

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0590**

State of Minnesota,
Respondent,

vs.

Donald Franklin Derricotte, Jr.,
Appellant.

**Filed April 12, 2021
Affirmed
Reilly, Judge**

St. Louis County District Court
File No. 69HI-CR-19-778

Keith Ellison, Attorney General, Michael Everson, Assistant Attorney General, St. Paul, Minnesota; and

Mark S. Rubin, St. Louis County Attorney, Duluth, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Jessica M. Godes, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Florey, Presiding Judge; Reilly, Judge; and Frisch, Judge.

NONPRECEDENTIAL OPINION

REILLY, Judge

During a confrontation, appellant pulled a two-foot long sword out from under his clothing and walked towards the victim. The state charged appellant with threats of violence and second-degree assault, and a jury found appellant guilty of both charges. In

this appeal, appellant argues that the evidence was not sufficient for the jury to find that he had the requisite intent to support his second-degree-assault conviction. We affirm.

FACTS

Officers responded to a 911 call from G.S., the victim, reporting that a man pulled a two-foot long sword out from under his clothing and threatened G.S. Officers soon discovered appellant Donald Franklin Derricotte Jr. sleeping in a vehicle with a two-foot long sword sitting on the front dash. Officers arrested appellant and the state charged him with threats of violence, Minn. Stat. § 609.713, subd. 1 (2018), and second-degree assault with a dangerous weapon, Minn. Stat. § 609.222, subd. 1 (2018). At trial, the state called five witnesses: G.S., K.S., M.Q., Sergeant Stauty, and Officer Holum. Appellant did not testify or call any witnesses on his own behalf. Trial testimony established these facts.

G.S. owns an antique store and lives in one of the eight apartments located above his store. Appellant's acquaintance, K.S., rents an apartment that shares an external hallway with G.S.'s unit. About a week before officers arrested appellant, G.S. woke up in the middle of the night and noticed the door handle on his locked apartment door moving, but did not hear knocking. G.S. knew that "somebody was trying to enter [his] residence" and he felt "fearful" and "very unsafe." G.S. quickly dressed, ran to the door, and saw appellant going into K.S.'s apartment.

G.S. managed the apartment complex so he spoke with K.S. about this incident and told her that appellant "was no longer allowed on the property." K.S. then told appellant that he was banned from the property. In response, appellant patted his belt where he had a large knife and stated, "I've got control over this. This is my defense." K.S. testified

that appellant's response was "weird," that she "didn't like it," and that she told G.S. what appellant said.

On the day of appellant's arrest, G.S. stepped into the alley near his antique store and saw appellant. Because K.S. had told appellant that he was not welcome on the property anymore, G.S. was surprised to see him. Appellant looked at G.S. and said, "Nice Nova." G.S. testified that he owns an old Chevrolet Nova parked on the property and that he took appellant's reference to the vehicle to be "a threat."

As appellant began walking towards G.S., G.S. stated, "You aren't supposed to be here. You were told not to come on this property." Appellant did not respond, turned around and continued to walk away from G.S. until there was about 20 feet of distance between the two men. Then appellant stopped, quickly pulled out a two-foot long sword from under his clothing, turned around so that he was facing G.S., and began walking towards him. Appellant took three or four steps towards G.S. with the sword and G.S. testified that he was "terrified," "froze," "didn't know what to do," thought appellant was "going to harm" him, and believed he was "dead."

As appellant advanced towards G.S., a cook at a nearby restaurant, M.Q., stepped into the alley. When appellant saw M.Q., he stopped, turned around, and began walking towards the front of G.S.'s antique store. G.S. testified that he thinks that M.Q.'s presence "stopped [appellant] from coming to stab [G.S.] with the sword." When appellant arrived at G.S.'s antique store, he walked up to the window of G.S.'s office "where everybody knows [G.S.] sit[s]" and acted like he planned to shatter the window. Appellant then turned and walked away from the antique store.

G.S. “ran as fast as [he] could” to get inside the antique store and called the police. Sergeant Stauty responded to G.S.’s call. Sergeant Stauty testified that G.S. did not report any direct threats such as “swinging of the . . . sword,” but that he did report that appellant “walk[ed] towards him with the [sword] raised and that he felt threatened for his own personal safety at that time.” Sergeant Stauty also testified that G.S. “appeared upset and concerned about what was going to happen to both his building and possibly his person,” and that he appeared to feel “threatened.”

