**STATE OF MINNESOTA**
**IN COURT OF APPEALS**
**A19-1874**

State of Minnesota,
Respondent,

vs.

Patrick Breslan Rowan,
Appellant.

**Filed August 17, 2020**
**Affirmed**
**Reyes, Judge**

Meeker County District Court
File No. 47-CR-18-1232

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

Brandi L. Schiefelbein, Meeker County Attorney, Jeffrey D. Albright, Assistant County Attorney, Litchfield, Minnesota (for respondent)

Joel A. Novak, John E. Mack, New London Law, PLLC, New London, Minnesota (for appellant)

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

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

**REYES**, Judge

Appellant challenges his fifth-degree-assault conviction on direct appeal, arguing that (1) the state failed to provide sufficient evidence to support his conviction and disprove his claim of self-defense and (2) the district court abused its discretion, entitling him to a

new trial, by (a) excluding evidence of the victim's driving conduct and (b) not allowing an in-court demonstration of the incident. We affirm.

## FACTS

A Meeker County police officer received a report soon after 1:00 a.m. on December 20, 2018, that a woman, victim R.R., wanted to meet with officers to discuss threats being made to her daughter, N.L., and her grandchildren. The officer and another officer met with R.R., who told them that N.L. and N.L.'s husband, appellant Patrick Breslan Rowan, were "having some issues" and she was concerned for N.L. and her grandchildren. N.L. agreed by phone to have the officers and R.R. come to the house where she lived with appellant.

The two officers and R.R. arrived at the house, which is a converted church. Its entry is up approximately five steps, after which there are two exterior doors with large windows, followed by an entryway, then a set of interior doors, each of which has one small, narrow, cross-shaped window.

As the officers and R.R. arrived, N.L. came out of the house and "collapsed" in the front yard. R.R. squatted down to console N.L., then proceeded to the house. According to one of the officers, who had been near the bottom of the stairs, moments after R.R. entered through the outer door, appellant "literally launched [R.R] out the door." The officer testified that "it wasn't like she fell down, rolled down the stairs. She literally flew out [the] door." R.R. suffered injuries to her leg and shoulder. Appellant had no injuries.

Respondent State of Minnesota charged appellant with fifth-degree assault, in violation of Minn. Stat. § 609.224, subd. 1 (2018). Appellant gave notice that he would

argue the defenses of self-defense, defense of children, and defense of dwelling. At his court trial, R.R., N.L., the two officers, and appellant testified. Appellant did not dispute that "there was contact" with R.R. He testified that he saw only a shadowy figure and thought it was an intruder. The district court rejected appellant's defenses, finding that sufficient lighting allowed him to recognize R.R. It found him guilty of fifth-degree assault and sentenced him to 90 days' confinement in local jail, 88 days of which it stayed for one year. This appeal follows.

## D E C I S I O N

### I. Sufficient evidence supports appellant's conviction.

Appellant argues that the evidence is insufficient to support his conviction because it does not prove beyond a reasonable doubt that he had the requisite intent to assault R.R. or that he did not act in self-defense. We disagree.

A party challenging the sufficiency of the evidence generally proves intent through circumstantial evidence. *See State v. Cooper*, 561 N.W.2d 175, 179 (Minn. 1997). We apply a heightened standard of review if a conviction is based on circumstantial rather than direct evidence. *State v. Harris*, 895 N.W.2d 592, 598 (Minn. 2017). Direct evidence is "[e]vidence that is based on personal knowledge or observation and that, if true, proves a fact without inference or presumption." *Id.* at 599 (quotation omitted). In contrast, circumstantial evidence is "evidence from which the factfinder can infer whether the facts in dispute existed or did not exist." *Id.* at 599 (quotation omitted). We review a challenge to an element proved by circumstantial evidence using the circumstantial-evidence

standard, even if the state proved other elements by direct evidence. *See State v. Al-Naseer*, 788 N.W.2d 469, 474-75 (Minn. 2010).

The circumstantial-evidence standard involves a two-step process. *Harris*, 895 N.W.2d at 598-601. First, we determine the circumstances proved and disregard testimony and other evidence inconsistent with the district court's finding of guilt. *See id.* at 600-601. Second, we determine whether the circumstances proved are "consistent with a reasonable inference that the accused is guilty and inconsistent with any rational hypothesis except that of guilt." *Id.* at 601. We do not defer to the factfinder's choice between reasonable inferences. *See id.* We will reverse only if there is a reasonable inference other than guilt. *Loving v. State*, 891 N.W.2d 638, 643 (Minn. 2017). In the second step, appellant must identify circumstances proved that support a theory other than guilt. *State v. Taylor*, 650 N.W.2d 190, 206 (Minn. 2002). "[P]ossibilities of innocence do not require reversal." *Id.* (quotation omitted).

