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**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A18-1813**

State of Minnesota,  
Respondent,

vs.

Jazmyne Amanda-May Shinabarger,  
Appellant.

**Filed December 9, 2019  
Affirmed  
Johnson, Judge**

Steele County District Court  
File No. 74-CR-18-418

Keith Ellison, Attorney General, Edwin W. Stockmeyer, Assistant Attorney General, St. Paul, Minnesota; and

Dan McIntosh, Steele County Attorney, Owatonna, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Christopher L. Mishek, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Cochran, Presiding Judge; Connolly, Judge; and Johnson, Judge.

**UNPUBLISHED OPINION**

**JOHNSON, Judge**

After a court trial, the Steele County District Court found Jazmyne Amanda-May Shinabarger guilty of second-degree assault with a dangerous weapon. The district court's

finding of guilt is based on evidence that, during a confrontation with another woman, Shinabarger held a knife near the woman's face and made jabbing motions. We conclude that the evidence is sufficient to prove beyond a reasonable doubt that Shinabarger intended to cause the woman fear of imminent bodily harm. Therefore, we affirm.

## **FACTS**

On March 4, 2018, Shinabarger entered a retail store in the city of Owatonna and saw M.P., whom she previously had considered her best friend. Shinabarger was angry at M.P. because M.P. recently had missed Shinabarger's daughter's birthday party, despite being the girl's godmother. The two women quarreled and Shinabarger held a knife close to M.P.'s face.

The state charged Shinabarger with second-degree assault with a dangerous weapon, in violation of Minn. Stat. § 609.222, subd. 1 (2016). The case was tried to the district court in June 2018. The state presented the testimony of eight witnesses. Shinabarger testified on her own behalf and called one other witness in her defense. The most pertinent portions of trial testimony are summarized below.

The state's primary witness was M.P., who testified as follows: She was shopping at a retail store with a friend when she saw Shinabarger enter the store. Shinabarger confronted her near the checkout area. After exchanging words with Shinabarger, M.P. tried to leave the store, but Shinabarger would not allow her to pass. M.P. put her hands on Shinabarger's body and shoved her. A four- to five-inch folding knife fell to the floor. M.P. previously had not seen the knife. Both Shinabarger and M.P. reached for the knife, but Shinabarger grabbed it first. Shinabarger picked up the knife and held it in front of her

with the point of the blade pointing upward and the sharp edge of the blade facing toward herself. Shinabarger was “maybe a half foot away” from M.P. and held the knife near M.P.’s face. M.P. felt scared. M.P. grabbed Shinabarger’s wrist to keep her away as Shinabarger pushed toward her. After the store manager and another customer intervened, Shinabarger walked out of the store. As she left, she waved the knife in the air and loudly said, “Yeah, I have a knife.”

Another customer, who was standing a few feet from M.P. near the checkout area, testified that Shinabarger initiated the confrontation. The customer pushed a shopping cart between Shinabarger and M.P. to interrupt the confrontation.

A store manager testified that she successfully separated the two women as they were arguing. She saw that Shinabarger had a knife. She told Shinabarger to leave the store, which she did.

During the defense case, Shinabarger testified as follows: Shortly before entering the store, while in the parking lot, she received a knife from a cousin as collateral for a loan. She put the knife in her coat pocket. She was not aware that M.P. was inside the store before she entered with her cousin. Upon seeing M.P. in the store, Shinabarger approached her to confront her about the birthday party. M.P. shoved Shinabarger, causing the knife to fall out of her pocket onto the floor. Shinabarger picked up the knife, which had “popped open” on the floor. She held the knife upright in front of her because she saw M.P. and another woman walking toward her, then gestured with the knife and told the women “to back off” and leave her alone. Shinabarger demonstrated her movements while on the witness stand. In its findings of fact, the district court described Shinabarger’s

movements as “jabbing motions.” Shinabarger left the store when the store manager told her to leave. She gave the knife back to her cousin in the parking lot. Police officers arrived soon thereafter and arrested her.

At the conclusion of the trial, the district court orally found Shinabarger guilty. The district court filed a written order two weeks later. In the order, the district court found that Shinabarger confronted M.P. with the knife in her hand or up her sleeve with the blade open. The district court found that Shinabarger used the knife to make “jabbing motions” toward M.P.’s face from a distance of one foot or less. The district court acknowledged discrepancies in the testimony of the state’s witnesses but concluded that “[t]hese minor differences do not impact the credibility of the witnesses on the central issues in this case.” Finally, the district court rejected Shinabarger’s claim that she brandished the knife in self-defense.

