M. Olson, St. Paul City Attorney, Clifford R. Berg, John Penland, Assistant City Attorneys, St. Paul, Minnesota (for respondent)

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

Considered and decided by Hooten, Presiding Judge; Connolly, Judge; and Reilly, Judge.

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

CONNOLLY, Judge

Appellant challenges his convictions for assault and disorderly conduct, arguing that the evidence is insufficient to show that he had the specific intent to cause fear of bodily harm required for assault and that the district court abused its discretion by not adding the names of store employees to the jury instruction for disorderly conduct. Because we see sufficient evidence of appellant's intent to cause fear of immediate bodily harm and no abuse of discretion in the jury instruction, we affirm.

FACTS

A Dollar Tree store posted at its entrance a policy that no one wearing a backpack would be permitted in the store. In November 2018, appellant Richard Blackwell entered the store wearing a backpack, and staff informed him that he could not wear it in the store. He refused to remove the backpack, got into a cashier's line to make a purchase, and began swearing and yelling. Two staff members, J.C. and Q.L., confronted appellant. Appellant flinched at Q.L. and went nose-to-nose with J.C., who pushed appellant away. Appellant then grabbed J.C.'s arm and began to struggle. Q.L. tried to remove appellant from the store to protect other customers and staff; appellant fought with him, then left the store and stood outside swearing, yelling, and making a shooting gesture with his hands.

The police officer who arrived at the store in response to a phone call said that appellant was apoplectic, screaming, swearing, and unable to answer questions. After interviewing staff inside the store, the officer arrested appellant.

Appellant was charged with one count of fifth-degree misdemeanor assault—infliction of bodily harm, one count of fifth-degree misdemeanor assault—intent to cause fear of bodily harm, and with one count of disorderly conduct—loud and boisterous conduct. Following trial, a jury convicted him of fifth-degree assault—intent to cause fear of bodily harm and of disorderly conduct, but acquitted him of fifth degree assault—infliction of bodily harm. Appellant was sentenced to 30 days in jail on the assault charge and was not sentenced on the disorderly-conduct charge.

On appeal, he challenges the sufficiency of the evidence for the assault and the jury instruction for the disorderly conduct.

D E C I S I O N

1. Sufficiency of the evidence of assault—intent to cause fear

> When evaluating the sufficiency of the evidence, appellate courts carefully examine the record to determine whether the facts and the legitimate inferences drawn from them would permit the jury to reasonably conclude that the defendant was guilty beyond a reasonable doubt of the offense of which he was convicted. The evidence must be viewed in the light most favorable to the verdict, and it must be assumed that the fact-finder disbelieved any evidence that conflicted with the verdict. The verdict will not be overturned if the fact-finder, upon application of the presumption of innocence and the State's burden of proving an offense beyond a reasonable doubt, could reasonably have found the defendant guilty of the charged offense.

State v. Griffin, 887 N.W.2d 257, 263 (Minn. 2016) (quotation and citations omitted). The element of intent is generally proved circumstantially, by drawing inferences from the defendant's words and actions in light of the totality of the circumstances. *State v. Cooper*, 561 N.W.2d 175, 179 (Minn. 1997). In reviewing the sufficiency of circumstantial

evidence, an appellate court first identifies the circumstances proved, then determines whether the inferences from those circumstances are consistent with the defendant's guilt and inconsistent with any other rational hypothesis. *State v. Silvernail*, 831 N.W.2d 594, 598-99 (Minn. 2013). The appellate court also recognizes that the jury was in the best position to evaluate the evidence. *State v. Lahue*, 585 N.W.2d 785, 789 (Minn. 1998). When the offense involves an intent to cause fear, the focal point is the intent of the actor, not the effect on the victim. *State v. Hough*, 585 N.W.2d 393, 396 (Minn. 1998).

