STATE OF MINNESOTA
IN COURT OF APPEALS
A12-2224

State of Minnesota,
Respondent,

vs.

William Quinones Santiago,
Appellant.

Filed October 21, 2013
Affirmed
Chutich, Judge

Dakota County District Court
File No. 19HA-CR-11-1930

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

James C. Backstrom, Dakota County Attorney, Jessica A. Bierwerth, Assistant County Attorney, Amy A. Schaffer, Assistant County Attorney, Hastings, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Sharon E. Jacks, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Kirk, Presiding Judge; Kalitowski, Judge; and Chutich, Judge.

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

CHUTICH, Judge

Appellant William Quinones Santiago argues that the evidence was insufficient to sustain his convictions of two counts of second-degree assault and that he should have received a downward durational sentencing departure based on two mitigating factors. Because the evidence was more than adequate to support the convictions and the district court properly exercised its broad discretion in sentencing, we affirm.

FACTS

On October 23, 2010, appellant William Quinones Santiago was at a Kmart store in West Saint Paul. Kmart loss prevention officers J.M. and K.M. determined that Santiago was concealing cologne bottles in his pockets to steal them. When Santiago tried to leave the store, J.M., standing in the foyer of the exit, confronted him and asked him to return the cologne. K.M. joined his colleague and stood next to him. After "fiddling around" with something behind his back, Santiago pulled his right hand out from behind his back and displayed a knife.

Santiago held the knife slightly above waist level with his arm extended, pointing the knife at the two employees. One of the employees testified that the knife was within a couple of feet of him. Both men feared Santiago would injure them and felt threatened by the knife.

J.M. testified that, after seeing the knife and "look[ing] at it long enough to register that it was a knife," he "turned and ran out of the building" because "if [he] didn't get out of the way, [he] might have been stabbed." After K.M. saw the knife, he

also backed off and went outside. As the two employees were backing away and going outside, Santiago lunged toward them. Santiago continued forward and went straight out the door, between the two employees, and ran through the parking lot.

Dakota County charged Santiago with one count of terroristic threats and two counts of second-degree assault. After a court trial, the district court found Santiago guilty of two counts of second-degree assault. The district court found that "[d]efendant produced a knife and threatened both loss prevention officers with the knife"; that Santiago "lunged at the loss prevention officers with the knife extended"; and that "[b]oth officers feared they would be severely injured." The district court sentenced Santiago to imprisonment for 57 months on Count II and to a stayed sentence of 60 months on Count III, to be served consecutively to Count II. This appeal followed.

D E C I S I O N

I. Sufficiency of the Evidence

Santiago does not challenge the district court's findings that he pulled a knife on J.M. and K.M. and that the knife is a dangerous weapon. He asserts instead that the state did not prove beyond a reasonable doubt that he intended to cause fear in J.M. and K.M. of immediate bodily harm or death, a necessary element of second-degree assault. After carefully considering the record here, we disagree.

When reviewing a claim of insufficient evidence, we determine whether the evidence, viewed in the light most favorable to the conviction, was sufficient to allow the factfinder to reach a guilty verdict. *State v. Hurd*, 819 N.W.2d 591, 598 (Minn. 2012). "In making this determination, we assume that the factfinder disbelieved any testimony

conflicting with that verdict." *Id.* (quotation omitted). Assessing witness credibility and determining the weight given to testimony is within the exclusive province of the factfinder. *State v. Pendleton*, 759 N.W.2d 900, 909 (Minn. 2009). "The verdict will not be overturned if, giving due regard to the presumption of innocence and the prosecution's burden of proving guilt beyond a reasonable doubt, the factfinder could reasonably have found the defendant guilty of the charged offense." *State v. Palmer*, 803 N.W.2d 727, 733 (Minn. 2011) (quotation omitted). In evaluating whether the evidence is sufficient to support a conviction in a bench trial, we apply the same standard of review as we do in a jury trial. *Id.*

The elements of second-degree assault require that the state prove that Santiago assaulted another with a dangerous weapon. Minn. Stat. § 609.222, subd. 1 (2010). Assault is "(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 (2010). The phrase "with intent to" means that "the actor either has a purpose to do the thing or cause the result specified or believes that the act, if successful, will cause that result." *Id.*, subd. 9(4).

