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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A10-1093**

State of Minnesota,
Respondent,

vs.

Sharon Suzanne Kier,
Appellant.

**Filed June 27, 2011
Affirmed
Ross, Judge**

Clearwater County District Court
File No. 15-CR-09-316

Lori Swanson, Attorney General, Kelly O'Neill Moller, Assistant Attorney General, St. Paul, Minnesota; and

Richard C. Mollin, Jr., Clearwater County Attorney, Bagley, Minnesota, (for respondent)

David W. Merchant, Chief Appellate Public Defender, Sara L. Martin, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Ross, Presiding Judge; Stauber, Judge; and Muehlberg,
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UNPUBLISHED OPINION

ROSS, Judge

While police escorted Sharon Kier's arrested husband from the couple's apartment to a squad car outside, Kier retrieved a .22 caliber revolver, raised it partially while she stared at the arresting officer, and did not drop it after an officer yelled at her to do so. She later explained that she was trying to help her husband "to get away." A jury convicted Kier of second-degree assault. This appeal calls into question the sufficiency of the evidence and requires us to decide whether the evidence supports the finding that Kier intended to cause fear in the arresting officer. Because it does, we affirm.

FACTS

Bagley Police Chief Darin Halverson and Deputy Brian Solee arrived to investigate a 911 hang-up call made from Sharon and John Kier's apartment. John Kier's pants were unbuttoned and he smelled of an alcoholic beverage. Sharon Kier was lying in a fetal position in the bedroom near a half-empty bottle of Southern Comfort. Sharon Kier denied that anything had happened to necessitate the emergency call.

Chief Halverson decided to arrest John Kier, who had recently been released from prison under a no-alcohol condition. Sharon Kier unsuccessfully urged the chief not to arrest her husband. Chief Halverson walked John Kier to the squad car, and Sharon Kier went to her storage locker. She retrieved a .22 caliber revolver and went to the doorway, facing the two officers.

Deputy Solee was the first to see Sharon Kier holding the gun. He testified later that she was raising the gun and pointing it at Halverson. The detective drew his gun and

repeatedly yelled, “Drop the gun!” Kier lowered but did not drop the gun. Chief Halverson later testified about what he saw: “[S]he was staring—with what I call a blank stare. I mean just was focused on me but it was like nothing else was mattering to her[.] [S]he was focused directly on me.” The chief also drew his gun.

Kier went back into the apartment with her gun. Detective Solee followed. He then arrested her over her resistance. Later that day she told Deputy Matthew Grossell, “I don’t know why I’m in trouble because all I was doing was trying to help my husband to get away.”

The state charged Sharon Kier with two counts of first-degree assault against a police officer and two counts of second-degree assault with a dangerous weapon. The jury found her guilty of one count of second-degree assault and the district court sentenced her to 36 months in prison. Kier appeals.

DECISION

Kier contends that the evidence is insufficient to support her conviction. We decide whether the evidence is sufficient to support the verdict by looking at whether the facts in the record, and legitimate inferences drawn from those facts, prove beyond a reasonable doubt the elements of the crime. *State v. Andersen*, 784 N.W.2d 320, 329–30 (Minn. 2010). In doing so, we assume the jury believed the state’s witnesses and evidence and disbelieved conflicting testimony. *State v. Pieschke*, 295 N.W.2d 580, 584 (Minn. 1980).

A person commits second-degree assault if, using a dangerous weapon, she commits an act with the “intent to cause fear in another of immediate bodily harm or death.” Minn. Stat. §§ 609.222, subd. 1, .224, subd. 1 (2008). Kier concedes that her gun was a dangerous weapon. But she maintains that insufficient evidence supports the jury’s finding that she intended to cause Chief Halverson fear.

Because the state introduced no direct evidence of Kier’s intent to assault Chief Halverson, the intent element must be proven with circumstantial evidence. Circumstantial evidence merits the same weight as direct evidence, *State v. Bauer*, 598 N.W.2d 352, 370 (Minn. 1999), but we apply a stricter degree of scrutiny reviewing convictions that depend on it, *State v. Jones*, 516 N.W.2d 545, 549 (Minn. 1994). The circumstantial evidence “must form a complete chain that, in view of the evidence as a whole, leads so directly to the guilt of the defendant as to exclude beyond a reasonable doubt any reasonable inference other than guilt.” *State v. Taylor*, 650 N.W.2d 190, 206 (Minn. 2002).

Kier insists that she did not actually point the gun at Chief Halverson. We need not address the assertion because the remaining circumstantial evidence amply supports the finding that she intended to cause him fear. She told the officers not to arrest her husband, she retrieved a gun while they were arresting him, she stared at Chief Halverson while she held the gun, she did not drop the gun when ordered to do so, and she told police she was “trying to help” her husband “to get away.” We conclude that these facts support the jury’s finding on the intent element. And this conclusion comports with settled precedent. *See State v. Patton*, 414 N.W.2d 572, 574 (Minn. App. 1987) (holding defendant’s

brandishing a knife in a dangerous manner sufficient to prove intent to cause fear); *State v. Kastner*, 429 N.W.2d 274, 276 (Minn. App. 1988) (holding defendant's pointing scissors and screwdriver at victim in threatening way sufficient to prove intent to cause fear), *review denied* (Minn. Nov. 16, 1988); *but cf. In re Welfare of T.N.Y.*, 632 N.W.2d 765, 770 (Minn. App. 2001) (holding that the intent-to-cause-fear element was not established when juvenile dropped his brandished gun complying with officers' directions).

By volunteering that her intention was to help her husband escape, Kier implicitly admitted that she wanted either to frighten or to shoot the officer. No reasonable innocent explanation accounts for Kier's statement and actions, leaving intact the jury's conclusion that she intended to cause Chief Halverson fear.

Affirmed.