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Minn. Stat. § 480A.08, subd. 3 (2010).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-2340**

State of Minnesota,
Respondent,

vs.

Ryan Lee Brown,
Appellant.

**Filed October 22, 2012
Affirmed
Collins, Judge***

Clay County District Court
File No. 14-CR-11-1783

Lori Swanson, Attorney General, Jennifer Coates, Assistant Attorney General, St. Paul, Minnesota; and

Brian Melton, Clay County Attorney, Heidi M. Davies, Assistant County Attorney, Moorhead, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Melissa Sheridan, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Johnson, Chief Judge; Stauber, Judge; and Collins,
Judge.

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

UNPUBLISHED OPINION

COLLINS, Judge

Appellant challenges his convictions of two counts of first-degree burglary and one count each of gross misdemeanor damage to property and misdemeanor domestic assault, contending that he was too intoxicated to form the requisite intent to commit the offenses. Appellant alternatively seeks reversal of his burglary and domestic-assault convictions for lack of evidence that he assaulted anyone while in the complainant's house. We affirm.

FACTS

Appellant Ryan Brown and M.S. lived together from 2006 until March 2010. They have a daughter together, born in 2007. After the three spent time together on May 21, 2011, Brown suggested that they also spend the next day, his birthday, together, but M.S. refused. Brown purchased several cans of malt liquor and drove to M.S.'s house, where he arrived between 10:00 and 11:00 p.m. He sat in his car and texted M.S., but she did not respond. Because he was low on gas and area gas stations were closed, Brown remained there and began drinking around 1:00 a.m.

Brown had three prescriptions for anti-depressant and sleeping pills; each to be taken once every 24 hours. He had between 15 and 21 pills with him, and he consumed them all, with the malt liquor, around 4:00 a.m.

M.S. testified that at 5:00 a.m., she was awakened by the noise of banging. She found Brown on her deck, and told him to leave. When he didn't leave, M.S. said she would call the police. Brown replied that he would wait for them on the deck.

M.S. further testified that while she was getting her phone to call 911, Brown threw a flower pot, breaking the sliding-glass door that leads from the deck to the house. He then entered the house. M.S. followed the advice of the 911 operator and barricaded herself and her daughter in a bedroom. Brown forced his way into the bedroom, and M.S. told him to leave. Eventually, Brown left the bedroom but soon returned and showed M.S. cuts on his wrists, and then left again. When the police arrived, Brown was sitting on a stairway inside the house. He became belligerent, resisted the officers' efforts to get him into a squad car, and head-butted one of the officers in the face.

Following a trial, the jury found Brown guilty of first-degree burglary (entry with intent to commit a crime), first-degree burglary (assault), first-degree criminal damage to property; fourth-degree assault of a police officer; and misdemeanor domestic assault (fear). This appeal followed.

D E C I S I O N

When this court considers a claim of insufficient evidence, our review is limited to a painstaking analysis of the record to determine whether the evidence, when viewed in the light most favorable to the conviction, is sufficient to allow the jurors to reach the verdict that they did. *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989).

1. Requisite intent

“[W]hen a particular intent or other state of mind is a necessary element to constitute a particular crime, the fact of intoxication may be taken into consideration in determining such intent or state of mind.” Minn. Stat. § 609.075 (2010). The defendant has the burden of establishing intoxication by a fair preponderance of the evidence. *State*

v. Buchanan, 431 N.W.2d 542, 549 (Minn. 1988). Brown argues that “[t]he evidence shows that . . . he was so intoxicated he could not form the intent to commit the charged offenses.” See Minn. Stat. § 609.582, subd. 1(a) (2010) (defining burglary to include entering an occupied residence without the consent of the lawful possessor and with the intent of committing a crime); Minn. Stat. § 609.582, subd. 1(c) (2010) (defining first-degree burglary as entering an occupied residence without the consent of the lawful possessor and assaulting a person therein); Minn. Stat. § 609.02, subd. 10(1) (2010) (defining assault to include an act done with intent to cause fear in another of immediate bodily harm or death); Minn. Stat. § 609.595, subd. 2(a) (2010) (defining damage to property to include intentionally causing damage to property without the owner’s consent).¹

While Brown’s intoxication was evident, “[a]s long as the record contains sufficient evidence to support the conclusion reached by the jury on the intoxication issue, that conclusion will not be reversed, despite the existence of some evidence to the contrary.” *State v. Wahlberg*, 296 N.W.2d 408, 416 (Minn. 1980). “[T]he question of whether intoxication negates the existence of the culpable mental state is a question of fact.” *State v. Tiessen*, 354 N.W.2d 473, 476 (Minn. App. 1984), *review denied* (Minn. Nov. 7, 1984). The verdict demonstrates that the jury found Brown’s degree of intoxication did not negate the existence of a culpable mental state.

