

*This opinion is nonprecedential except as provided by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
A24-1836**

State of Minnesota,
Respondent,

vs.

Richard Allen Waagen,
Appellant.

**Filed June 22, 2026
Affirmed
Smith, John, Judge ***

Morrison County District Court
File No. 49-CR-23-546

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

Brian Middendorf, Morrison County Attorney, Little Falls, Minnesota (for respondent)

Zorislav R. Leyderman, The Law Office of Zorislav R. Leyderman, Minneapolis,
Minnesota (for appellant)

Considered and decided by Smith, Tracy M., Presiding Judge; Beane, Judge; and
Smith, John, Judge.

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

NONPRECEDENTIAL OPINION

SMITH, JOHN, Judge

We affirm appellant Richard Allen Waagen's convictions for second-degree assault with a dangerous weapon and threats of violence because the evidence is sufficient to support the convictions.

FACTS

Thirteen-year-old R.J. was riding his manual four-wheeler up and down a road near his home, as he did almost every day. He was wearing a helmet, Muck boots, and a jacket. He had no weapons on him. R.J. started at his house and drove up the road until his four-wheeler stalled. As he restarted his engine, he heard barking behind him and saw a dog roughly 200 yards away. As R.J. began driving back toward his house, Waagen drove up behind R.J. in a pickup truck and cut him off. R.J. stopped and his four-wheeler stalled again.

Waagen got out of the truck, held a gun two inches from R.J.'s helmet, and angrily asked, "What the 'F' are you doing? Why are you trying to kidnap my dogs? Who are you?" R.J. did not testify as to whether the gun was in a holster when Waagen pointed it at his head. R.J. "was freaking out" and thought that he was going to die while Waagen was pointing the gun at his head. R.J. told Waagen that he lived with his parents. Waagen told R.J. to drive back home and said that he would follow him to talk to his parents.

R.J. drove his four-wheeler back to his house. When he arrived, he told his mom what happened, including that there was a man who had held a gun to his head. R.J. was "very distraught, crying," and unintelligible. Waagen pulled up to R.J.'s house in his truck

and walked up onto the porch.

Mom and her fiancé noticed a man—Waagen—standing on their porch. Waagen had an unholstered gun in his right hand and appeared angry. Waagen told mom and fiancé that he believed R.J. “had been messing with his dogs.” After an exchange, mom told Waagen to leave the property. Mom felt “[v]ery scared” because Waagen had a gun and because she had two children in the home. Waagen backed up slowly, got in his truck, and left. Waagen never pointed the gun at mom or fiancé.

Fiancé called the police. Waagen also called the police when he arrived back at his home. Deputies arrived at R.J.’s house and took statements from R.J., mom, and fiancé. Deputies then went to Waagen’s house and took a statement from Waagen and his girlfriend (girlfriend). R.J.’s and Waagen’s stories largely lined up, but Waagen told deputies that when he confronted R.J., “he had the gun, but [that] it never left the holster and that he didn’t point it at [R.J.]” When deputies asked Waagen where the gun was, he directed them to the center console of his truck. Deputies located the gun—which had a magazine inserted but no round in the chamber—and took it. The deputies arrested Waagen.

After the incident with Waagen, R.J. stopped riding his four-wheeler, began experiencing night terrors, and began sleeping with a Nerf gun or a paintball gun. Mom testified that they no longer felt safe in their home and that they had to get cameras.

At trial, girlfriend testified that, together, she and Waagen have three small emotional support dogs. On the evening of April 26, girlfriend was outside with two of the dogs and they did not come to girlfriend when called, which was unusual. The dogs “were heading towards the field.” A four-wheeler “popped” out of the ditch by the field, spun around, and sped off. Girlfriend went inside and told Waagen—who was in bed wearing shorts and no shirt—that she thought someone was trying to take the dogs. Girlfriend testified that Waagen told her that when he went to investigate, “the gun was weighing down his pants . . . so the gun was in his hand.” She also testified that she and Waagen had recently experienced a burglary during which merchandise was stolen and that dogs in the surrounding area had recently been stolen. Girlfriend never saw the person on the four-wheeler cross onto their property, she never saw the person touch her dogs, and she never saw the dogs leave the property.

Waagen testified that when he initially confronted R.J., he first tried to put his gun in his pocket but because his shorts were loose, the gun pulled down his pants and “fell out right away,” so instead he held the gun holstered and in his hand. Waagen testified that, at the time he confronted R.J., he was swearing and “upset because [he] thought somebody tried to steal the dogs” and he was holding the gun in his hand and “probably talking with [his] hands.” He testified, “I don’t think I was trying to scare him, but I was trying to get him to know that, you know, I don’t appreciate it.” Waagen knew the dogs were safe inside the house when he went to confront R.J.

