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Minn. Stat. § 480A.08, subd. 3 (2008).

STATE OF MINNESOTA
IN COURT OF APPEALS
A09-1913

State of Minnesota,
Respondent,

vs.

Randy Travis Rising,
Appellant.

Filed August 24, 2010
Affirmed
Bjorkman, Judge

Chisago County District Court
File No. 13-CR-08-1623

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

Janet Reiter, Chisago County Attorney, Nicholas A. Hydukovich, Assistant County Attorney, Center City, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Sara L. Martin, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Kalitowski, Presiding Judge; Worke, Judge; and Bjorkman, Judge.

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

BJORKMAN, Judge

Appellant Randy Travis Rising challenges the sufficiency of the evidence supporting his conviction of first-degree burglary, with assault, on the grounds that he did

not intend to harm the victim when he pushed her away and the victim was not harmed. We affirm.

FACTS

On August 19, 2008, at approximately 2:45 p.m., S.M. returned home to find an unfamiliar car parked in her driveway. The front door to the home was standing open and the car was running. S.M. stepped into the house and saw the back of a person she later identified as appellant reflected in a hallway mirror. She called out "hello," and appellant turned and ran toward the door. S.M. used her elbows to pin him against the wall, demanding to know appellant's name. Appellant then pushed S.M. to the floor and ran out the door. S.M. got up, followed appellant out the door, noted the car's license-plate number, and called the police.

Appellant was charged with first-degree burglary, with assault, in violation of Minn. Stat. § 609.582, subd. 1(c) (2008). He waived his right to a jury trial and argued to the district court that he did not commit assault during the burglary because he was merely trying to escape and did not intend to scare or harm S.M. The district court found appellant guilty of the charged offense. This appeal follows.

D E C I S I O N

In considering a claim of insufficient evidence, this court's review is limited to a painstaking analysis of the record to determine whether the evidence, when viewed in the light most favorable to the conviction, is sufficient to allow the fact-finder to reach the resulting verdict. *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989). 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. Alton*, 432 N.W.2d 754, 756 (Minn. 1988).

Under Minn. Stat. § 609.582, subd. 1:

> Whoever enters a building without consent and with intent to commit a crime, or enters a building without consent and commits a crime while in the building, either directly or as an accomplice, commits burglary in the first degree . . . if:
>
> . . . .
>
> (c) the burglar assaults a person within the building or on the building's appurtenant property.

Appellant only challenges the assault component of his conviction. "Assault" is defined as "(1) an act done with intent to cause fear in another of immediate bodily harm or death; or (2) the intentional infliction of or attempt to inflict bodily harm upon another." Minn. Stat. § 609.02, subd. 10 (2008).

Appellant first argues that, in order to prove assault, the state must establish that the victim suffered some harm. We disagree. The definition of assault includes an "attempt to inflict bodily harm." *Id.* An attempt, by definition, may be unsuccessful and not result in any harm to the victim.

Appellant next argues that insufficient evidence supports the district court's finding that he acted with intent to inflict bodily harm or fear of immediate bodily harm. The intent of the actor, and not the effect of the act on the victim, is the focal point of the inquiry. *State v. Hough*, 585 N.W.2d 393, 396 (Minn. 1998). "Intent may be proved by circumstantial evidence, including drawing inferences from the defendant's conduct, the character of the assault, and the events occurring before and after the crime." *In re*

Welfare of T.N.Y., 632 N.W.2d 765, 769 (Minn. App. 2001). A fact-finder may also infer that an actor "intends the natural and probable consequences of his actions." *State v. Cooper*, 561 N.W.2d 175, 179 (Minn. 1997).

Appellant asserts that his response to S.M.'s entry into the house—becoming frightened, running immediately for the door, and trying to escape—indicate that his only intent in pushing S.M. was to flee, not to cause bodily harm to S.M. or make her fear imminent harm. We disagree. When appellant pushed S.M., he acted with knowledge that she would be propelled away from him. Appellant admits as much when he states that he pushed her to get away. The district court could reasonably infer that appellant intended "the natural and probable consequences" of his actions. *Id.* The natural and probable consequences of pushing S.M. down were causing bodily harm or instilling fear of harm. On this record, we conclude that sufficient evidence supports appellant's conviction.

Affirmed.