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Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A25-1929**

State of Minnesota,
Respondent,

vs.

Neil Julian Elavsky,
Appellant.

**Filed October 12, 2026
Reversed and remanded
Ross, Judge
Dissenting, Beane, Judge**

Hennepin County District Court
File No. 27-CR-24-20281

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

Kristyn Anderson, Minneapolis City Attorney, Adam E. Szymanski, Assistant City Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Erik I. Withall, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Ross, Presiding Judge; Larson, Judge; and Beane, Judge.

NONPRECEDENTIAL OPINION

ROSS, Judge

Neil Elavsky expressed his opposition to a social cause that was the subject of an outdoor fundraising event by posting leaflets on the windshields of cars near the event, and he confronted a supporter of the cause after he saw her removing his posted leaflets. He

rushed toward her, demanded she return the removed leaflets to him, and grabbed them from her hand when she refused. After the woman claimed that Elavsky scratched her finger when he snatched the leaflets from her, the state charged him with fifth-degree assault (fear), fifth-degree assault (harm), and disorderly conduct. A jury acquitted him of assault (harm) but found him guilty on the other charges, and the district court convicted him of assault (fear). Because the record contains insufficient circumstantial evidence to prove that Elavsky intended to cause the woman fear of immediate bodily harm, we reverse the assault conviction and remand for the district court to enter a conviction of disorderly conduct.

FACTS

Up to 5,000 supporters, including the employees of business sponsors, of the National Alliance of Mental Illness (NAMI) gathered at Minnehaha Park in Minneapolis one morning in September 2023 to participate in a fundraising march. An altercation at the event resulted in the state charging Neil Elavsky with fifth-degree assault (fear), fifth-degree assault (harm), and disorderly conduct. At Elavsky's trial, the jury heard evidence of the following account.

Two NAMI supporters, whom we will call "June" and "Lynn," names we have randomly chosen in the interest of their privacy, were employees of a large health-insurance company and arrived early to set up a picnic area and booth to greet their participating coworkers and provide information about their employer. Elavsky, who opposes NAMI's cause, was also present at the event. Elavsky and a companion had previously protested NAMI by distributing windshield leaflets that criticized NAMI and

urged readers not to donate to it. Lynn, who “[does not] agree with what the flyers were stating” and had remembered Elavsky and his companion from their activity at prior NAMI events, had previously complained about the leaflets to NAMI’s executive director. She saw Elavsky’s companion at about noon distributing leaflets and asked him not to place a leaflet on her car. June saw Elavsky during the event, “shouting very, very loudly” with a “big, full, bold voice.”

The event neared its end at about 2:00 p.m., and Lynn saw that her car had been tagged with a leaflet. She asked June to remove the leaflet from her car and from a different person’s car. June did so, and she started walking toward a trash can. Elavsky approached June from behind saying, “Give me those” and “That’s private property. Give me that back.” He appeared to June to be “very agitated” and, according to her, spoke to her in the same “big, bold, boisterous” voice she had heard him using earlier. June turned toward Elavsky, but she did not hand him the leaflets. Instead, she kept them in her hand at her side. She argued, “It’s not private property. It’s been distributed. It’s public property.” Elavsky “lurched” toward June, who recounted, “[A]ll of a sudden I felt his arms going around me, reaching for the flyers that he claimed were private property.” At that point, the two were chest to chest, and June could feel Elavsky’s breath on her face. She said, “[Elavsky] grabbed my hand and my arm . . . to grab those flyers out of my hand.” She said that he “grabbed the two flyers that [she] had in [her] hand, out of [her] hand, and then he turned to walk away.” She acknowledged that Elavsky never shoved, hit, or raised his arms toward her.

The prosecutor asked June at least five times how or what she felt during her encounter with Elavsky. She answered that she “really didn’t have any feelings”; “[k]ind of more of a shock than anything else”; “not understanding why this gentleman is approaching me like this”; “angry”; “very violated.” Even after the prosecutor clearly tried leading June to the answer he was fishing for, with, “[June], as far as being fearful, did you feel fear at that moment,” June still did not say that she feared Elavsky would harm her during the incident. She replied instead, “At that moment, not a lot of fear. I felt it later after the incident had transpired and I reflected upon it. And then I went more into the fear mode.” She clarified that she became afraid only after considering that Elavsky might live near her in south Minneapolis. Her fear arose when she speculated that she might later encounter him and that he might again be “assertive and aggressive” toward her.

