

*This opinion is nonprecedential except as provided by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
A22-1128**

State of Minnesota,
Respondent,

vs.

Franz Michael Huss,
Appellant.

**Filed June 5, 2023
Affirmed
Reyes, Judge**

Brown County District Court
File No. 08-CR-21-593

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

Charles W. Hanson, Brown County Attorney, Daniel D. Kalk, Chief Deputy County Attorney, New Ulm, Minnesota (for respondent)

Michelle K. Olsen, Jacob M. Birkholz, Birkholz & Associates, L.L.C., Mankato, Minnesota (for appellant)

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

NONPRECEDENTIAL OPINION

REYES, Judge

Appellant argues that the state failed to present sufficient evidence to prove beyond a reasonable doubt that he engaged in disorderly conduct. We affirm.

FACTS

On January 5, 2021, at approximately 9:32 a.m., New Ulm police officers were dispatched to a domestic disturbance. Dispatch reported to the officers that they could hear a lot of screaming on the phone during the 911 call. Upon arriving at the residence, a responding officer spoke with victim, A.O., and A.O.'s daughter, K.O., who made the 911 call. A.O. informed the officer that appellant Franz Michael Huss had pushed and slammed her into a door following an argument they had about their ten-month-old baby. Appellant left the residence right after K.O.'s 911 call. The officer tried to contact appellant but did not receive a response back.

Respondent State of Minnesota charged appellant with four counts: (1) gross misdemeanor interference with an emergency 911 call in violation of Minn. Stat. § 609.78, subd. 2(1) (2020); (2) misdemeanor domestic assault-commits act with intent to cause fear in another of immediate bodily harm or death in violation of Minn. Stat. § 609.2242, subd. 1(1) (2020); (3) misdemeanor domestic assault-intentionally inflicts or attempting to inflict bodily harm in violation of Minn. Stat. § 609.2242, subd. 1(2) (2020); and (4) misdemeanor disorderly conduct in violation of Minn. Stat. § 609.72, subd. 1(3) (2020). The case proceeded to a jury trial. At the beginning of the trial, the parties stipulated to appellant having a prior domestic-assault conviction and amended count 2 of misdemeanor domestic assault-fear to a gross misdemeanor. During trial, the jury heard testimony from A.O., K.O., and appellant.

A.O. testified that, on the day of the incident, she, her daughter K.O., and her younger son were in the living room. Appellant went to take a nap and kept the baby in

the bedroom with him even though the baby was not tired. About ten minutes later, A.O. headed to the bedroom to get the baby because the baby kept crying. A.O. told appellant that the baby was “not tired” and that she would instead “take [the baby to] the living room.” Rather than allowing A.O. to take the baby, appellant “jumped up from the bed” and “yanked the baby out of [her] arms.” Following this, appellant squeezed the baby.

K.O. testified that she observed A.O. go to the bedroom to get the baby but that appellant grabbed the baby out of A.O.’s hands. At some point, A.O. told K.O. to call 911 if appellant yelled again. After hearing appellant yelling at A.O., K.O. called 911, and appellant “tried to grab the phone and hang up the 911 call.” But K.O. turned her back towards appellant and prevented him from grabbing the phone. Appellant then “ran to the back and grabbed his things and left.” The jury also heard the 911 call:

Dispatch: is this your mom and dad fighting?
K.O.: yes

....

Dispatch: okay are able to get away from where they’re at?
K.O.: yea, he’s [] yelling outside and causing a scene in the front of the house and his name is Frank Huss.

The jury also heard from appellant, who denied getting physical with A.O. Appellant testified that he went to check the baby’s diaper when A.O. yelled to bring the baby to the living room. Appellant told her no and held the baby in his arms, on the edge of the bed. A.O. then tried to grab the baby from his arms and while she tried, appellant let go of the baby and A.O. stumbled back into the doorway. He also denied trying to stop K.O. from making the 911 call or reaching towards her.