G.S. described appellant’s physical appearance to Sergeant Stauty and, that same day, officers located appellant at his known address and placed him under arrest. After a two-day jury trial in December 2019, the jury found appellant guilty of threats of violence and second-degree assault. The district court sentenced appellant to 52 months in prison. This appeal followed.

DECISION

Appellant challenges the sufficiency of the evidence supporting his conviction of second-degree assault.¹ To evaluate the sufficiency of the evidence, “appellate courts carefully examine the record to determine whether the facts and the legitimate inferences drawn from them would permit the jury to reasonably conclude that the defendant was guilty beyond a reasonable doubt of the offense of which he was convicted.” *State v. Griffin*, 887 N.W.2d 257, 263 (Minn. 2016). We review the evidence “in the light most favorable to the conviction” and “assume the jury believed the State’s witnesses and

¹ Appellant does not challenge the sufficiency of the evidence supporting his conviction for threats of violence.

disbelieved any evidence to the contrary.” *State v. Ortega*, 813 N.W.2d 86, 100 (Minn. 2012) (quotation omitted). And 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.” *Id.*

If the state’s evidence on one or more elements of a charged offense consists solely of circumstantial evidence, we apply a heightened standard of review. *State v. Porte*, 832 N.W.2d 303, 309 (Minn. App. 2013). Circumstantial evidence is “evidence from which the [jury] can infer whether the facts in dispute existed or did not exist.” *State v. Harris*, 895 N.W.2d 592, 599 (Minn. 2017) (quotation omitted). Direct evidence, by contrast, “is evidence that is based on personal knowledge or observation and that, if true, proves a fact without inference or presumption.” *Id.* (quotation omitted).

In a circumstantial-evidence case, we apply a two-step test to determine whether the evidence was sufficient. *State v. Silvernail*, 831 N.W.2d 594, 598 (Minn. 2013). First, we identify the circumstances proved. *State v. Andersen*, 784 N.W.2d 320, 329 (Minn. 2010). In identifying the circumstances proved, we assume “that the jury resolved any factual disputes in a manner that is consistent with the jury’s verdict.” *Id.* Next, we independently examine “the reasonableness of all inferences that might be drawn from the circumstances proved,” including “inferences consistent with a hypothesis other than guilt.” *Id.* (citation omitted). In so doing, we consider the evidence as a whole and do not examine any piece of evidence in isolation. *Id.* at 332.

The jury found appellant guilty of second-degree assault. A defendant is guilty of second-degree assault if the defendant assaulted another with a dangerous weapon. Minn. Stat. § 609.222, subd. 1. Minnesota law defines assault as “an act done with intent to cause fear in another of immediate bodily harm or death.” Minn. Stat. § 609.02, subd. 10(1) (2018). A defendant acts with the requisite “intent” when the defendant “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) (2018). Intent may be determined by the defendant’s words and actions in light of the surrounding circumstances. *State v. Thomas*, 352 N.W.2d 526, 528 (Minn. App. 1984), *review denied* (Minn. Oct. 11, 1984). Whether a defendant had the requisite intent to be guilty of second-degree assault is a question for the jury and the jury may rely on circumstantial evidence to make this determination. *State v. Lee*, 391 N.W.2d 46, 48-49 (Minn. App. 1986), *review denied* (Minn. Sept. 22, 1986).

Appellant argues that we must reverse his conviction because the state did not prove beyond a reasonable doubt that he acted with intent to cause fear of immediate bodily harm or death. We begin by identifying the circumstances proved. *Andersen*, 784 N.W.2d at 329. The circumstances proved that align with the verdict show that appellant tried to enter G.S.’s apartment in the middle of the night. Afterwards, K.S. informed appellant that he was no longer welcome on the property; in response, appellant pulled a large knife secured to his belt and stated that he had “control over this” and that the knife was his “defense.”

