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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1273**

State of Minnesota,
Respondent,

vs.

Randal Edward Carlson,
Appellant.

**Filed July 8, 2019
Affirmed
Slieter, Judge**

Wabasha County District Court
File No. 79-CR-18-240

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

Karen Kelly, Wabasha County Attorney, Jordan T. Cook, Assistant County Attorney,
Wabasha, Minnesota (for respondent)

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

Considered and decided by Halbrooks, Presiding Judge; Connolly, Judge; and
Slieter, Judge.

UNPUBLISHED OPINION

SLIETER, Judge

Appellant Randal Edward Carlson appeals his convictions of fifth-degree assault, in
violation of Minn. Stat. § 609.224, subd. 1(2) (2016), and disorderly conduct, in violation

of Minn. Stat. § 609.72, subd. 1 (3) (2016), arguing that the state failed to prove the venue element of each charged offense, and that he was improperly sentenced because the charges arise out of a single behavioral incident. We affirm.

FACTS

This case was tried to a jury, and the following evidence was presented at trial. On March 14, 2018, six-year-old W.K. was playing on the playground with his ten-year-old sister, M.K., and two other friends, at the Eastwood Apartments building in Plainview, Minnesota. W.K. and one of the friends were playing with a broken fishing pole. Appellant approached the children, yelled at them, and told all the children, except W.K., to go inside. Appellant then grabbed W.K., threw him to the ground, and struck him with the broken fishing pole. M.K. was watching from the doors of the apartment building and saw appellant hit W.K. with the fishing pole. W.K. then ran to his sister, and the two went inside to inform their mother of the assault. W.K. had a red, swollen left cheek and ear.

During trial, M.K. testified about the assault. W.K.'s mother also testified about the assault and stated that it took place at the Eastwood Apartments in Plainview. The responding police officer testified about his investigation and stated that he spoke with the victim and his mother "[a]t [the] Eastwood Apartments on Fifth Avenue Northeast in Plainview." An officer who interviewed appellant at the Wabasha county jail also testified.

The jury found appellant guilty of fifth-degree assault and disorderly conduct. Appellant received a stay of imposition of sentence on both counts and was placed on probation. This appeal follows.

DECISION

I. The evidence at trial was sufficient to prove venue beyond a reasonable doubt.

Appellant argues that the evidence is insufficient to support his convictions because the state did not prove the venue element of the offenses beyond a reasonable doubt. When considering the sufficiency of the evidence, we view the evidence in the record in the light most favorable to the jury's verdict. *State v. Braylock*, 501 N.W.2d 625, 628 (Minn. 1993). “[T]he state must prove beyond a reasonable doubt that the charged offense occurred in the charging county.” *State v. Bahri*, 514 N.W.2d 580, 582 (Minn. App. 1994), *review denied* (Minn. June 15, 1994). “[A]n appellate court may find that venue was proven where the state places the offense in a particular city in the state.” *Id.* at 583. Proper venue may be proved by direct or circumstantial evidence, *id.*, and based on “all the reasonable inferences arising from the totality of the surrounding circumstances.” *State v. Carignan*, 272 N.W.2d 748, 749 (Minn. 1978).

In assessing the sufficiency of circumstantial evidence, we first identify the circumstances proved and then “examine independently the reasonableness of all inferences that might be drawn from the circumstances proved.” *State v. Al-Naseer*, 788 N.W.2d 469, 473-74 (Minn. 2010) (quotations omitted). We affirm only if the reasonable inferences from the circumstances proved are consistent with guilt and “inconsistent with any rational hypothesis except that of guilt.” *State v. Harris*, 895 N.W.2d 592, 598 (Minn. 2017) (quotation omitted).

W.K.’s mother testified that she and her children lived in the Eastwood Apartments in Plainview at the time of the assault. The responding officer testified that he responded

to a call from the Eastwood Apartments on Fifth Avenue Northeast in Plainview. A Plainview Police Department investigator also testified that he interviewed appellant at the Wabasha county jail.

Although no witness expressly stated that the crime occurred in Wabasha county, based on the totality of the circumstances, the only reasonable inference to be drawn from the evidence is that the offense occurred in Wabasha county. In addition, the district court required the jury to find venue in Wabasha county as a separate element of the crime in order to convict appellant. We conclude that by showing the offenses occurred in Plainview and requiring the jury to find venue in Wabasha county, the state proved the venue element beyond a reasonable doubt.

II. The district court properly sentenced appellant on both convictions.

Appellant challenges the district court's imposition of sentence on both counts, arguing that because the convictions stem from a single behavioral incident, he can receive only a single sentence. "Whether the offenses were part of a single behavioral incident is a mixed question of law and fact, so we review the district court's findings of fact for clear error and its application of the law to those facts *de novo*." *State v. Bakken*, 883 N.W.2d 264, 270 (Minn. 2016).

Under Minnesota law, "if a person's conduct constitutes more than one offense under the laws of this state, the person may be punished for only one of the offenses." Minn. Stat. § 609.035, subd. 1 (2016). "[W]here multiple offenses arise from a single behavioral incident, a conviction or acquittal for one offense bars prosecution for any additional offense" *State v. Schmidt*, 612 N.W.2d 871, 876 (Minn. 2000). "The single

behavioral incident statute protects criminal defendants from both multiple prosecutions and multiple sentences for offenses resulting from the same behavioral incident.” *Id.*

“In determining whether a course of conduct consists of a single behavioral incident, we have considered the factors of time and place and also whether the conduct was motivated by an effort to obtain a single criminal objective.” *Id.* “[W]hen crimes are committed against different persons in the same incident, the district court has discretion to impose one sentence per victim so long as such sentencing does not exaggerate the criminality of the defendant’s conduct.” *State v. Cole*, 542 N.W.2d 43, 53 (Minn. 1996).

Appellant contends that his conduct is part of a single behavioral incident, arguing he was convicted of striking W.K. and yelling at W.K. with the single motive of scaring W.K. Because, appellant reasons, his conduct is part of a single behavioral incident, he should have been sentenced on one conviction.

Appellant’s argument is unpersuasive. The disorderly conduct charge did not stem from appellant’s conduct regarding W.K.; rather, the disorderly conduct charge related to his conduct toward the *other* children. The charges related to different conduct aimed at different individuals and were motivated by different criminal objectives. Under these facts, “the district court has discretion to impose one sentence per victim so long as such sentencing does not exaggerate the criminality of the defendant’s conduct.” *Id.* The district court properly sentenced appellant on both convictions.

Affirmed.