

*This opinion is nonprecedential except as provided by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
A20-1575**

State of Minnesota,
Respondent,

vs.

Roberto Amed Dommer,
Appellant.

**Filed October 18, 2021
Affirmed
Larkin, Judge**

Dakota County District Court
File No. 19WS-CR-17-14230

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

Alina Schwartz, Campbell Knutson, P.A., Eagan, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Julie Loftus Nelson, Assistant
Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Bratvold, Presiding Judge; Larkin, Judge; and Jesson,
Judge.

NONPRECEDENTIAL OPINION

LARKIN, Judge

In this direct appeal from a judgment of conviction and sentences for obstructing
arrest and disorderly conduct, appellant contends that the evidence was insufficient to

sustain his conviction for the first offense and that the district court erred in imposing sentences for both offenses. We affirm.

FACTS

Respondent State of Minnesota charged appellant Roberto Amed Dommer with violation of an order for protection (OFP), obstructing arrest, and disorderly conduct. The matter proceeded to a court trial.

Dommer's ex-wife testified that she had obtained an OFP against him. On November 16, 2017, she attended a concert at their daughter's school gym and saw Dommer, but she did not think he was violating the OFP because the issuing judge stated that the parents could attend their daughter's school events if they stayed "on either side of the gym." According to the ex-wife, Dommer approached her after the concert, swore at her, and called her names. She told him that she was calling the police, and she subsequently called 911 to report the alleged OFP violation.

A responding officer testified that he was dispatched to the school in response to the ex-wife's call for assistance. He was in uniform but wearing a coat. The officer saw Dommer standing near the gym, approached him, and told him that he needed to speak to him. Dommer was "very abrasive." Dommer had his hands in his pockets, and the officer told him to show his hands. Dommer pushed his hands deeper into his pockets. Fearing that Dommer might have a weapon, the officer grabbed Dommer and removed his hands from his pockets. Dommer told the officer that he was "unlawfully detaining him." The officer told Dommer that he was "investigating a possible crime." The officer attempted to place Dommer's hands behind his back to handcuff him. Dommer flexed. The officer

then placed Dommer in a “vascular neck restraint.” Dommer attempted to roll forward and fight the restraint. The officer tripped Dommer, and the two fell to the ground. The officer told Dommer to stop resisting. Dommer continued to resist. The two wrestled on the ground, and the officer used his radio to call for help. About a minute later, the officer heard squad cars, and other officers arrived. However, Dommer “continued to resist.” The other officers were ultimately able to handcuff Dommer.

After being handcuffed, Dommer continued to yell that it was illegal for the officers to detain him and that “the judge allowed him to be there at the school.” As Dommer was escorted to a squad car, he was “kicking at officers and resisting.” It took three officers to escort Dommer to the squad car. Once in the squad car, Dommer began “kicking at the doors.”

Dommer testified that his ex-wife approached him after the concert. He testified that after he left the gym, he was approached by a man who asked to speak with him. Dommer gave conflicting testimony about whether he believed the man was an officer. Dommer testified that the man grabbed him, and the two wrestled. He acknowledged continuing to struggle after the other officers arrived. Dommer’s attorney conceded that Dommer’s conduct constituted disorderly conduct, and Dommer, when questioned by the court, admitted that he committed the charged disorderly-conduct offense.

The district court found Dommer guilty of obstructing arrest and disorderly conduct, but not guilty of violating the OFP. The district court concluded that the two convictions arose from the same behavioral incident and imposed concurrent jail sentences. This appeal followed.

DECISION

I.

Dommer contends that the evidence was insufficient to sustain his gross-misdemeanor conviction for obstructing arrest. He was convicted under Minn. Stat. § 609.50, subd. 1(2) (2016), which prohibits a person from intentionally obstructing, resisting, or interfering “with a peace officer while the officer is engaged in the performance of official duties.” The offense was charged as a gross misdemeanor, which required the state to prove that Dommer’s act was “accompanied by force or violence or the threat thereof.” Minn. Stat. § 609.50, subd. 2(2) (2016). Dommer contends that he did not know that the officer he initially made contact with was a peace officer and that the state therefore failed to prove that he intentionally interfered with an officer’s duties.