The store manager, S.D., testified that: (1) appellant "kept coming towards [J.C.]," (2) she heard appellant say to J.C. "N-----, you're not going to do nothing to me," (3) appellant looked as if he were going to hit J.C. when they were about a foot apart, (4) J.C. hit appellant, (5) Q.L. tried to get appellant off J.C., (6) "[O]nce [Q.L.] and [J.C.] did get [appellant] outside, they came running back in. I locked the store door," and finally (7) appellant "sat outside [the store] screaming, yelling, telling my employees to come outside, he was going to f--- them up. He did the gun pointing thing at everybody, you know, saying that we were going to be arrested for assault." The jury's inference that appellant intended to cause fear of bodily harm is supported by the circumstances proved that he threatened the employees and made a shooting gesture.

Appellant argues that the evidence is also consistent with the hypothesis that appellant was merely trying to leave the store rather than remove his backpack. But J.C. and Q.L. both testified that they wanted appellant to leave the store because he was disturbing other customers; there is no evidence that anyone opposed his leaving the store. Moreover, the fact that appellant remained outside the store where he swore and made

shooting gestures at those inside the store refutes his claim that he was motivated by a desire to leave the store.

2. Jury instruction on disorderly conduct

"While district courts have broad discretion to formulate appropriate jury instructions, a district court abuses its discretion if the jury instructions confuse, mislead, or materially misstate the law." *State v. Taylor*, 869 N.W.2d 1, 14-15 (Minn. 2015) (quotation omitted).

Appellant argues that the district court should have granted his request to name the store employees in the disorderly-conduct jury instruction. The district court asked whether the state would argue that appellant engaged in disorderly conduct toward the police officers, and the state said it would not; the state's argument was that appellant's "conduct toward the store staff; the yelling and the swearing and the threatening to the store staff" was disorderly conduct. The district court then denied appellant's request that employees J.C., Q.L., and S.D. be named in the jury instruction, saying

> I'm not going to include any individual people here. There's no specific requirement that folks were actually alarmed, angered or that resentment was aroused in them. The standard here is that the conduct or language would tend reasonably to do that. So I'm not going to name specific individuals in the disorderly conduct charge.

Appellant argues that his theory of the case was that "his conduct . . . was not alarming or frightening to the store employees." But, as the district court observed, whether anyone was actually alarmed or frightened is not an element of disorderly conduct.

The jury was instructed:

> Under Minnesota law, whoever in a public or private place, knowing or having reasonable grounds to know that it will or will tend to alarm, anger or disturb others or provoke an assault or breach of the peace engages in offensive, obscene, abusive, boisterous or noisy conduct or in offensive, obscene, or abusive language tending reasonably to arouse alarm, anger or resentment in others is guilty of a crime.
>
> The [four] elements of Disorderly Conduct are, first, the defendant engaged in offensive, obscene, abusive, boisterous or noisy conduct or in offensive, obscene, or abusive language tending reasonably to arouse alarm, anger or resentment in others.
>
> . . . The offense may be based upon the utterance of fighting words alone without resulting in actual violence. The focus is upon the nature of the words and the circumstances in which they were spoken rather than upon the actual response.
>
> Second, the defendant knew or had reasonable grounds to know that the conduct would or could tend to alarm, anger, disturb, provoke an assault by or provoke a breach of the peace by others. 'To know' requires only that the actor believes that the specified fact exists. 'Had reason to know' means that the defendant acted in conscious disregard of a substantial and unjustifiable risk that the specified fact exists or will result from his conduct. 'In conscious disregard of a substantial and unjustifiable risk' means that the defendant was aware that, one, there was a risk that the specified fact exists or will result from his conduct; two, the risk was substantial; three, there was no adequate reason for taking the risk; and four, the defendant disregarded the risk.
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> Third, the defendant's act took place in a public or private place.
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> Four, the defendant's act took place on November 30, 2018 in Ramsey County.

Appellant argues that he is entitled to a new trial because not naming the employees in the jury instruction was an error that affected the jury's verdict by causing "the jury to convict [him] of disorderly conduct against the store's customers because of multiple witnesses who testified as to whether the customers were upset by [his] conduct. Had the district court included the names of the store employees, the jury may have acquitted [appellant] of the [disorderly conduct] charge." But the question before the jury was whether appellant committed the conduct requisite for the crime, not whether store employees, or anyone else, reacted to that conduct. Therefore, the district court's instruction did not misstate the law.

Affirmed.