STATE OF MINNESOTA
IN COURT OF APPEALS
A16-1112

State of Minnesota,
Respondent,

vs.

Raven Kimo Martinez,
Appellant.

Filed June 19, 2017
Affirmed
Reyes, Judge

Ramsey County District Court
File No. 62-CR-15-9392

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

John J. Choi, Ramsey County Attorney, Peter R. Marker, Assistant County Attorney, St. Paul, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Lydia Maria Villalva Lijó, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Bjorkman, Presiding Judge; Hooten, Judge; and Reyes, Judge.

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

REYES, Judge

On appeal from his convictions of second-degree assault and felony domestic assault, appellant argues that (1) the state failed to present sufficient evidence to prove

beyond a reasonable doubt that he committed felony domestic assault and (2) the district court abused its discretion in denying his request to instruct the jury on fifth-degree assault as a lesser-included offense of the second-degree assault charge. We affirm.

FACTS

On December 2, 2015, respondent State of Minnesota charged appellant Raven Kimo Martinez with one count of aggravated stalking, one count of second-degree assault, and one count of terroristic threats. The state later filed an amended complaint, dismissing count three and amending counts one and two to allege second-degree assault under Minn. Stat. § 609.222, subd. 1 (2014), and felony domestic assault under Minn. Stat. § 609.2242, subd. 4 (2014), respectively.

The evidence admitted at appellant's jury trial established that A.M.L. had been romantically involved with appellant when she was a teenager, and the two had resumed dating between August and November 2015. During that period in 2015, A.M.L. was married to J.L., but she had moved out of their apartment to live with appellant and planned to divorce J.L. Toward the end of November 2015, A.M.L. reconciled with J.L. and ended her relationship with appellant.

On November 30, 2015, appellant went to A.M.L.'s and J.L.'s apartment, which they shared with J.L.'s sister, M.M.L., and J.L.'s two brothers. J.L. answered the door, spoke briefly with appellant, and told A.M.L. that appellant wanted to speak with her. A.M.L. spoke with appellant at the door and denied his request for a ride. A.M.L. testified that appellant became upset and threatened to hurt J.L. or anyone else in the apartment if A.M.L. did not leave with him. Appellant then showed A.M.L. a large

knife, which he had concealed in the waistband of his pants, and said, "You know what I'm capable of." A.M.L. told appellant that she would be right back, shut the door, and called 911. During her conversation with the 911 operator, A.M.L. reported that appellant was at her door and she needed help because he was threatening to take her away. A.M.L. further reported that appellant was known to carry a large knife and would hurt her if he found out that she called 911. A.M.L. also stated that she was scared and needed help quickly. The state's charge of felony domestic assault stemmed from this conduct.

M.M.L. arrived at the apartment building while A.M.L. was on the phone with the 911 operator. Appellant let M.M.L. into the building but then stood between her and the door to her apartment. Appellant told M.M.L. that he knew everything about her family, pulled out the knife, held it to her chest, and said he could kill her. M.M.L. testified at trial that appellant pressed the knife's blade against her chest, and she thought appellant was going to kill her. The state's charge of second-degree assault stemmed from this conduct.

St. Paul Police Officer Jonathan Finnegan testified that he arrived at the apartment building and observed appellant and M.M.L. "talking very, very close." He arrested appellant and removed the knife from appellant's pants. St. Paul Police Officer Gregory Williams arrived after Officer Finnegan had arrested appellant. Both officers thought that M.M.L. was the 911 caller. Officer Williams then interviewed M.M.L., who stated that appellant pointed the knife toward her chest but did not make contact with her body, and J.L., who stated that he did not open the apartment door or see appellant. Later,

St. Paul Police Officer Nichole Sipes noted that M.M.L. was not the 911 caller and went to the apartment building to determine if two different women were involved in the incident. During that visit, Officer Sipes interviewed both A.M.L. and J.L.

