STATE OF MINNESOTA
IN COURT OF APPEALS
A13-1120

State of Minnesota,
Respondent,

vs.

Antoinette Kay Kuhlmann,
Appellant.

Filed April 14, 2014
Affirmed
Hooten, Judge

Dakota County District Court
File No. 19SW-CR-12-11933

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

David B. Gates, David S. Kendall, LeVander, Gillen & Miller, P.A., South St. Paul, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Stephen L. Smith, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Bjorkman, Presiding Judge; Ross, Judge; and Hooten, Judge.

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

HOOTEN, Judge

Appellant challenges her convictions of domestic assault and disorderly conduct, arguing that the evidence is insufficient to support her convictions. We affirm.

FACTS

In August 2012, appellant Antoinette Kuhlmann argued with M.B., her boyfriend at the time, at their apartment. At trial, M.B. testified that he did not want to live with Kuhlmann anymore and told her that she had two weeks to figure out her plans. According to M.B., Kuhlmann took his car keys to retrieve her belongings from his car, but he did not trust her and told her that she had to give him the keys before she left. At this point, according to M.B., Kuhlmann "made her way through" him by swinging part of a vacuum cleaner at him, injuring his forearms when he used them to protect his face. The part was a four-foot long metal pipe that connected to the vacuum hose. M.B. claimed that he did not try to take the keys from Kuhlmann and did not grab her. He testified that Kuhlmann ran out of the apartment "screaming that [he] was beating her." M.B. called the police. In responding to the call, Officer Casey Kohn heard M.B.'s description of the incident and photographed M.B.'s forearms. At trial, Officer Kohn testified that M.B. had "fresh" and "red swollen marks" on both of his forearms.

Kuhlmann admitted that she wanted to get her belongings in M.B.'s car, but that M.B. refused to let her leave because "he felt like [their] relationship was going bad." According to Kuhlmann, she grabbed her bags and tried to leave, but "every time [she] would make [her] way to the door with [her] bags . . . [M.B.] would stop [her], even physically grabbing [her] bags and ripping them out of [her] hands." She also claimed that M.B. locked the door and "held [her] against the door and the closet in the corner." She testified that M.B. chased her around the kitchen island and that she "threw [the vacuum cleaner pipe] in his path so that he would stop chasing" her. Kuhlmann believed

that she "might have kicked [the pipe] towards him so that he could probably trip." She stated that she both "threw [the pipe] and kicked it at [M.B.] to block his path." Upon further questioning, Kuhlmann explained that the pipe was "connected to the hose, which [was] connected to the bottom piece so [she] threw and kicked the entire vacuum as a whole." She testified that she "threw [the vacuum] and kicked it all at the same time." She also stated that she "pushed [the vacuum] with two hands . . . [i]n front of [her]." Kuhlmann's trial counsel asked her, "Were you even thinking about how you were doing these things as you were doing them?" She replied, "No, because I just wanted to leave and I was scared for my life . . . ." But she also testified, "I do remember what happened."

A jury found Kuhlmann guilty of domestic assault (intentional infliction of bodily harm) in violation of Minn. Stat. § 609.2242, subd. 1(2) (2012); disorderly conduct (brawling or fighting) in violation of Minn. Stat. § 609.72, subd. 1(1) (2012); and disorderly conduct (offensive, obscene, abusive, boisterous, or noisy conduct) in violation of Minn. Stat. § 609.72, subd. 1(3) (2012). This appeal follows.

D E C I S I O N

Kuhlmann contends that the evidence is insufficient to support her convictions of domestic assault and disorderly conduct. "To sustain a conviction, the state must prove all essential elements of the charged crime beyond a reasonable doubt." *State v. Papadakis*, 643 N.W.2d 349, 354 (Minn. App. 2002). Under Minn. Stat. § 609.2242, subd. 1(2), whoever "intentionally inflicts or attempts to inflict bodily harm upon another" against a household member "commits an assault and is guilty of a

misdemeanor." Under Minn. Stat. § 609.72, subd. 1(1) and (3), whoever "engages in brawling or fighting" or "engages in offensive, obscene, abusive, boisterous, or noisy conduct or in offensive, obscene, or abusive language tending reasonably to arouse alarm, anger, or resentment in others," "knowing, or having reasonable grounds to know that it will, or will tend to, alarm, anger or disturb others or provoke an assault or breach of the peace, is guilty of disorderly conduct, which is a misdemeanor."

