STATE OF MINNESOTA
IN COURT OF APPEALS
A22-1058

State of Minnesota,
Respondent,

vs.

Malique Isiah Shaqur Hanson,
Appellant.

Filed June 12, 2023
Affirmed in part, reversed in part, and remanded
Larson, Judge

Benton County District Court
File No. 05-CR-21-881

Keith Ellison, Attorney General, Peter Magnuson, Assistant Attorney General, St. Paul, Minnesota; and

Karl Schmidt, Benton County Attorney, Foley, Minnesota (for respondent)

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

Considered and decided by Larson, Presiding Judge; Reilly, Judge; and Reyes, Judge.

NONPRECEDENTIAL OPINION

LARSON, Judge

Appellant Malique Isiah Shaqur Hanson appeals from final judgment, challenging his convictions for second-degree assault and threats of violence, and his sentences for

threats of violence and obstructing legal process. We affirm in part, reverse in part, and remand.

FACTS

On May 21, 2021, a St. Cloud police officer (first officer) responded to a call reporting a heated argument between a male and female on the street. As the first officer approached the reported location, he observed a man walking away from the location, who he thought might be involved. But the first officer proceeded to the reported location. There, the first officer interviewed A.L.,[1] who reported that she argued with her then-boyfriend, appellant, because she sought to end their relationship. A.L. told the first officer that appellant responded by slashing two tires on A.L.'s vehicle and smashing its windshield. A.L. then described appellant's appearance, at which time the first officer realized appellant matched the description of the man the first officer observed walking away from the scene. The first officer radioed for other police officers to search for appellant.

A second St. Cloud police officer (second officer) located appellant. The second officer turned on his squad car's emergency lights and siren. Appellant fled from the second officer, and the second officer pursued appellant in his squad car. The second officer called for back-up and radioed that appellant appeared to have something inside his

[1] A.L. later suffered a stroke and no longer recalled the events from May 21, 2021. At trial, the state called A.L. only to establish that she lost her memory due to the stroke. The state then relied on the testimony from the responding police officers and body-camera footage to prove the events that occurred on that date.

backpack. The first officer replied that appellant may have the knife he used to slash the tires on A.L.'s vehicle.

After the second officer observed pedestrians in the vicinity, the second officer decided to pursue appellant on foot. The second officer told appellant to stop and informed appellant that he was under arrest. After chasing appellant a short distance, appellant turned toward the second officer and brandished a hatchet[2] in an aggressive posture. Appellant then resumed fleeing from the second officer. The second officer maintained his distance with his gun drawn, continually instructing appellant to stop and put down the weapon and telling appellant he was under arrest. Appellant repeatedly swore at the second officer, told him to "[s]top coming up on me[,]" and raised the hatchet above his head.

Appellant eventually jumped a fence, and several police officers intercepted him shortly thereafter. Appellant then engaged in an intense, roughly 10-minute altercation with police officers. During that time, appellant raised the hatchet over his head and stepped aggressively toward the police officers, as if preparing to throw the hatchet. Appellant repeatedly swore at the police officers and taunted them to shoot him. One police officer testified she heard appellant say "'I will kill you.'" Appellant also threatened self-harm, holding the hatchet up to his own neck. During this lengthy interaction, police officers had their guns drawn and kept roughly 20 feet of distance.

Later in the altercation, a second group of police officers arrived with a canine unit and approached appellant. The canine's barking distracted appellant, at which point an

[2] Police found multiple items they described as "edged weapons" on appellant after his arrest.

officer tased appellant and he fell to the ground. Appellant continued to resist arrest, causing the police officers to place appellant in a full-body restraint.

Respondent State of Minnesota charged appellant with one count of second-degree assault, Minn. Stat. § 609.222, subd. 1 (2020); one count of making threats of violence, Minn. Stat. § 609.713, subd. 1 (2020); one count of misdemeanor fourth-degree criminal damage to property, Minn. Stat. § 609.595, subd. 3 (2020);[3] and one count of gross-misdemeanor obstructing legal process or arrest with force or violence, Minn. Stat. § 609.50, subd. 2(2) (2020). The case proceeded to a jury trial where the state called several police officers to testify to the facts described above and admitted body-camera footage into evidence. The police officers testified that throughout their interaction with appellant, appellant acted erratically, appeared agitated and aggressive, and did not comply with the police officers' instructions. The police officers further testified that they were afraid appellant would cause them imminent bodily harm or injury with the hatchet. Appellant did not testify. The jury returned guilty verdicts on all four counts. The district court convicted appellant on all four counts and sentenced appellant to the following concurrent periods of confinement: 45 months for second-degree assault; 27 months for threats of violence; 90 days for misdemeanor fourth-degree criminal damage to property; and 365 days for obstructing legal process or arrest.

This appeal follows.

[3] The state initially charged appellant with first-degree criminal damage to property but reduced this count to fourth-degree criminal damage to property in an amended complaint.

