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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0409**

State of Minnesota,
Respondent,

vs.

Cole Lyle Kjellberg,
Appellant.

**Filed January 22, 2019
Affirmed
Jesson, Judge**

Clearwater County District Court
File No. 15-CR-17-374

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

Alan Rogalla, Clearwater County Attorney, Bagley, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Michael McLaughlin, Assistant
Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Rodenberg, Presiding Judge; Hooten, Judge; and Jesson,
Judge.

UNPUBLISHED OPINION

JESSON, Judge

Appellant Cole Kjellberg kicked in the door to the home he shared with his wife and
two young daughters, yelled at his wife in front of his four-year-old daughter, and pushed

the same daughter across her bedroom, causing her to fall. Kjellberg was convicted of domestic assault—intent to cause fear—and child endangerment based on these actions. In this direct appeal of his child endangerment conviction, Kjellberg argues the evidence presented at trial was insufficient to prove that substantial harm to his daughter was likely to occur, as required by the child endangerment statute. We affirm.

FACTS

On September 29, 2017, Kjellberg’s wife called 911 to report that Kjellberg had tried to choke her, pushed their daughter across the room, punched walls, and kicked in the front door. Police quickly arrived at the home, but Kjellberg had already fled. Later that day, after receiving a tip that Kjellberg had returned home, police found him hiding in a bedroom closet and arrested him.

Kjellberg was charged with making threats of violence,¹ attempted domestic assault by strangulation,² child endangerment,³ and two counts of domestic assault.⁴ Kjellberg’s daughter was the alleged victim of the child endangerment and domestic assault—intent to cause fear—charges and his wife was the alleged victim of the other charges. At a court trial, Kjellberg’s wife and a responding police officer provided testimony and the prosecution played an audio tape of the 911 call. The district court found Kjellberg guilty of domestic assault—intent to cause fear—and child endangerment and not guilty of the remaining charges. On the child endangerment conviction, Kjellberg was sentenced to 365

¹ In violation of Minn. Stat. § 609.713, subd. 1 (2016).

² In violation of Minn. Stat. § 609.2247, subd. 2 (2016).

³ In violation of Minn. Stat. § 609.378, subd. 1(b)(1) (2016).

⁴ In violation of Minn. Stat. § 609.2242, subd. 1(1), (2) (2016).

days in jail, with 289 days stayed for two years and credit for time served of 76 days. On the domestic assault conviction, Kjellberg was sentenced to 90 days in jail, with credit for time served.

Kjellberg appeals from the final judgment but only challenges his child endangerment conviction.

DECISION

On appeal, Kjellberg argues that his conviction of child endangerment should be reversed because there was insufficient evidence to show that the incident was likely to cause substantial harm to his daughter's physical, mental, or emotional health. For sufficiency-of-the-evidence claims, this court reviews the evidence to determine whether, given the facts in the record and the legitimate inferences that can be drawn from those facts, a fact-finder could reasonably conclude that the defendant was guilty beyond a reasonable doubt of the charged offense. *State v. Robertson*, 884 N.W.2d 864, 871 (Minn. 2016). We view the evidence in the light most favorable to the verdict and assume that the fact-finder disbelieved any evidence contrary to the verdict. *State v. Fox*, 868 N.W.2d 206, 223 (Minn. 2015). We will not disturb the verdict if, acting with due regard for the presumption of innocence and the requirement of proof beyond a reasonable doubt, the fact-finder could reasonably conclude that the defendant was guilty. *State v. Ortega*, 813 N.W.2d 86, 100 (Minn. 2012).

To obtain a conviction for child endangerment, the state must prove that Kjellberg “endanger[ed] [his] child’s person or health by: . . . intentionally or recklessly causing or permitting [the] child to be placed in a situation *likely to substantially harm* the child’s

physical, mental, or emotional health or cause the child's death." Minn. Stat. § 609.378, subd. 1(b)(1) (emphasis added). The statute requires "more than ordinary civil negligence" and "more than a simple deviation from the standard of care." *State v. Tice*, 686 N.W.2d 351, 355 (Minn. App. 2004), *review denied* (Minn. Nov. 16, 2004) (emphasis omitted). And when we consider whether the situation is "likely" to substantially harm a child, we contemplate whether that harm is more likely than not. *Id.* at 351-52.