Kuhlmann notes that she and M.B. "are the only two people that know what happened" and, therefore, "discerning credibility was paramount in the jury's deliberations." She argues that M.B.'s testimony was "no more credible than her explanation." Without explaining which elements of the offenses she is challenging, Kuhlmann generally asserts that "there was little to corroborate either side's version of events" and that "the state gave the jury very little evidence to reach [its] conclusion."

As a threshold matter, we note that Kuhlmann incorrectly states the standard of review. She cites our opinion in *State v. Hanson* for the proposition that the circumstantial-evidence standard "applies even when a single element . . . depends on circumstantial evidence." 790 N.W.2d 198, 201 (Minn. App. 2010), *rev'd on other grounds*, 800 N.W.2d 618 (Minn. 2011). But we have recently stated that the circumstantial-evidence standard applies only "to those elements as to which the state's proof necessarily depends on circumstantial evidence." *State v. McCormick*, 835 N.W.2d 498, 506 n.3 (Minn. App. 2013) (citing *State v. Porte*, 832 N.W.2d 303, 309 (Minn. App. 2013); *State v. Silvernail*, 831 N.W.2d 594, 604 (Minn. 2013) (Stras, J., concurring)). Here, as Kuhlmann admits, the evidence used to convict her comprised substantially of

M.B.'s testimony about what happened, which is direct evidence. Officer Kohn's testimony and photographs were also direct evidence of M.B.'s injuries. For the element of intent for the domestic-assault offense, Kuhlmann admitted to throwing the vacuum cleaner pipe that caused M.B.'s injuries. Accordingly, except for the element of intent for the disorderly conduct offense, the state's proof does not necessarily depend on circumstantial evidence and we do not apply the circumstantial-evidence standard with regard to all of the elements of the offenses.

When reviewing sufficiency-of-the-evidence challenges to elements of the offenses that do not necessarily depend on circumstantial evidence, we view the record "in the light most favorable to the conviction" to determine whether the evidence "was sufficient to permit the jurors to reach the verdict which they did." *State v. Ortega*, 813 N.W.2d 86, 100 (Minn. 2012) (quotation omitted). We do 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 defendant was guilty of the charged offense." *Id.*

Applying this standard, Kuhlmann's argument that she was as credible as M.B. fails because "[w]e assume the jury believed the State's witnesses and disbelieved any evidence to the contrary." *See id.*[1] Indeed, "[a]ssessing the credibility of a witness and the weight to be given a witness's testimony is exclusively the province of the jury."

[1] We note that Kuhlmann's credibility argument fails even if we were to apply the circumstantial-evidence standard because "the jury is in the best position to evaluate the credibility of the evidence even in cases based on circumstantial evidence." *State v. Silvernail*, 831 N.W.2d 594, 599 (Minn. 2013).

State v. Mems, 708 N.W.2d 526, 531 (Minn. 2006). Moreover, Kuhlmann's contention that the jury had "very little evidence" on which to convict her is not persuasive because "[e]yewitness testimony, standing alone, can support a guilty verdict." *State v. Landa*, 642 N.W.2d 720, 725 (Minn. 2002).

Here, the record contains more evidence than just the eyewitness testimony of M.B. The jury heard Officer Kohn's description of M.B.'s injuries on his forearms, which were consistent with M.B.'s version of the incident that Kuhlmann repeatedly struck him with the vacuum cleaner pipe as he raised his arms to block her blows. The jury was also presented with photographs of M.B.'s injuries, which were consistent with Officer Kohn's and M.B.'s description of such injuries. As further support of M.B.'s version of the incident, the jury heard evidence that M.B. promptly reported the incident to police and made statements to Officer Kohn consistent with his trial testimony. On the other hand, Kuhlmann was inconsistent in describing the incident, was uncertain whether she even remembered her actions, and was not able to explain how the injuries to M.B.'s forearms occurred.

As for the intent elements of the offenses, Kuhlmann does not appear to challenge these elements because they are not specifically discussed in her brief. *See McKenzie v. State*, 583 N.W.2d 744, 746 n.1 (Minn. 1998) (concluding that issues that are "allude[d] to" but not argued are waived). But we note that Kuhlmann admitted to throwing the vacuum cleaner pipe, satisfying the element of intent for the domestic-assault offense. And, M.B.'s testimony supports that Kuhlmann knew or had reasonable grounds to know

that her conduct will tend to alarm, anger, disturb others or provoke an assault or breach of the peace, satisfying the element of intent for the offense of disorderly conduct.

Based on this record and our deference to the credibility findings of the jury, we conclude that the evidence was sufficient for the jury to have reasonably concluded that Kuhlmann is guilty of domestic assault and disorderly conduct.

Affirmed.