

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 17-0610

STATE OF MONTANA,

Plaintiff and Appellee,

v.

DANIEL DEAN HELM,

Defendant and Appellant.

BRIEF OF APPELLANT

On Appeal from the Montana First Judicial District Court, Lewis and
Clark County, the Honorable James P. Reynolds, Presiding

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STATEMENT OF THE ISSUES

I. Did the District Court abuse its discretion by denying Helm's motion to dismiss a PFMA charge for lack of evidence when the victim did not testify at trial, and there was insufficient circumstantial evidence to support an inference that the victim reasonably apprehended bodily injury?

STATEMENT OF THE CASE AND FACTS

On June 25, 2016, Daniel Helm (Helm) was residing at a trailer court in East Helena. (Trial Tr. at 207-08.) He was separated from his wife, Misty Helm (Misty) who lived a few trailers further away. (Trial Tr. at 207-08.) Helm had been married to Misty for 15 years and they had three children together. (D.C. Doc. 62; Trial Tr. at 207.) On the night of June 25, 2016, Helm visited Misty at her trailer. (Trial Tr. at 207-08.) Misty was moving and invited Helm over to collect his items and help pack. (Trial Tr. at 208; D.C. Doc. 2) When Helm arrived at the trailer, his son, Alan Helm (Alan), and his son's friend, Corday Boone (Boone), were also in the trailer. (Trial Tr. at 207-08.) Alan was 16 years old, and Boone was 14. (D.C. Doc. 2). Several others were in the trailer as well. (Trial Tr. at 208, 158.)

Close to midnight, Misty and Helm got into an argument about a phone charger and about the presence of the other people in the trailer. (Trial Tr. at 131, 208.) While Misty and Helm yelled at each other, Alan got in between them and a struggle ensued. (Trial Tr. at 134.) The struggle moved from inside the trailer through the porch door onto the porch until a neighbor, Henry Taylor (Taylor), came and separated Alan and Helm. (Trial Tr. at 152.)

Taylor told Helm to “walk it off” and Helm walked away. Taylor also told Alan to go to his house. (Trial Tr. at 152-53) After Taylor told Helm to walk away, Misty came out of the trailer yelling at Helm. (Trial Tr. at 153.) Both Misty and Helm seemed aggressive toward each other and Taylor separated them as well. (Trial Tr. at 153.) Helm kept on walking away from the incident down the trailer park. (Trial Tr. at 154.) Taylor told Misty to go into his house together with Alan. (Trial Tr. at 153.) Taylor noticed that Misty was intoxicated. (Trial Tr. at 159.) While this was going on, the Helena City Police had received several 911 calls from residents in the trailer court. (Trial Tr. at 164, 165, 152.)

The police arrived a few minutes later. (Trial Tr. at 155.) Sergeant Skidmore (Skidmore) of the Helena City Police was first

approached by Taylor, who introduced him to Alan. (Trial Tr. at 166.) Skidmore took Alan's statement and photographed his injuries. (D.C. Doc. 2; Trial Tr. at 166-168.) Skidmore then spoke to Boone and Misty. (Trial Tr. at 172.) Although Misty admitted to Skidmore that she had been drinking, and although he "could smell alcohol on her person," Skidmore did not consider her impaired. (Trial Tr. at 173.) Skidmore and two officers remained in the trailer court for an hour. (Trial Tr. at 176.) The police issued a broadcast for Helm, and Skidmore asked Misty where Helm was living, but she "did not really give [Skidmore] a clear answer on that." (Trial Tr. at 176, 184.) Police located Helm in a residence at the trailer court four days after the event. (Trial Tr. at 178-179.)

Helm was arrested on June 30, 2016. (Trial Tr. at 192) He was then charged by information on July 6, 2016, with one count of partner or family member assault against Misty. The information alleged that Helm purposely or knowing caused Misty reasonable apprehension of bodily injury in violation of § 45-5-206(1)(c), MCA. Helm was also charged with one count of partner family member assault against Alan,

in violation of § 45-5-206(1)(a), MCA. (D.C. Doc 3.) The case proceeded to trial on June 13, 2017. (D.C. Doc 52.)

