

*This opinion is nonprecedential except as provided by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
A21-0203**

State of Minnesota,
Respondent,

vs.

Alonzo Lonnie Jr. Williams,
Appellant.

**Filed January 10, 2022
Affirmed in part, reversed in part, and remanded
Rodenberg, Judge***

Otter Tail County District Court
File No. 56-CR-19-3493

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

Michelle Eldien, Otter Tail County Attorney, Fergus Falls, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Adam Lozeau, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Bryan, Presiding Judge; Smith, Tracy M., Judge; and
Rodenberg, Judge.

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

NONPRECEDENTIAL OPINION

RODENBERG, Judge

Appellant Alonzo Lonnie Jr. Williams was convicted of kidnapping, simple robbery, and fifth-degree assault after a jury trial. On appeal, he argues that: (1) the circumstantial evidence of his mental state is insufficient to prove either kidnapping under Minn. Stat. § 609.25, subd. 1(3) (2018), or simple robbery under Minn. Stat. § 609.24 (2018); (2) the fifth-degree assault conviction under Minn. Stat. § 609.224, subd. 1(2) (2018) must be vacated as a lesser-included offense of the simple-robbery conviction; and (3) in the alternative, he was denied a fair and impartial trial because of judicial bias. We affirm appellant's kidnapping and simple-robbery convictions. We reverse the fifth-degree assault conviction and remand for the district to correct the warrant of commitment.

FACTS

On November 28, 2019, appellant stayed at a motel near Fergus Falls, Minnesota. That evening, appellant assaulted Z.B., an employee at the motel. Z.B. testified that, while he worked at the front desk, he heard loud stomping as appellant approached the front-desk area. The stomping was loud enough to startle Z.B., and he pushed his computer back from where he was working. As appellant approached Z.B., appellant jumped on top of the desk at which Z.B. was working. In response, Z.B. shouted, "Whoa" and he put his hands up. Appellant made his way down from the counter and entered Z.B.'s work area. Appellant pushed Z.B. and accused him of having a sexual relationship with appellant's girlfriend. At one point, appellant grabbed Z.B. by the neck and forced him toward the wall behind the desk. The force caused Z.B.'s head to hit a window. Appellant continued to shout at

Z.B., demanding to know if Z.B. had a sexual relationship with appellant's girlfriend. Z.B. told appellant, "I don't know who you are. I don't know who you are." Unconvinced, appellant continued to act aggressively toward Z.B. both physically and verbally.

Appellant hit Z.B. in the head with a closed fist and continued shouting at him. Z.B. again said, "I don't even know who you are." Appellant then grabbed Z.B. and dragged him to appellant's motel room. When asked at trial why he went with appellant, Z.B. testified that he was afraid of being hit again. Once the two arrived at appellant's motel room, appellant pinned Z.B. against the wall while he took a room key out of his pocket. Still holding Z.B. by his neck, appellant forced Z.B. into the motel room. Inside the room, appellant began to shout at his girlfriend. Appellant's girlfriend assured him that she did not know who Z.B. was and that they had never had a sexual relationship. Appellant accepted her response and then escorted Z.B. away from his motel room.

Appellant grabbed Z.B.'s work phone and forced Z.B. down a hallway toward a back exit. Appellant asked Z.B., "[i]f [they] could talk outside." Another motel employee saw the two men walking down the hallway and stopped them. Z.B.'s coworker demanded that appellant give her the work phone that he had taken from Z.B. She then took the phone from appellant. The two employees returned to the front desk without appellant.

Once Z.B. returned to the front desk, he explained to his coworker what had happened. Z.B. later noticed that his personal cellular phone was no longer on the front desk, where he had placed it before he was assaulted by appellant. Z.B.'s coworker then called the police. Police later found Z.B.'s personal phone outside the motel, and it was returned to Z.B.

The state charged appellant with kidnapping, simple robbery, and fifth-degree assault. The case was tried to a jury. After the state rested, appellant moved for a judgment of acquittal challenging the sufficiency of the evidence to support the kidnapping and robbery charges. The district court denied both motions. The jury found appellant guilty of all charges.

This appeal followed.

