STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0017

State of Minnesota,
Respondent,

vs.

Nicholas Chad Friese,
Appellant.

Filed October 25, 2021
Affirmed
Worke, Judge

Chippewa County District Court
File No. 12-CR-20-286

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

Matthew Haugen, Chippewa County Attorney, Christopher Reisdorfer, Assistant County Attorney, Montevideo, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Rachel F. Bond, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Worke, Presiding Judge; Cochran, Judge; and Cleary, Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

NONPRECEDENTIAL OPINION

WORKE, Judge

Appellant challenges the sufficiency of the evidence supporting his fourth-degree-assault and domestic-assault convictions. We affirm.

FACTS

Throughout the day on June 8, 2020, appellant Nicholas Chad Friese argued with his girlfriend, M.W. At one point, Friese "chucked part of [a] sectional sofa at" M.W. and she put her hand out so she would not get hit. M.W. decided to leave. As she walked out of the residence, Friese threw a plastic container holding cat food at her. M.W. left with her two daughters and called 911.

When the responding officer arrived, M.W. was "crying" and appeared "very disturbed, and upset." As M.W. and the officer discussed the incident, Friese approached the officer. Friese "got up in front of [the officer's] face" and "chestbutt[ed]" him. Friese continued to "yell," "scream," and "spit" in the officer's face. The officer told Friese to calm down or be charged with obstruction because the officer was attempting to talk to M.W. The officer unholstered his taser. When Friese saw the officer's taser he threatened to get his "AR," a type of rifle, and went back to the residence. M.W. told the officer that she feared for her safety, and the officer decided to arrest Friese.

The officer approached the residence and saw Friese holding a brick. The officer directed Friese to drop the brick and talk to him. Friese dropped the brick, but he went inside the residence and yelled from a window that the officer threatened to shoot Friese's dog. Friese eventually ran out of the residence screaming "hands up, don't shoot." The

officer told Friese many times to put his hands behind his back and that he was under arrest for domestic assault. Friese resisted. The officer pushed Friese against the porch and handcuffed him. While the officer escorted Friese to the squad car, Friese kicked the officer's knee and they both fell. The officer got Friese into the squad car, but Friese remained "combative" and "kick[ed] everything he could." As the officer reached around Friese to buckle the seatbelt, Friese "veered his head back and headbutted [the officer]."

Friese was charged with fourth-degree assault committed against a peace officer, obstruction of legal process, and domestic assault—intent to cause fear or immediate bodily harm or death. At Friese's jury trial M.W. testified about the incident and stated that she felt "[s]cared" and "[u]pset." The officer testified that it was painful when Friese kicked him. He also testified that Friese did not headbutt him accidentally and that afterward he felt "dizzy" to the point of almost losing consciousness. The officer testified that he feared for his safety. Friese did not testify. The jury found Friese guilty as charged.

The district court sentenced Friese to 365 days in jail, with 335 days stayed for two years, and 30 days on work release or sentence-to-service for his fourth-degree-assault conviction, and to a concurrent 90 days in jail, with 60 days stayed for his domestic-assault conviction. This appeal followed.

DECISION

Friese challenges the sufficiency of the evidence supporting his convictions, arguing that the state failed to prove the intent elements of each offense. In reviewing an insufficient-evidence claim, we analyze the record to determine whether the evidence, viewed in the light most favorable to the conviction, is sufficient to allow the jury to reach

the verdict that it did. *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989). We assume that "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).

Intent, because it involves a state of mind, is generally established circumstantially. *State v. Davis*, 656 N.W.2d 900, 905 (Minn. App. 2003), *rev. denied* (Minn. May 20, 2003). Circumstantial evidence is "evidence from which the [jury] can infer whether the facts in dispute existed." *State v. Harris*, 895 N.W.2d 592, 599 (Minn. 2017) (quotation omitted). "Circumstantial evidence must form a complete chain that, in view of the evidence as a whole, leads so directly to the guilt of the defendant as to exclude beyond a reasonable doubt any reasonable inference other than guilt." *State v. Taylor*, 650 N.W.2d 190, 206 (Minn. 2002).

We apply a heightened standard of review when presented with a challenge to the circumstantial evidence supporting a conviction. *State v. Porte*, 832 N.W.2d 303, 309 (Minn. App. 2013). This review requires application of a two-step test. *State v. Silvernail*, 831 N.W.2d 594, 598 (Minn. 2013). First, we identify the circumstances proved. *State v. Andersen*, 784 N.W.2d 320, 329 (Minn. 2010). In doing so, we defer "to the jury's acceptance of the proof of these circumstances" and its rejection of evidence that conflicted with these circumstances. *Id.* Second, we examine "the reasonableness of all inferences that might be drawn from the circumstances proved," including "inferences consistent with a hypothesis other than guilt." *Id.* (quotation omitted). During this independent examination, we do not defer to the jury's choice among reasonable inferences. *Loving v. State*, 891 N.W.2d 638, 643 (Minn. 2017).