Because intent is a state of mind, it is generally proved circumstantially. *State v. Cooper*, 561 N.W.2d 175, 179 (Minn. 1997). A conviction based on circumstantial evidence receives a heightened, two-step circumstantial evidence test. *State v. Nelson*, 812 N.W.2d 184, 188 (Minn. App. 2012). First, we identify the circumstances proved, deferring to the factfinder's "acceptance of the proof of these circumstances and rejection of evidence in the record that conflicted with the circumstances proved by the State."

State v. Silvernail, 831 N.W.2d 594, 598–99 (Minn. 2013) (quotation omitted). Second, "we examine independently the reasonable inferences that might be drawn from the circumstances proved." *State v. Boldman*, 813 N.W.2d 102, 107 (Minn. 2012). In this second step, "[w]e give no deference to the fact-finder's choice between reasonable inferences." *Id.* "[T]he inquiry is not simply whether the inferences leading to guilt are reasonable. Although that must be true in order to convict, it must also be true that there are no other reasonable, rational inferences that are inconsistent with guilt." *State v. Al-Naseer*, 788 N.W.2d 469, 474 (Minn. 2010) (quotation omitted).

Applying these principles here, the circumstances proved show that Santiago was in the process of stealing from Kmart when he was confronted by the loss prevention officers at the exit doors. Santiago concedes that he pulled a knife and that he lunged at the two employees "while they were running out either side of the exit doors." According to the district court's findings, Santiago "threatened both loss prevention officers with the knife" and "lunged at [them] with the knife extended." The employees testified and the district court credited their testimony that they both feared that they would be "severely" injured.

Independently examining the reasonable inferences that might be drawn from these circumstances, we recognize that a factfinder "is permitted to infer that a person intends the natural and probable consequences of [his] actions." *State v. Johnson*, 616 N.W.2d 720, 726 (Minn. 2000). A natural and probable consequence of threatening someone with a knife is that the person would fear immediate bodily harm or death. "Pointing a weapon at . . . another person has been held to supply the requisite intent to

cause fear." *In re Welfare of T.N.Y.*, 632 N.W.2d 765, 770 (Minn. App. 2001); *see State v. Patton*, 414 N.W.2d 572, 574 (Minn. App. 1987) (upholding defendant's conviction of second-degree assault where defendant brandished knife in a way that the jury could have found was used to cause fear of immediate bodily harm); *State v. Soine*, 348 N.W.2d 824, 827 (Minn. App. 1984) (concluding defendant's action of waving knife in front of victim was sufficient to support second-degree assault conviction), *review denied* (Minn. Sept. 12, 1984).

Santiago argues that, because no evidence showed that he made any verbal threats or made stabbing motions, and because he failed to pursue either employee after they exited the store, "it can reasonably be inferred that [he] pulled the knife with the intent to flee to be free to feed his heroin addiction." Even if Santiago had the intent to flee, the reasonable inference that follows is that, by brandishing the knife, he intended to frighten the employees into allowing him to escape. *See, e.g.*, *State v. Lee*, 391 N.W.2d 46, 48–49 (Minn. App. 1986) (upholding defendant's conviction of second-degree assault where he argued that when he held a knife to the victim's neck, he "did not intend to frighten [victim], only to get him to leave the apartment," stating "[t]he distinction, if any, is negligible"), *review denied* (Minn. Sept. 22, 1986).

Santiago further contends that the district court's findings underlying the acquittal of the crime of terroristic threats contradict its finding of the requisite intent for second-degree assault. This assertion is unpersuasive because more than sufficient evidence supports the district court's conclusion that Santiago intended to cause fear of immediate bodily harm when he brandished the knife at the employees. And, of course, we do not

review a district court's verdict of acquittal. *State v. Large*, 607 N.W.2d 774, 779 (Minn. 2000).

In sum, viewing the evidence as a whole and in the light most favorable to the conviction, the district court could reasonably have found that Santiago intended to cause fear of immediate bodily harm or death. No other reasonable, rational inference can be drawn from the circumstances proved.

