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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1839**

State of Minnesota,
Respondent,

vs.

Darcel Louis Magee,
Appellant.

**Filed April 6, 2020
Affirmed in part, reversed in part, and remanded.
Cochran, Judge**

Dakota County District Court
File No. 19HA-CR-17-799

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

James C. Backstrom, Dakota County Attorney, Anna Light, Assistant County Attorney,
Hastings, Minnesota (for respondent)

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Considered and decided by Cochran, Presiding Judge; Segal, Judge; and
Peterson, Judge.*

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

UNPUBLISHED OPINION

COCHRAN, Judge

Appellant Darcel Louis Magee challenges the sufficiency of the evidence supporting his convictions of first-degree criminal damage to property and second-degree assault with a dangerous weapon. We affirm in part, reverse in part, and remand.

FACTS

In February 2017, Magee went to visit his relative, O.S. A scuffle ensued that resulted in injuries to O.S. and damage to a neighboring property. The state charged Magee with second-degree assault with a dangerous weapon (firearm); first-degree criminal damage to property (damage exceeding \$1,000); unlawful possession of a firearm; and second-degree assault with a dangerous weapon (car). The matter proceeded to a jury trial.

At trial, O.S. testified that Magee came to visit him at his home. During the visit, Magee asked O.S. if O.S.'s son was going to testify at an upcoming trial. O.S., annoyed by Magee's questions, asked Magee to leave. Magee went to the door, turned around, and stated that he was "not going anywhere." O.S. put Magee in a chokehold and pushed Magee out of the house.

Magee got into the car that he drove to O.S.'s house, which was parked in the driveway. Magee then yelled to O.S. that he was going to kill him. O.S. became angry, went up to the car, and then punched Magee in the face. O.S. testified that he punched Magee because he believed that Magee was about to pull a gun on him. After being punched, Magee jumped out of the car and ran around it. O.S. chased Magee, telling Magee that he should hurt him. Magee got back inside the car and shut the car door, but O.S.

opened it. Magee then put the car in reverse and floored the gas pedal. At the time, O.S. was trapped on three sides by the car, the car door, and a fence that was directly next to the car. O.S., with no avenue of retreat, fell to the ground. The open car door dragged O.S. down his driveway approximately fifteen feet. O.S. sustained injuries including bruising and ripped tendons.

Magee's car continued past O.S. The car travelled across a city street, over a curb, and into a neighbor's fence, tearing the fence down in the process. The car also damaged the neighbor's yard with deep wheel marks. The damage exceeded \$1,000. Magee drove away from the scene.

The jury found Magee not guilty of second-degree assault with a dangerous weapon (firearm), and guilty of the remaining counts. Magee appealed. The direct appeal was stayed to permit Magee to pursue postconviction proceedings. The postconviction court vacated Magee's unlawful-possession-of-a-firearm conviction and resentenced Magee to executed sentences of 12 months and one day for criminal damage to property, and 21 months for second-degree assault with a dangerous weapon (car), to run concurrently. After resentencing, this appeal was reinstated.

D E C I S I O N

Magee challenges his convictions of first-degree criminal damage to property under Minn. Stat. § 609.595, subd. 1(3) (2016), and second-degree assault with a dangerous weapon under Minn. Stat. § 609.222, subd. 1 (2016). Magee argues that the evidence is insufficient to support either conviction. We address the sufficiency of the evidence of each conviction in turn.

I. The circumstantial evidence is insufficient to prove that Magee intended to damage property.

Magee first argues that the evidence is insufficient to prove beyond a reasonable doubt that he intentionally damaged the neighbor's property. To convict Magee of criminal damage to property, the state must prove that Magee "intentionally" caused damage to the physical property of another and that the damage exceeded \$1,000. Minn. Stat. § 609.595, subd. 1(3). The parties agree that Magee damaged the property and that the damage exceeded \$1,000. The issue on appeal is whether Magee had the specific intent required to convict under the statute. Here, "intentionally" means that "the actor either has a purpose to do the thing or cause the result specified or believes that the act performed by the actor, if successful, will cause that result." Minn. Stat. § 609.02, subd. 9(3) (2016).

When a party challenges the sufficiency of the evidence, we conduct a "painstaking analysis of the record to determine whether the evidence, when viewed in a light most favorable to the conviction, was sufficient to permit the jurors to reach their verdict." *State v. Caine*, 746 N.W.2d 339, 356 (Minn. 2008) (quotation omitted). Generally, we will not disturb the verdict if the jury, 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. *State v. Chavarria-Cruz*, 839 N.W.2d 515, 519 (Minn. 2013).

Because the state offered only circumstantial evidence to prove the element of intent, we apply a heightened two-step test to determine whether the state presented sufficient evidence of intent. *State v. Griffin*, 887 N.W.2d 257, 264 (Minn. 2016). First,

we identify the circumstances proved, deferring to the jury's acceptance of the proof of these circumstances, and rejecting evidence in the record that conflicts with the circumstances proved by the state. *State v. Harris*, 895 N.W.2d 592, 601 (Minn. 2017). "Second, we examine the reasonable inferences that might be drawn from the circumstances proved, giving no deference to the fact-finder's choice between reasonable inferences." *Griffin*, 887 N.W.2d at 264. In making this determination, "we do not review each circumstance proved in isolation." *State v. Andersen*, 784 N.W.2d 320, 332 (Minn. 2010). Instead, we consider the circumstances as a whole to determine whether they form a "complete chain" that "leads so directly to the guilt of the defendant as to exclude beyond a reasonable doubt any reasonable inference other than guilt." *State v. Al-Naseer*, 788 N.W.2d 469, 473 (Minn. 2010). The conviction is sustained if the reasonable inferences that can be drawn from the circumstances proved, as a whole, are consistent with the hypothesis that the accused is guilty and inconsistent with any rational hypothesis except that of guilt. *Id.*

Viewing the evidence in the light most favorable to the verdict, the circumstances proved at trial in relation to the criminal-damage-to-property charge are as follows: Magee put the car in reverse, floored the gas pedal, sped down the driveway, hit the neighbor's fence, and damaged the neighbor's lawn. Just before the damage occurred, O.S. had punched Magee and chased Magee around the car. Magee left quickly because he was trying to run away from the scene. The damage exceeded \$1,000.