Fourth-degree assault

The jury found Friese guilty of physically assaulting a peace officer. *See* Minn. Stat. § 609.2231, subd. 1(b) (2018). This requires a finding that Friese intentionally inflicted or attempted to inflict bodily harm on the officer. *See id.*; *see also* Minn. Stat. § 609.02, subd. 10 (2018). "Bodily harm" is "physical pain or injury, illness, or any impairment of physical condition." *Id.*, subd. 7 (2018). The officer testified that he experienced physical pain or impairment when Friese kicked and headbutted him. Friese does not challenge the evidence establishing that the officer experienced bodily harm; rather, he challenges the evidence establishing that he intended the officer to experience bodily harm.

"[A]ssault-harm, as defined by Minn. Stat. § 609.02 . . . is a general-intent crime." *State v. Fleck*, 810 N.W.2d 303, 309-10 (Minn. 2012). A general-intent crime does not require an "intent to cause a particular result." *Id.* at 308 (quotation omitted). What is required is "only that the defendant engaged intentionally in specific, prohibited conduct." *In re Welfare of C.R.M.*, 611 N.W.2d 802, 808 n.10 (Minn. 2000) (emphasis omitted). The defendant must have engaged in a volitional act and not merely acted accidentally. *Fleck*, 810 N.W.2d at 312.

Here, the circumstances proved show that when the officer responded to the dispatch of a possible domestic assault, Friese got in the officer's face and "chestbutt[ed]" him; Friese yelled, screamed, and spit in the officer's face; Friese threatened to retrieve a rifle when the officer unholstered his taser; Friese picked up a brick; Friese ran into the residence when the officer attempted to talk to him; Friese ran out of the residence

"screaming hands up, don't shoot"; Friese resisted when the officer attempted to handcuff him; Friese "kicked [the officer] in [his] knee" when they walked to the squad car; Friese was "combative" and "kicking everything he could" in the squad car; and Friese "veered his head back and headbutted [the officer]" as the officer attempted to attach Friese's seatbelt.

Friese claims that the circumstances proved show that, instead of intending to inflict bodily harm, he tripped and accidentally kicked the officer or was pushed by the officer. He also claims that, instead of intending to inflict bodily harm by headbutting the officer, "their heads came into contact during a chaotic scene as [he] moved and struggled to breathe." But the evidence does not support these theories. The officer testified that Friese did not accidentally headbutt him. But even if there was evidence supporting these acts being accidents, "possibilities of innocence do not require reversal of a jury verdict so long as the evidence taken as a whole makes such theories seem unreasonable." *State v. Stein*, 776 N.W.2d 709, 719 (Minn. 2010) (quotation omitted). The evidence taken as a whole shows that Friese acted intentionally in inflicting bodily harm upon the officer.

Domestic assault

The jury found Friese guilty of domestic assault—committing an act with intent to cause fear of immediate bodily harm or death. *See* Minn. Stat. § 609.2242, subd. 1(1) (2018). Assault-fear is a specific-intent crime. *Fleck*, 810 N.W.2d at 309. The state was required to prove that Friese intended to cause a particular result—to place M.W. in fear of immediate bodily harm or death. *See id.* The state generally proves intent "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).

The circumstances proved show that Friese and M.W. fought throughout the day; Friese "chucked part of [a] sectional sofa at" M.W.; M.W. put her hand out to stop the sofa from hitting her and hurt her hand; Friese threw a container of cat food at M.W.; and M.W. left because she felt scared for her and her daughters.

These circumstances proved, considering the totality of the circumstances, show that Friese threw these items at M.W. intending to cause her to fear immediate bodily harm. Friese claims that the circumstances proved show that, instead of intending to cause M.W. to fear bodily harm, he only threw a section of a sofa and a container of cat food. But he did not simply throw items. First, if he did not intend for M.W. to fear bodily harm, he surely could have thrown something other than a section of a large piece of furniture. Second, he threw the items *at* M.W. and he hit her. Finally, M.W. testified that she was scared. The evidence taken as a whole shows that Friese intended to cause M.W. to fear immediate bodily harm or death. The evidence was sufficient to sustain Friese's convictions.

Affirmed.