

*This opinion is nonprecedential except as provided by  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  
A25-0865**

State of Minnesota,  
Respondent,

vs.

Lowell Victor Abelson,  
Appellant.

**Filed April 27, 2026  
Affirmed  
Johnson, Judge**

Martin County District Court  
File No. 46-CR-24-209

Keith Ellison, Attorney General, Morgan Alexander, Assistant Attorney General, St. Paul, Minnesota; and

Taylor McGowan, Martin County Attorney, Fairmont, 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; Johnson, Judge; and Schmidt, Judge.

**NONPRECEDENTIAL OPINION**

**JOHNSON, Judge**

A Martin County jury found Lowell Victor Abelson guilty of second-degree assault based on evidence that he injured a woman by firing a handgun. We conclude that the evidence is sufficient to prove that Abelson had the *mens rea* required for the offense of

assault by the intentional infliction of bodily harm (also known as assault-harm). We also conclude that the prosecutor did not misstate the law during closing argument and, thus, did not engage in prosecutorial misconduct. Therefore, we affirm.

## **FACTS**

On the night of March 15, 2024, V.W. was talking on the telephone with Abelson, a longtime friend, when she heard him fall. She became concerned when Abelson did not resume the conversation or respond to her. V.W. took a taxi to Abelson's home in the city of Fairmont and helped him care for an injury caused by the fall.

After taking care of Abelson's injury, V.W. remained at Abelson's home while the two talked and consumed alcoholic beverages. In the early morning hours of March 16, 2024, Abelson unexpectedly became "aggressive," yelled at V.W., and demanded that she leave. Abelson forced V.W. to go outside onto his porch, but he later allowed her to come back inside his home.

After V.W. reentered Abelson's home, she began to look around the living room for her cellphone and wallet so that she could leave. While V.W. was near the couch and looking for her possessions, she saw a flash of light in her peripheral vision. She looked at her left hand and saw injuries and blood. V.W. said to Abelson: "You shot me. Why did you shoot me?" V.W. left Abelson's home and knocked on neighbors' doors to ask for help. One neighbor answered the door and called 911.

The state charged Abelson with six offenses: (1) second-degree assault with a dangerous weapon inflicting substantial bodily harm, in violation of Minn. Stat. § 609.222, subd. 2 (2022); (2) second-degree assault with a dangerous weapon, in violation of Minn.

Stat. § 609.222, subd. 1; (3) reckless discharge of a firearm within a municipality, in violation of Minn. Stat. § 609.66, subd. 1a(a)(3) (2022); (4) intentional discharge of a firearm, in violation of Minn. Stat. § 609.66, subd. 1a(a)(2); (5) failure to render aid to a shooting victim, in violation of Minn. Stat. § 609.662, subd. 2(a) (Supp. 2023); and (6) reckless handling or use of a firearm, in violation of Minn. Stat. § 609.66, subd. 1(a)(1) (Supp. 2023).

The case was tried to a jury on two days in January 2025. The state called 12 witnesses and introduced numerous exhibits. The state's primary witness was V.W., who testified to the facts described above. V.W. also testified that she had difficulty recalling some details of the incident. She did not recall seeing a gun and did not see Abelson fire a gun. She did not know exactly where Abelson was located when the gun was fired, but she believes that he was more than an arm's length away from her.

The state called five law-enforcement officers as witnesses. Officer Beletti testified that he searched Abelson's home and saw an apparent bullet hole in a couch cushion and two bullet holes in the living-room hardwood floor between the couch and a coffee table. He also testified that he saw blood on the living-room floor and on the coffee table and saw a trail of blood leading from the coffee table to the front door. He testified further that he recovered a .45-caliber firearm and a magazine containing .45-caliber ammunition in Abelson's backyard. Deputy Wells testified that he searched Abelson's home and found a .45-caliber shell casing near the kitchen table and two .45-caliber shell casings near the couch. Deputy Tietje, who is trained to identify gunshot wounds, testified that he observed "through-and-through" injuries to V.W.'s fingers that were consistent with a gunshot

wound. In addition, a neighbor who lives across the street from Abelson testified that she heard gunshots early in the morning on March 16, 2024.