Here the district court found that the altercation between Kjellberg and his wife took place in the presence of their four-year-old daughter and included Kjellberg pushing his daughter into her room. The district court concluded the incident was likely to substantially harm the child. We agree.

The testimony of Kjellberg's wife established that Kjellberg placed the child in a "situation likely to substantially harm" the child's physical health. Kjellberg's wife described the situation on the morning of September 29, 2017, testifying that Kjellberg "started freaking out because [she] did not have breakfast for [their daughter] on the table." She then stated that Kjellberg "threw a coffee cup" at her, followed her around the house "screaming and yelling," put his hands on her neck and "started squeezing," telling her that "he had no issue killing her." This was the situation their four-year-old daughter encountered when she came out of her room and yelled at Kjellberg, "quit hitting my mom." Kjellberg's wife also testified to the likely substantial physical harm when she explained that Kjellberg then pushed their daughter into her bedroom "and she went flying in her room and fell on her floor." Their daughter's head "almost hit her bed," at which point the child yelled at Kjellberg "asking him why he was being mean to her and pushing

her.” And the situation later included Kjellberg kicking the door in and stating that “he had no problem burning the house down with [his wife] and the kids in it.”⁵

The evidence presented at trial, of an adult man (in the midst of an intense fight with his wife) intentionally pushing his four-year-old daughter to the point she went flying across a room, fell, and almost hit her head, qualifies as a situation likely to substantially harm the child.⁶

But Kjellberg contends that his conduct towards his daughter was not proved to be likely to cause substantial harm because the district court’s findings do not credit his wife’s allegations of strangulation or death threats. The district court found Kjellberg not guilty of making threats of violence, attempted domestic assault by strangulation, and domestic assault—intent to inflict physical harm. But a trier of fact is free to accept part and reject part of a witness’s testimony, and we defer to the district court’s determinations as to what is credible because a district court is in a superior position to assess the credibility of witnesses. *State v. Johnson*, 568 N.W.2d 426, 436 (Minn. 1997); *In re Welfare of L.A.F.*, 554 N.W.2d 393, 396 (Minn. 1996); *Constans v. Comm’r of Pub. Safety*, 835 N.W.2d 518,

⁵ The wife’s testimony was corroborated by the 911 call played for the court. During the call, Kjellberg’s wife stated that Kjellberg had tried to choke her, pushed their daughter across the room, punched walls, and kicked the front door in.

⁶ Kjellberg argues that, since the child endangerment statute does not define substantial physical harm, we should use the definition of “substantial bodily injury” found in the Minnesota criminal code, which defines it as “bodily injury which involves a temporary but substantial disfigurement, or which causes a temporary but substantial loss or impairment of the function of any bodily member or organ, or which causes a fracture of any bodily member.” Minn. Stat. § 609.02, subd. 7a (2016). If we applied this definition, Kjellberg’s conduct resulting in a child flying across the room before falling on the floor would qualify as likely to cause a temporary but substantial impairment.

523 (Minn. App. 2013). Here, the district court clearly credited the relevant testimony of Kjellberg's wife on the subject of Kjellberg's actions towards his daughter.

Kjellberg further argues that the district court found him not guilty of domestic assault—intent to inflict physical harm—and therefore did not believe that his act of pushing his daughter caused physical harm. But Kjellberg misstates the victim of the domestic assault—intent to inflict physical harm—as being his daughter, rather than his wife. The argument is therefore without merit. And if the facts were as Kjellberg claims, the child endangerment statute does not require that the parent's conduct result in substantial harm—only that substantial harm was *likely* to occur. Here, as described above, Kjellberg's actions were likely to cause substantial physical harm to his daughter. See Minn. Stat. § 609.378, subd. 1(b)(1).⁷

In sum, we conclude that there was sufficient evidence to permit the fact-finder to reasonably conclude that Kjellberg's daughter was placed in a situation where she was likely to be substantially physically harmed and to find Kjellberg guilty of child endangerment.

Affirmed.

⁷ Kjellberg also contends that his conviction for child endangerment should be reversed because neither his daughter nor any expert provided testimony on whether Kjellberg's conduct towards his daughter was likely to result in substantial mental or emotional harm. But the child endangerment statute requires only that substantial physical or emotional harm was likely to result, not both. See Minn. Stat. § 609.378, subd. 1(b)(1). Because we conclude that there was sufficient evidence for the fact-finder to conclude that the child was likely to be substantially harmed physically, we need not reach this issue related to mental or emotional harm.