Traditionally, when considering a challenge to the sufficiency of the evidence, we carefully analyze the record to determine whether the evidence, viewed in the light most favorable to the conviction, was sufficient to permit the fact-finder to reach its verdict. *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989). We assume the fact-finder believed the state’s witnesses and disbelieved any contrary evidence. *State v. Brocks*, 587 N.W.2d 37, 42 (Minn. 1998). We defer to the fact-finder’s credibility determinations and will not reweigh the evidence on appeal. *State v. Franks*, 765 N.W.2d 68, 73 (Minn. 2009); *State v. Watkins*, 650 N.W.2d 738, 741 (Minn. App. 2002). We will not disturb a guilty verdict if the fact-finder, acting with due regard for the presumption of innocence and requirement of proof beyond a reasonable doubt, could reasonably have concluded that the state proved the defendant’s guilt. *Bernhardt v. State*, 684 N.W.2d 465, 476-77 (Minn. 2004).

However, if the state relied on circumstantial evidence to prove an element of an offense, we apply a heightened standard of review. *See State v. Harris*, 895 N.W.2d 592, 601-03 (Minn. 2017) (applying circumstantial-evidence standard to individual element of criminal offense that was proved by circumstantial evidence). Circumstantial evidence is “evidence from which the [fact-finder] can infer whether the facts in dispute existed or did not exist.” *Id.* at 599 (quotation omitted). “In contrast, direct evidence is evidence that is based on personal knowledge or observation and that, if true, proves a fact without inference or presumption.” *Id.* (quotations omitted). Intent is commonly proved with circumstantial evidence. *State v. McAllister*, 862 N.W.2d 49, 53 (Minn. 2015); *see also State v. Johnson*, 616 N.W.2d 720, 726 (Minn. 2000) (“A state of mind generally is proved circumstantially, by inference from words and acts of the actor both before and after the incident.”).

Because the state relied on circumstantial evidence to prove that Dommer *intentionally* interfered with a peace officer, we apply the two-step circumstantial-evidence standard of review.¹ First, we determine the circumstances proved, disregarding evidence

¹ The parties did not discuss the applicability of the circumstantial-evidence standard of review in their briefs, and this case was submitted without oral argument. “However, it is the responsibility of appellate courts to decide cases in accordance with law, and that responsibility is not to be diluted by counsel’s oversights, lack of research, failure to specify issues or to cite relevant authorities.” *State v. Hannuksela*, 452 N.W.2d 668, 673 n.7 (Minn. 1990) (quotation omitted). If the circumstantial-evidence standard of review were either novel or questionable, it might be appropriate to solicit additional briefs. *See id.* But that is not the case here. *See State v. Al-Naseer*, 788 N.W.2d 469, 471 (Minn. 2010) (holding that heightened scrutiny applies to any disputed element of the conviction that is based on circumstantial evidence). We therefore apply that standard in this case notwithstanding the parties’ failure to do so in their briefs.

that is inconsistent with the fact-finder's verdict. *Harris*, 895 N.W.2d at 600-01. Next, we “determine whether the circumstances proved are consistent with guilt and inconsistent with any rational hypothesis other than guilt.” *Loving v. State*, 891 N.W.2d 638, 643 (Minn. 2017) (quotation omitted). We do not defer to the fact-finder's choice between reasonable inferences. *State v. Silvernail*, 831 N.W.2d 594, 599 (Minn. 2013). But we will reverse a conviction based on circumstantial evidence only if there is a reasonable inference other than guilt. *Loving*, 891 N.W.2d at 643.

The circumstances proved are as follows. Dommer's ex-wife told Dommer that she was calling the police. Although the responding officer who tussled with Dommer wore a jacket, he was in uniform. When the officer grabbed Dommer to force his hands out of his pockets, Dommer told the officer that he was “unlawfully detaining him.” The officer told Dommer that he was “investigating a possible crime.” When the officer placed Dommer in a neck restraint, Dommer told the officer that his actions were “unlawful” and “illegal.” The officer gave Dommer “loud verbal commands to put his hands behind his back and stop resisting,” yet Dommer continued to resist. When the two were on the ground, the officer used his radio to call for help. About a minute later, squad cars and other officers arrived to help. Dommer “continued to resist.”

