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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0534**

State of Minnesota,
Respondent,

vs.

Earley Romero Blevins,
Appellant.

**Filed February 11, 2019
Affirmed
Smith, Tracy M., Judge**

Chisago County District Court
File No. 13-CR-17-306

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

Janet Reiter, Chisago County Attorney, Erin C. Stephens, Assistant County Attorney, Center City, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Jessica Merz Godes, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Smith, Tracy M., Presiding Judge; Ross, Judge; and Johnson, Judge.

UNPUBLISHED OPINION

SMITH, TRACY M., Judge

A jury found appellant Earley Romero Blevins guilty of fourth-degree assault for spitting on a corrections officer, and he was convicted of and sentenced for the crime. On

appeal, Blevins argues that the evidence was insufficient to prove beyond a reasonable doubt that he intended to spit on the corrections officer. We affirm.

FACTS

Blevins was imprisoned at a Minnesota Department of Corrections facility. When Blevins was leaving his job in the kitchen, corrections officers ordered him to submit to a routine pat search. Blevins agreed to the search, but officers later testified that he was “agitated,” “loud,” and argumentative. In response, officers began moving Blevins to a nearby holding cell and, as part of that process, directed him to comply with a strip search. Blevins said that he would comply. As the search began, he told officers that he could “pull away” from them if he wanted to and said, “[J]ust take me to seg[regation].”¹ Blevins testified that he made these comments in response to a threat that he would be taken to segregation and that he made them because he knew that he had not stolen anything and could not be kept there for long. Officers took Blevins to segregation and performed a “staff-assisted unclothed body search,” that is, a forced strip search. At that point, the officers began recording the interaction on a handheld video camera.

Blevins was handcuffed and placed face-down on a mattress, and his clothes were cut off. Blevins told the officers there was blood and feces on the mattress, but they continued the strip search. Blevins threatened to spit on the officers. They put him in a spit hood—a mesh head covering, like a mosquito net, intended to catch any saliva if Blevins did spit.

¹ “Segregation” refers to an area of the prison where prisoners are confined to a cell by themselves; prisoners may be placed there as punishment.

Once the strip search was complete, officers began to leave the room. They needed to move Blevins close to the door to enable them to remove his handcuffs while the door was shut and they were out of the cell. Blevins resisted being moved, variously kicking, stiffening his body, and going limp.

The corrections officers decided to move Blevins to a restraint chair. When Blevins continued resisting, they applied “touch pressure”—a technique intended to force compliance by inflicting pain—to various points on his body, including between his ear and the end of his jawbone, as well as directly under his jawbone. At the same time, other corrections officers were attempting to strap his legs into the chair. Three corrections officers testified that, while this was going on, Blevins spat on them. The first officer testified that, after he spat, Blevins said, “I’m going to get you.” The second corrections officer, Smith, testified that he felt spit on the right side of his face and his right eye (despite the spit hood) and that Blevins was looking at him and laughing at him at the moment he spat. The final officer testified simply about applying pressure and being spat on.

Blevins was charged with three counts of fourth-degree assault against a correctional employee—one count for each employee. *See* Minn. Stat. § 609.2231, subd. 3 (2016). A jury found Blevins not guilty of the first and third counts of fourth-degree assault but guilty of the second count, which related to Smith. Blevins was convicted and sentenced. He now appeals.

DECISION

I. The evidence is sufficient to support Blevins's conviction.

A valid conviction of fourth-degree assault for spitting on a correctional employee requires the state to prove, beyond a reasonable doubt, that the defendant intentionally spat at or onto a correctional employee. Minn. Stat. § 609.2231, subd. 3. Blevins argues that the evidence of his intent is insufficient to support his conviction.

Because intent is a state of mind, it is rarely proved by direct evidence. *See State v. McAllister*, 862 N.W.2d 49, 53 (Minn. 2015). That general rule holds here. The state did not introduce direct evidence of Blevins's state of mind;² it instead relied on circumstantial evidence to prove that he intended to spit on Smith.

In Minnesota, the sufficiency of circumstantial evidence is subject to a stricter standard of review than is the sufficiency of direct evidence. *State v. Harris*, 895 N.W.2d 592, 598 (Minn. 2017). This heightened standard applies to the review of any element of a crime that is proved by circumstantial evidence, including mens rea. *State v. Al-Naseer*, 788 N.W.2d 469, 474 (Minn. 2010). When applying the heightened standard, an appellate court employs a two-step process. *Loving v. State*, 891 N.W.2d 638, 643 (Minn. 2017).