The state also called a forensic scientist who tested the .45-caliber handgun found in Abelson's backyard. The forensic scientist testified that, because the handgun is a semi-automatic weapon, a separate trigger pull is necessary to discharge each bullet. The forensic scientist also testified that the handgun has multiple safety mechanisms designed to prevent an accidental discharge, that all such mechanisms were functional, and that she was unable to produce "any type of accidental discharge" with the handgun during laboratory testing. A second forensic scientist testified that a DNA mixture found on the handgun contained only one major-contributor profile, which matched Abelson's DNA.

Abelson did not testify. The jury found him guilty of all six charges. The district court imposed concurrent prison sentences of 36 months and 12 months on counts 1 and 5. The district court did not impose sentences on counts 3, 4, and 6 and did not adjudicate guilt on count 2. Abelson appeals.

## **DECISION**

### **I. Sufficiency of the Evidence**

Abelson first argues that the evidence is insufficient to support his conviction of second-degree assault with a dangerous weapon inflicting substantial bodily harm.

#### **A.**

A person is guilty of second-degree assault if the person "assaults another with a dangerous weapon and inflicts substantial bodily harm." Minn. Stat. § 609.222, subd. 2. The term "assault" is defined by statute to mean "(1) an act done with intent to cause fear

in another of immediate bodily harm or death,” or “(2) the intentional infliction of or attempt to inflict bodily harm upon another.” Minn. Stat. § 609.02, subd. 10 (2022).

In this case, the district court instructed the jury on the second form of assault in the statutory definition, which often is called “assault-harm.” *See State v. Fleck*, 810 N.W.2d 303, 308 (Minn. 2012). The state’s theory at trial was that Abelson intentionally inflicted substantial bodily harm on V.W. by firing a handgun, which discharged a bullet that struck and injured V.W.’s hand.

Assault-harm is a general-intent crime. *Id.* at 309-10. The conduct forbidden by the assault-harm offense is “a physical act, which results in bodily harm upon another.” *Id.* at 309. The statutory definition of assault-harm “requires the State to prove that the defendant intended to do the physical act.” *Id.* But the state is not required to prove “that the defendant meant to violate the law or cause a particular result.” *Id.* Rather, “the mens rea element of assault-harm, ‘intentional,’ requires only the general intent to do the act that results in bodily harm.” *State v. Dorn*, 887 N.W.2d 826, 831 (Minn. 2016) (citing *Fleck*, 810 N.W.2d at 309). Stated differently, the intent required for assault-harm is “‘only an intent to do the prohibited physical act of committing a battery.’” *Fleck*, 810 N.W.2d at 310 (quoting *State v. Lindahl*, 309 N.W.2d 763, 767 (Minn. 1981)).

Abelson contends that the evidence is insufficient on the ground that “the state failed to prove beyond a reasonable doubt that Abelson intended to commit an act that constitutes a battery.” Abelson notes that battery is defined as “[t]he nonconsensual touching of, or use of force against, the body of another with the intent to cause harmful or offensive contact.” *See Black’s Law Dictionary* 182 (10th ed. 2014). Putting these concepts

together, Abelson contends (or at least suggests) that the state was required to prove not only that he “intended to commit an act that constitutes a battery” but also that he intended the harmful or offensive result of the battery. In practical terms, Abelson contends that the state was required to prove “that Abelson intended to fire the handgun *at V.W.*”

Abelson’s argument is inconsistent with the supreme court’s caselaw. As stated above, the supreme court has explained that, to establish the *mens rea* required for assault-harm, the state is required “to prove that the defendant intended to do the physical act” but is not required to prove “that the defendant meant to violate the law or cause a particular result.” *Fleck*, 810 N.W.2d at 310. In other words, “the State need not show that the defendant ‘meant to or knew that [she] would violate the law or cause a particular result.’” *Dorn*, 887 N.W.2d at 831 (quoting *Fleck*, 810 N.W.2d at 308) (internal quotation omitted). Consequently, it is sufficient for the state to prove that the prohibited physical act or acts “were not accidental but were intentionally inflicted.” *Fleck*, 810 N.W.2d at 310 (quoting *Lindahl*, 309 N.W.2d at 767).