As Elavsky turned to walk away after he took the leaflets from June, June noticed a cut on her finger, which was bleeding. June then positioned herself in front of Elavsky and told him, “Look what you’ve done. I’ve been cut,” showing him her finger. Elavsky responded, “I did not do that.” June sought first aid, and Lynn dialed 9-1-1. Both women gave statements to the responding police officer. Lynn then saw Elavsky walking through the park, “agitated” and “angry,” “[s]wearing, lots of profanity, extremely loud.” She took a photo of him, and he “flipp[ed] the bird” at her.

The jury found Elavsky guilty of fifth-degree assault (fear) and disorderly conduct but acquitted him of fifth-degree assault (harm). The district court convicted Elavsky of fifth-degree assault (fear), but not disorderly conduct, and sentenced him to serve 90 days in jail, stayed on probationary conditions.

Elavsky appeals.

DECISION

Elavsky argues that the evidence does not support his fifth-degree-assault (fear) conviction. We evaluate a sufficiency-of-the-evidence challenge by carefully examining the record to assess whether the facts and their reasonable inferences would allow the jury to find the defendant guilty beyond a reasonable doubt. *State v. Griffin*, 887 N.W.2d 257, 263 (Minn. 2016). In doing so, we consider the evidence in the light most favorable to the verdict and assume the jury disbelieved any contrary evidence. *Id.* We conclude for the following reasons that the evidence does not support the assault conviction.

Elavsky argues specifically that the state failed to prove the mental-state element of the assault charge. A person is guilty of fifth-degree assault (fear) if he “commits an act with intent to cause fear in another of immediate bodily harm or death.” Minn. Stat. § 609.224, subd. 1(1) (2022); *see State v. Fleck*, 810 N.W.2d 303, 309 (Minn. 2012) (stating that assault (fear) is a specific-intent crime). “With intent to” means that the accused person “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) (2022). “Bodily harm means physical pain or injury, illness, or any impairment of physical condition.” *Id.*, subd. 7 (2022). Our decision therefore hangs on whether the state offered sufficient evidence that Elavsky specifically intended to cause June to fear immediate harm.

The state did not offer direct evidence that Elavsky had this specific intent, relying instead on circumstantial evidence. *See State v. Ulrich*, 3 N.W.3d 1, 10 (Minn. 2024)

(restating that a defendant’s state of mind is generally proved by circumstantial rather than direct evidence). When an element of a conviction rests on circumstantial evidence, we apply a “heightened,” two-step test to decide whether the evidence is sufficient. *State v. Colgrove*, 996 N.W.2d 145, 150 (Minn. 2023). The first step focuses on evidence and the second focuses on reason.

Our first step is to determine the “circumstances proved” by resolving any factual disputes in favor of the guilty verdict. *State v. Firkus*, 31 N.W.3d 468, 478 (Minn. 2026). In doing so, we generally disregard evidence that is inconsistent with the jury’s verdict, *Ulrich*, 3 N.W.3d at 11, unless “nothing in the record contradicted, impeached, or rendered [the evidence] improbable,” *Firkus*, 31 N.W.3d at 482 n.13. The circumstances proved regarding Elavsky’s alleged intent are that Elavsky was present at the NAMI event to place protest leaflets on car windshields as he had done at previous NAMI events; that June removed the leaflets from two cars and walked toward a trash can to dispose of them; that Elavsky approached June from behind and unsuccessfully demanded that she give him the leaflets; that Elavsky moved toward June to grab the leaflets while asserting that the leaflets were his property; that June retorted that the leaflets were not Elavsky’s property; that Elavsky reached his arms around June and grabbed at the leaflets; that June had various feelings in the moment as stated above but did not feel fear until later out of concern that she might encounter him again; that Elavsky snatched the leaflets from June and walked away; and that Elavsky was expressively agitated and angry before the encounter, during the encounter, and after the encounter as he walked around the area.

Elavsky would have us add to this list of circumstances proved. He contends the list should also include that he peacefully protested at NAMI events in the past, that he did not verbally threaten June, and that he was not armed with a weapon when he confronted her. But circumstances proved must rest on evidence that supports the verdict, and no one introduced evidence establishing these proposed additions. Although June and Lynn testified that Elavsky protested at prior NAMI events by distributing leaflets, no one testified as to his alleged peacefulness at those events. And while it is true that no one testified that Elavsky verbally threatened June or that he was armed, no one testified that he did not threaten her or that he was not armed. We decline Elavsky's invitation to add his mitigating allegations as circumstances proved.

