

DA 17-0610

IN THE SUPREME COURT OF THE STATE OF MONTANA

2019 MT 27N

STATE OF MONTANA,

Plaintiff and Appellee,

v.

DANIEL DEAN HELM,

Defendant and Appellant.

APPEAL FROM: District Court of the First Judicial District,
In and For the County of Lewis and Clark, Cause No. DDC 16-276
Honorable James P. Reynolds, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Samir F. Aarab, Boland Aarab PLLP, Great Falls, Montana

For Appellee:


Timothy C. Fox, Montana Attorney General, Tammy K Plubell, Assistant
Attorney General, Helena, Montana

Leo John Gallagher, Lewis and Clark County Attorney, Fallon Stanton,
Deputy County Attorney, Helena, Montana

Submitted on Briefs: December 12, 2018

Decided: January 29, 2019

Filed:


Clerk

Justice Beth Baker delivered the Opinion of the Court.

¶1 Pursuant to Section I, Paragraph 3(c), Montana Supreme Court Internal Operating Rules, this case is decided by memorandum opinion and shall not be cited and does not serve as precedent. Its case title, cause number, and disposition shall be included in this Court's quarterly list of noncitable cases published in the Pacific Reporter and Montana Reports.

¶2 A Lewis and Clark County jury found Daniel Dean Helm guilty of two counts of Partner or Family Member Assault ("PFMA"), arising from an incident with his estranged wife and son on June 26, 2016. Helm appeals one of the convictions, arguing that he was entitled to dismissal on one count because the State presented insufficient evidence that his wife reasonably apprehended bodily injury. We affirm.

¶3 Helm and his wife of many years, Misty Helm ("Misty"), were separated and lived in separate trailers in the Wagon Wheel Trailer Court. The couple had three children together, including Alan Helm ("Alan"). At the time, sixteen-year-old Alan lived with Misty.

¶4 On June 26, 2016, three neighbors called the police to respond to a fight at the trailer Misty shared with Alan. When officers arrived, the fight had broken up, and several neighbors were standing outside with Misty and Alan. Officers took statements from Misty, Alan, and other people at the scene about a physical fight between Helm and Alan. An officer took photographs of Alan's injuries. The officers were unable to locate Helm that night and obtained an arrest warrant. An officer arrested Helm four days later.

¶5 The State charged Helm with one count of PFMA under § 45-5-206(1)(c), MCA, for purposely or knowingly causing reasonable apprehension of bodily injury in Misty and a second count of PFMA under § 45-5-206(1)(a), MCA, for purposely or knowingly causing bodily injury to Alan. Neither Misty nor Alan could be located to testify at trial.

¶6 Trial on the two charges took place on June 13 and 14, 2017. The State called four witnesses. First to testify was Corday Boone. Boone was fourteen years old at the time of the altercation and was a friend of Alan. Boone testified that he was in Misty's trailer that night to help Alan pack up his belongings because Alan was moving. According to Boone, Helm arrived later and began arguing with Misty about a phone charger. Helm was angry and yelling. Boone knew there would be a "big argument" and thought that Helm "would be aggressive toward[]" Misty based on his demeanor. Boone did not remember whether Helm made any physical contact with Misty, but endorsed his statement to police the night of the incident that Helm grabbed Misty by the arm. Boone stated that he thought Misty might get hurt and that Misty is very petite and much smaller than Helm. According to Boone's testimony, Alan stepped between his parents to prevent Helm from hurting Misty and to get Helm to leave. Boone testified that Helm was the initial aggressor and that Helm punched Alan in the face when Alan intervened. Boone stated that, after getting punched, Alan wrestled Helm out of the trailer, breaking the partially broken door the rest of the way off its hinges. Boone explained that Helm left after the fight moved outside when some neighbors told him to leave.

¶7 The State next called Henry Taylor. Taylor lived in a nearby trailer. He reported that on June 26, 2016, he heard noise coming from outside. He told a family member to

call the police and went outside to see what was going on. When he got outside, he saw Helm and Alan wrestling on the front porch of Misty's trailer. He testified that it looked like Helm was on top and hitting Alan. He reported that he pulled Helm and Alan apart, telling Helm to take a walk and Alan to go wait for the police in Taylor's trailer. Taylor reported that Misty then came running out of the trailer yelling, "You hit my son," and Helm went toward Misty. Taylor said he told Misty to go to his trailer as well, and Helm left.