The district imposed a sentence of 21 months of imprisonment but stayed execution of the sentence and ordered Shinabarger to serve 150 days in jail. Shinabarger appeals.

## **D E C I S I O N**

Shinabarger argues that the evidence is insufficient to support her conviction.

The state alleged that Shinabarger assaulted M.P. with a dangerous weapon. *See* Minn. Stat. § 609.222, subd. 1 (2016). The statutory definition of “assault” includes “an act done with intent to cause fear in another of immediate bodily harm or death.” Minn. Stat. § 609.02, subd. 10(1) (2016). The phrase “with intent to” means “that the actor either has a purpose to do the thing or cause the result specified or believes that the act, if successful, will cause that result.” *Id.*, subd. 9(4). Second-degree assault by causing fear

is a specific-intent crime. *State v. Fleck*, 810 N.W.2d 303, 308-09 (Minn. 2012). “The crime is in the act done with intent to cause fear, not in whether the intended result is achieved.” *State v. Hough*, 585 N.W.2d 393, 396 (Minn. 1998).

Shinabarger’s argument has three parts.

A.

Shinabarger argues that “the district court’s findings and verdict should be reversed because the court failed to make sufficient findings on the intent element.” Specifically, she argues that the district court “never found that Shinabarger’s actions were done with a specific intent to cause fear of immediate bodily harm or death as required for a conviction.”

In a court trial in a felony case, a district court must make a general finding of guilt and written findings of the essential facts. Minn. R. Crim. P. 26.01, subd. 2(a)-(b). “If the court omits a finding on any issue of fact essential to sustain the general finding, it must be deemed to have made a finding consistent with the general finding.” Minn. R. Crim. P. 26.01, subd. 2(e). Accordingly, the omission of a finding on a particular issue is “immaterial.” *State v. Townsend*, 925 N.W.2d 280, 286 n.2 (Minn. App. 2019), *review granted* (Minn. May 14, 2019). If a district court does not make a specific finding concerning whether the defendant had the requisite intent, “such intent can be assumed to be included in the general finding.” *State v. Totimeh*, 433 N.W.2d 921, 924 (Minn. App. 1988), *review denied* (Minn. Feb. 22, 1989).

Thus, the district court did not err by not making a specific finding on the issue of intent.

**B.**

Shinabarger also argues that the district court clearly erred by finding that Shinabarger made “jabbing motions” with the knife when she held it near M.P.’s face. Shinabarger refers to paragraph 11 of the district court’s order, in which the district court found as follows:

Ms. Shinabarger testified she pointed the knife at Ms. [P.], but that the blade edge was pointing toward herself and the dull edge was toward Ms. [P.]. Given the jabbing motions she demonstrated and that the point of the knife was clearly at Ms. [P.]’s face at a distance of a foot or less, the direction of the blade edge (were the Court to believe this testimony) would do little to minimize the fear experienced by the person who was her intended target.

Shinabarger contends that the district court’s finding is contrary to the testimony of M.P. and the store manager, both of whom testified that Shinabarger did not make stabbing motions with the knife. The state responds by arguing that the district court is permitted to disregard M.P.’s testimony and that the district court’s finding is properly “based on Appellant’s own physical demonstration of how she brandished the knife.”

The district court did not expressly cite any witness with respect to its finding that Shinabarger made “jabbing motions” with the knife. But the trial transcript confirms that Shinabarger made a gesture to communicate to those present in the courtroom what she did during the confrontation with M.P. On direct examination, as Shinabarger was describing the incident, her attorney said, “You described holding the – you made a motion as if – . . . .” Shinabarger then said, “I had the knife up like this (indicating), and I had told [M.P.] to back the f--k up and leave me alone . . . .” Neither Shinabarger’s attorney nor the

prosecutor sought to develop the record further with a description of Shinabarger's physical demonstration. In that situation, an attorney should "describe[e] all conduct, gestures, inaudible responses, [and] nonverbal behavior" of the witness, preferably by asking the district court for permission "to have the record reflect what occurred." See Roger Haydock & John Sonsteng, *Trial* 146 (1991).