The second step requires us to determine whether the reasonable inferences drawn from the circumstances proved are, as a whole, not only consistent with the defendant's guilt but also "inconsistent with any rational hypothesis other than guilt." *Firkus*, 31 N.W.3d at 483. Without any deference to the verdict, if we conclude that the circumstances proved allow for a reasonable hypothesis inconsistent with guilt, the evidence is insufficient and we will reverse the conviction. *Id.* This step applied here leaves us certain that the evidence of Elavsky's guilt is lacking.

The state is correct that the circumstances proved reasonably support an inference that Elavsky intended to cause June fear of immediate bodily harm. We can infer that a person intends the natural and probable consequences of his actions. *Colgrove*, 996 N.W.2d at 152. Elavsky's angry demeanor, his leafletting and loud expressions of disagreement with NAMI's cause throughout the day, his lurching approach toward June while

demanding that she return the leaflets to him, and his abrupt entry into her personal space to the point of chest-to-chest contact would together allow a reasonable person to infer that he might have specifically intended his actions to cause June to be immediately afraid that he would injure her. That June did not testify that Elavsky's actions in fact caused her to fear immediate injury—despite multiple failed attempts by the prosecutor—is not a basis for us to conclude otherwise. This is because evidence that the victim felt fear is neither necessary nor sufficient to prove that the defendant intended to cause fear. *In re Welfare of T.N.Y.*, 632 N.W.2d 765, 769 (Minn. App. 2001) (citing *State v. Hough*, 585 N.W.2d 393, 396 (Minn. 1998)). We are satisfied that the circumstances proved support the inference of intent to cause fear, offering some ground for the guilty verdict.

But we are likewise satisfied that the circumstances proved also support a reasonable inference other than guilt. Elavsky argues convincingly that one can reasonably infer from the same circumstances that he intended only to retrieve the leaflets from June and nothing more. Elavsky is a committed NAMI protester who distributed hundreds of leaflets on the day of the incident, just as he had in the past. The uncontradicted testimony established that he had already been loud and angry in his protesting long before he saw June remove the leaflets. He demanded that June return what he described as his property and grabbed them from her after she disagreed about who owned them. June described his actions in reaching around her only as intended “to try to get the flyer[s]” from her. Elavsky ended his encounter with June immediately after he got the leaflets back, turning promptly to walk away. June then moved in front of Elavsky, directly confronting him about her finger. All the circumstances considered as a whole support the alternative inference that

Elavsky's only actual intent was to get the leaflets back from June. This is a reasonable inference of a hypothesis other than guilt.

The dissent acknowledges that the circumstances proved demonstrate that "Elavsky clearly intended to retrieve the flyers" but posits that causing June to fear bodily harm was "the means he chose to achieve that goal." We are confident instead that the circumstances proved as we have identified them, or as the dissent has listed them, do not eliminate the reasonable inference that retrieving the flyers was his exclusive objective. The dissent points out that "Elavsky was agitated and shouting when he approached" June. But the evidence showed that he was agitated and shouting both long before the confrontation began and after it ended, strongly suggesting that his agitation and shouting had a purpose wholly independent of causing fear. The dissent highlights Elavsky's size relative to June's, but his size by itself says nothing about intent to cause fear and nothing in the record indicates that he intended to use his size in any particular way. The dissent especially emphasizes that Elavsky got physically close to June and forcefully and immediately removed the flyers from her—circumstances that most clearly show that he intended to retrieve the flyers from June by force, not that he intended to retrieve them by fear. Again, although one might reasonably infer that Elavsky wanted to cause June to fear bodily harm, we simply disagree with the dissent's conclusion that this is "the only rational inference."

We therefore hold that the evidence is insufficient to support Elavsky's conviction of fifth-degree assault (fear). We of course do not say that Elavsky's actions were civil or legal, because the jury also found, and Elavsky does not contest, that he is guilty of

disorderly conduct. We reverse the assault conviction and remand for the district court to enter a conviction only on the disorderly-conduct verdict.

Reversed and remanded.

BEANE, Judge (dissenting)

Appellant Neil Julian Elavsky argues that his conviction of fifth-degree assault (fear) should be reversed because the evidence presented at trial was insufficient to prove that he intended to cause fear of immediate bodily harm. *See* Minn. Stat. § 609.224, subd. 1(1) (2022) (providing that a person who “commits an act with intent to cause fear in another of immediate bodily harm or death” is guilty of fifth-degree assault). Because I would conclude that the evidence is sufficient and would affirm Elavsky’s assault-fear conviction, I respectfully dissent.