Thus, to establish the *mens rea* required for the charge in count 1, assault-harm, the state was required to prove only that Abelson intended to fire the handgun. The state was not required to prove that Abelson intended to fire the handgun at V.W., intended the discharged bullet to strike V.W., or intended to cause injury to V.W. See *Dorn*, 887 N.W.2d at 830-31; *Fleck*, 810 N.W.2d at 309-10; see also *State v. Lampkin*, 994 N.W.2d

280, 291 (Minn. 2023) (applying *Fleck* and *Dorn* to offense of domestic assault-harm in section 609.2242 (2022)).<sup>1</sup>

## B.

To determine whether evidence is sufficient to support a conviction, this court undertakes “a painstaking analysis of the record to determine whether the evidence, when viewed in a light most favorable to the conviction, was sufficient.” *State v. Jones*, 977 N.W.2d 177, 187 (Minn. 2022) (quotation omitted). We “carefully examine the record to determine whether the facts and the legitimate inferences drawn from them would permit the factfinder to reasonably conclude that the defendant was guilty beyond a reasonable doubt of the offense of which he was convicted.” *State v. Waiters*, 929 N.W.2d 895, 900 (Minn. 2019) (quotation omitted). “We assume that the jury believed the state’s witnesses and disbelieved any evidence to the contrary.” *State v. Friese*, 959 N.W.2d 205, 214 (Minn. 2021) (quotation omitted).

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<sup>1</sup>It appears that the existing supreme court caselaw concerning the *mens rea* required for assault-harm arises exclusively from cases in which defendants committed assault-harm with their hands or with a hand-held instrument that made direct contact with the victim. See *Dorn*, 887 N.W.2d at 828-29 (describing defendant’s acts of pushing and shoving victim’s chest, which caused victim to fall backward into bonfire); *Fleck*, 810 N.W.2d at 305-06 (describing defendant’s act of stabbing victim with butcher knife). We are unaware of any precedential caselaw concerning the *mens rea* required for assault-harm when committed by using a gun to discharge a bullet that strikes a victim. To our knowledge, this court has issued only one pertinent opinion, which is a nonprecedential opinion. See *In re Welfare of E.M.L.-T.*, A17-1385, 2018 WL 1569989, \*1-2 (Minn. App. Apr. 2, 2018) (reasoning that circumstantial evidence was insufficient because, even though appellant intended to pull trigger, it was reasonable to infer appellant did not intend to injure victim); Minn. R. Civ. App. P. 136.01, subd. 1(c) (providing that nonprecedential opinions are “not binding authority”).

The above-described standard of review applies so long as a conviction is adequately supported by direct evidence. *State v. Horst*, 880 N.W.2d 24, 39 (Minn. 2016). The parties agree that circumstantial evidence is necessary to prove Abelson’s intent. “Intent is a state of mind, which generally is proved circumstantially, by inference from words and acts of the actor both before and after the incident.” *State v. Cruz*, 997 N.W.2d 537, 552 (Minn. 2023) (quotation omitted). Accordingly, we must apply the standard of review applicable to circumstantial evidence.

If a conviction is based on circumstantial evidence, we apply a heightened standard of review with a two-step analysis. *State v. Firkus*, 31 N.W.3d 468, 478 (Minn. 2026); *State v. Moore*, 846 N.W.2d 83, 88 (Minn. 2014). At the first step of the circumstantial-evidence analysis, we “identify the ‘circumstances proved.’” *State v. Isaac*, 9 N.W.3d 812, 815 (Minn. 2024) (quoting *State v. McInnis*, 962 N.W.2d 874, 890 (Minn. 2021)). “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.’” *Firkus*, 31 N.W.3d at 478 (quoting *State v. Harris*, 895 N.W.2d 592, 600 (Minn. 2017)). The winnowing-down process “protects the well-established legal principal that the jury is in a unique position to determine the credibility of the witnesses and weigh the evidence before it.” *Id.* at 479 (quotation omitted). Accordingly, we “disregard evidence that is inconsistent with the jury’s verdict.” *Harris*, 895 N.W.2d at 601.