² The state did introduce evidence that Blevins threatened to spit on the officers. Evidence of threats can be evidence of a defendant's state of mind. *State v. Kirch*, 322 N.W.2d 770, 773 (Minn. 1982). Threats may even be direct evidence of state of mind. *See State v. Horst*, 880 N.W.2d 24, 40 (Minn. 2016) (implicitly overruling *Kirch*'s statement that mental states cannot be proved by direct evidence). But here, Blevins's threat was to spit if officers did not let him go. Even though they did not release him, Blevins did not spit for several minutes, during which he was strenuously resisting the officers. Though the threat was quite close in time, the intervening events suggest that it may not have captured his state of mind at the moment he actually spat.

First, the court determines what circumstances the state proved. *Id.* In doing so, the court “resolv[es] all questions of fact in favor of the jury’s verdict” and disregards any evidence inconsistent with the verdict. *Harris*, 895 N.W.2d at 600. Second, the court determines “whether the circumstances proved are consistent with guilt and inconsistent with any rational hypothesis other than guilt.” *State v. Bahtuoh*, 840 N.W.2d 804, 810 (Minn. 2013). The evidence is insufficient to support the verdict if an inference that is inconsistent with guilt can reasonably be drawn from the circumstantial evidence supporting the verdict. *See Harris*, 895 N.W.2d at 601.

Blevins concedes that the circumstances are consistent with guilt but argues that two inferences inconsistent with guilt can reasonably be drawn from the circumstances proved. We begin the analysis with the circumstances proved.

A. Circumstances Proved

Assuming that the jury credited the testimony of the state’s witnesses and construing the evidence in the light most favorable to the verdict, *see State v. Hawes*, 801 N.W.2d 659, 668 (Minn. 2011), we identify the following circumstances proved. Blevins was taken to segregation and subjected to a strip search by force because he was resistant to both a pat down and a voluntary strip search. During the course of the forced strip search, Blevins said that he would start spitting if not released. He was not released; a spit hood was placed over his head. After the strip search, corrections employees attempted to place Blevins into a restraint chair. Blevins continued resisting, and corrections officers applied force to various areas around his jawline in an attempt to force him to comply. Blevins responded by repeatedly shouting “stop choking me.” While applying pressure, Smith was near

Blevins's face. Blevins looked him in the eyes, spat, and laughed. Smith was hit with a mist of saliva.

Blevins asserts that there were additional circumstances proved. He asserts that he was being choked and could not breathe. He also asserts that he was shouting "stop choking me" at the same time that he spat. However, because the standard of review for circumstantial evidence requires this court to assume that the jury discredited testimony inconsistent with the verdict, Blevins's own statements and testimony are not "circumstances proved." *See Harris*, 895 N.W.2d at 600. Thus, no inferences regarding Blevins's intent can be drawn from those alleged facts. *State v. Stein*, 776 N.W.2d 709, 715 (Minn. 2010) ("Where the jury has rejected conflicting facts and circumstances, we do not draw competing inferences from those facts on appeal.").

B. Inferences from the Circumstances Proved

Blevins does not dispute that the circumstances proved are consistent with the inference that he intended to spit on Smith. He argues, however, that the circumstances also allow for the inference that Blevins did not intend to spit on Smith. He argues that it is reasonable to infer either (a) that any expulsion of saliva was an unintentional side-effect of his shouting, or (b) that his purpose in spitting was to clear his airways, and not to spit on Smith.

1. Unintentional Side-Effect of Shouting

Blevins first argues his lack of intent can reasonably be inferred from "[t]he natural tendency to collect saliva in one's mouth under these circumstances and to unintentionally expel it while screaming and pleading for air." Such an inference would be inconsistent

with intent and thus inconsistent with guilt. Because there was no direct evidence of how full of saliva Blevins's mouth was, his argument requires a chain of inferences. First, it must be reasonable to infer that he accumulated excess saliva; second, it must be reasonable to infer that he unintentionally expelled that saliva while shouting. The evidence in the record does not support either inference.

Blevins points to *Al-Naseer* to argue that his accumulation of saliva can be inferred from the circumstances. *See* 788 N.W.2d at 480. But *Al-Naseer* does not support his argument. In *Al-Naseer*, the circumstances proved were that a driver hit a car tire and a person on the shoulder of the road, causing significant damage to the driver's own vehicle, but did not react except by slowly drifting back onto the roadway while driving away. *Id.* at 477-78. The supreme court held that it could be inferred that the driver's lack of reaction was caused by the driver being asleep or unconscious. *Id.* at 478-79. Because it is common knowledge that an unconscious person does not react to external stimuli, it was a reasonable inference that a driver who hits something and does not react may have been unconscious. *See id.* In contrast, the circumstances proved here are that Blevins was shouting and pressure was being placed around his jawbone. The connection between those facts and the accumulation of saliva is not readily apparent. And there is no record evidence of how the officers' use of force could affect a person's saliva accumulation. Under the circumstances proved, it would be "mere conjecture or speculation" to conclude that Blevins's mouth filled with saliva. *See id.* at 480 (quotation omitted).