In evaluating the sufficiency of the evidence, we “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.*

Because the state relied on circumstantial evidence to prove that Elavsky intended to cause fear, we apply a two-step test to assess the sufficiency of that evidence. *See State v. Firkus*, 31 N.W.3d 468, 478 (Minn. 2026). At the first step, we “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). In doing so, we cannot “re-weigh the evidence and sit, in essence, as a 13th juror.” *Id.* at 479 (quotation omitted). The process of identifying the circumstances proved is

intended to “protect[] the well-established legal principle that the jury is in a unique position to determine the credibility of the witnesses and weigh the evidence before it.” *Id.* (quotation 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.* at 478 (quotation omitted).

The state charged Elavsky with assaulting a woman (identified here by the pseudonym June) who was working at a National Alliance on Mental Illness (NAMI) event. Elavsky was protesting at the event and placing flyers on the windshields of cars parked near the event. The encounter between Elavsky and June occurred when June removed the flyers from the windshields of two of her colleagues’ cars.

June testified at trial about her encounter with Elavsky. That testimony, when viewed in the light most favorable to the verdict, establishes the following regarding Elavsky’s conduct: Elavsky was agitated and shouting when he approached June, who was holding in her right hand two of the flyers Elavsky had been placing on cars near the NAMI event. Elavsky told June, in a manner that “was more of a command than a request,” to give him the flyers. Elavsky then “went for [June] before [she] had a chance to do anything else.” His voice “was very loud and very intimidating,” and he is “a larger man compared to” June in terms of both weight and height. Elavsky “grabbed around” June with both of his arms in a “forceful” way, and “grabbed [her] hand and [her] arm . . . to grab those flyers out of [her] hand.” To June, Elavsky was “a strange man that’s approached [her]” and was “in [her] space.” She could “feel his body around [her],” “feel the sweat off of his arms

against [her] arm,” “feel him grabbing,” “feel his chest against [her] chest,” and “feel his breath on [her] face.” She “felt very violated” and “went into defense mode.” She described the contact as “unnerving,” “unwanted,” “unprovoked,” and “very disconcerting.”

June’s testimony is the only first-hand account of Elavsky’s conduct that was presented to the jury. In considering whether this evidence was sufficient to support Elavsky’s conviction, we must view it in the light most favorable to the jury’s verdict. *See Griffin*, 887 N.W.2d at 263.

Based on the evidence described above, I would define the circumstances proved relevant to Elavsky’s intent as follows: Elavsky was agitated and shouting when he approached June—a woman he did not know—and demanded that she give him two flyers she was holding in her hand that Elavsky claimed were rightfully his. When she did not immediately do so, Elavsky wrapped both his arms around her body so that their chests were touching, and she could feel his breath on her face. He grabbed her arm, and he forcibly took the flyers from her hand. Although June did not use the word “fear” to describe how Elavsky’s conduct made her feel, she described feeling the need to defend herself against his aggressive behavior and feeling unnerved and disconcerted. Elavsky is physically larger than June in both height and weight.

These circumstances, I believe, foreclose the possibility that Elavsky did not intend to cause June fear—that is, they are inconsistent with any reasonable hypothesis other than guilt. Elavsky argues that the circumstances support “the reasonable inference that he exclusively intended to retrieve his flyers without causing fear.” Elavsky clearly intended to retrieve the flyers, but the only rational inference from the means he chose to achieve

that goal is that he intended to cause June fear of bodily harm. As the majority notes, we can infer that a person intends the natural and probable consequences of their actions. *See State v. Hough*, 585 N.W.2d 393, 396 (Minn. 1998). The natural and probable consequence of an agitated, larger man approaching a smaller woman who is a stranger to him, addressing her in a “very loud” and “intimidating” voice, demanding that she do as he says, and then forcefully grabbing around her body with both arms is that the woman will experience fear of immediate bodily harm. Given Elavsky’s actions, it is not reasonable to infer that he intended a different result.

Stated differently, the only reasonable inference regarding Elavsky’s intent that can be drawn from the evidence presented at trial, when viewed in the light most favorable to the verdict, is the one the jury drew: that Elavsky acted with the purpose of causing, or with the belief that he would cause, June fear of bodily harm. *See* Minn. Stat. § 609.02, subd. 9(4) (2022) (defining “with intent to” as “the actor either has a purpose to . . . cause the result specified or believes that the act, if successful, will cause that result”). Because I see no basis to disturb the jury’s verdict, I would affirm Elavsky’s assault-fear conviction.