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**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1983**

State of Minnesota,
Respondent,

vs.

John Okuch Odiel,
Appellant.

**Filed November 30, 2020
Affirmed
Smith, Tracy M., Judge**

Blue Earth County District Court
File No. 07-CR-18-4820

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

Patrick R. McDermott, Blue Earth County Attorney, Susan B. DeVos, Assistant County Attorney, Mankato, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Erik I. Withall, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Smith, Tracy M., Presiding Judge; Segal, Chief Judge;
and Connolly, Judge.

UNPUBLISHED OPINION

SMITH, TRACY M., Judge

Appellant John Okuch Odiel challenges his conviction for domestic assault—fear,
arguing that respondent State of Minnesota failed to prove his requisite intent beyond a

reasonable doubt. Examining the circumstances proved by the state, and drawing all reasonable inferences from those circumstances, we conclude that the evidence is sufficient to sustain Odiel's conviction, and we affirm.

FACTS

The following facts were established at trial. Odiel was at the home of his ex-wife A.O. to celebrate Thanksgiving when Odiel and A.O. got into an argument. During the argument, Odiel pushed A.O.'s head. After being pushed, A.O. told Odiel, "[D]on't hit me," while one of their sons said, "[D]on't put your hand on my mom." Following this, Odiel's brother K.O., who was present at the dinner, removed Odiel from the house. In response, Odiel called 911 and kicked the front door of the house, trying to get back inside. O.B., a friend who was also in attendance at the dinner, testified that, during this time, A.O. said that she and her child did not want Odiel in the house anymore.

When officers arrived, they found A.O. "frantic." Odiel was also outside the home, yelling loudly, and appeared angry when officers arrived. Police arrested Odiel, and the state charged him with three misdemeanors: (1) domestic assault—harm, (2) domestic assault—fear, and (3) disorderly conduct.

At trial, the state called K.O., O.B., and three of the responding police officers to testify. Odiel testified in his own defense. The jury found Odiel guilty of domestic assault—fear and disorderly conduct.

Odiel appeals, challenging only his conviction for domestic assault—fear.

DECISION

Odiel challenges his conviction for domestic assault—fear on the ground that there is insufficient evidence to prove beyond a reasonable doubt that he acted with the intent to cause A.O. fear of immediate bodily harm or death.

Domestic assault—fear is a specific-intent crime. *State v. Fleck*, 810 N.W.2d 303, 308-09 (Minn. 2012). To be guilty of the offense, Odiel must have intended through his actions to cause A.O. fear of immediate bodily harm or death. *Id.*; *see also* Minn. Stat. § 609.2242, subd. 1(1). A.O. need not actually have been harmed for Odiel to be found guilty. *Fleck*, 810 N.W.2d at 308.

The state proved Odiel’s intent with circumstantial evidence. Intent is usually established through circumstantial evidence by drawing inferences from the defendant’s words and actions in light of the totality of the circumstances surrounding the crime. *State v. Cooper*, 561 N.W.2d 175, 179 (Minn. 1997). For a conviction to be upheld based on circumstantial evidence, “the circumstances must form a complete chain which, in light of the evidence as a whole, leads so directly to the guilt of the accused as to exclude, beyond a reasonable doubt, any reasonable inference other than that of guilt.” *State v. Reed*, 737 N.W.2d 572, 581 (Minn. 2007) (quotation omitted).

In reviewing whether circumstantial evidence is sufficient to sustain a conviction, we apply a two-step inquiry. First, we identify the circumstances proved. *State v. Harris*, 895 N.W.2d 592, 601 (Minn. 2017). In doing so, we only consider those circumstances consistent with the verdict. *State v. Silvernail*, 831 N.W.2d 594, 599 (Minn. 2013); *see also State v. Tschau*, 758 N.W.2d 849, 858 (Minn. 2008) (quoting *State v. Johnson*, 217 N.W.

683, 684 (1928)) (stating that the court only looks at those “circumstances as the jury finds proved by the evidence”). Conflicting evidence is construed in the light “most favorable to the verdict,” and we assume “that the jury believed the State’s witnesses and disbelieved the defense witnesses.” *Tscheu*, 758 N.W.2d at 858.