During the trial, prior to closing arguments, appellant requested that the jury be instructed on fifth-degree assault as a lesser-included offense of the second-degree assault charge. The district court denied the request after determining that "[t]he record as a whole does not support a rational basis for acquitting [appellant] on the second-degree assault and convicting him on the lesser offense of fifth-degree assault." The district court offered the following explanation for this ruling:

> Here there is no conflicting testimony as to whether [appellant] had a knife, pulled out [a] knife, pulled [it] up to the victim's chest, and threatened to kill her. [Appellant's] defense appears to be a complete denial of any assault. In order for the jury to convict [appellant] of a lesser-included fear assault or a fifth-degree assault and acquit him [of] the second-degree assault, the jury must conclude that [appellant] threatened to kill [M.M.L.] but discredit the testimony—her testimony in regards to the knife and therefore must believe that he threatened to kill her or threatened to harm her or threatened bodily harm without a knife.

The jury returned guilty verdicts on both counts, and appellant was later sentenced accordingly. This appeal follows.

D E C I S I O N

I. Sufficient evidence supports appellant's conviction of felony domestic assault.

Appellant argues that the evidence was insufficient to prove beyond a reasonable doubt that he committed felony domestic assault against A.M.L. We disagree.

To convict appellant of felony domestic assault, the state had to prove that appellant (1) acted with the intent to cause a family or household member[1] to fear immediate bodily harm or death (2) "within ten years of the first of any combination of two or more previous qualified domestic violence-related offense convictions or adjudications of delinquency." Minn. Stat. § 609.2242, subds. 1(1), 4 (2014). At the start of trial, appellant stipulated to the second element.

Appellant maintains that the state failed to prove that he acted with the requisite intent and that A.M.L. did not fear immediate bodily harm or death. But A.M.L.'s subjective reaction is not an element of the assault offense. *See State v. Bustos*, 861 N.W.2d 655, 672 n.5 (Minn. 2015). Therefore, the only question before this court is whether the state proved beyond a reasonable doubt that appellant acted with the intent to cause fear of immediate bodily harm or death.

A criminal defendant acts "with intent to" when he either "has the purpose to do the thing or cause the result specified or believes that the act, if successful, will cause that result." Minn. Stat. § 609.02, subd. 9(4) (2014). Intent is a state of mind "generally proved circumstantially by drawing inferences from a defendant's words and actions in light of the totality of the circumstances." *State v. Moua*, 678 N.W.2d 29, 39 (Minn. 2004).

[1] "Family or household member" includes "persons who are presently residing together or who have resided together in the past," and "persons involved in a significant romantic or sexual relationship." Minn. Stat. § 518B.01, subd. 2(b)(4), (7) (2014). Appellant does not argue that A.M.L. is not a family or household member.

When a conviction is based on circumstantial evidence, we use a two-step process to assess the sufficiency of the evidence to sustain the conviction. *State v. Silvernail*, 831 N.W.2d 594, 598 (Minn. 2013); *see also State v. Harris*, __ N.W.2d __, __, 2017 WL 2265434, at *2-5 (Minn. May 24, 2017) (reaffirming circumstantial-evidence standard). First, we identify the circumstances proved. *Silvernail*, 831 N.W.2d at 598. In identifying the circumstances proved, "we construe conflicting evidence in the light most favorable to the verdict and assume that the jury believed the State's witnesses and disbelieved the defense witnesses." *Id.* at 599 (quotation omitted). Second, we "determine whether the circumstances proved are consistent with guilt and inconsistent with any rational hypothesis except that of guilt," giving no deference to the jury's choice among reasonable inferences. *Id.* (quotation omitted).

Here, the circumstances proved include: (1) appellant went to A.M.L.'s apartment to request a ride; (2) when she refused this request, appellant became upset, showed her the knife that he was carrying, and said "you know what I'm capable of"; (3) appellant threatened to hurt J.L. or anyone else in the apartment if A.M.L. did not leave with him; (4) A.M.L. told the 911 operator that she needed help because appellant was threatening to take her away, appellant would hurt her if he found out that she called 911, and she was scared and needed help quickly; and (5) in responding to A.M.L's 911 call, police arrested appellant inside the apartment building and discovered a knife in his pants.

