STATE OF MINNESOTA
IN COURT OF APPEALS
A11-662

State of Minnesota,
Respondent,

vs.

Natalie Ann Brown,
Appellant.

Filed June 18, 2012
Affirmed
Rodenberg, Judge

Stevens County District Court
File No. 75CR09449

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Aaron Jordan, Stevens County Attorney, Theodora D. Economou, Assistant County Attorney, Morris, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, St. Paul, Minnesota; and

Jessica J. Stomski, Special Assistant State Public Defender, Briggs and Morgan, P.A., Minneapolis, Minnesota (for appellant)

Considered and decided by Johnson, Chief Judge; Rodenberg, Judge; and Huspeni, Judge.*

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

U N P U B L I S H E D O P I N I O N

RODENBERG, Judge

On appeal from her conviction of fourth-degree assault, fifth-degree assault, and misdemeanor domestic assault, appellant argues (1) the evidence was insufficient to convict her of intentionally assaulting a sheriff's deputy and (2) the district court erred when it granted the state's motion in limine regarding evidence of appellant's mental health. Because sufficient evidence existed to establish the general intent required for the fourth-degree assault conviction, and because the record does not support the contention that the district court granted the state's motion in limine, we affirm.

FACTS

On the morning of November 15, 2009, three law enforcement officers brought appellant Natalie Brown to the Stevens County Medical Center in Morris, Minnesota. However, appellant would not cooperate with the medical center staff. One of the law enforcement officers, a deputy sheriff, informed appellant that she could either cooperate with the medical staff or he would place her under arrest for two assaults she had committed earlier.[1] Appellant refused to cooperate, and the deputy sheriff informed appellant that she was under arrest. A struggle ensued during which the law enforcement officers attempted to subdue appellant as she flailed, kicked, and attempted to get away. During this struggle, appellant kicked the deputy sheriff in the groin.

[1] Appellant had repeatedly struck her boyfriend and another person who had intervened and attempted to restrain her. This behavior was the basis for the domestic assault and the fifth-degree assault convictions. Those convictions are not part of appellant's sufficiency challenge.

Appellant was charged by complaint with assaulting the deputy sheriff, and for two assaults she had committed the prior evening.

On the morning of trial, the district court judge held an informal chambers conference with trial counsel. The district court and the attorneys discussed the state's motion in limine seeking to bar appellant from introducing evidence or argument "regarding any allegations of reduced mental capacity, mental illness, or intoxication" at the time of the assaults.

The informal conference was not placed on the record. The record of the chambers conference on appeal consists of a statement of proceedings prepared by appellant pursuant to Minn. R. Civ. App. P. 110.03. The district court subsequently filed a modified statement of proceedings pursuant to the same rule.

Appellant's proposed statement of proceedings asserted that the district court heard arguments from both parties on the motion in limine and granted the state's motion.

The modified statement of proceedings indicated that the district court issued no ruling on the motion, noting that "[s]ince defense counsel was not prepared to present any testimony from third party witnesses as to Defendant's mental or physical condition, the motion was essentially moot; hence the reason that nothing was placed on the record." However, the district court "did express concerns to both counsel as to what Defendant may or may not have been competent to testify to, but the Court made no ruling per se, indicating that objection could be made as deemed appropriate during testimony."

Appellant did not testify or present any witnesses at trial. The jury found appellant guilty of the three counts of the complaint.

This appeal follows.

D E C I S I O N

I.

Appellant argues that the evidence in this case is insufficient to prove beyond a reasonable doubt that she had the requisite intent to be held criminally responsible for assaulting the deputy sheriff.

In considering the sufficiency of evidence, this court's 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, was sufficient to allow the jury to reach the verdict that it did. *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989). The reviewing court will not disturb the verdict if the jury, acting with due regard for the presumption of innocence and the requirement of proof beyond a reasonable doubt, could reasonably conclude that the appellant was guilty of the charged offense. *Bernhardt v. State*, 684 N.W.2d 465, 476–77 (Minn. 2004).

Convictions based on circumstantial evidence receive greater scrutiny. *State v. Jones*, 516 N.W.2d 545, 549 (Minn. 1994). In such cases, 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. *Id.* This standard applies to the intent element where intent is

proven by circumstantial evidence. *State v. Al-Naseer*, 788 N.W.2d 469, 474–75 (Minn. 2010).

Appellant was convicted of fourth-degree assault pursuant to Minn. Stat. § 609.2231, subd. 1 (2008), which makes it a crime to physically assault a peace officer "when that officer is effecting a lawful arrest or executing any other duty imposed by law."

There are two categories of "assault." Minn. Stat. § 609.02, subd. 10 (2008); *see also State v. Fleck*, 810 N.W.2d 303, 308 (Minn. 2012). The first, assault-fear, is "an act done with intent to cause fear in another of immediate bodily harm or death." Minn. Stat. § 609.02, subd. 10(1); *Fleck*, 810 N.W.2d at 308. The second, assault-harm, is "the intentional infliction of or attempt to inflict bodily harm upon another." Minn. Stat. § 609.02, subd. 10(2); *Fleck*, 810 N.W.2d at 308.

Assault-harm is a general intent crime and requires only proof that the appellant intended "to do the physical act" which resulted in bodily harm, but does not require proof that appellant "meant to violate the law or cause a particular result." *Fleck*, 810 N.W.2d at 309. However, the physical act itself must be "volitional" and not, for example, the result of a reflexive movement or other nonvolitional act, such as accidentally falling on someone after tripping. *Id.* at 309, 312. Appellant's actions in this case constituted assault-harm because appellant actually inflicted bodily harm upon the deputy sheriff, and she was so charged.

In this case, appellant flailed, kicked, and pulled away from the peace officers upon being informed that she was under arrest. Appellant was not doing those things

immediately prior to being informed that she was under arrest. As a result of these movements, appellant kicked a deputy sheriff in the groin, inflicting bodily harm upon him.

The only reasonable inference to be drawn from the facts is that appellant made these movements volitionally. The timing of the movements excludes as a rational inference the possibility that the movements were reflexive or nonvolitional. The only rational inference to be drawn from the timing of the movements is that they were part of a deliberate attempt to avoid arrest.

The circumstantial evidence was sufficient to allow the jury to conclude beyond a reasonable doubt that appellant had the requisite intent for a fourth-degree assault.

II.

Appellant's argument that the district court impermissibly prevented her from presenting evidence of her mental health is based on her contention that the district court granted the state's motion in limine and prohibited her from presenting such evidence.

Under Minn. R. Civ. App. P. 110.3, "[t]he statement [of proceedings] *as approved by the trial court* shall be included in the record." (Emphasis added.) This means that appellant's account of events is a part of the record on appeal only to the extent that it was accepted by the district court. The district court did not accept appellant's assertion that it granted the state's motion in limine. Instead, the court-approved statement of proceedings indicates that the district court did not rule on the motion.

As appellant is taking exception to a ruling that the district court did not make, this issue does not provide a basis for reversal.

The trial transcript indicates that the district court afforded appellant substantial leeway to question the state's witnesses with respect to appellant's apparent degree of intoxication and the fact that appellant had not been taking some unspecified "medications." The record does not support the contention that the district court granted the motion in limine with respect to evidence of appellant's mental health.

The evidence at trial was sufficient to support appellant's conviction of fourth-degree assault, and the trial court did not erroneously preclude appellant from presenting relevant evidence at tial.

Affirmed.