At the second step of the analysis, 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.” *Firkus*, 31 N.W.3d at 478 (quotations omitted). At the second step, we independently examine the reasonableness of the inferences drawn from the circumstances proved. *See id.* We do not give deference to the jury’s verdict at this step. *Loving v. State*, 891 N.W.2d 638, 643 (Minn. 2017).

### C.

We begin by identifying the circumstances proved, which are as follows. *See Firkus*, 31 N.W.3d at 478. During the night of March 15-16, 2024, V.W. went to Abelson’s home to help him. V.W. remained at Abelson’s home into the morning of March 16, 2024, during which time she and Abelson talked and consumed alcoholic beverages. Abelson became “aggressive,” yelled at V.W., and demanded that she leave his home. For a while, Abelson forced V.W. onto his porch. After Abelson allowed V.W. to come back inside his home, V.W. decided to leave and started searching the living room for her cellphone and wallet. While V.W. was looking for her possessions, she saw a flash of light in her peripheral vision. V.W. looked at her hand and saw injuries and blood. V.W. said to Abelson: “You shot me. Why did you shoot me?” V.W. sustained “through-and-through injuries” to her hand that were consistent with gunshot wounds. V.W. was near the couch in the living room when she was shot. Abelson was more than an arm’s length away from V.W. when the gun was fired. A neighbor who lives across the street from Abelson heard gunshots that morning. Officers found two bullet holes in the living-room hardwood floor and an apparent bullet hole in a couch cushion. Officers found three .45-caliber shell casings in Abelson’s living room and kitchen. Officers found a .45-caliber firearm and a

magazine containing .45-caliber ammunition in Abelson's backyard. The .45-caliber firearm found in Abelson's backyard is a semi-automatic handgun, which requires a separate trigger pull to discharge each bullet. The handgun has multiple functional safety mechanisms to prevent accidental discharge, which were functional, and the handgun did not accidentally discharge in laboratory testing. A DNA sample found on the handgun contained only one major-contributor DNA profile, which matched Abelson's DNA.

We continue by determining whether "the circumstances proved, when viewed as a whole," are consistent with guilt. *See Firkus*, 31 N.W.3d at 478 (quotation omitted). The state contends that the circumstantial evidence supports a reasonable inference that Abelson intended to fire the handgun. Abelson does not concede that such an inference is a reasonable inference but also does not contest it. We agree with the state that the circumstances proved are consistent with a reasonable inference that Abelson intentionally fired the handgun three times.

We conclude by determining whether the circumstances proved are "inconsistent with any rational hypothesis other than guilt." *See Firkus*, 31 N.W.3d at 478 (quotations omitted). Abelson contends that the circumstances proved are consistent with a reasonable inference that he "did not intend to commit an act that constitutes a battery against V.W." Specifically, Abelson contends that the circumstances proved allow a reasonable inference that he merely "intended to scare V.W. and hasten her departure from his home rather than harm her." Abelson's asserted hypothesis is based on an incorrect view of the applicable law concerning the *mens rea* required for the offense of assault-harm. As stated above, the state was required "to prove that the defendant intended to do the physical act," which is

the act of discharging the firearm. *Fleck*, 810 N.W.2d at 309. Even if we assume that Abelson intended only to scare V.W., the evidence would be sufficient because the state was required to prove only that Abelson’s discharges of the handgun ““were not accidental but were intentionally inflicted.”” *Id.* at 310 (quoting *Lindahl*, 309 N.W.2d at 767).