The absence of a verbal record, however, does not mean that the district court's finding that Shinabarger made "jabbing motions" is clearly erroneous. The district court's finding is corroborated in part by Shinabarger's verbal testimony that "I had the knife up like this" and the court reporter's insertion of "(indicating)." Shinabarger has not cited any authority for the proposition that the absence of a verbal description of a witness's physical demonstration precludes a fact-finder from relying on the physical demonstration or, more importantly for this case, precludes an appellate court from considering the physical demonstration when reviewing the sufficiency of the evidence. We are not aware of any such caselaw. In the absence of such caselaw, we are inclined to defer to the district court, which presided over the court trial as the fact-finder and, thus, surely was paying careful attention to the witness's testimony and any physical gestures. Deference in this situation is justified because the district court "was able to observe [Shinabarger's] testimony and demeanor, as well as any gestures that [she] used to describe [her] conduct." See *State v. Stempfley*, 900 N.W.2d 412, 418 (Minn. 2017). We defer whether or not the advocates or the district court made a contemporaneous record of the nonverbal information on which the district court relied. Furthermore, when reviewing for clear error, this court typically will not reverse unless it has a "definite and firm conviction" that an error occurred. *State*

*v. Poehler*, \_\_\_ N.W.2d \_\_\_, \_\_\_, 2019 WL6334370, at \*3 (Minn. Nov. 27, 2019); *see also Vangsness v. Vangsness*, 607 N.W.2d 468, 474 (Minn. App. 2000). Given the record in this case, we do not have such a conviction.

Thus, the district court did not clearly err by finding that Shinabarger made “jabbing motions” with the knife near M.P.’s face.

### C.

Shinabarger’s primary argument is that the circumstantial evidence is insufficient to prove that she intended to cause M.P. fear of immediate bodily harm. On appeal, the parties do not dispute that a knife is a dangerous weapon, that Shinabarger possessed a knife when she approached M.P., and that Shinabarger held the knife close to M.P.’s face. The sole issue on appeal is whether the state introduced sufficient evidence to prove beyond a reasonable doubt that Shinabarger intended to cause M.P. fear of immediate bodily harm. More specifically, the issue is whether the state proved beyond a reasonable doubt that Shinabarger either had the purpose of causing M.P. fear of immediate bodily harm or believed that her act would cause that result. *See* Minn. Stat. § 609.02, subds. 9(4), 10(1).

When reviewing the sufficiency of the evidence, we ordinarily undertake “a painstaking analysis of the record to determine whether the evidence, when viewed in the light most favorable to the conviction, was sufficient” to support the conviction. *State v. Ortega*, 813 N.W.2d 86, 100 (Minn. 2012) (quotation omitted). We “assume that the factfinder disbelieved any testimony conflicting with that verdict.” *State v. Palmer*, 803 N.W.2d 727, 733 (Minn. 2011) (quotation omitted). We do not disturb a verdict if the fact-finder, “acting with due regard for the presumption of innocence and the requirement

of proof beyond a reasonable doubt, could reasonably conclude that the defendant was guilty of the charged offense.” *Ortega*, 813 N.W.2d at 100.

The above-stated standard of review applies so long as a conviction is based on direct evidence. *State v. Horst*, 880 N.W.2d 24, 39 (Minn. 2016). Direct evidence is evidence that is “based on personal knowledge or observation and that, if true, proves a fact without inference or presumption.” *State v. Harris*, 895 N.W.2d 592, 599 (Minn. 2017) (quotation omitted). Circumstantial evidence, on the other hand, is “evidence from which the factfinder can infer whether the facts in dispute existed or did not exist.” *Id.* (quotation omitted). A conviction depends on circumstantial evidence if proof of the offense, or a single element of the offense, is based solely on circumstantial evidence. See *State v. Fairbanks*, 842 N.W.2d 297, 307 (Minn. 2014). In this case, the parties agree that the state’s proof of Shinabarger’s intent depends on circumstantial evidence.