Those circumstances are consistent with guilt because they indicate that Dommer knew that the person he tussled with was a law-enforcement officer investigating him for an OFP violation. That conclusion is bolstered by Dommer's actions after being handcuffed. Dommer continued to yell that it was illegal for the officers to detain him and that “the judge allowed him to be there at the school.” As Dommer was escorted to a squad

car, he was “kicking at officers and resisting.” It took three officers to escort Dommer to the squad car. Once in the squad car, Dommer began “kicking at the doors.”

We next consider whether the circumstances proved are inconsistent with any rational hypothesis other than guilt. “To successfully challenge a conviction based upon circumstantial evidence, a defendant must point to evidence in the record that is consistent with a rational theory other than guilt.” *State v. Taylor*, 650 N.W.2d 190, 206 (Minn. 2002). A defendant may not rely on mere conjecture or speculation, but must instead point to specific evidence in the record that is consistent with innocence. *Al-Naseer*, 788 N.W.2d at 480; *State v. Tscheu*, 758 N.W.2d 849, 858 (Minn. 2008). Possibilities of innocence do not require reversal “so long as the evidence taken as a whole makes such theories seem unreasonable.” *Taylor*, 650 N.W.2d at 206 (quotation omitted).

Dommer points to his testimony that he did not know that the person he tussled with was an officer because that person was not in full uniform and he did not see a squad car. But Dommer contradicted himself at trial and repeatedly testified that he believed the man was an officer. He testified, “He appeared to be a police officer.” And he acknowledged that when he was on the ground, the officer told him that he was under arrest, and yet he continued to struggle. He also acknowledged that he continued to struggle after the other officers arrived. The evidence as a whole renders Dommer’s theory of innocence unreasonable. We therefore do not disturb the guilty verdict and resulting conviction for obstructing arrest.

II.

Dommer argues that the district court erred in imposing sentences for both of his convictions because the underlying offenses arose from the same behavioral incident. Under Minn. Stat. § 609.035, subd. 1 (2016), “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.” This statute “generally prohibits multiple sentences, even concurrent sentences, for two or more offenses that were committed as part of a single behavioral incident.” *State v. Ferguson*, 808 N.W.2d 586, 589 (Minn. 2012) (quotation omitted). To determine whether two intentional offenses were part of the same behavioral incident, this court examines “factors of time and place and whether the segment of conduct involved was motivated by an effort to obtain a single criminal objective.” *State v. Bauer*, 792 N.W.2d 825, 828 (Minn. 2011) (quotation omitted).

The state concedes, and we agree, that Dommer’s convictions arose from the same behavioral incident. The offenses occurred at the same time and place and were motivated by Dommer’s intent to resist arrest. However, this does not end our analysis because “the legislature did not intend in every case to immunize offenders from the consequences of separate crimes intentionally committed in a single episode against more than one individual.” *Id.* (quotation omitted). Thus, under the multiple-victim rule, “courts are not prevented from giving a defendant multiple sentences for multiple crimes arising out of a single behavioral incident if: (1) the crimes affect multiple victims; and (2) multiple sentences do not unfairly exaggerate the criminality of the defendant’s conduct.” *Id.*

(quotation omitted). We examine the facts and circumstances of the crimes to determine whether the multiple-victim rule applies. *Id.* at 402.

Dommer's offenses affected multiple victims. The disorderly-conduct offense affected a crowd of bystanders at the school, including children. See Minn. Stat. § 609.72, subd. 1 (2016) (providing that a person commits the offense of disorderly conduct if he "engages in brawling or fighting" or "offensive, obscene, abusive, boisterous, or noisy conduct or in offensive, obscene, or abusive language tending reasonably to arouse alarm, anger, or resentment in others" in a public place "knowing, or having reasonable grounds to know that it will, or will tend to, alarm, anger or disturb others"). Dommer's obstructing-arrest offense affected the arresting officer.

We review a district court's determination that multiple sentences do not unfairly exaggerate the criminality of a defendant's conduct for an abuse of discretion. *State v. Alger*, 941 N.W.2d 396, 403 (Minn. 2020). For the gross-misdemeanor offense of obstructing arrest, the district court imposed a sentence of 365 days in jail but stayed execution of 275 of those days. For the misdemeanor disorderly-conduct offense, the district court imposed a concurrent 90-day jail sentence. The district court's imposition of concurrent sentences did not unfairly exaggerate the criminality of Dommer's conduct and was not an abuse of discretion.

Affirmed.