Properly framed, the question is whether Abelson intended to commit the acts of discharging the handgun three times. The circumstances proved do not support a reasonable inference that Abelson did not intend to discharge the handgun three times. Abelson had exhibited anger toward V.W. and had asked her to leave his home. V.W. saw a flash in her peripheral vision. She suffered through-and-through injuries to her hand that were consistent with a gunshot wound. Officers discovered two bullet holes in the hardwood floor between the coffee table and the couch, near where V.W. was shot, and one apparent bullet hole in a couch cushion. Officers recovered three .45-caliber shell casings, which match the number of apparent bullet holes in Abelson’s home. A DNA sample removed from the handgun matched Abelson’s DNA. The handgun requires a separate trigger pull for each bullet fired, and the handgun is not prone to accidental discharges. Consequently, the hypothesis that Abelson did not intentionally fire the handgun is not rational. Instead, the circumstances proved, when viewed as a whole, are “inconsistent with any rational hypothesis except that of guilt.” *See id.*

Thus, the evidence is sufficient to prove the *mens rea* required for the offense of second-degree assault with a dangerous weapon inflicting substantial bodily harm.

## II. Claim of Prosecutorial Misconduct

Abelson also argues that he is entitled to a new trial on the ground that the prosecutor engaged in prosecutorial misconduct in his opening statement and his closing argument by misstating the law.

The right to due process includes the right to a fair trial. *State v. Duol*, 25 N.W.3d 135, 141 (Minn. 2025). “Prosecutors have an affirmative obligation to ensure that a defendant receives a fair trial.” *State v. Jones*, 753 N.W.2d 677, 686 (Minn. 2008) (quotation omitted). Consequently, prosecutorial misconduct may result in the denial of a fair trial. *State v. Ramey*, 721 N.W.2d 294, 300 (Minn. 2006). “A prosecutor engages in prosecutorial misconduct when he violates clear or established standards of conduct, e.g., rules, laws, orders by a district court, or clear commands in this state’s case law.” *State v. McCray*, 753 N.W.2d 746, 751 (Minn. 2008) (quotation omitted). A prosecutor’s misstatement of the law may constitute misconduct. *See State v. Strommen*, 648 N.W.2d 681, 689-90 (Minn. 2002).

Abelson challenges several statements in the prosecutor’s opening statement and closing arguments. Abelson did not object to any of the challenged statements. Accordingly, we apply the modified plain-error test. *State v. Carridine*, 812 N.W.2d 130, 146 (Minn. 2012); *see also* Minn. R. Crim. P. 31.02. To prevail under the modified plain-error test, an appellant first must establish that an error occurred. *Ramey*, 721 N.W.2d at 302. The appellant then must show that the error was plain. *Id.* At the third step of the modified plain-error test, the burden shifts to the state to show “that there is no reasonable likelihood that the absence of the misconduct in question would have had a significant

effect on the verdict of the jury.” *Id.* (quotations omitted). If the state does not satisfy that burden, the appellate court proceeds to the fourth step to determine whether the plain misconduct should result in a new trial to ensure the “fairness, integrity, or public reputation of judicial proceedings.” *State v. Portillo*, 998 N.W.2d 242, 248 (Minn. 2023) (quotation omitted).

Abelson contends that the prosecutor misstated the law by inaccurately describing the *mens rea* required for assault-harm. In short, Abelson challenges the prosecutor’s statements that the state was required to prove only that Abelson intentionally discharged the handgun. In making that challenge, Abelson refers back to his arguments challenging the sufficiency of the evidence, which we have discussed above. *See supra* part I.A. Abelson’s prosecutorial-misconduct argument is based on an incorrect premise, the same incorrect premise that we rejected above. To reiterate, the state was required “to prove that the defendant intended to do the physical act,” *i.e.*, the act of discharging the firearm, *Fleck*, 810 N.W.2d at 309, but was not required to “show that the defendant ‘meant to or knew that [she] would violate the law or cause a particular result,’” *Dorn*, 887 N.W.2d at 831 (quoting *Fleck*, 810 N.W.2d at 308) (internal quotation omitted). Accordingly, the prosecutor did not misstate the law concerning the *mens rea* required for the offense of assault-harm.

Thus, the prosecutor did not engage in prosecutorial misconduct.

**Affirmed.**