Even if it were reasonable to infer that saliva accumulated in Blevins's mouth, the video recording of the incident that was shown to the jury is inconsistent with Blevins's

theory of unintentional expulsion. The video shows Blevins shouting “stop choking me” repeatedly, but then stopping. Fifteen seconds after he stops shouting, there is a sound like a soft burst of air and three of the officers react. Smith is then seen talking to the supervising officer and leaving the room. Though quiet, Smith’s words are audible: “He spit on me.” Interpreting the video in the light most favorable to the verdict, the burst of air is the moment Blevins spat, and the spitting occurred well after Blevins had stopped shouting. Under those circumstances, it is unreasonable to infer that the spitting was an unintentional side effect of Blevins’s shouting.

2. Innocent Purpose

Blevins’s second argument is that Minn. Stat. § 609.2231, subd. 3, requires the state to prove not only that he intended to spit at or onto Smith, but that he spat with the purpose of doing so. He argues that it is reasonable to infer his purpose in spitting was to breathe more easily and not to spit at or onto Smith. Blevins relies on *State v. Cogger*, 802 N.W.2d 407, 411 (Minn. App. 2011), *review granted* (Minn. Oct. 18, 2011) *and order granting review vacated* (Minn. Mar. 28, 2012). *Cogger* dealt with the prohibition against assault of a police officer, not a correctional officer, but both statutory sections use the same phrase—“intentionally throws or otherwise transfers bodily fluids or feces at or onto” the victim. Minn. Stat. § 609.2231, subd. 1(c) (2010), subd. 3. The *Cogger* court held that a person violates this prohibition if the person acts “with the purpose to spit on a police officer.” 802 N.W.2d at 412. Blevins relies on the court’s use of “purpose” to assert that a defendant’s goal must be to cause spit to land on a correctional officer. The state does not contest this interpretation. The parties thus seem to agree that, for a person to be convicted,

the person's purpose in spitting must be to spit at or onto a correctional officer. *See* Minn. Stat. § 609.2231, subd. 3.

Nevertheless, Blevins's argument fails for two reasons. First, Blevins reads too much into *Cogger's* use of the word "purpose." The *Cogger* court held that Minn. Stat. § 609.2231, subd. 1, created a general-intent crime, and not a specific-intent crime, such that voluntary intoxication was not a defense. 802 N.W.2d at 411. The statement that the statute required "the purpose to spit on a police officer" was made in contrast to an interpretation that would have also required the purpose to cause some result. *Id.* at 412. Indeed, the court stated that "the only intent necessary under the statute is to intentionally engage in the prohibited conduct." *Id.* at 411. "Intentionally," for the purposes of Minn. Stat. § 609.2231, subd. 3, includes acting with the belief that the action will cause the prohibited result. Minn. Stat. § 609.02, subd. 9(3) (2016). Under that definition of "intentionally," Blevins is guilty of fourth-degree assault of a corrections officer if he believed that the act of spitting would direct the saliva at or onto the officer, even if his purpose was to clear saliva from his mouth.

Given that definition, the circumstances proved are inconsistent with any rational hypothesis other than guilt. While Smith was near Blevins's face, Blevins looked Smith in the eyes and spat. It is unreasonable to infer that Blevins did not believe he would spit at or onto Smith by spitting in Smith's direction at that moment.

Second, even if the state had been required to prove that Blevins's purpose was to spit at or on Smith, it did so. Evidence that Blevins was being choked was discredited under the first step of review, because it was not inconsistent with guilt. Because the

circumstances proved do not include that Blevins struggled to breathe, it is unreasonable to infer that Blevins's purpose in spitting was to breathe more easily. Further, the state introduced evidence, which we assume the jury credited, that Blevins had (1) threatened to spit on corrections officers, (2) locked eyes with Smith, (3) spat, and (4) laughed when the spit landed on Smith. Given this evidence that Blevins's goal was to spit on Smith, and the absence of evidence supporting Blevins's asserted innocent purpose, it is unreasonable to infer that Blevins had any purpose other than spitting at or onto Smith.

II. Blevins's Pro Se Supplemental Brief

Blevins's pro se supplemental brief asserts the same claim as was raised in the brief submitted by counsel but with more detailed allegations regarding the force used against him. Blevins also argues that the officers used excessive force against him as unconstitutional corporal punishment for his verbal conduct. However, Blevins does not explain why that alleged improper use of force justifies or excuses his conduct of spitting on Smith, and his brief does not cite to relevant law. To the extent Blevins raises any additional claims, they fail because they are unsupported by argument or legal authority. *See State v. Bartylla*, 755 N.W.2d 8, 22-23 (Minn. 2008) (holding pro se claims waived because they lacked "supportive arguments and/or legal authority").

Affirmed