DECISION

I. *Judicial misconduct*

Appellant argues on appeal that he was unconstitutionally denied a fair trial. He specifically argues that the district court was not impartial and made biased comments during the state's presentation of evidence. If appellant was denied his constitutional right to a fair trial, reversal and remand for a new trial would be required. *See State v. Malone*, 963 N.W.2d 453, 469-70 (Minn. 2021).

"The Sixth Amendment of the United States Constitution guarantees criminal defendants the right to be tried by an impartial" fact-finder. *State v. Dorsey*, 701 N.W.2d 238, 249 (Minn. 2005). Questions of whether a defendant's "right to a fair trial" and "[w]hether a judge has violated the Code of Judicial Conduct" are both questions of law that appellate courts review de novo. *Id.* at 246,249. A judge will be found to have acted with bias when "a reasonable examiner, with full knowledge of the facts and circumstances, would question the judge's impartiality." *State v. Reek*, 942 N.W.2d 148, 156 (Minn. 2020) (quotation omitted). "The mere fact that a party declares a judge partial does not in itself generate a reasonable question as to the judge's impartiality." *Id.* (quotation omitted).

Appellant argues that the following statement by the district court concerning when the prosecutor would publish exhibits to the jury rose to the level of judicial bias: “I believe we’ll do it now so [the exhibits] are part of the evidence and not simply matters of closing statement.” The prosecutor intended to publish the exhibits later and so indicated in open court, but then proceeded as suggested by the district court. Appellant seeks a new trial based on the argument that the district court’s use of the word “we’ll” when speaking to the prosecutor impermissibly aligned the district court with the prosecution. Appellant specifically argues that the jurors would consider that the district court and the prosecutor were the “we[]” to which the district court referred, and that “we[]” would not include the defense.

Appellant argues that the district court’s comments concerning the state’s treatment of evidence violated Canon 2 of the Minnesota Code of Judicial Conduct. Under Minn. Code Jud. Conduct Rule 2.11(A)(1) “[a] judge shall disqualify himself or herself in any proceeding in which the judge’s impartiality might reasonably be questioned, including . . . [when] [t]he judge has a personal bias or prejudice concerning a party.” Appellate courts will grant a new trial only “in those rare cases where the remark of the trial judge was so prejudicial to one party that it rendered a fair and impartial determination by the jury improbable.” *Fortier v. Ritter’s Hairdressing Studios, Inc.*, 164 N.W.2d 897, 899-900 (Minn. 1969).

On careful review of the record, we see no impermissible judicial bias here. Although it was not ideal that the district court used the plural “we[]” when discussing when the state’s exhibits should be published, it is clear from the transcript that the judge’s

suggestion was *inconsistent* with the prosecutor's intended course. And it seems that the use of "we[]" was not intended to nor did it align the judge with the prosecution. It was a fleeting reference to the timing of the publication of evidence. No reasonable examiner would question the district court's impartiality for this fleeting comment.

Appellant's trial was not infected by judicial bias and he therefore was not deprived of his constitutional right to a fair trial.

II. *Sufficiency of the evidence*

Appellant challenges the sufficiency of the evidence for his convictions for kidnapping and simple robbery. "When considering a sufficiency-of-the-evidence argument, we view the evidence in the light most favorable to the verdict, assuming the fact-finder believed the [s]tate's witnesses and disbelieved any evidence to the contrary." *State v. Townsend*, 941 N.W.2d 108, 110 (Minn. 2020). We will not overturn a verdict if the fact-finder could reasonably have found the defendant guilty of the charged offense, giving due regard to the presumption of innocence and the prosecution's burden of proving guilt beyond a reasonable doubt. *State v. Lopez*, 908 N.W.2d 334, 335 (Minn. 2018).

Circumstantial evidence is "evidence from which the [fact-finder] can infer whether the facts in dispute existed or did not exist," and "always requires an inferential step" by the fact-finder. *State v. Harris*, 895 N.W.2d 592, 599 (Minn. 2017) (quotation and citation omitted).

A conviction based upon circumstantial evidence is subject to a heightened standard of review. *State v. Al-Naseer*, 788 N.W.2d 469, 473 (Minn. 2010). Generally, intent is a state of mind that may be proved by inferences from the defendant's words and actions.