At trial, the State introduced testimony from Boone, Taylor, Skidmore, and Officer Renshaw, who had arrested Helm a few days after the event. (D.C. Doc. 52; Trial Tr. at 178-179.) Neither Alan nor Misty testified. (D.C. Doc. 52.) Helm testified in his own defense. (D.C. Doc. 52.) During the trial, the only State witness that testified as to what occurred inside the trailer was Boone. (Trial Tr. at 126-148.) Boone described the altercation as a heated argument primarily instigated by Helm. (Trial Tr. at 126-148.) None of Boone's testimony regarding the start of the altercation was corroborated by any other of the State's witnesses. (Trial Tr. at 148-205.) And no witness testified about whether Misty seemed afraid while inside the trailer.

According to Boone's testimony, Alan, who was 16, overpowered his father and "threw" him into the half-broken porch-door until the remaining hinges came off. (Trial Tr. at 144, 146.) Boone also mentioned that he tried to protect Misty from the altercation, but he too was pushed onto the porch. (Trial Tr. at 144-45.) In contrast, Helm testified that he was set upon by Misty after confronting her about the

use of his phone charger and accusing her of having inappropriate sexual relations with minors. (Trial Tr. at 208-09.) After making the latter accusation, Helm was attacked by Misty, and Alan and Boone joined in the fray and pushed him out on the porch. (Trial Tr. at 208-10.) At the close of the State's case, counsel for Helm moved for a directed verdict due to the insufficiency of the evidence about Misty's mental state. (D.C. Doc. 57.) The Court denied the motion. (Trial Tr. at 241.)

During deliberations, the jury sent an inquiry to the Court in which they requested Helm's testimony. (Trial Tr. at 277; D.C. Doc 54.) The Court, acting with the advice of both counsel, declined the jury's request and instructed the jury to rely on their recollection of Helm's testimony. (Trial Tr. at 277.)

The jury returned a verdict of guilty on both counts on June 14, 2017. (D.C. Doc. 58). Helm was sentenced on August 4, 2017. (D.C. Doc. 65). After several amendments to the judgment, Helm filed his notice of appeal on October 23, 2017. (D.C. Doc. 72.)

STANDARD OF REVIEW

This Court reviews a denial of a motion for a directed verdict to determine whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. The decision is within the sound discretion of the trial court and will not be reversed on appeal absent an abuse of discretion. *State v. Vukasin*, 2003 MT 230, ¶ 16, 317 Mont. 204, 75 P.3d 1284 (citing *State v. Landis*, 2002 MT 45, ¶ 23, 308 Mont. 354, 43 P.3d 298).

SUMMARY OF THE ARGUMENT

In order to convict a defendant of partner family member assault, the State must prove beyond a reasonable doubt that the defendant “caus[ed] reasonable apprehension of bodily injury in a partner or family member.” Section 45-5-206(1)(c), MCA. Whether the victim reasonably apprehended bodily injury can be proven by circumstantial evidence. But if the victim does not testify, this Court requires some evidence of the victim’s appearance, utterances, or behavior, in order to support an inference that the victim reasonably apprehended bodily injury. In this case, the victim did not testify, and there was no

testimony from any witness about the victim's apparent mental state. The district court abused its discretion by denying Helm's motion for a directed verdict because no rational trier of fact could have found, based on the evidence at trial, that Misty reasonably apprehended bodily injury.

ARGUMENT

- I. The District Court abused its discretion by denying Helm's motion to dismiss a PFMA charge for lack of evidence when the victim did not testify at trial, and there was insufficient circumstantial evidence to support an inference that the victim reasonably apprehended bodily injury.**

Section 46-16-403, MCA, provides that a defendant can make a motion to "dismiss the action and discharge the defendant" if the evidence is "insufficient to support a finding or verdict of guilty." There is sufficient evidence to support a conviction if any rational trier of fact could have found the essential elements of the offense beyond a reasonable doubt. *State v. Finley*, 2011 MT 89, ¶ 18, 360 Mont. 173, 252 P.3d 199. Although courts review the evidence in the light most favorable to the State, both the quality and the volume of the evidence must be sufficient to establish the elements of the crime beyond a

reasonable doubt. *State v. Gunderson*, 2010 MT 166, ¶ 58, 357 Mont. 142, 237 P.3d 74; *State v. Jackson*, 2009 MT 427, ¶ 23, 354 Mont. 63, 221 P.3d 1213; *State v. Merseal*, 167 Mont. 412, 415, 538 P.2d 1366, 1368 (1975).

In this case, Helm moved for a directed verdict as to Count I, in which the State charged Helm with “purposely or knowingly caus[ing] *reasonable apprehension of bodily injury* in a partner or family member,” Misty (D.C. Doc. 57); § 45-5-206(1)(c), MCA (emphasis added). In response to Helm’s motion, the Court reluctantly concluded that Boone’s testimony was sufficient to allow the jury to draw an inference about Misty’s mental state. (Trial Tr. at 200, 241.)

