

*This opinion is nonprecedential except as provided by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
A24-1176**

State of Minnesota,
Respondent,

vs.

Ashten Gregory Szathmary,
Appellant.

**Filed September 15, 2025
Affirmed
Bentley, Judge**

Carlton County District Court
File No. 09-CR-23-1347

Keith Ellison, Attorney General, Lydia Villalva Lijó, Assistant Attorney General, St. Paul, Minnesota; and

Lauri Ketola, Carlton County Attorney, Carlton, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Laura G. Heinrich, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Bentley, Presiding Judge; Larkin, Judge; and Larson, Judge.

NONPRECEDENTIAL OPINION

BENTLEY, Judge

In this appeal from the final judgments of conviction for two counts of fourth-degree assault against staff members at the Minnesota Sex Offender Program (MSOP), appellant

Ashten Gregory Szathmary argues that his convictions must be reversed because the evidence is insufficient. We affirm.

FACTS

The following factual summary is based on the evidence received at a jury trial.

Szathmary is a client of MSOP. On May 8, 2023, he approached the facility director in a common area of his residential unit. Szathmary called him names, including a “Nazi,” and shared his opinion about certain facility policies. When a clinical program therapist told Szathmary to stop, he responded by making obscene gestures and remarks. MSOP staff determined that his conduct violated the facility’s rules.

In response, the unit director, S.G., triggered a protocol that required clients to return to their assigned rooms while an “emergency response team” conferred about appropriate next steps. All clients, including Szathmary, returned to their assigned rooms. The team decided to place Szathmary on “prehearing restriction,” meaning that he would be temporarily confined to his room. The team informed Szathmary of that decision and permitted the other clients to leave their rooms.

As other clients were leaving their rooms, Szathmary also left his room and began quickly moving towards the staff station. He grabbed a chair, raised it above his shoulders, and used it to hit R.S., who was working as a security counselor on the unit. R.S. fell and hit her head, and Szathmary struck her with the chair again.

S.G. rushed to take the chair from Szathmary. S.G. testified that Szathmary “started becoming combative” with him, so he “grabbed [Szathmary] and made the decision to take [him] to the ground.” S.G., who weighed “[a]bout 300 pounds,” was on top of Szathmary,

with his back on Szathmary's chest, and was "[l]eaning back against him." S.G. tried to pin one of Szathmary's arms to the ground, while Szathmary scratched at S.G.'s eye with his other arm. S.G. testified that he "could feel [Szathmary's] fingers kind of dragging across [his] face and across [his] eye." S.G. was wearing eyeglasses, but Szathmary's hand went under the glasses. S.G. testified that he "believe[d] [he] gave [Szathmary] a directive not to scratch [his] eyes." Szathmary's conduct left a mark underneath S.G.'s eye. S.G. also had abrasions on his forehead and upper chest, and a bruise on his arm from the altercation.

A group supervisor, K.W., was one of the staff members who responded. K.W. testified that she saw Szathmary "grabbing at [S.G.'s] face or eyes or attempting to get his glasses," so she grabbed Szathmary's hand to stop him. In the process, Szathmary bit her pinky finger. She testified that it "felt like he was tearing [her] skin." K.W. saw that Szathmary "had blood in his mouth" and that she "had blood on [her] hand." K.W. yelled at Szathmary to let go, and he stopped biting after a person pointed pepper spray near his face and said, "I'm gonna spray you." While Szathmary was being restrained, Szathmary said to S.G. that he was going to kill him.

Respondent State of Minnesota charged Szathmary with two counts of fourth-degree felony assault against treatment facility personnel, Minn. Stat. § 609.2231, subd. 3a(b)(1) (2022), for his conduct toward S.G. and K.W. It also charged him with one count of fifth-degree assault, Minn. Stat. § 609.224, subd. 1(2) (2022), for his conduct toward R.S. The district court held a three-day jury trial from April 9 to April 11, 2024. Several witnesses testified, including S.G. and K.W. The district court admitted

photographs of S.G.'s and K.W.'s injuries into evidence, as well as a video clip of the incident from a body-worn camera.

The jury found Szathmary guilty of all three counts. For each of the felony counts of fourth-degree assault, Szathmary was sentenced to imprisonment for one year and one day, to be served consecutively, and five years of conditional release. For the count of fifth-degree assault, he was sentenced to 90 days' imprisonment, to be served concurrently with the sentences on the felony counts.

Szathmary appeals his convictions of the two felony counts.