¶8 Officer Don Skidmore testified third. Officer Skidmore responded to the trailer court on June 26, 2016, in response to a call that there was a physical altercation occurring. Before arriving on the scene, officers received a tip that the altercation was over and a male was walking away from the scene. Officer Skidmore testified that several individuals were outside when he arrived at Misty's trailer. He took statements from Misty, Alan, Boone, and Taylor. Officer Skidmore testified that Alan was not wearing a shirt when he arrived on the scene and that he could see visible injuries on Alan, including dried blood on his lower lip, a bump on his forehead, a bruise on the left side of his face, some redness and abrasions on his upper torso, and abrasions on his right forearm. Officer Skidmore laid the foundation for eight photographs of Alan's injuries the police took the night of the altercation, and the District Court admitted the photographs into evidence. Officer Skidmore testified that Boone seemed dumbfounded and in shock. Officer Skidmore testified that Misty "seemed a little reluctant to speak with me at first. There seemed to be maybe some fear there." Officer Skidmore stated that the stories from Misty, Alan, Boone, and Taylor were fairly consistent with each other and with the physical injuries he observed

on Alan. Officers were unable to locate Helm that night, and Officer Skidmore did not talk to him.

¶9 The State's final witness was Officer Steven Renshaw. Officer Renshaw testified that he arrested Helm on a warrant on June 30, 2016. Helm told Officer Renshaw that he had not been to Misty's trailer in weeks.

¶10 After the close of the State's evidence, Helm moved for a directed verdict, arguing that there was not sufficient evidence for the jury to find reasonable apprehension of bodily injury under count one.¹ Counsel for Helm argued that there was no evidence of Misty's state of mind. The Court determined that it would not rule on the motion until both parties had an opportunity to do additional research on the question.

¶11 Helm testified on his own behalf. Helm testified that he and Misty were separated and living apart on June 26, 2016. Helm stated that Misty invited him to come to her trailer that night to help her pack, because she was moving. When he got there, Alan and Boone were there with two or three other teenage boys. He said that he got into an argument with Misty over the phone charger and the presence of the teenagers in the trailer, with whom he believed Misty had inappropriate relations. According to Helm, some of the boys then left, leaving Misty, Alan, and Boone with him in the trailer. Helm testified that he was not the aggressor, but rather that Misty, Alan, and Boone all attacked him. He averred that he did not punch Alan, but only put him in a headlock, as Boone and Misty hit Helm. According to Helm, the altercation ended when Alan pulled Misty off him. Helm testified

¹ Motions for a directed verdict or for acquittal "are more appropriately entitled motions to dismiss for insufficient evidence." *State v. Farmer*, 2008 MT 354, ¶ 6, 346 Mont. 335, 195 P.3d 800.

that he left the scene because he knew that the police were on the way and that, even when Misty was the aggressor, he was always the one to go to jail. Helm explained that, when Officer Renshaw arrested him four days later, he told Officer Renshaw that he had an alibi and had not been in Misty's trailer for weeks. Helm admitted that before his trial testimony, he had not told the police that Misty, Alan, and Boone had attacked him.

¶12 After the defense closed, the court allowed both parties to provide additional argument on Helm's directed verdict motion. The District Court denied the motion, explaining that the standard is what a reasonable person would think based on the entire set of circumstances presented. The court noted that Boone's testimony that he feared Helm was going to assault Misty and the testimony from multiple witnesses regarding the physical altercation that broke out between Helm and Alan tended to provide some support that a person in Misty's position would have felt reasonable apprehension of bodily injury. The jury returned a guilty verdict on both counts. The Court sentenced Helm to five years with the Department of Corrections on each count to run concurrently.

¶13 This Court reviews questions regarding the sufficiency of evidence in a criminal matter to determine whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt, when viewing the evidence presented in the trial court in the light most favorable to the prosecution. *City of Helena v. Strobel*, 2017 MT 55, ¶ 8, 387 Mont. 17, 390 P.3d 921. Whether sufficient evidence exists to convict a defendant is ultimately an application of the law to the facts, which we review de novo. *Strobel*, ¶ 8. It is the function of the trier of fact to determine the credibility of the witnesses and the weight to give their testimony. *Strobel*, ¶ 8.