Although a criminal conviction can be based on entirely on circumstantial evidence, this Court has usually required evidence of the alleged victim’s behavior and utterances to buttress circumstantial evidence of a mental state. *State v. Vukasin*, 2003 MT 230, ¶ 20, 317 Mont. 204, 75 P.3d 1284; *Finley*, ¶¶ 4-16, ; *State v. McMahon*, 2003 MT 363, ¶ 22, 319 Mont. 77, 81 P.3d 508; *State v. Pingree*, 2015 MT 187, ¶¶ 27-28, 379 Mont. 521, 352 P.3d 1086. The standard for determining whether a person has “reasonably

apprehended bodily injury is that of a reasonable person under similar circumstances.” *Vukasin*, ¶ 19 (quoting *State v. McCarthy*, 1999 MT 99, ¶ 27, 294 Mont. 270, 980 P.2d 629). “A reasonable person standard is an objective one.” *Vukasin*, ¶ 19 (quoting *State v. Martel*, 273 Mont. 143, 150, 902 P.2d 14, 19 (1995)).

Boone testified that at the beginning of the incident, Helm and Misty were some distance apart on each side of the room. (Trial Tr. at 132.) Helm raised his voice, but he never used threatening language. (Trial Tr. at 132.) When asked whether Helm got closer to Misty, Boone said “kind of.” (Trial Tr. at 132.) Then, after having his memory refreshed by the prosecutor, Boone asserted that Helm had grabbed Misty’s arm. (Trial Tr. at 133-34.) The prosecutor proceeded to lead Boone to develop the necessary testimony:

Okay. And you said that you believed that Misty might get hurt; is that right?

A. Yes.

Q. Do you think that Alan, seeing the same thing you did --
Counsel for Defendant: Objection. Calls for speculation.

THE COURT: Sustained.

Q. So you believe, based on your viewpoint that

you saw, that Misty was going to get hurt by Alan -- or, excuse me -- by Daniel?

A. Yes.

Q. Okay. And then you think that Alan stepped in and was trying to get him to stop?

A. Yes.

(Trial Tr. at 134-35.)

On redirect, the prosecutor managed to prompt Boone to speculate about what Alan thought:

Q: And when Alan got involved, what was he doing?

A. Trying to get Daniel, or Dan, to leave.

Q. How come?

A. Because he thought that he would hurt Misty.

Q. Is that what you thought too?

A. Yes.

(Trial Tr. at 147.)

The prosecutor led Boone through his testimony in order to establish the only evidence that could support an inference as to Misty's mental state. The only part of Boone's testimony that could arguably establish Misty's mental state constituted little more than a dozen

words. (Trial Tr. at 134-35, 147.) The State did not present any corroborating testimony or evidence supporting Boone's subjective opinion. None of Boone's testimony references Misty's reactions, appearance, or words. (Trial Tr. at 134-35, 147.) The entirety of Boone's testimony was based on what he or Alan thought. (Trial Tr. at 127-148.)

This Court has ruled before on the sufficiency of evidence of a victim's reasonable apprehension of bodily injury, and in every case, this Court has required some evidence that would allow for an inference about the *victim's* mental state. In *Finley*, for example, the defendant had been charged with partner family member assault, specifically, causing reasonable apprehension of bodily injury in his wife pursuant to § 45-5-206(1)(c), MCA. The victim in that case ran out of her home at 1:41 am, called 911, breathless and crying, and reported that her husband was "going to crush my fucking head in." *Finley*, ¶ 4. Police officers arrived and witnessed the victim shaking and crying. She was wearing pajamas but no shoes in early April. *Finley*, ¶¶ 5-6. At trial, the victim recanted and claimed that many of her former statements were lies. On appeal from a guilty verdict in justice court, the district court concluded that the State had not met its burden to show that the

victim experienced reasonable apprehension of bodily injury. *Finley*, ¶ 15.

This Court reversed the district court's ruling. *Finley*, ¶ 33. This Court concluded that the State had circumstantial evidence that directly related to the victim's mental state. *Finley*, ¶ 30. Even though the victim recanted her story, the jury heard the victim's own words on the 911 call, and they heard she was crying. *Finley*, ¶ 30. The jury also heard testimony from police officers who described the trashed appearance of the house, the victim's lack of appropriate clothing and her distraught appearance. *Finley*, ¶ 30. That circumstantial evidence was sufficient to allow the jury to draw an inference that the victim apprehended bodily injury.