DECISION

Szathmary argues that the state did not prove beyond a reasonable doubt that he was guilty of assaulting S.G. and K.W. A person is guilty of fourth-degree assault against secure treatment facility personnel if the person “assaults . . . and inflicts demonstrable bodily harm” on an employee or other individual who provides care or treatment at a secure treatment facility. Minn. Stat. § 609.2231, subd. 3a(b) (2022). Szathmary argues that (1) the state did not prove that he intended to assault S.G. and (2) the state did not prove that he inflicted demonstrable bodily harm on K.W. The state maintains that the evidence was sufficient to convict Szathmary on both counts.

When we review the sufficiency of the evidence, we “view the evidence in the light most favorable to the verdict and assume that the factfinder disbelieved any testimony conflicting with that verdict.” *State v. Palmer*, 803 N.W.2d 727, 733 (Minn. 2011) (quotation omitted). We apply a different standard of review to elements proved by

circumstantial evidence or direct evidence. *See State v. Williams*, 3 N.W.3d 68, 74 (Minn. App. 2024).

Circumstantial evidence is “evidence from which the factfinder can infer whether the facts in dispute existed or did not exist.” *Id.* (quotation omitted). Our review for sufficiency of circumstantial evidence is “a two-step process.” *State v. Cruz*, 997 N.W.2d 537, 551 (Minn. 2023). First, we “identify[] the circumstances proved.” *Id.* (quotation omitted). In doing so, we may consider “only those circumstances that are consistent with the verdict.” *Id.* (quotation omitted). This requires “winnow[ing] down the evidence presented at trial to a subset of facts” that is consistent with the fact-finder’s decision and disregarding evidence that is inconsistent with the fact-finder’s decision. *Id.* (quotation omitted). Second, we determine “whether the circumstances proved are consistent with the hypothesis that the accused is guilty and inconsistent with any rational hypothesis other than guilt.” *Id.*

“[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) (quotation omitted). We review an element proven by direct evidence “to determine whether the evidence, when viewed in the light most favorable to the conviction, was sufficient to permit the jurors to reach the verdict which they did.” *Williams*, 3 N.W.3d at 74 (quoting *State v. Horst*, 880 N.W.2d 24, 40 (Minn. 2016)). “We assume that the jury believed the witnesses whose testimony supports the verdict and that the jury did not believe evidence to the” contrary. *State v. Pendleton*, 706 N.W.2d 500, 512 (Minn. 2005).

With our standard of review in mind, we turn to Szathmary's arguments.

I

With respect to Szathmary's first argument, that the state did not prove he intended to assault S.G., the parties assert, and we agree, that fourth-degree assault under section 609.2231, subd. 3a(b)(1), is a general intent crime that the state sought to prove by circumstantial evidence. *See State v. Spann*, 986 N.W.2d 205, 210 n.1 (Minn. 2023) (explaining that the legislature has defined two forms of assault—assault-harm and assault-fear—and that assault-harm is a general intent crime). “[A] general-intent crime only requires proof that the defendant intended to do the physical act forbidden, without proof that [he] meant to or knew that [he] would violate the law or cause a particular result.” *State v. Dorn*, 887 N.W.2d 826, 830 (Minn. 2016) (quotations omitted). “Intent is generally proven by circumstantial evidence.” *State v. Lampkin*, 994 N.W.2d 280, 291 (Minn. 2023).

Applying our two-step circumstantial-evidence review, the circumstances proved are as follows. On May 8, 2023, Szathmary was placed on prehearing restriction and confined to his room because he violated MSOP rules when he called the facility director a “Nazi” and used obscenities towards the clinical program therapist after she directed him to control himself. Szathmary was directed to remain in his room. But shortly after, he walked quickly to the common area, picked up a chair, and struck R.S. with it twice. S.G. grabbed the chair from Szathmary, Szathmary became combative, and S.G. took him to the ground. S.G. pinned Szathmary's right arm to the ground, and S.G.'s body was leaning back against Szathmary's torso. Szathmary moved his left hand and grabbed under S.G.'s eyeglasses, scratching S.G.'s skin near the eye. K.W. responded as Szathmary and S.G.

were on the ground. She grabbed Szathmary's left hand to move it away from S.G.'s face, and Szathmary bit her pinky finger. S.G. sustained several injuries that he attributed to Szathmary: a scratch on his face underneath his eye, abrasions on his forehead and upper chest, and a bruise on his arm. After Szathmary was restrained, he told S.G. that he was going to kill him.

These circumstances, viewed in the light most favorable to the verdict, are consistent with guilt—specifically, that Szathmary intended to assault S.G. Szathmary does not dispute that conclusion. Instead, he argues that the circumstances proved do not exclude a rational alternative hypothesis that is inconsistent with guilt: that the action of “flailing his arm and reaching back at S.G., whose weight was pushing down on his neck, was a reaction, not an intentional scratch.” Szathmary notes that he fell hard when S.G. threw him, and the incident occurred without time for him to decide to assault S.G. We are not persuaded that this is a reasonable inference from the circumstances proved for two reasons.