Appellant challenges these circumstances proved by emphasizing inconsistencies between A.M.L.'s statements to police and her trial testimony. Appellant further argues that, following their breakup, he was in a dispute with A.M.L. over personal property,

which gave A.M.L. a motive to retaliate against him. However, appellant's trial counsel cross-examined A.M.L. extensively regarding any dispute with appellant and various discrepancies between her testimony and prior statements. More importantly, appellant's argument is immaterial under the applicable standard of review where we construe conflicting evidence in the light most favorable to the verdict and assume that the jury believed the state's witnesses.

Here, the circumstances proved are consistent with guilt and are inconsistent with any rational hypothesis except that appellant acted with the intent to cause fear of immediate bodily harm or death. Therefore, we conclude that the evidence is sufficient to sustain the jury's verdict that appellant committed felony domestic assault.

II. The district court did not abuse its discretion in denying appellant's request for a jury instruction on the lesser-included offense of fifth-degree assault.

Appellant argues that the district court abused its discretion in denying his request to instruct the jury on fifth-degree assault as a lesser-included offense of the second-degree assault charge, asserting that the court impermissibly based its denial on a credibility determination and balancing of evidence. We disagree.

When a defendant requests an instruction on a lesser-included offense, a district court must give the instruction if "1) the lesser offense is included in the charged offense; 2) the evidence provides a rational basis for acquitting the defendant of the charged offense; and 3) the evidence provides a rational basis for convicting the defendant of the lesser-included offense." *State v. Dahlin*, 695 N.W.2d 588, 595 (Minn. 2005). The district court must view the evidence in the light most favorable to the party requesting

the instruction and must not weigh evidence or make credibility determinations. *Id.* at 597. This court reviews the denial of a requested lesser-included-offense instruction for an abuse of discretion. *Id.*

A conviction of second-degree assault requires the state to prove that the defendant committed an assault with a dangerous weapon. Minn. Stat. § 609.222, subd. 1. "Assault" is defined as "an act done with intent to cause fear in another of immediate bodily harm or death." Minn. Stat. § 609.02, subd. 10(1) (2014). A conviction of fifth-degree assault requires the state to prove that the defendant committed "an act with intent to cause fear in another of immediate bodily harm or death." Minn. Stat. § 609.224, subd. 1(1) (2014). Because fifth-degree assault is a lesser-included offense of second-degree assault, the first element is met. *See* Minn. Stat. § 609.04, subd. 1(1) (2014) (providing that a lesser degree of the charged crime is an included offense). Therefore, the district court would have been required to give an instruction on fifth-degree assault if the evidence, viewed in the light most favorable to appellant, provided rational bases for the jury to conclude that he did not assault M.M.L. with the knife and, instead, acted with intent to cause M.M.L. to fear immediate bodily harm or death.

The district court denied appellant's request, noting that appellant's defense theory was a complete denial of any assault and the absence of any conflicting testimony regarding whether appellant had threatened M.M.L. while holding the knife. The district court reasoned that there are no rational bases on which the jury could both acquit appellant of second-degree assault and convict him of fifth-degree assault. The district court further explained that, in order to reach such a conclusion, the jury would need to

discredit M.M.L.'s testimony regarding appellant's use of the knife, despite M.M.L.'s consistent assertion that appellant used the knife in making threats, but credit her testimony regarding appellant's threats.

In arguing that these rational bases existed, appellant emphasizes inconsistencies between M.M.L.'s statements to police (appellant pointed the knife at her chest while threatening her) and her trial testimony (appellant pressed the knife against her chest while threatening her). Viewing the evidence in the light most favorable to appellant, even if he pointed the knife at M.M.L.'s chest while threatening her and did not press it against her chest, this still constitutes second-degree assault under Minn. Stat. § 609.222, subd. 1. *See State v. Soine*, 348 N.W.2d 824, 827 (Minn. App. 1984) (affirming second-degree assault conviction where defendant was holding a knife "within striking distance" while threatening an individual).

Accordingly, we agree with the district court's determination that appellant is unable to satisfy the second of the three conjunctive *Dahlin* elements. Therefore, we conclude that the district court did not abuse its discretion in denying appellant's request. Moreover, the district court's comments regarding the reasoning behind its decision did not constitute an impermissible weighing of evidence or credibility determination. These comments were merely an explanation of why appellant was not entitled to an instruction on the lesser-included offense under *Dahlin*.

Affirmed.