These circumstances proved are consistent with an inference of guilt. As the state points out, Magee's intent to damage the property can be inferred from his knowledge that

driving in reverse at a high rate of speed could cause damage. *See Barnslater v. State*, 805 N.W.2d 910, 915 (Minn. App. 2011) (stating that intent to damage can be inferred from knowledge and conduct). Here, Magee sped away from O.S.’s house, in reverse, at a high-enough rate of speed to damage the fence and yard. And after causing some damage, Magee fled the scene. A defendant’s actions after an alleged offense can serve as evidence of intent. *Davis v. State*, 595 N.W.2d 520, 526 (Minn. 1999). Accordingly, the circumstances proved are consistent with guilt.

But we conclude that the circumstances proved demonstrate an equally reasonable inference inconsistent with guilt: that Magee inadvertently damaged the property while going fast in reverse. This is a reasonable inference because Magee was trying to leave quickly after the altercation. As O.S. testified at trial, Magee was “trying to run away from the scene.” Further, the neighbor’s fence that Magee damaged was just across the street. Under these circumstances, it is rational to infer that Magee hit the property because he was going too fast in reverse, but he did not intend to do so.

The state contends that Magee’s failure to stop to correct his driving after hitting the neighbor’s fence shows an intent to damage the property. The state notes that Magee “continued driving at a high rate of speed” through the fence and into the yard. But it is also reasonable to infer that after he hit the fence, he was going so fast in reverse that he could not stop quickly. Further, the state presented no evidence that Magee knew the fence was there before he hit it, nor did the state present any evidence that he had any desire to damage the neighbor’s fence. Accordingly, the circumstances proved show an equally

reasonable inference that Magee did not have the purpose to damage the property or believe that if he drove fast in reverse he would damage the property.

We conclude that the circumstances proved at trial do not form the “complete chain” needed to show Magee’s intent to damage property beyond a reasonable doubt because they fail to exclude another reasonable inference consistent with innocence. *Al-Naseer*, 788 N.W.2d at 473. Accordingly, we reverse Magee’s conviction of criminal damage to property and remand to the district court to correct the warrant of commitment.

II. The evidence is sufficient to show that Magee used the car as a dangerous weapon.

Magee argues that the evidence is insufficient to support his conviction of second-degree assault. Magee’s second-degree assault conviction is based on direct evidence, namely O.S.’s testimony. *See Harris*, 895 N.W.2d at 599 (“[D]irect evidence is evidence that is based on personal knowledge or observation and that, if true, proves a fact without inference or presumption.” (quotation omitted)). When an element of an offense is supported by direct evidence, our review is limited to a painstaking analysis of the record to determine whether the evidence, when viewed in the light most favorable to the conviction, is sufficient to allow the jurors to reach the verdict that they did. *State v. Horst*, 880 N.W.2d 24, 40 (Minn. 2016).

To convict Magee of second-degree assault, the state had to prove (1) that Magee assaulted O.S. and (2) that he used a dangerous weapon in the assault. *See Minn. Stat. § 609.222, subd. 1* (defining second-degree assault with a dangerous weapon). Magee

challenges only the second element, arguing that the state failed to prove that the car was used as a dangerous weapon.

A “dangerous weapon,” as relevant here, is defined as a “device or instrumentality that, in the manner it is used or intended to be used, is calculated or likely to produce death or great bodily harm.” Minn. Stat. § 609.02, subd. 6 (2016). “Great bodily harm” means “bodily injury which creates a high probability of death, or which causes serious permanent disfigurement . . . or other serious bodily harm.” *Id.*, subd. 8 (2016). To determine “whether an object, even an inherently dangerous object, is a dangerous weapon, [we] must examine not only the nature of the object itself, but also the manner in which it was used.” *State v. Basting*, 572 N.W.2d 281, 285 (Minn. 1997).

Magee argues that he did not use the car as a dangerous weapon. We disagree. Viewing the evidence in a light most favorable to the conviction, the evidence is more than sufficient to show that the car was a dangerous weapon. Magee put the car in reverse, slammed on the gas, sped down the driveway, and dragged O.S. for approximately 15 feet. O.S., blocked on three sides, had no avenue of retreat. The nature of the car door, combined with the speed and manner in which Magee drove the car, was likely to produce great bodily harm. And it is the manner in which the object was used—not the injuries that O.S. sustained—that determines whether the object is, or is not, a dangerous weapon. *State v. Weyaus*, 836 N.W.2d 579, 586 (Minn. App. 2013).

Accordingly, we conclude that the evidence, viewed in the light most favorable to the verdict, is sufficient to prove that the manner in which Magee drove the car made it a

dangerous weapon. As a result, Magee's conviction of second-degree assault with a dangerous weapon is affirmed.

Affirmed in part, reversed in part, and remanded.