DECISION

Appellant challenges his second-degree-assault and threats-of-violence convictions on the ground that the state failed to prove beyond a reasonable doubt that he had the requisite intent. Appellant also argues that, if his second-degree-assault conviction is not reversed, then his threats-of-violence and obstructing-legal-process sentences must be vacated, because they arose from the same behavioral incident as the second-degree assault. We address appellant's arguments in turn below.

I.

Appellant argues the state presented insufficient evidence to prove that he had the requisite intent to support his second-degree-assault and threats-of-violence convictions. Appellant asserts that the state's evidence only established that he was having a mental-health crisis and intended to flee or have the officers harm him. We are not persuaded.

A person commits second-degree assault when the person "assaults another with a dangerous weapon." Minn. Stat. § 609.222, subd. 1. As relevant here, "'[a]ssault' is an act done *with intent to* cause fear in another of immediate bodily harm or death." Minn. Stat. § 609.02, subd. 10 (2020) (emphasis added). "'With intent to' . . . means that the actor either has a purpose to do the thing or cause the result specified or believes that the act, if successful, will cause that result." Minn. Stat. § 609.02, subd. 9(4) (2020). A victim does not need to actually fear bodily harm or death to support a conviction for second-degree assault, but such evidence can provide circumstantial evidence of intent. *In re Welfare of T.N.Y.*, 632 N.W.2d 765, 769-70 (Minn. App. 2001).

A person commits threats of violence when the person "threatens, directly or indirectly, to commit any crime of violence *with purpose to terrorize* another."[4] Minn. Stat. § 609.713, subd. 1 (emphasis added). In this context, "purpose" means "aim, objective, or intention," and "terrorize" means "cause extreme fear by use of violence or threats." *State v. Smith*, 825 N.W.2d 131, 136 (Minn. App. 2012) (quoting *State v. Schweppe*, 273 N.W.2d 609, 614 (Minn. 1975)), *rev. denied* (Minn. Mar. 19, 2013). A victim's reaction to threats of violence can supply circumstantial evidence of intent. *Sykes v. State*, 578 N.W.2d 807, 811 (Minn. App. 1998), *rev. denied* (Minn. July 16, 1998).

When evaluating a sufficiency-of-the-evidence claim, we view the evidence "in the light most favorable to the verdict, and it must be assumed that the fact-finder disbelieved any evidence that conflicted with the verdict." *State v. Griffin*, 887 N.W.2d 257, 263 (Minn. 2016). But the level of scrutiny we apply depends on whether the elements of an offense are supported by direct or circumstantial evidence. *State v. Silvernail*, 831 N.W.2d 594, 598-99 (Minn. 2013). "[D]irect evidence is evidence that is based on personal knowledge or observation." *State v. Harris*, 895 N.W.2d 592, 599 (Minn. 2017) (quotation omitted). When the state supports an element with direct evidence, we painstakingly

[4] A person can also commit threats of violence when a person "threatens, directly or indirectly, to commit any crime of violence . . . in a reckless disregard of the risk of causing such terror." Minn. Stat. § 609.713, subd. 1. Appellant's brief notes this alternative theory but does not separately argue any difference exists between the levels of mens rea required. *See State v. Mrozinski*, 971 N.W.2d 233, 239-40 (Minn. 2022) (distinguishing the requisite mens rea for "purpose to terrorize" and "reckless disregard of the risk of causing terror"). Because we conclude the direct and circumstantial evidence proved a purpose to terrorize, we do not separately analyze whether the conduct would also meet the standard for reckless disregard.

review "the record to determine whether the evidence, when viewed in a light most favorable to the conviction, was sufficient to permit the jurors to reach the verdict which they did." *State v. Horst*, 880 N.W.2d 24, 40 (Minn. 2016) (quotation omitted).

Circumstantial evidence is "evidence from which the factfinder can infer whether the facts in dispute existed or did not exist." *Harris*, 895 N.W.2d at 599 (quotation omitted). We apply a heightened two-step standard when reviewing the sufficiency of circumstantial evidence. *State v. Ortega*, 813 N.W.2d 86, 100 (Minn. 2012). First, we identify the circumstances proved. *Silvernail*, 831 N.W.2d at 598. In this step, we defer to "the jury's acceptance of the proof of these circumstances" and "assume that the jury believed the State's witnesses and disbelieved the defense witnesses." *Id.* at 598-99 (quotations omitted). Second, we determine if the circumstances 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." *Id.* at 599 (quotation omitted). During this step, we do not defer to the factfinder's choice between reasonable inferences. *State v. Andersen*, 784 N.W.2d 320, 329-30 (Minn. 2010).

Here, the state used a combination of direct and circumstantial evidence to prove that appellant possessed the requisite intent to support his second-degree-assault and threats-of-violence convictions. The supreme court has held that a stated threat to kill is direct evidence of intent, because it does not require the jury "to draw any inferences about the purposes of [the defendant's] actions." *Horst*, 880 N.W.2d at 40; *see also State v. Olson*, 887 N.W.2d 692, 697-98 n.2 (Minn. App. 2016) (applying *Horst* to a threats-of-violence conviction for the proposition that a stated threat constitutes direct evidence of

intent). In this case, the state presented direct evidence from the testimony from one police officer who heard appellant state "'I will kill you.'"