**A. Circumstances proved**

Appellant does not identify any circumstances proved in his brief. Rather, he provides a "[s]ummation of evidence" without record citations, which includes statements that contradict the district court's findings and credibility determinations.

Looking to the evidence that supports the district court's finding of guilt, *see Harris*, 895 N.W.2d at 600, the circumstances proved include that two officers and R.R. arrived at N.L. and appellant's home after 1:00 a.m. N.L. came out of the house and "collapsed" on the front lawn. From the interior doors of the house, a person can see down the steps and out into the yard. When the interior door is open, the light from inside illuminates the

entryway enough to see within it. Approximately 15 feet separate the interior door and the bottom of the stairs outside. One of the officers followed approximately ten feet behind R.R. as she approached the house. The other officer followed further behind but saw R.R. enter as well. When R.R. entered the exterior doors, she did not knock or announce her presence, consistent with her practice during the 17 years N.L. and appellant were married and lived in the house. Appellant had been peering out the interior door to see N.L. when R.R. opened the interior door. Appellant knows and can recognize R.R. R.R. completely opened the interior door, saw appellant standing there, and recognized him given the sufficient lighting. Appellant did not react in a scared manner. R.R. did not make contact with him. Rather, she put her hands up, appellant placed his hands on her, and he then "launched her out the door" almost immediately. She landed on the steps, sustaining injuries.

**B. Rational hypotheses drawn from the circumstances proved**

We next consider whether these circumstances are consistent with guilt and inconsistent with any rational hypothesis other than guilt. *Harris*, 895 N.W.2d at 601.

Fifth-degree-assault harm is the intentional infliction of or attempt to inflict bodily harm upon another. Minn. Stat. § 609.224, subd. 1; *see also* Minn.Stat. § 609.02, subd. 10(2) (2018) (defining "[a]ssault"). The state must prove that a defendant "intentionally appl[ied] force to another person without [] consent." *State v. Dorn*, 887 N.W.2d 826, 831 (Minn. 2016).

The circumstances proved show that appellant acted with the intent to make contact with R.R., that R.R. did not consent, and that the contact resulted in harm to R.R. Appellant

argues that he lacked the specific intent to harm R.R. because he only intended to have her leave his house. If appellant is arguing that assault requires specific intent to harm, he is misguided. Assault requires only the intent to do the act that causes harm. *See id.*; *see also State v. Fleck*, 810 N.W.2d 303, 309 (Minn. 2012). The circumstances proved support a finding that appellant intentionally pushed R.R., which satisfies the intent element of assault and sustains a finding of guilt. *See Dorn*, 887 N.W.2d at 831.

Next, appellant appears to advance the alternate hypotheses that (1) he accidentally pushed R.R. and (2) he pushed her in defense of himself, his home, or his children.

First, appellant does not identify any circumstances proved to support his alternate hypothesis that he accidentally pushed R.R. At most, he states in his reply brief, without citation to the record or any legal authority, that his "reaction was instinctive and without thought, making the contact an accident." Because this is not a circumstance proved, we do not consider it.

Second, appellant argues that he acted in defense of self, home, or children based on his testimony that R.R. appeared larger than him, she put her hands on his throat, and the lighting allowed him to see only a shadowy figure. But none of these are circumstances proved either.

A person is not guilty of a crime if he used reasonable force to resist an offense against him. Minn. Stat. § 609.06, subd. 1(3) (2018). The elements of self-defense when a person is in their home are "(1) the absence of aggression or provocation on the part of the defendant; (2) the defendant's actual and honest belief that he or she was in imminent danger of . . . bodily harm; [and] (3) the existence of reasonable grounds for that belief."

*See State v. Devens*, 852 N.W.2d 255, 258 (Minn. 2014) (quotation omitted). The "defense of dwelling" involves "an unauthorized intrusion into the defendant's dwelling," *State v. Hare*, 575 N.W.2d 828, 832 (Minn. 1998), allowing the defendant to use "reasonable force" upon the intruder without their consent, Minn. Stat. § 609.06, subd. 1(4) (2018).

The circumstances proved, including that the area had sufficient illumination to see into the yard and identify people within the entryway and that R.R. did not touch appellant before he made contact with her, are inconsistent with appellant's alternate hypotheses. They are inconsistent with appellant having an "actual and honest belief that he . . . was in imminent danger of . . . bodily harm" or that reasonable grounds existed for that belief, both of which are required for defense of self and others. *See Devens*, 852 N.W.2d at 258 (quotation omitted); *see also* Minn. Stat. § 609.06, subd. 1(3). They also go against him having used "reasonable force" to resist a trespass upon his property, which is required for defense of dwelling. *See* Minn. Stat. § 609.06, subd. 1(4); *Hare*, 575 N.W.2d at 832. Appellant argues that "[n]o prosecution witness gave any evidence indicating that [he] knew it was [R.R.]." But multiple witnesses testified that sufficient lighting allowed appellant to see R.R. as she entered and that appellant knew R.R. The district court credited this testimony, and we will not reweigh its credibility determinations. *See Harris*, 895 N.W.2d at 600; *see also Al-Naseer*, 788 N.W.2d at 473.

