

*This opinion is nonprecedential except as provided by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
A22-0667**

State of Minnesota,
Respondent,

vs.

Rafael Sharif Hassan, II,
Appellant.

**Filed April 10, 2023
Affirmed
Bjorkman, Judge**

Hennepin County District Court
File No. 27-CR-20-10106

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

Mary F. Moriarty, Hennepin County Attorney, Peter R. Marker, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Rachel F. Bond, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Bjorkman, Presiding Judge; Jesson, Judge; and Frisch, Judge.

NONPRECEDENTIAL OPINION

BJORKMAN, Judge

Appellant challenges his felony conviction for making threats of violence, arguing that the evidence was insufficient to prove beyond a reasonable doubt that he intended to terrorize the victim or acted in reckless disregard of that risk. We affirm.

FACTS

On April 21, 2020, appellant Rafael Sharif Hassan, II went to his mother's house in Minneapolis to visit his two daughters. Hassan's mother, T.M., lived there with two of her daughters and her significant other, V.R.

When Hassan's daughters arrived, T.M. went outside to meet them and brought them into the house. Hassan left the house and tried to get into the car with the girls' mother, who refused to let him in and drove away. Hassan returned to the house and told T.M. that he was leaving and taking his daughters with him. When she refused to let him do so, Hassan "went off the deep end" and became verbally abusive. They began to argue, and Hassan threw a punch that T.M. managed to avoid. He then reached into the front waistband of his pants and told T.M., "I will kill you." T.M. saw Hassan place his hand on a gun in his waistband as he told her he was going to "take her out." One of T.M.'s daughters entered the room, and Hassan said he would "take [her] out too." While Hassan was threatening them, he kept his hand on the gun in his waistband. T.M. was "terrified" and picked up a baseball bat to protect herself. She believed Hassan was serious because it was "not the first time" he had threatened her. T.M. told Hassan to leave. He refused, so T.M. called the police.

V.R. was outside on the front porch when he heard Hassan say, "B-tch, I'll f-ck you up." V.R. went back inside the house and saw Hassan "with his hands balled up like he was about to do something." Hassan yelled something at V.R. like "come outside" and "I got something for you." T.M. saw that Hassan still had his hand on the gun in his waistband when he made these statements. V.R. then grabbed Hassan by the arm and took him

outside. V.R. was not worried or scared for himself, but he was concerned for T.M. and her daughter. He told Hassan, “Whatever you think you are about to do to me you better go ahead and try it now.” Hassan backed away and again reached for his waistband, telling V.R. to “come around the corner.” Eventually, Hassan walked away.

Minneapolis police officers responded to T.M.’s call. They found Hassan walking near the house and arrested him. A search incident to the arrest did not reveal a gun or other type of weapon. An investigator interviewed T.M. and V.R. over the next two days. T.M. told the investigator that Hassan threatened her, her daughter, and V.R., and that she believed Hassan had a gun. V.R. told the investigator that Hassan threatened to kill him. Both T.M. and V.R. stated that Hassan repeatedly put his hand in his waistband, under his shirt. No gun was ever recovered.

Hassan was charged with making threats of violence and felony domestic assault. The case proceeded to a jury trial, at which T.M., V.R., one of the arresting officers, and the investigator testified consistent with the facts described above. Hassan also testified, telling a conflicting story and denying that he threatened to kill anyone or that he had a gun. The jury found Hassan guilty of making threats of violence and not guilty of domestic assault. The district court imposed a 36-month prison sentence.

Hassan appeals.

DECISION

Under Minnesota law, “[w]hoever threatens, directly or indirectly, to commit any crime of violence with purpose to terrorize another . . . or in a reckless disregard of the risk of causing such terror . . .” is guilty of making a threat of violence. Minn. Stat. § 609.713,

subd. 1 (2018). Intent to terrorize is generally proved using circumstantial evidence “by drawing inferences from the defendant’s words and actions in light of the totality of the circumstances,” and from a “victim’s reaction to a threat.” *State v. Smith*, 825 N.W.2d 131, 136 (Minn. App. 2012) (quotation omitted), *rev. denied* (Minn. Mar. 19, 2013). A defendant acts in reckless disregard of the risk of causing terror when he takes “deliberate action in disregard of a known, substantial risk” of threatening another. *State v. Bjergum*, 771 N.W.2d 53, 57 (Minn. App. 2009) (quotation omitted), *rev. denied* (Minn. Nov. 17, 2009).

Hassan argues that the evidence was insufficient to prove beyond a reasonable doubt that he intended to terrorize T.M. or acted in reckless disregard of that risk. The parties agree that proof of Hassan’s intent turned on circumstantial evidence. We agree.

In assessing the sufficiency of circumstantial evidence, we engage in a two-part analysis. *State v. Al-Naseer*, 788 N.W.2d 469, 473-74 (Minn. 2010). First, we identify the circumstances proved, deferring to the fact-finder’s credibility determinations and weighing of the evidence. *Id.* at 473. Circumstances proved include evidence consistent with the verdict and uncontroverted evidence presented by the state that does not contradict the verdict. *State v. German*, 929 N.W.2d 466, 473 (Minn. App. 2019). The absence of evidence is not a circumstance proved. *Id.*

Second, we “determine whether the circumstances proved are consistent with guilt and inconsistent with any rational hypothesis except that of guilt.” *State v. Palmer*, 803 N.W.2d 727, 733 (Minn. 2011) (quotation omitted). We do not view a circumstance proved in isolation; we consider whether the circumstances proved *on the whole* are consistent

with guilt and inconsistent with a reasonable hypothesis of innocence. *State v. Hawes*, 801 N.W.2d 659, 669 (Minn. 2011). And we do not defer to the fact-finder’s choice between reasonable inferences. *State v. Silvernail*, 831 N.W.2d 594, 599 (Minn. 2013).

The circumstances proved at trial consist of the following. Hassan and T.M. had a heated argument about whether Hassan could leave the house with his daughters. Hassan tried to punch T.M., reached into the front of his waistband, put his hand on a gun, and told her, “I will kill you.” He also stated, “B-tch, I’ll f-ck you up,” and told her that he was going to “take [her] out.” T.M. was so terrified that she grabbed a baseball bat for protection and called the police. She believed Hassan was serious because it was “not the first time” he had threatened her. V.R. overheard one of Hassan’s statements. And when V.R. entered the room, he saw Hassan “with his hands balled up like he was about to do something.” As V.R. forcibly removed Hassan from the house, Hassan kept his hand on the gun and challenged V.R. to “come around the corner.”

Having identified the circumstances proved, we next evaluate the reasonableness of the inferences that might be drawn from them. Hassan twice declared an intention to kill T.M., told her he would “f-ck [her] up,” and tried to punch her. T.M. believed his threat was real. When viewed in the context of the circumstances proved as a whole, including Hassan’s other words and actions and T.M.’s reactions, we conclude that the only reasonable inference to be drawn is that Hassan threatened to kill T.M. with the purpose of terrorizing her, or in reckless disregard of the risk of causing such terror. Hassan’s proposed alternative hypothesis—that his statements merely expressed “transitory frustration and anger”—is unreasonable when the circumstances proved are considered

together. Hassan wanted to take his children away from T.M.'s house. When she refused to let him do so, Hassan responded with verbal and physical acts that occurred both inside and outside of the house and included express threats of bodily harm against three people. Considering the totality of the circumstances, we are not persuaded that there is a reasonable inference of innocence. Thus, the evidence was sufficient to allow the jury to reasonably conclude that Hassan was guilty beyond a reasonable doubt of making threats of violence against T.M.

Affirmed.