After the parties presented their cases, appellant’s counsel moved for a directed verdict on count 2 of gross-misdemeanor domestic assault-with intent to cause fear, which the district court granted. The jury found appellant guilty of count 4, misdemeanor disorderly conduct and acquitted him of the other two remaining charges. The district court sentenced appellant to 90 days in jail and stayed the sentence for one year. This appeal follows.

DECISION

Appellant argues that the direct evidence presented does not support his conviction of disorderly conduct. We are not persuaded.

“When evaluating 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) (quotation omitted). “The evidence must be viewed 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.” *Id.*

Minnesota’s disorderly conduct statute states:

Whoever does any of the following in a public or private place . . . knowing, or having reasonable grounds to know that it will, or will tend to, *alarm, anger or disturb others or provoke an assault or breach of the peace*, is guilty of disorderly conduct, which is a misdemeanor:

. . . .

(3) engages in *offensive, obscene, abusive, boisterous, or noisy conduct* or in *offensive, obscene, or abusive language tending reasonably to arouse alarm, anger, or resentment* in others.

Minn. Stat. § 609.72, subd. 1 (2020) (emphasis added). “Actual commotion need not occur, rather it is sufficient if defendant’s conduct is likely to annoy, disturb, or arouse anger.” *State v. Soukup*, 656 N.W.2d 424, 428 (Minn. App. 2003), *rev. denied* (Minn. Apr. 29, 2003) (quotation omitted). “In determining if [appellant’s] actions were sufficient to support a conviction of disorderly conduct, we view his words, coupled with his conduct and physical movements, and measure them as a package against the controlling statute.” *State v. McCarthy*, 659 N.W.2d 808, 811 (Minn. App. 2003) (quotation omitted). “[D]irect evidence is evidence that is based on personal knowledge or observation and that, if true, proves a fact without inference or presumption.” *State v. Harris*, 895 N.W.2d 592, 599 (Minn. 2017) (quotations omitted). Witness testimony “is direct evidence when it reflects a witness’s personal observations and allows the jury to find the defendant guilty without having to draw any inferences.” *State v. Horst*, 880 N.W.2d 24, 40 (Minn. 2016). We assume that the factfinder believed A.O., K.O., and the 911 call presented by the state in support of the disorderly conduct charge. *See Griffin*, 887 N.W.2d at 263.

We are persuaded that witness testimony provided sufficient direct evidence to support the finding of guilt of disorderly conduct. A.O. and K.O. testified to appellant’s offensive and noisy conduct. A.O. testified that, after hearing the baby cry continuously, she went to the bedroom to get the baby, appellant jumped up from bed and yanked the baby from her and then squeezed the baby. A.O. testified that she felt fearful for her and for her children’s safety. As a result, she did not want appellant to be in the residence

anymore and told him to leave. K.O. testified to calling 911 after appellant yelled at A.O. During the 911 call, K.O. told the dispatch operator that, appellant was “yelling outside and causing a scene in the front of the house.” This is supported by the dispatch operator who reported to law enforcement that the dispatch operator could hear a lot of screaming on the phone. K.O. also testified that, during the 911 call, appellant tried to grab the phone from her and hang up the call. Accordingly, there is sufficient direct evidence to support the jury’s finding that appellant’s offensive and noisy conduct aroused alarm in A.O. and K.O.

In addition, appellant had reasonable grounds to know that his conduct alarmed and angered A.O. and K.O. Appellant testified that, after A.O. fell backwards, “she was upset” and told him that she was “going to call the cops.” Appellant also should have known that his conduct alarmed K.O. because K.O. called 911 after seeing that he yelled at A.O. K.O. even turned her back towards him to prevent him from hanging up the 911 call. Following the 911 call, A.O. testified that appellant handed the baby back to her and “frantically” got ready to leave. Based on appellant’s actions and the testimony received including, appellant’s testimony that he knew “[A.O.] was upset,” there is sufficient evidence to support the conclusion that appellant had reasonable grounds to know that his conduct would alarm and anger A.O. and K.O. The state therefore presented sufficient evidence to allow the jury to find appellant guilty of disorderly conduct.

Affirmed.