In addition to direct evidence, the circumstantial evidence also proved that appellant had the requisite intent to support his second-degree-assault and threats-of-violence convictions. The state proved the following circumstances. After A.L. ended her relationship with appellant, appellant slashed her vehicle's tires and smashed its windshield. When the second officer approached appellant on foot, the second officer told appellant to stop and informed appellant that he was under arrest. Appellant stopped, turned around, and raised a hatchet above his head "in an aggressive manner." Appellant made the same gestures toward other police officers shortly thereafter, including appellant raising the hatchet over his head and stepping aggressively toward the police officers, as if preparing to throw the hatchet. Appellant repeatedly swore at the police officers and taunted them to shoot him. Appellant also threatened self-harm, holding the hatchet up to his own neck. Throughout this interaction, appellant acted erratically, appeared agitated and aggressive, and did not comply with police officers' instructions. The police officers were afraid appellant would cause them bodily harm or injury with the hatchet.

It can be reasonably inferred from these circumstances that appellant intended his threatening words and gestures to cause the police officers extreme fear of bodily harm. And the police officers testified that these actions caused them to fear bodily harm. Thus, the circumstances proved are consistent with appellant having the requisite intent to commit both second-degree assault and threats of violence.

Appellant argues that the circumstances proved do not exclude the reasonable inference that appellant "was having angry and frustrated outbursts caused by an extreme, apparently suicidal, mental health crisis." Appellant asserts that the facts, therefore, support a rational hypothesis that appellant "was not acting with intent to assault or terrorize the officers," but an intent to flee or have the officers harm him. But even assuming these were appellant's purposes, the direct and circumstantial evidence proves that appellant intended to accomplish these purposes by causing the police officers extreme fear of bodily harm. Therefore, the circumstances proved exclude any reasonable inference inconsistent with guilt. *See Smith*, 825 N.W.2d at 137.

Because the only reasonable inference from the evidence is that appellant intended to cause the police officers extreme fear of bodily harm, there was sufficient evidence to establish his guilt for second-degree assault and threats of violence.

II.

Appellant next argues, and the state agrees, that the district court erred when it sentenced appellant to concurrent sentences for second-degree assault, threats of violence, and obstructing legal process. Appellant asserts that the three convictions arose from the same behavioral incident, requiring the district court to vacate the threats-of-violence and obstructing-legal-process sentences. We agree.

Under Minn. Stat. § 609.035, subd. 1 (2020), "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." Therefore, a district court may impose only one sentence when multiple offenses are part of a single behavioral incident. *State v. Schmidt*, 612 N.W.2d 871, 876

(Minn. 2000). This prohibition extends to multiple concurrent sentences. *State v. Bookwalter*, 541 N.W.2d 290, 293-94 (Minn. 1995).

"Whether the offenses were part of a single behavioral incident is a mixed question of law and fact, so we review the district court's findings of fact for clear error and its application of the law to those facts de novo." *State v. Bakken*, 883 N.W.2d 264, 270 (Minn. 2016). "Whether a defendant's multiple offenses occurred during a single course of conduct depends on the facts and circumstances of the case." *State v. Jones*, 848 N.W.2d 528, 533 (Minn. 2014). We use several factors to determine whether two or more offenses arose from a single behavioral incident, including "time, place, and whether the offenses were motivated by a desire to obtain a single criminal objective." *State v. Soto*, 562 N.W.2d 299, 304 (Minn. 1997).

Here, the state argued to the jury that the same actions supported convictions for second-degree assault, threats of violence, and obstruction of legal process. And the district court acknowledged the offenses all arose from the same behavioral incident. The state, which bears the burden to prove separate incidents to support multiple sentences, *State v. Degroot*, 946 N.W.2d 354, 365 (Minn. 2020), never argued to the district court that the counts were separate incidents, and the district court never made such a finding. Further, the record shows that all three offenses were an escalation of behavior. Appellant's conduct began with a failure to comply with an officer's instructions, escalated to assaultive gestures and threats of violence, and concluded with appellant obstructing legal process after his arrest.

Because the district court convicted and sentenced appellant for multiple offenses arising from the same behavioral incident and second-degree assault is the most severe offense, the sentences for threats of violence and obstructing legal process must be vacated. *See* Minn. Stat. § 609.035; *State v. Steward*, 950 N.W.2d 750, 758 (Minn. 2020). We therefore reverse appellant's sentences on the threats of violence and obstructing legal process convictions and remand for the district court to vacate those sentences. *See State v. Patzold*, 917 N.W.2d 798, 812 (Minn. App. 2018).

Affirmed in part, reversed in part, and remanded.