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Minn. Stat. § 480A.08, subd. 3 (2012).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-1796**

State of Minnesota,
Respondent,

vs.

John Kevin Allensworth,
Appellant.

**Filed September 3, 2013
Affirmed
Toussaint, Judge ***

Polk County District Court
File No. 60-CR-11-2509

Lori Swanson, Minnesota Attorney General, St. Paul, Minnesota; and

Gregory A. Widseth, Polk County Attorney, Crookston, Minnesota (for respondent)

David Merchant, Chief Appellate Public Defender, Rochelle R. Winn, Assistant State
Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Worke, Presiding Judge; Johnson, Chief Judge; and
Toussaint, Judge.

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

UNPUBLISHED OPINION

TOUSSAINT, Judge

Following a stipulated-facts trial, the district court found appellant John Allensworth guilty of felony fifth-degree assault. The assault conviction stemmed from Allensworth's actions as he was arrested for violating a harassment restraining order (HRO). On appeal, Allensworth contends that the evidence is insufficient to sustain the assault conviction. We affirm.

DECISION

In 2010, the district court granted A.B. an HRO against Allensworth. On October 29, 2011, in violation of the HRO, Allensworth knocked on A.B.'s apartment door and refused to leave when she directed him to do so. A.B. called the police. As the dispatched officers attempted to arrest Allensworth, he was physically and verbally aggressive. As a result of the HRO violation and his behavior during arrest, the state charged Allensworth with felony violation of the HRO,¹ and felony fifth-degree assault in violation of Minn. Stat. § 609.224, subds. 1(2), 4(b) (2010). Allensworth waived his right to a jury trial and the district court proceeded with a stipulated-facts bench trial. The district court found Allensworth guilty of both of the charged offenses and subsequently sentenced him.

Allensworth challenges the district court's conclusion that the evidence was sufficient to convict him of felony fifth-degree assault. In its order, the district court identified that the assault charge resulted from Allensworth's actions toward one of the

¹ The HRO violation conviction is not challenged in this appeal.

responding police officers. The district court determined that the state met its burden of proof because “there was no evidence in the record contradicting [the officer’s] report.”

A conviction of fifth-degree assault pursuant to Minn. Stat. § 609.224, subd. 1(2) requires the state to prove that a defendant “intentionally inflict[ed] or attempt[ed] to inflict bodily harm upon another.” To prove an assault, the evidence must establish that the physical contact to the victim was not accidental but instead was intentionally inflicted. *State v. Lindahl*, 309 N.W.2d 763, 767 (Minn. 1981). Intent is an inference drawn from the totality of the circumstances and a defendant’s statements as to his or her intentions are not binding on the factfinder if the defendant’s acts demonstrate a contrary intent. *State v. Raymond*, 440 N.W.2d 425, 426 (Minn. 1989).

Allensworth asserts that the evidence is insufficient to sustain his assault conviction because there was no evidence of “bodily harm,” nor was there evidence that he possessed the requisite intent. Allensworth’s claim regarding bodily harm is accurate—the record contains no indication the Allensworth’s kick resulted in bodily harm to the officer. *See* Minn. Stat. § 609.02, subd. 7 (2010) (defining bodily harm as “physical pain or injury, illness, or any impairment of physical condition”).

Intent, however, requires additional analysis. Intent is “subjective state of mind usually established only by reasonable inference from surrounding circumstances.” *State v. Schweppe*, 306 Minn. 395, 401, 237 N.W.2d 609, 614 (1975). Therefore, appellate courts examine intent as circumstantial evidence. *See State v. Silvernail*, 831 N.W.2d 594, 604 (Minn. 2013) (Stras, J., concurring) (explaining that the circumstantial evidence standard applies when the state proves a disputed element of a criminal offense

exclusively by circumstantial evidence, even if it presented direct evidence on other elements). A conviction based on circumstantial evidence receives “heightened scrutiny” on review. *State v. Al-Naseer*, 788 N.W.2d 469, 473 (Minn. 2010).

We apply a two-step test to evaluate the sufficiency of the circumstantial evidence supporting a defendant’s conviction. *State v. Andersen*, 784 N.W.2d 320, 329-30 (Minn. 2010). First, we identify the circumstances proved. *Id.* at 329. At this first step, we defer to the factfinder’s “acceptance of the proof of these circumstances and rejection of evidence in the record that conflicted with the circumstances proved by the [s]tate.” *Id.* (quotation omitted). Second, we “examine independently 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). At this second step, we provide no deference to the factfinder’s choice between reasonable inferences. *Id.* at 329-30. “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.” *Al-Naseer*, 788 N.W.2d at 473 (quotation omitted).

Here, the circumstantial evidence is sufficient to prove that Allensworth intentionally attempted to inflict bodily harm on the police officer. Throughout his encounter with law enforcement, Allensworth resisted verbally and physically. When the first officer arrived to A.B.’s apartment, Allensworth informed the officer of his intent not to comply and that he was “not going [anywhere] with [the police].” Allensworth’s uncooperativeness prompted the first officer to request assistance. Allensworth

continued his resistance by lying down, rolling on the ground, rolling on top of his hands to prevent handcuff placement, refusing to stand, informing the officers he would not move, and ignoring the officers' warnings that they would use a Taser to gain compliance if he continued to resist. Finally, one of the officers attempted to use the Taser's stun setting on Allensworth's leg, but Allensworth pulled away and kicked the officer in the hip. Allensworth continued his obstreperous behavior even after being handcuffed, insisting that the officers carry him to the police vehicle and being verbally disruptive en route to the police station and throughout booking.

Allensworth argues that any contact between Allensworth and the officer could have been an involuntary movement. But based on the circumstances proved, an inference that Allensworth unintentionally kicked the officer is unreasonable. Instead, by kicking the officer, Allensworth was attempting to inflict some type of bodily harm in order to prolong his removal from A.B.'s residence. The evidence as a whole is "consistent with guilt and inconsistent with any rational hypothesis except that of guilt," *Andersen*, 784 N.W.2d at 330 (quotation omitted). Therefore, the evidence is sufficient to support Allensworth's conviction of felony fifth-degree assault.

Affirmed.