Second, we independently “determine whether the circumstances proved are consistent with guilt and inconsistent with any rational hypothesis except that of guilt, not simply whether the inferences that point to guilt are reasonable.” *Silvernail*, 831 N.W.2d at 599 (quotation omitted). Here, we give no deference to the jury’s choice between any reasonable inferences. *Harris*, 895 N.W.2d at 601. If there is any rational hypothesis pointing to innocence, then the evidence was insufficient and the conviction should be overturned. *State v. Al-Naseer*, 788 N.W.2d 469, 474 (Minn. 2010).

We address each step in turn.

Circumstances Proved

There are six circumstances proved that bear on Odiel’s intent. First, Odiel pushed A.O.’s head while they were arguing in her kitchen. Second, before K.O. forced Odiel from the home, A.O. told Odiel, “[D]on’t hit me,” and one of their children said, “[D]on’t put your hand on my mom.” Third, after seeing Odiel push A.O., K.O. forced Odiel from the home. Fourth, after being removed from the home, Odiel kicked the front door until police arrived about ten minutes later. Fifth, while Odiel was kicking the door, according to O.B., A.O. said that she and her child did not want Odiel in the house anymore. Finally, A.O. appeared “frantic” and Odiel appeared angry when police arrived.

Reasonable Inferences

Odiel argues that the circumstances proved do not permit the reasonable inference that he intended to inflict fear of immediate harm or death upon A.O.

Intent is generally established by drawing inferences “from a person’s words or actions in light of all the surrounding circumstances.” *State v. Thompson*, 544 N.W.2d 8, 11 (Minn. 1996). Relevant circumstances may include “events occurring before and after the crime,” *Davis v. State*, 595 N.W.2d 520, 526 (Minn. 1999), as well as the victim’s reaction to a threat, *State v. Schweppe*, 237 N.W.2d 609, 614 (Minn. 1975).

Here, an unfriendly argument occurred between Odiel and A.O. Odiel pushed A.O. in the head—a particularly sensitive part of the body. Other witnesses interpreted Odiel’s actions as hostile. Both A.O. and the parties’ son said to Odiel to stop hitting A.O., and K.O. reacted to what had happened by forcibly removing Odiel from the house. Odiel’s friend O.B. testified that A.O. said that she and her child did not want Odiel in the house anymore. Once removed from the house, Odiel kicked the door for several minutes, seeking to get back into the house even though A.O. told him he was no longer welcome at her home. Further, Odiel appeared angry and A.O. appeared frantic when police arrived. Together, these circumstances support the reasonable inference that Odiel intended to cause A.O. fear of immediate bodily harm.

Odiel argues that the evidence is insufficient because the state did not call A.O. to testify and other evidence—such as evidence of past abuse, a weapon, or threatening words—was not present. But the absence of that evidence does not undermine the presence of the other sufficient evidence of Odiel’s intent based on the circumstances proved.

Odiel also argues that the circumstances proved show only that he intended to push A.O.'s head but not to cause her to fear harm as a result. He compares this case to *State v. Dorn*, 887 N.W.2d 826 (Minn. 2016). In *Dorn*, the supreme court upheld the defendant's conviction for first-degree assault—harm when she pushed a man who, as a result, fell into a bonfire and suffered significant burns. 887 N.W.2d at 833. *Dorn* argued that she lacked the requisite intent because she only intended to push the victim, not to cause him serious injuries. *Id.* at 828-29. The supreme court rejected that argument, reasoning that assault—harm is a general-intent crime that is proved by the defendant's intent to engage in the prohibited conduct, not an intent to cause a particular result. *Id.* at 831. Odiel argues that *Dorn* shows that an intended act can be independent of any intended consequences and that, here, the only intent proved was his intent to push A.O.'s head and not to cause the consequence of fear.

But *Dorn* was an assault—harm case, not an assault—fear case. *Id.* at 830. *Dorn* does not preclude an assault—fear conviction when the totality of circumstances, even including a physical pushing, demonstrate the specific intent to cause fear. The context leading to Odiel pushing A.O.'s head, the reactions of A.O. and the child, K.O.'s response of removing Odiel from the home, Odiel's aggressive kicking the door to re-enter the house, and Odiel's anger and A.O.'s frantic appearance when police arrived together lead to the reasonable inference that Odiel intended to cause A.O. to fear imminent bodily harm. Odiel makes no other argument that the evidence permits a particular alternative reasonable inference consistent with innocence, and we conclude that, on this record, the circumstances proved are inconsistent with any rational hypothesis other than guilt.

The circumstantial evidence is therefore sufficient to support Odiel's conviction for domestic assault—fear.

Affirmed.