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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1385**

In the Matter of the Welfare of:
E. M. L.-T., Child.

**Filed April 2, 2018
Reversed
Cleary, Chief Judge**

Douglas County District Court
File No. 21-JV-17-674

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

Chad Larson, Douglas County Attorney, Ezra P. Hartsell, Assistant County Attorney,
Alexandria, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Leslie J. Rosenberg, Assistant
Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Cleary, Chief Judge; Reilly, Judge; and Stauber, Judge.*

UNPUBLISHED OPINION

CLEARY, Chief Judge

Appellant E.M.L.-T. challenges the sufficiency of the circumstantial evidence supporting the district court's finding of guilt. Because the evidence does not sufficiently support guilt, we reverse.

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

FACTS

On December 31, 2016, 14-year-old appellant fired a BB gun loaded with cat litter in the direction of his eight-year-old sister who was holding a piece of paper near her body. Appellant's sister was shot in the chest and sustained a bruise. She testified that she was meant to hold the paper "like a target" and that the incident was an accident. Appellant and his sister were the only two present during the incident.

Appellant was issued a citation for domestic assault in violation of Minn. Stat. § 609.2242, subd. 1(2) (2016). After a delinquency trial, the district court found appellant guilty and adjudicated him delinquent, concluding that appellant intended to shoot and harm his sister. This appeal follows.

DECISION

"A conviction based on circumstantial evidence . . . warrants heightened scrutiny." *State v. Al-Naseer*, 788 N.W.2d 469, 473 (Minn. 2010). Because there is no direct evidence of appellant's intent, heightened scrutiny is appropriate.

In applying heightened scrutiny, we first identify the circumstances proved. *Id.* at 473. We defer to the fact-finder's "acceptance of the proof of these circumstances and rejection of evidence in the record that conflicted with the circumstances proved by the State." *State v. Stein*, 776 N.W.2d 709, 718 (Minn. 2010). In other words, in determining which circumstances were proved, "we disregard testimony that is inconsistent with the verdict." *State v. Hawes*, 801 N.W.2d 659, 668-69 (Minn. 2011).

We next examine "independently the reasonableness of all inferences that might be drawn from the circumstances proved, including inferences consistent with innocence."

Stein, 776 N.W.2d at 716. “[W]e give no deference to the fact finder’s choice between reasonable inferences.” *Id.* We review the circumstantial evidence as a whole, not as isolated facts. *State v. Hurd*, 819 N.W.2d 591, 599 (Minn. 2012). “In assessing the inferences drawn from the circumstances proved, the inquiry is not simply whether the inferences leading to guilt are reasonable. Although that must be true in order to convict, it must also be true that there are no other reasonable, rational inferences that are inconsistent with guilt.” *Stein*, 776 N.W.2d at 716.

Appellant contends that the state failed to disprove the reasonable inference that he did not intend to harm his sister. The district court rejected the accident testimony and found that appellant had intended to harm his sister. While made on the record, these findings were not reduced to writing.

As to the first step of the circumstantial evidence test, the district court found that the state proved the following circumstances consistent with appellant’s guilt: (1) 14-year-old appellant was in possession of a BB gun; (2) appellant’s eight-year-old sister held a piece of paper; (3) appellant pointed the BB gun in his sister’s direction; (4) appellant intentionally pulled the trigger of the BB gun; and (5) appellant’s sister was struck by the projectile of cat litter from the BB gun.

Appellant was adjudicated delinquent for misdemeanor domestic assault: intentionally inflicting or attempting to inflict bodily harm upon a family or household member. Minn. Stat. § 609.2242, subd. 1(2). Assault-harm is a general-intent crime. *State v. Fleck*, 810 N.W.2d 303, 312 (Minn. 2012). “General intent is satisfied when a defendant ‘intentionally engag[ed] in the prohibited conduct.’” *State v. Dorn*, 887 N.W.2d 826, 830

(Minn. 2016) (quoting *Fleck*, 810 N.W.2d at 308). “For assault-harm, ‘[t]he forbidden conduct is a physical act, which results in bodily harm upon another.’ Specifically, assault-harm requires ‘only an intent to do the prohibited act of committing a battery.’” *Id.* (quoting *Fleck*, 810 N.W.2d at 309). A battery is “[t]he nonconsensual touching of, or use of force against, the body of another with the intent to cause harmful or offensive contact.” *Black’s Law Dictionary* 182 (10th ed. 2014).

A reasonable inference from the circumstances proved is that appellant did not intend to harm his sister. There is no dispute that appellant intended to pull the trigger of the BB gun, but it is reasonable to infer from the circumstances proved that he intended to hit or strike the paper—the target—his sister was holding rather than hitting or striking his sister. This reasonable inference is inconsistent with guilt and warrants reversal.

While we reverse because the circumstantial evidence was not sufficient, we pause to note the district court’s failure to issue written findings. The district court’s May 10, 2017 order finding appellant guilty does not contain any additional findings supporting guilt. The absence of written findings further undermines the sufficiency of the circumstantial evidence.

In addition to making a general finding of guilt, a district court must “specifically find the essential facts that support a general finding that the allegations in the charging document have been proved beyond a reasonable doubt in writing.” Minn. R. Juv. Delinq. P. 13.09. Here, while the district court made oral findings on the record, specific findings supporting guilt were not reduced to writing. Given the possible inferences from the circumstantial evidence of intent and the additional clarity that specific written findings

would provide in resolving that issue, this case underscores the need for such findings. Because we reverse the adjudication on the ground of sufficiency of the evidence, we do not reach the remaining evidentiary issues raised by appellant.

Reversed.