State v. Thompson, 544 N.W.2d 8, 11 (Minn. 1996). The standard of review for sufficiency of circumstantial evidence employs a two-step process. *Harris*, 895 N.W.2d at 600-01. First, a reviewing court identifies the circumstances proved by the state. *Loving v. State*, 891 N.W.2d 638, 643 (Minn. 2017). In order to do so, the evidence must be “winnow[ed] down . . . by resolving all questions of fact in favor of the jury’s verdict,” and disregarding any evidence inconsistent with the verdict. *Harris*, 895 N.W.2d at 600. Second, the reviewing court determines “whether the circumstances proved are consistent with guilt and inconsistent with any rational hypothesis” other than guilt. *State v. Bahtuoh*, 840 N.W.2d 804, 809 (Minn. 2013) (quotation omitted). The steps in the analysis of circumstantial evidence are: first, “whether the inferences that point to guilt are reasonable,” and, second, whether the circumstances proved exclude any reasonable inference other than guilt. *State v. Silvernail*, 831 N.W.2d 594, 599 (Minn. 2013) (quotation omitted).

We address the sufficiency of the evidence supporting appellant’s kidnapping and simple-robbery convictions separately.

A. Kidnapping

Appellant challenges the sufficiency of the evidence for his kidnapping conviction, arguing that the state failed to prove beyond a reasonable doubt that he removed Z.B. from his work area to the motel room for the purpose of terrorizing him by causing him extreme fear by use of violence or threats.

A kidnapping conviction requires proof of: (1) confinement or removal of another person from one place to another; (2) without that person’s consent; and (3) for one of four

enumerated purposes, including “to commit great bodily harm or to terrorize the victim or another.” Minn. Stat. § 609.25, subd. 1(3). “The confinement or removal must be criminally significant in the sense of being more than merely incidental to the underlying crime, in order to justify a separate criminal sentence.” *State v. Earl*, 702 N.W.2d 711, 722 (Minn. 2005) (quotation omitted). “In Minnesota, there is no requirement that the person be detained for a ‘substantial’ period of time or transported a ‘substantial’ distance.” *State v. Budreau*, 641 N.W.2d 919, 929 (Minn. 2002). The perpetrator must have the specific intent to commit great bodily harm or to terrorize. *See State v. Wilson*, 830 N.W.2d 849, 853 (Minn. 2013). “The word purpose is synonymous with intention and is defined as the result or an effect that is intended or desired.” *Id.* at 853-54 (quotation omitted). Great bodily harm is defined as “bodily injury which creates a high probability of death, or which causes serious permanent disfigurement, or which causes a permanent or protracted loss or impairment of the function of any bodily member or organ or other serious bodily harm.” Minn. Stat. § 609.02, subd. 8 (2018). The term “to terrorize” is defined for juries as “causing extreme fear by use of violence or threats.” 10 *Minnesota Practice*, CRIMJIG 15.02 (2017).

1. Circumstances proved

The state provided sufficient direct evidence to prove elements one and two of appellant’s kidnapping conviction, and appellant makes no argument to the contrary. To prove element three, however, the state relied on circumstantial evidence. The record does not suggest that appellant caused or had specific intent to inflict great bodily harm during his confrontation with Z.B. We are therefore left to determine whether the circumstantial

evidence of record is sufficient to show that appellant intended to terrorize Z.B. and that there is no rational inference otherwise.

Our review is aided by the district court's explicit consideration of the sufficiency of the evidence in ruling on—and denying—appellant's motion for judgment of acquittal on the kidnapping charge. The district court concluded, as we do, that the record contains no direct evidence that appellant intended to terrorize Z.B. In denying appellant's motion, the district court noted “a number of items of circumstantial evidence to establish intent.”

The circumstances proved concerning appellant's intent are as follows. Appellant jumped onto the front desk of the motel. Next, appellant came down from the front desk and confronted Z.B. behind the front desk, an area appellant did not have permission to enter. Appellant accused Z.B. of having a sexual relationship with his girlfriend. Appellant then assaulted Z.B. while restricting his ability to escape. As discussed in more detail below, appellant took both of the cellular phones available to Z.B. and, in so doing, prevented Z.B. from calling for help. Without Z.B.'s consent, appellant removed Z.B. from the front desk by his neck and forced him to walk down the hall to appellant's motel room. At appellant's motel room, appellant pinned Z.B. against a wall. He forced Z.B. into the motel room against Z.B.'s will. In the motel room, appellant shouted obscenities at his girlfriend and accused her of infidelity. After appellant was convinced that Z.B. and his girlfriend were not having a sexual relationship, he took Z.B. toward an exit to talk. On their way to the exit, appellant and Z.B. were stopped by Z.B.'s coworker. Appellant released Z.B., and the two employees returned to the front desk and called the police.