Finally, appellant argues that the district court incorrectly shifted the burden to him to prove self-defense. While the district court's conclusions of law incorrectly stated that appellant bore the burden of proof for his defenses, it thereafter correctly explained that the state had the burden of proving beyond a reasonable doubt that appellant did not act in self-

defense. It also then correctly stated that appellant had the burden of production, and it concluded that the state had met its burden of disproving appellant's defenses. Assuming, without deciding, that appellant met his initial burden of production, the circumstances proved show that the state then met its burden of proving beyond a reasonable doubt that appellant did not act in self-defense. Appellant's alternate hypotheses fail.

## II. The district court did not abuse its discretion by excluding evidence of R.R.'s driving conduct or a demonstration.

Appellant argues that the district court abused its discretion by excluding (1) evidence of R.R.'s driving conduct meant to show her state of mind, while allowing the state to reference her state of mind and (2) a demonstration between R.R. and appellant of their positioning before the contact occurred. We are not persuaded.

We review the district court's decision to exclude evidence for an abuse of discretion. *See State v. Hallmark*, 927 N.W.2d 281, 291 (Minn. 2019). A district court abuses its discretion if it bases its ruling on an error of law or if its ruling is contrary to logic and the record. *Id.* Only relevant evidence is admissible. Minn. R. Evid. 402. Evidence is relevant when it has "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Minn. R. Evid. 401. If a district court erroneously excludes evidence, we then review that exclusion for harmless error. *See State v. Post*, 512 N.W.2d 99, 102 (Minn. 1994).

### A. R.R.'s driving conduct

Appellant sought to ask R.R., "To get [to the meeting with officers], you were flying down the road at eighty miles an hour, weren't you." The state objected based on relevance, and the district court sustained the objection. Appellant then asked R.R. questions about her mindset the night of the incident.

Appellant concedes that the exclusion "alone, would probably be harmless error," but he argues that the prosecutor's statement that the victim "wasn't on a mission . . . as the defense counsel seems to suggest" and the district court's findings regarding victim's behavior as she approached the house make the error harmful. He argues that the excluded testimony would show that R.R. "was on a mission, burst into the home, and scared [appellant] into defending himself, his children, his home, and reacting in fear."

Appellant does not explain how R.R.'s claimed conduct driving to meet officers would show that she "scared" appellant or caused him to react "in fear" once she arrived, and he testified to neither. Nor does he address how this evidence would serve a purpose not already served by the evidence that the district court allowed in regarding the victim's state of mind and his counsel's own comments that R.R. was on a "mission." For example, one of the officers testified that R.R.'s demeanor when she arrived at the house "was pretty excited . . . to get into the residence. I mean, she was, ya know, worried about things and, ya know, it was kind of an elevated situation." Appellant also asked N.L. questions regarding whether R.R. is "a very focused woman" and if "[w]hen she decides to do something it's decided." He also asked R.R. about her state of mind that night. Because testimony about R.R.'s driving conduct before meeting officers does not make it any more

or less probable that R.R. arrived at the house on a "mission" and that she scared appellant, and because other evidence went to her state of mind, the excluded testimony is cumulative and not relevant. The district court did not abuse its discretion by excluding it.

**B. Witness demonstration**

Appellant argues that the district court deprived him of the right to a fair trial by refusing to allow a witness demonstration and not allowing him to make an offer of proof in response to the exclusion. Appellant sought to have R.R. stand with her arms and hands positioned as she testified she had them during the incident and to have appellant stand in front of her, which he argues would show that her hands came to the same height as his neck.

The decision to allow or deny demonstrations or experiments performed during trial "rests in the sound discretion of the [district] court." *See State v. Darrow*, 177 N.W.2d 778, 779 (Minn. 1970) (discussing experiments performed in court). The district court also has the discretion to control the courtroom and witness testimony. *See* Minn. R. Evid. 611(a).

As with R.R.'s state of mind, the record already contains the information appellant sought to elicit. Appellant stated several times during his testimony that he felt something grab his neck and that R.R. grabbed at his neck or throat. He also testified that R.R. is taller than him. The demonstration would not make it any more probable that R.R. had touched appellant's neck. Further, asking appellant to stand directly in front of R.R., as had happened during the incident, would expose R.R. to "harassment or undue

embarrassment," which the district court must avoid. *See* Minn. R. Evid. 611(a). The district court did not abuse its discretion by denying the demonstration.

**Affirmed.**