II. Sentencing Departure

A district court "shall pronounce a sentence within the applicable range" for a crime unless there are "identifiable, substantial, and compelling circumstances" to support a departure from the presumptive sentence. Minn. Sent. Guidelines II.D (2010). "The district court has broad discretion to depart if substantial and compelling circumstances exist, and this court generally will not interfere with the exercise of that discretion." *State v. Martinson*, 671 N.W.2d 887, 891 (Minn. App. 2003) (citing *State v. Kindem*, 313 N.W.2d 6, 7 (Minn. 1981)). Only in a "rare" case will we reverse a sentencing court's refusal to depart. *Kindem*, 313 N.W.2d at 7.

Santiago contends that two mitigating factors warrant a downward durational departure: 1) substantial grounds that mitigate his culpability; and 2) lack of substantial capacity for judgment. After reviewing the district court's findings and relevant case law, we disagree.

A. Substantial Grounds That Mitigate Culpability

Santiago first argues that substantial grounds exist that mitigate his culpability. *See* Minn. Sent. Guidelines II.D.2.a.(3). He asserts that his actions "were less serious than those in the typical second-degree assault."

The district court found that Santiago produced a knife, threatened both victims with it, lunged at the victims with the knife extended, and found that the victims feared that they would be severely injured. These facts place this second-degree assault squarely in the category of a "typical" second-degree assault case where a knife has been displayed. *See Patton*, 414 N.W.2d at 574 (upholding second-degree assault conviction where defendant brandished a knife, but did not swing it or attempt to stab victims); *State v. Case*, 312 N.W.2d 246, 247 (Minn. 1981) (upholding second-degree assault conviction where defendant displayed a knife and threatened to harm victim with it); *State v. Kastner*, 429 N.W.2d 274, 275 (Minn. App. 1988) (upholding second-degree assault conviction where defendant pointed scissors and screwdriver at victim), *review denied* (Minn. Nov. 16, 1988).

B. Lack of Substantial Capacity for Judgment

Santiago next argues that he lacked substantial capacity for judgment at the time of the offense because of physical or mental impairment. *See* Minn. Sent. Guidelines II.D.2.a(3). The "voluntary use of intoxicants (drugs or alcohol) does not fall within the purview of this factor." *Id.* Santiago acknowledges that he was not intoxicated or under the influence of drugs at the time of the offense. He argues instead that he is an addict

and was acting "under the mental and physical impairment of an addict who needed drugs."

To be a mitigating factor in sentencing, "a defendant's impairment must be extreme to the point that it deprives the defendant of control over his actions." *State v. McLaughlin*, 725 N.W.2d 703, 716 (Minn. 2007) (quotation omitted) (upholding the district court's imposition of consecutive sentences where defendant was suffering "only a subtle form of schizophrenia" and his impairment "was not an extreme mental illness"); *see State v. Lee*, 491 N.W.2d 895, 902 (Minn. 1992) (concluding that defendant's mental illness was not a mitigating factor where defendant "was depressed, angry and maybe impulsive, but he did not suffer from an *extreme* mental impairment"). "The degree to which [a defendant] lacked substantial capacity for judgment is the type of factual issue best decided by the trial court." *State v. Barsness*, 473 N.W.2d 325, 329 (Minn. App. 1991), *review denied* (Minn. Aug. 29, 1991).

Here, the district court found that Santiago's actions "were motivated by a desire to obtain money to purchase heroin," but made no further findings on Santiago's impairment or capacity for judgment. Santiago has not presented any evidence showing that his impairment as a result of being an addict was extreme or that he had no control over his actions at the time of the offense. *Cf. Martinson*, 671 N.W.2d at 892 (upholding the district court's downward durational departure where "expert psychological evidence [was] uncontroverted that, at all relevant times, [defendant] suffered from the psychosis of paranoid schizophrenia").

Further, even if a ground for departure existed, the district court had discretion whether to impose a durational departure and was not obligated to impose a shorter sentence. *See State v. Wall*, 343 N.W.2d 22, 25 (Minn. 1984) ("The fact that a mitigating factor was clearly present [does] not obligate the court to place [a] defendant on probation or impose a shorter term than the presumptive term.").

Affirmed.