A week later, G.S. encountered appellant outside his antique store and appellant told G.S., “Nice Nova,” which appellant interpreted to be a threat. G.S. reminded appellant he was not permitted on the property and appellant began to walk away. When appellant was

about 20 feet away from G.S., he stopped, quickly pulled a two-foot long sword out from under his clothing, turned around to face G.S., and began walking towards him. Appellant took three to four steps towards G.S. and G.S. felt like appellant would harm him. When appellant saw M.Q., he stopped, turned around, and began walking towards G.S.'s antique store. Appellant then acted like he would shatter the window of G.S.'s office in the antique store with his sword. After appellant walked away from the scene, G.S. ran into the antique store as quickly as he could and called the police. Sergeant Stauty responded and testified that G.S. appeared to feel "threatened," "upset," and was concerned about what would happen to his building and his person.

The next step requires us to evaluate the "reasonableness of all inferences that might be drawn from the circumstances proved" including those that are inconsistent with guilt. *Id.* (citation omitted). Appellant argues that the circumstances proved support two reasonable inferences inconsistent with guilt: (1) appellant intended to cause G.S. to fear that appellant would damage his property, and (2) that appellant intended to cause G.S. to fear future bodily harm. We disagree. The evidence presented at trial supports the jury's determination that appellant intended to cause G.S. to fear immediate bodily harm or death.

First, the circumstances proved do not support the inference that appellant intended to cause G.S. to fear property damage alone. Appellant's argument ignores the fact that after being informed that he was no longer welcome on the property, appellant told K.S. that he had the situation under control and that his knife would be his defense. And that later, during a confrontation with G.S., appellant pulled a two-foot long sword out from under his clothing and began to walk towards G.S. Second, the circumstances proved do

not support the inference that appellant intended to cause G.S. to fear future bodily harm. No reasonable inference supports the determination that by walking towards G.S. with a two-foot long sword, during a confrontation, appellant intended that G.S. fear future, not immediate, bodily harm.

Appellant, however, argues that Minnesota caselaw supports the determination that the requisite intent to cause fear of immediate bodily harm was absent here and cites *State v. Kastner*, 429 N.W.2d 274 (Minn. App. 1988), *review denied* (Minn. Nov. 16, 1988) and *State v. Soine*, 348 N.W.2d 824 (Minn. App. 1984), *review denied* (Minn. Sept. 12, 1984). We disagree. The defendants in *Kastner* and *Soine* challenged the sufficiency of the evidence supporting their convictions of second-degree assault and in both cases this court affirmed. *Kastner*, 429 N.W.2d at 276; *Soine*, 348 N.W.2d at 827. In *Kastner*, while about 10 feet away, the defendant pointed a scissors and a screwdriver at the victim and made verbal threats. 429 N.W.2d at 275. And in *Soine*, the defendant pointed a 3.5-inch buck-knife at two victims and made verbal threats. 348 N.W.2d at 825.

Appellant argues that this case is distinguishable from *Kastner* and *Soine* because (1) he did not make verbal threats to G.S., (2) he did not point the sword at G.S., and (3) the record is unclear about how far away G.S. and appellant were standing. While the record does not show that appellant made any verbal threats while walking towards G.S. with the sword, intent must be determined “from his words (if any) and actions in the light of all the surrounding circumstances.” *State v. Hardimon*, 310 N.W.2d 564, 566 (Minn. 1981) (quotation omitted). Appellant’s failure to make a verbal threat to G.S. does not negate that his actions and the attendant circumstances proved show that appellant intended

to cause G.S. to fear immediate bodily harm. G.S. testified that the two men were about 20 feet apart when appellant pulled the sword out from under his clothing and began to walk towards G.S. Based on the record on appeal, however, it is unclear whether appellant pointed the sword directly at G.S. But G.S. demonstrated appellant's actions for the jury stating, "then he turns around and goes back toward me with the sword like this." And Sergeant Stauty testified that G.S. reported that appellant "walk[ed] towards [G.S.] with the [sword] raised." The jury, moreover, "is in a unique position to determine the credibility of the witnesses and weigh the evidence before it." *Harris*, 895 N.W.2d at 600. We thus conclude that it would be unreasonable to infer from all the circumstances proved that appellant did not intend to cause G.S. to fear immediate bodily harm or death.

Based on the evidence presented and viewed in the light most favorable to the jury's verdict, we conclude that the state proved beyond a reasonable doubt that appellant intended to cause G.S. to fear immediate bodily harm or death.

Affirmed.