The jury found Waagen guilty on both charges. The district court entered convictions on both charges and sentenced Waagen to 36 months in prison for second-degree assault. Waagen filed a direct appeal that we stayed for postconviction proceedings. After Waagen filed a petition for postconviction relief, the district court vacated his sentence due to ineffective assistance of counsel. The district court later resentenced Waagen to 36 months in prison, and we dissolved the stay.

DECISION

Waagen argues that the state did not present sufficient evidence to prove beyond a reasonable doubt that he possessed the requisite intent for second-degree assault with a dangerous weapon and for threats of violence. We disagree.

Due process requires that the state prove every element of a criminal offense beyond a reasonable doubt. *State v. Beganovic*, 991 N.W.2d 638, 654 (Minn. 2023). Here, Waagen was convicted of second-degree assault with a dangerous weapon and threats of violence. The element at issue for each offense is intent. A defendant’s “intent may be determined by [their] words and actions in view of the surrounding circumstances.” *State v. Kastner*, 429 N.W.2d 274, 275 (Minn. App. 1988) (citation omitted), *rev. denied* (Minn. Nov. 16, 1988). Relevant surrounding circumstances may include “the defendant’s conduct, the character of the assault, and the events occurring before and after the crime.” *In re Welfare of T.N.Y.*, 632 N.W.2d 765, 769 (Minn. App. 2001) (citation omitted).

A person commits second-degree assault with a dangerous weapon if they “assault another with a dangerous weapon.”¹ Minn. Stat. § 609.222, subd. 1 (2022). As relevant here, a person commits an assault when they perform “an act . . . with intent to cause fear in another of immediate bodily harm or death.”² Minn. Stat. § 609.02, subd. 10(1) (2022). “‘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.” *Id.*, subd. 9(4) (2022).

A person commits threats of violence when they “threaten[], 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.” Minn. Stat. § 609.713, subd. 1 (2022). “To cause terror means to cause extreme fear by use of violence or threats.” *State v. Mrozinski*, 971 N.W.2d 233, 240 (Minn. 2022) (quotation omitted). A person acts “in a reckless disregard of the risk of causing such terror” when they are “aware of a substantial and unjustifiable risk that [their] words or actions will cause terror in another” and “act in conscious disregard of that risk.” *Id.* (quotation omitted).

When considering a sufficiency-of-the-evidence claim, we must “view the evidence in the light most favorable to the verdict and assume the jury disbelieved any evidence that conflicts with the verdict.” *State v. Culver*, 941 N.W.2d 134, 142 (Minn. 2020) (quotation

¹ The term “[d]angerous weapon” includes “any firearm, whether loaded or unloaded.” Minn. Stat. § 609.02, subd. 6 (2022).

² “‘Bodily harm’ means physical pain or injury, illness, or any impairment of physical condition.” Minn. Stat. § 609.02, subd. 7 (2022).

omitted). “The applicable standard of review depends on whether the conviction—or . . . the specific element at issue—is supported by direct evidence or circumstantial evidence.” *State v. Nyonteh*, 24 N.W.3d 271, 283 (Minn. 2025) (citation omitted). “[D]irect evidence is [e]vidence that is based on personal knowledge or observation and that, if true, proves a fact without inference or presumption.” *Id.* (alterations in original) (quotation omitted). “Circumstantial evidence is evidence from which the fact[-]finder can infer whether the facts in dispute existed or did not exist.” *Id.* (quotation omitted).

The parties agree that the evidence of Waagen’s intent to commit both offenses was circumstantial. When assessing the sufficiency of circumstantial evidence, Minnesota appellate courts apply a two-step test. *State v. Firkus*, 31 N.W.3d 468, 478 (Minn. 2026) (citation omitted).

“The first step requires us to winnow down the evidence presented at trial by resolving all questions of fact in favor of the jury’s verdict, which results in a subset of facts that constitute the circumstances proved.” *Id.* (quotations omitted).

“At the second step, we consider whether the reasonable inferences that can be drawn from the circumstances proved, when viewed as a whole and not as discrete, isolated facts, are consistent with the hypothesis that the accused is guilty and inconsistent with any rational hypothesis other than guilt.” *Id.* (quotations omitted). “During the second step, [this court] do[es] not defer to the fact[-]finder but examine[s] the reasonableness of the inferences [itself].” *Id.* at 483 (quotation omitted). “If the circumstances proved when viewed as a whole, support a reasonable inference that is inconsistent with guilt, the evidence is not sufficient to support the conviction and [this court] must reverse.” *Id.*

(quotations omitted). But this court will not reverse a defendant's conviction "based on mere conjecture." *Id.* (quotation omitted).