2. *We see no rational inference from these circumstances that is inconsistent with appellant's guilt*

Appellant argues that *Wilson* requires the reversal of his kidnapping conviction. Specifically, he argues that the circumstances proved by the state failed to show beyond a reasonable doubt that appellant's removal of Z.B. was for the specific purpose of committing great bodily harm or terrorizing him.

Wilson holds, in the context of the statute prohibiting the fleeing of a peace officer by motor vehicle, the phrase "for the purpose of" creates a "specific-intent requirement." *Wilson*, 830 N.W.2d at 852-54. The supreme court's analysis in *Wilson* applies here. The state was not required to prove that appellant's sole or even principal *motivation* was to inflict terror on Z.B. The state's burden at trial was to prove the specific intent to terrorize, regardless of the ultimate objective or motivation for doing so.

The evidence at trial proved that appellant removed Z.B. by force from where Z.B. was working. Appellant seemingly wished to confront Z.B. and his girlfriend together in his motel room. To accomplish this, appellant assaulted and terrorized Z.B. to force his compliance. He precluded Z.B. from calling for help by taking two cellular phones, further terrorizing him. The circumstantial evidence admits of no rational inference other than that appellant removed Z.B. from the front desk without his consent and with the specific intent to terrorize Z.B. to compel him to go to the motel room. Appellant's assault and his actions in forcing Z.B. down the hallway of the motel were all part of one continuous incident. The evidence—though circumstantial—admits of no rational inference other than that appellant intended to terrorize Z.B. to get him back to the motel room and confront the

girlfriend about her possible infidelity. Appellant did detain Z.B. in the motel room against his will, Z.B. having been terrorized the entire time. Although appellant may have had motivations beyond merely terrorizing Z.B., as appellant argues on appeal, he achieved his desired result of confronting the two people together by terrorizing Z.B. and detaining him in a motel room against his will. In so doing, appellant satisfied the requirements of the statute defining kidnapping. The only rational conclusion that can be made based on the circumstances proved is that appellant acted with the specific intent to terrorize Z.B.

Although appellant's kidnapping conviction depends on circumstantial evidence concerning appellant's mental state at the time of the crime, we conclude that the circumstantial evidence is sufficient to support the conviction.

B. Simple robbery

Appellant also challenges the sufficiency of the evidence for his simple-robbery conviction. Appellant argues that the state failed to meet its burden of proof that he took the property of another by force.

The state has the burden to prove each element of the charged offense beyond reasonable doubt. *State v. Struzyk*, 869 N.W.2d 280, 289 (Minn. 2015). “[S]imple robbery has four elements.” *Townsend*, 941 N.W.2d at 112. The four elements are: (1) an individual has knowledge of not being entitled to the property at the time of the offense; (2) the individual takes the property; (3) the taking of the property was from the person or in the presence of another; and (4) the individual uses or threatens to use force against any person to overcome the person's resistance to the taking or carrying away of the property. Minn. Stat. § 609.24. The use or threat of force must “precede or accompany either the

taking or the carrying away and . . . be used to overcome the victim’s resistance or compel his acquiescence in the taking or carrying away” of property. *State v. Kvale*, 302 N.W.2d 650, 653 (Minn. 1981). “Mere force suffices for the simple robbery statute.” *State v. Burrell*, 506 N.W.2d 34, 37 (Minn. App. 1993), *rev. denied* (Minn. Oct. 19, 1993). “[E]ven temporary control or dominion over another’s property [is] sufficient to complete the offense of simple robbery” *State v. Thonesavanh*, 904 N.W.2d 432, 438 (Minn. 2017) (quotation omitted).

1. Circumstances proved

The state produced sufficient evidence to prove that appellant took Z.B.’s personal property while in Z.B.’s presence, and appellant makes no contrary argument. The remaining question is whether the state proved that appellant used or threatened to use imminent force to overcome Z.B.’s resistance to or to compel Z.B.’s acquiescence in the taking of his personal property. The evidence of whether such force was so used is circumstantial. As discussed, we review the record to determine whether that circumstantial evidence is sufficient to support the inference that appellant’s use of force facilitated the taking of Z.B.’s personal property and that there is no rational inference to the contrary.