Accordingly, we apply the heightened standard of review applicable to the sufficiency of circumstantial evidence, which consists of a two-step analysis. First, we identify the circumstances proved. *State v. Moore*, 846 N.W.2d 83, 88 (Minn. 2014). “In identifying the circumstances proved, we assume that the [factfinder] resolved any factual disputes in a manner that is consistent” with the verdict. *Id.* Second, we “examine independently the reasonableness of the inferences that might be drawn from the circumstances proved” and “determine whether the circumstances proved are consistent with guilt and inconsistent with any rational hypothesis except that of guilt.” *Id.* (quotations omitted). The circumstantial-evidence standard of review applies in both

appeals after a jury trial and appeals after a court trial. *State v. Petersen*, 910 N.W.2d 1, 6 (Minn. 2018).

At the first step of the analysis, we identify the following circumstances that are relevant to the question whether Shinabarger specifically intended to cause fear of immediate bodily harm in M.P.: Shinabarger had a pre-existing hostility toward M.P. because M.P. had missed Shinabarger's daughter's birthday party. Shinabarger saw M.P. in a store. Shinabarger had a folding knife in her possession when she entered the store. Shortly after entering the store, Shinabarger approached M.P. and yelled and screamed at her. M.P. shoved Shinabarger. The knife fell to the floor and unfolded. Both M.P. and Shinabarger reached for the knife, but Shinabarger grabbed it first. Shinabarger stepped toward M.P. and held the knife less than a foot from M.P.'s face. Shinabarger made "jabbing motions" with the knife. M.P. felt scared when Shinabarger brandished the knife. M.P. grabbed Shinabarger's wrist and pushed her back.

At the second step of the analysis, we "determine whether the circumstances proved are consistent with guilt." *Moore*, 846 N.W.2d at 88 (quotations omitted). Shinabarger contends that the state's evidence is inconsistent with guilt because it does not allow an inference that Shinabarger intended to cause M.P. fear of immediate bodily harm. The state contends that Shinabarger's intent to cause fear may be inferred from the fact that she carried a knife before confronting M.P., brandished the knife, and jabbed it near M.P.'s face. We agree with the state that one reasonable inference from the circumstances proved is that Shinabarger intended to cause M.P. fear of immediate bodily harm. See *State v. Soine*, 348 N.W.2d 824, 826 (Minn. App. 1984) (concluding that defendant intended to

cause fear when he waved knife near victim's face), *review denied* (Minn. Sept. 12, 1984); *see also State v. Hough*, 585 N.W.2d 393, 396 (Minn. 1998) (concluding that defendant intended to cause fear when he fired a gun at victims' home); *State v. Kastner*, 429 N.W.2d 274, 275-76 (Minn. App. 1988) (concluding that defendant intended to cause fear when she pointed scissors and screwdrivers at victim and made hostile statements), *review denied* (Minn. Nov. 16, 1988).

At the second step of analysis, we also determine whether the circumstances proved are "inconsistent with any rational hypothesis except that of guilt." *Moore*, 846 N.W.2d at 88 (quotations omitted). Shinabarger contends that the circumstances proved are consistent with a rational hypothesis that she intended to defuse the situation and to leave the scene. She contends that this hypothesis is rational in light of the evidence that the situation was heated, that M.P. had shoved Shinabarger before the knife fell, that both Shinabarger and M.P. reached for the knife, and that she quickly exited the store while holding the knife aloft and loudly announcing that she had it. In response, the state contends that this alternative hypothesis is inconsistent with the entirety of the circumstances proved, especially the fact that Shinabarger stepped toward M.P. while brandishing the knife and made "jabbing motions" with it.

We agree with the state that Shinabarger's hypothesis of innocence is inconsistent with the circumstances proved. Shinabarger brought a knife into the store and immediately confronted M.P., a person against whom she had ill will. The district court found that the knife was in her sleeve or in her hand before it fell to the floor and unfolded. The district court also found that, after she grabbed the knife off the floor, Shinabarger held the knife

close to M.P.'s face and made jabbing motions. These actions are inconsistent with an intent to defuse a confrontation and leave the scene. If that were Shinabarger's intent, she would not have caused the confrontation in the first place. She has not identified any circumstance that would explain a change in her state of mind between the time she entered the store and the time she held the knife near M.P.'s face. The only rational hypothesis is that, when Shinabarger held the knife near M.P.'s face and made jabbing motions, she intended to cause M.P. fear of immediate bodily harm.

Thus, the state's circumstantial evidence is sufficient to prove that Shinabarger had the requisite intent for the offense of second-degree assault with a dangerous weapon.

**Affirmed.**