¶14 Helm argues that the District Court erred in denying his motion for a directed verdict because the State put on no evidence of the victim’s appearance, utterances, or behavior that would support an inference that Misty reasonably apprehended bodily injury. Helm maintains that with no testimony from any witness about Misty’s apparent mental state, no rational trier of fact could have found that Misty reasonably apprehended bodily injury.

¶15 In the count related to Misty, the State charged Helm under § 45-5-206(1)(c), MCA, under which a person commits the offense of PFMA if the person “purposefully or knowingly causes reasonable apprehension of bodily injury in a partner or family member.” This standard is objective, “asking whether a reasonable person under similar circumstances would have reasonably apprehended bodily injury.” *State v. Finley*, 2011 MT 89, ¶ 29, 360 Mont. 173, 252 P.3d 199 (citing *State v. Vukasin*, 2003 MT 230, ¶ 19, 317 Mont. 204, 75 P.3d 1284). “The State need not establish fear of bodily injury, but rather must produce evidence that a reasonable person would have realized that bodily injury could result.” *Finley*, ¶ 29 (citing *State v. McMahon*, 2003 MT 363, ¶ 22, 319 Mont. 77, 81 P.3d 508).

¶16 A criminal conviction may be based entirely on circumstantial evidence. *Vukasin*, ¶ 20. Circumstantial evidence is evidence that “tends to establish a fact by proving another and which, though true, does not of itself conclusively establish that fact but affords an inference or presumption of its existence.” Section 26-1-102(1), MCA; *see also Vukasin*, ¶ 20. “Thus, the direct proof of other facts may give rise to an inference that the victim sustained reasonable apprehension of bodily injury.” *Vukasin*, ¶ 20.

¶17 We review the evidence presented at Helm’s trial in the light most favorable to the prosecution to determine “whether a reasonable person under similar circumstances would have reasonably apprehended bodily injury.” *Finley*, ¶ 29. In that light, the evidence established: Helm grabbed Misty’s arm when the two began arguing. Alan stepped between his parents to protect his much-slighter mother. When Alan got in the way, Helm punched his son in the face, and Alan began to wrestle his father outside, from which the jury could infer a further attempt to protect Misty from Helm’s assault. To the two observers of the scene, Boone and Taylor, Helm appeared to be the aggressor, their observations corroborated by the physical evidence of Alan’s numerous injuries. As the only eyewitness inside the trailer, Boone likewise was afraid that Misty would be hurt. Given what Helm unleashed on Boone’s friend Alan, his concern was justified. Misty’s outburst after Helm’s assault against Alan came only when Helm had moved outside and neighbors were on the scene. When Officer Skidmore arrived, Misty seemed fearful and hesitant to speak with him. And Helm was nowhere to be found, but later gave statements inconsistent with every other witness’s account. Although presented with Helm’s alternate description of how the night unfolded, it is clear from the verdict that the jury rejected this scenario.

¶18 The testimonies from Boone, Taylor, and Officer Skidmore presented enough circumstantial evidence to support the jury’s finding that a reasonable person in Misty’s position reasonably would have apprehended bodily injury from Helm. According to Boone, Alan was trying to get Helm to leave for fear that he would hurt Misty. That is what Boone thought would happen, and the jury could infer that Misty reasonably would

have thought so too. Upon review of the trial record, we hold that the evidence presented by the prosecution could have allowed a rational trier of fact to conclude that the “reasonable apprehension of bodily injury” element was satisfied beyond a reasonable doubt. Helm was not entitled to dismissal for insufficient evidence on Count 1.

¶19 We have determined to decide this case pursuant to Section I, Paragraph 3(c) of our Internal Operating Rules, which provides for memorandum opinions. This appeal presents no constitutional issues, no issues of first impression, and does not establish new precedent or modify existing precedent. The jury had sufficient evidence to convict Helm of Partner or Family Member Assault, and the judgment is affirmed.

/S/ BETH BAKER

We Concur:

/S/ MIKE McGRATH
/S/ JAMES JEREMIAH SHEA
/S/ INGRID GUSTAFSON
/S/ LAURIE McKINNON
/S/ DIRK M. SANDEFUR
/S/ JIM RICE