First, Szathmary's hypothesis is not consistent with the evidence of his altercation with S.G. The surveillance footage shows Szathmary moving his unrestrained left hand from S.G.'s chin area to claw at S.G.'s right eye for about one second before K.W. grabbed the hand. S.G. testified, “I could feel [Szathmary's] fingers kind of dragging across my face and across my eye. He managed to get under my glasses. I believe I gave him a directive not to scratch my eyes[.]” And K.W. testified that she saw Szathmary “grabbing at [S.G.'s] face or eyes or attempting to get his glasses.” The surveillance footage and testimony indicate that Szathmary was engaged in purposeful conduct when he grabbed at

S.G.’s face. Presuming that the jury believed this evidence, as we must in a sufficiency challenge, *Pendleton*, 706 N.W.2d at 512, it is not rational to conclude that Szathmary was merely flailing and not attempting to inflict bodily harm, *see State v. Colgrove*, 996 N.W.2d 145, 152 (Minn. 2023) (noting that a “fact-finder may infer that a person intends the natural and probable consequences of that person’s actions”).

Second, the surrounding circumstances suggest that Szathmary intentionally grabbed at S.G.’s eyes instead of merely reacting to the situation. Before the altercation, Szathmary name-called facility staff and was then confined to his room. He left his room and began intentionally striking R.S. with a chair. Even once he was restrained, he bit K.W.’s finger and did not release his bite until he was threatened with pepper spray. Szathmary later threatened to kill S.G. The circumstances proved, viewed as a whole and in the light most favorable to the verdict, *see Palmer*, 803 N.W.2d at 733, are consistent with guilt and inconsistent with the hypothesis that Szathmary unintentionally scratched S.G.’s face. We therefore conclude the state presented sufficient evidence to prove Szathmary intended to scratch S.G.’s face.

II

Szathmary also challenges his conviction for assaulting K.W., arguing that there was insufficient evidence that Szathmary’s bite caused “demonstrable bodily harm” under Minn. Stat. § 609.2231, subd. 3a(b). The parties assert, and we agree, that state sought to prove demonstrable bodily harm through direct evidence.

Bodily harm is “demonstrable” when it is “capable of being perceived by a person other than the victim.” *State v. Backus*, 358 N.W.2d 93, 95 (Minn. App. 1984) (holding

that the district court did not err by defining “demonstrable” in this way). Here, the state produced direct evidence of harm in the form of K.W.’s testimony, body-worn camera footage, and photographs of K.W.’s hand taken shortly after she was bitten. K.W. testified that she looked down as Szathmary was biting her and saw that “he had blood in his mouth,” and she “had blood on [her] hand, so he had torn [her] skin.” Three photographs of the top of K.W.’s right hand and pinky finger show that the pinky finger was red and had visible bite marks. A fourth photograph shows the bottom of K.W.’s hand and pinky finger, and another bite mark is visible where the finger meets the palm of her hand. K.W. testified that those photographs show that her “skin was broken.”

Szathmary argues that the evidence does not support that K.W.’s finger was bleeding because no blood is visible in the body-worn camera footage or the photographs. He contends that “the only visible injuries are some indentations,” but that there are no “laceration[s], bruising, [or] blood,” so the “level of visible injury is consistent with misdemeanor assault.” The state argues that K.W.’s testimony and the photographs are direct evidence that she suffered demonstrable bodily harm.

We agree with the state. Photographs of K.W. show indentations from teeth, redness, and possible swelling. These are visible injuries that are capable of being perceived by a person other than K.W. *See Backus*, 358 N.W.2d at 95. Anyone viewing the photos could observe the bite marks, redness, and what appears to be swelling. *See State v. Gratz*, No. A10-781, 2011 WL 781107, at *3-4 (Minn. App. Mar. 8, 2011) (concluding that a visibly swollen finger was demonstrable bodily harm because it would have been noticeable to anyone who compared it with the victim’s other hand and because the

swelling was, in fact, observed by a physician).¹ Moreover, K.W. testified that her skin was torn and bleeding from Szathmary's bite, which is direct evidence of demonstrable bodily harm. We presume that the jury believed K.W.'s testimony. *See Pendleton*, 706 N.W.2d at 512. We therefore conclude that there was sufficient direct evidence to prove beyond a reasonable doubt that Szathmary's biting caused demonstrable bodily harm.

Affirmed.

¹ Nonprecedential opinions "are not binding authority," but "may be cited as persuasive authority." Minn. R. Civ. App. P. 136.01, subd. 1(c).