The circumstances proved at trial on this point are as follows. Z.B. was working behind the front desk of the motel when appellant approached him and began shouting obscenities at him. Before appellant approached the front desk, Z.B. had placed his personal cellular phone on the desk, next to the computer. Appellant jumped on top of the

front desk near where Z.B.'s personal phone was located. He then entered Z.B.'s workspace. He was close enough to Z.B.'s personal cellular phone that he could grab it and he did so. Because Z.B. was under a ferocious assault from appellant, he did not notice when appellant did this. Z.B. returned to the front-desk area with his coworker after appellant had released him. Z.B. then noticed that his cellular phone was missing. Z.B.'s coworker then called the police. The next day, police returned Z.B.'s phone to him after it was found in the parking lot adjacent to the motel.

2. We see no rational inference from these circumstances that is inconsistent with appellant's guilt

Appellant assaulted Z.B. and took his phone. Appellant's use of force is distinguished from the simple-robbery conviction in *Townsend*, where the supreme court considered that "Townsend's struggle with the employee permits a fact-finder to reasonably conclude that Townsend used force for the purpose of overcoming the employee's resistance to the carrying away of property." 941 N.W.2d at 113. In contrast, appellant's use of force in this case provided him the opportunity to take Z.B.'s phone.

Appellant argues that this was a theft and not a robbery, because the state did not prove that appellant's use of force was used to overcome resistance or to compel Z.B. to acquiesce in the taking.

The evidence is consistent only with the conclusion that appellant took Z.B.'s personal phone during the assault on Z.B. at the front desk. The assault was ferocious enough that Z.B. did not realize that appellant took his personal phone. Although appellant's conduct during this entire episode is sufficiently bizarre as to render impossible

a precise analysis of his every intention, this much is clear: appellant took both of the phones to which Z.B. had access. He did not retain or use either phone himself, the only reasonable conclusion from the facts being that he took the phones in order to deprive Z.B. of a way to seek assistance. And he accomplished this by violently attacking Z.B. The attack and the taking of the phones were part of appellant's overall objective to get Z.B. to appellant's motel room. We see no rational inference from the circumstances proved other than that the force used by appellant during the assault overcame any resistance Z.B. might otherwise have offered to the taking of his phone.

We therefore affirm appellant's simple-robbery conviction.

III. *Lesser-included offense: fifth-degree assault*

Appellant argues that his conviction for fifth-degree assault should be vacated if his conviction for simple robbery is affirmed.¹ Appellant maintains that fifth-degree assault is a lesser-included offense upon proof of simple robbery. The state agrees.

An individual "may be convicted of either the crime charged or an included offense, but not both." Minn. Stat. § 609.04, subd. 1 (2018). Under a section 609.04 inquiry, we are required to compare "the statutory elements of both crimes." *State v. Holmes*, 778 N.W.2d 336, 340 (Minn. 2010). A crime is included in a greater offense "if it is impossible to commit the greater offense without committing the lesser offense." *State v. Bertsch*, 707 N.W.2d 660, 664 (Minn. 2006). A conviction of fifth-degree assault requires a showing

¹ Appellant was credited 362 days for time served in jail while awaiting trial and sentencing.

that an individual “intentionally inflict[ed] or attempt[ed] to inflict bodily harm upon another.” Minn. Stat. § 609.224, subd. 1(2).

Fifth-degree assault is an included offense of simple robbery. To commit simple robbery, one must also commit at least fifth-degree assault. *State v. McClenton*, 781 N.W.2d 181, 188 (Minn. App. 2010), *rev. denied* (Minn. June 29, 2010). The jury’s verdict stands, but appellant’s conviction for fifth-degree assault is an offense necessarily proved in the simple-robbery conviction, and appellant cannot be convicted of both. We reverse the conviction for fifth-degree assault and remand to the district court with instructions to vacate that conviction.

In sum, we reject appellant’s argument of judicial bias. We affirm appellant’s convictions for kidnapping and simple robbery. We reverse appellant’s conviction for fifth-degree assault and remand with instructions that the district court correct the warrant of commitment to eliminate that conviction.

Affirmed in part, reversed in part, and remanded.