The circumstances proved relevant to the intent elements of both of Waagen's convictions include the following:

- While outside, girlfriend saw two of her dogs heading toward a field.
- Thirteen-year-old R.J. was riding his four-wheeler on a road near his house.
- When R.J. turned his four-wheeler around after it stalled, he noticed a small dog roughly 200 yards away from him.
- Girlfriend saw a person riding a four-wheeler in a ditch near the field.
- Girlfriend never saw the person on the four-wheeler cross onto Waagen's property.
- Girlfriend never saw the person on the four-wheeler touch the dogs.
- The dogs never left Waagen's property.
- Girlfriend brought the dogs inside and told Waagen that she thought someone was trying to take their dogs.
- Waagen got into his truck, drove to find the four-wheeler, and stopped in front of the four-wheeler to cut it off.
- When Waagen got out of his truck and confronted R.J., Waagen had a gun in his hand and may have been talking with his hands.
- Waagen did not see a gun on R.J.

- Waagen got out of the truck, held a gun—that may or may not have been in a holster—two inches from R.J.’s head, and said, angrily, “What the ‘F’ are you doing? Why are you trying to kidnap my dogs? Who are you?”
- At the time Waagen confronted R.J., Waagen knew that all of the dogs were safely in his house.
- When Waagen confronted R.J., Waagen was swearing, he was “upset because [he] thought somebody tried to steal the dogs,” and he “was trying to get [R.J.] to know that . . . [Waagen] [did not] appreciate it.”
- R.J. “was freaking out” and thought that he was going to die.
- R.J. told Waagen that he lived with his parents.
- Waagen told R.J. to drive back home and said that he would follow.
- Waagen followed R.J. to his house.
- When R.J. got to his house, he told mom that a man had held a gun to his head. R.J. was “very distraught, crying,” and unintelligible.
- Mom and fiancé found an angry Waagen standing on their porch with a gun in his hand.
- Waagen told mom and fiancé that he believed R.J. “had been messing with his dogs.”
- Mom felt “[v]ery scared” because Waagen had a gun and because she had two children in the house.
- Mom told Waagen to leave the property.
- Waagen left.

- When police located Waagen’s gun in his truck, it had a magazine inserted but did not have a round in the chamber.

We must examine the reasonable inferences that may be drawn from the circumstances proved. If “the reasonable inferences that can be drawn from the circumstances proved, when viewed as a whole and not as discrete, isolated facts, are consistent with the hypothesis that [Waagen] is guilty [of each offense] and inconsistent with any rational hypothesis other than guilt,” it follows that the state presented sufficient evidence at trial to prove the intent element for both offenses beyond a reasonable doubt. *Id.* at 483 (quotations omitted).

A. Second-Degree Assault with a Dangerous Weapon

The intent element for the offense of second-degree assault with a dangerous weapon required that Waagen acted with “a purpose to cause fear in [R.J.] of immediate bodily harm or death,” or “believe[d] that [his actions], if successful, [would] cause fear in [R.J.] of immediate bodily harm or death.” Minn. Stat. § 609.02, subds. 9(4), 10(1) (2022).

Waagen argues that the circumstances proved and the reasonable inferences that follow support a hypothesis that he did not possess the requisite intent for second-degree assault with a dangerous weapon, that he “brought the gun with him only as a means of self-defense because he reasonably believed that someone was attempting to steal his dogs,” and that “he held the holstered gun in his hand while he spoke with [R.J.] only because he had nowhere else to safely store the gun at the time” given the loose shorts that Waagen was wearing.

Waagen's asserted hypothesis fails for several reasons. First, Waagen knew that his dogs were safely back in the house at the time he went out to pursue the driver of the four-wheeler, which means that Waagen knew no one was "attempting to steal his dogs" at the time he confronted R.J. Second, Waagen himself testified that, when he confronted R.J., he "was trying to get [R.J.] to know that . . . [he] [did not] appreciate it." This undermines Waagen's argument on appeal that he was defending himself. Third, someone acting in self-defense, who never saw a weapon on the other person, would not initiate a confrontation and hold a gun two inches from the other person's head when that other person had not done or said anything threatening. Fourth, Waagen argues that he had nowhere else to put the gun given his loose shorts, but he could have set his gun on the ground or put it back in his truck as soon as he observed that R.J. was an unarmed 13-year-old child.

The circumstances proved and the reasonable inferences that can be drawn from them are consistent only with the hypothesis that Waagen "inten[ded] to cause fear of immediate bodily harm or death in [R.J.]," Minn. Stat. § 609.02, subd. 10(1), and they are inconsistent with the alternative hypothesis asserted by Waagen. We therefore conclude that the state presented sufficient evidence at trial to prove the intent element of second-degree assault with a dangerous weapon beyond a reasonable doubt.

B. Threats of Violence

The intent element of threats of violence is lower than the intent element of second-degree assault with a dangerous weapon. It only requires the defendant's "aware[ness] of a substantial and unjustifiable risk that [the defendant's] words or actions will cause terror

in another” and a “conscious disregard of that risk.” *Mrozinski*, 971 N.W.2d at 240 (quotations omitted). Based on our conclusion above, we also conclude that the state presented more than enough evidence at trial to prove the intent element for threats of violence beyond a reasonable doubt.

Affirmed.