Brown’s own testimony as to his conduct supports the jury’s verdict. Granted, Brown testified that: (1) he consumed four 24-ounce cans of a beverage containing 12%

¹ Fourth-degree assault of a peace officer is not a specific-intent crime.

alcohol between about 2:00 and 4:00 a.m.; (2) two of his three prescribed medications are combined antidepressant and sleep aiding, and the third is solely antidepressant; (3) the prescribed dosage of each medication is one pill every 24 hours; (4) around 4:00 a.m., he swallowed all the medication he had with him—five to seven pills of each prescription—with the malt liquor; (5) he consumed all four cans of the malt liquor, which was “a lot of alcohol” for him; and (6) when he takes one of his medications, he’s “out within a half hour.” Nonetheless, thereafter, he: (1) threw a flower pot to shatter the sliding-glass door and gained entry into M.S.’s house; (2) followed M.S. upstairs and forced his way into a bedroom; (3) stated to M.S., “I’m not going to hurt you”; (4) cut his wrists (though superficially) to “finish the job” of getting out of the relationship; and (5) was responsive to the police officers. Thus, in sum, Brown’s testimony shows that he was able to walk, talk, take actions for a particular purpose, and respond, albeit belligerently, to police officers’ directives despite the effects of alcohol and medications he had consumed.

The officers’ testimony corroborates Brown’s. The first officer at the scene testified that Brown spoke rudely but complied by walking outside with the officer, responded to the officer’s request to tell him about the incident by directing the officer to talk to M.S., and refused an ambulance attendant’s assistance for the cuts on his wrists. The second officer testified that Brown got into the squad car but kept his feet outside, and when the officer attempted to pull Brown into the squad car from behind, Brown butted with the top or back of his head into the officer’s face. This officer described Brown as intoxicated, but added “I wouldn’t say he was out of it.”

Thus, we are satisfied that the jury received evidence sufficient to find that Brown was not so intoxicated as to negate the particular intent essential to his crimes.

2. *Assault and Burglary*

Brown alternatively argues that “the state did not prove beyond a reasonable doubt that [he] intended to commit a crime when he entered [M.S.’s] house or that he assaulted anyone or committed any other crime while he was in the house.” We disagree. It is not necessary for the state to show that Brown actually committed a crime while in M.S.’s house; it is necessary to show only that Brown intended to commit a crime or did acts with the intent to cause another to fear immediate bodily harm. *See* Minn. Stat. § 609.582, subd. 1(a) (defining burglary to include entering occupied residence with the intent of committing a crime); Minn. Stat. § 609.582, subd. 1(c) (defining burglary to include entering occupied residence and assaulting a person within the building); Minn. Stat. § 609.02, subd. 10(1) (defining assault to include acts done with the intent to cause another to fear immediate bodily harm). “[T]he proof of intent to commit a crime in connection with proof of burglary is always one that must rest on a permissible inference from the facts proved.” *State v. Crosby*, 151 N.W.2d 297, 300 (Minn. 1967).

Brown and M.S. had a history of physical altercations. Regarding this incident, the jury heard from Brown that: (1) he admitted to an officer that he hit M.S. in the face in a previous incident; (2) he was angry with M.S. because she wouldn’t respond to his texting while he was outside of her house; (3) he broke the glass door to get into the house; (4) he twice barged through the barricade that M.S. put up to keep him out of the bedroom; (5) he did not immediately leave when M.S. told him to; and (6) he showed

M.S. the cuts he had made on his wrists. From these facts, it was permissible for the jury to infer that Brown entered M.S.'s house with the intent to commit a crime and that he intended his actions to cause fear of immediate bodily harm in M.S.

Brown argues that he was not armed when he entered the house; but by cutting his wrists and showing the cuts to M.S., he demonstrated that he accessed some sort of a weapon. Brown also argues that he did not "do anything physical" suggesting intent to harm M.S; but his persistence in confronting her after she had closed the door from the deck and barricaded the bedroom door against him support the conclusion that Brown entered the bedroom with the intent to cause M.S. to fear immediate bodily harm.

Affirmed.