In contrast, in this case, there is no evidence describing or otherwise recording Misty's appearance or behavior that could lead a rational trier of fact to conclude that Helm had caused her "reasonable apprehension of bodily injury." *Gunderson*, ¶ 58. Misty never called 911, and no evidence about her words, behavior, or appearance was ever presented to the jury. Boone testified that Helm and Misty were both yelling, that Helm "kind of" got closer to Misty, and that Helm grabbed

Misty's arm, but Boone did not say anything about how Misty looked or acted in response to Helm. Boone testified only that he thought Helm might hurt Misty. (Trial Tr. at 133-35, 147.) In stark contrast to the volume and character of evidence in *Finley*, there is no evidence in this case that could "afford[] an inference or presumption of [Misty's] reasonable apprehension of bodily injury." Section 26-1-102(1), MCA. At best, Boone's testimony allows for an inference that Boone felt apprehensive on Misty's behalf. Such an inference is insufficient to prove an element of PFMA beyond a reasonable doubt.

Similarly, the defendant in *Vukasin* was charged with multiple felony and misdemeanor counts, including PFMA, following a night of drinking and rampaging. *Vukasin*, ¶ 12. Vukasin's partner, Zigan, knew Vukasin had been drinking on the evening in question, and she knew from past experience that he became violent when he was drunk. *Vukasin*, ¶ 7. Anticipating Vukasin's return to their apartment, Zigan left the apartment and went to stay with a neighbor. Vukasin eventually returned to the apartment and realized Zigan was hiding from him in the neighbor's apartment. *Vukasin*, ¶ 8. Vukasin came looking for Zigan, and she locked herself in the neighbor's bathroom. In

the minutes that ensued, Zigan heard Vukasin ransack her apartment, shattering glass in the process. *Vukasin*, ¶ 9. She also heard him yell “get your ass over here you fucking whore. I’m going to kill you.”

Vukasin, ¶ 9. Zigan called 911 three times. *Vukasin*, ¶ 21. When officers arrived and attempted to contact Vukasin, Zigan saw Officers jump backwards as Vukasin stabbed a knife through the front door ten times, each time penetrating the wooden door with four or five inches of blade. *Vukasin*, ¶ 21.

Vukasin was ultimately convicted of PFMA. Zigan testified at his trial. *Vukasin*, ¶¶ 8, 18. On appeal, this Court was asked to determine whether, after viewing all the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of PFMA beyond a reasonable doubt. *Vukasin*, ¶ 16.

Specifically, Vukasin contended that no rational trier of fact could have concluded that his partner, Zigan, reasonably apprehended bodily injury. *Vukasin*, ¶ 22. This Court disagreed, and affirmed the district court’s denial of Vukasin’s motion for a directed verdict. *Vukasin*, ¶ 22. Essential to this Court’s determination in that case were the facts that Zigan hid from Vukasin, that she could hear him ransacking their

apartment and threatening to kill her, that she called 911 three times for help, and that she witnessed him stabbing at officers through a door. *Vukasin*, ¶ 22. This Court concluded that a reasonable person under similar circumstances would have apprehended bodily injury. *Vukasin*, ¶ 22.

Vukasin differs from the case at bar in several crucial respects. First, *Vukasin*'s partner testified at trial, whereas Helm's partner did not. As a result, the jury in *Vukasin* did not need to rely only on circumstantial evidence of the partner's mental state—she told the jury herself of her concerns for her safety. *Vukasin*, ¶ 8. Second, *Vukasin*'s behavior involved verbal threats of violence, and physical acts of destruction and violence, all of which would cause fear of bodily injury in a reasonable person. In contrast, in this case, there was conflicting testimony about whether Helm or Misty started the verbal altercation, (*Compare* Trial Tr. at 127-48 *with* Trial Tr. at 208-09), and there was no testimony indicating Misty had a preexisting reason to fear violence from Helm. Furthermore, Misty followed Helm outside the trailer to continue yelling at him (not the other way around), and an eye-witness testified that Helm walked away from the incident. (Trial Tr. at 153-

54.) There is no indication anywhere in the testimony from Helm’s trial that Misty had reason to fear anything from Helm other than a withering argument. Under these circumstances, no reasonable person would have apprehended bodily injury.

In *McMahon*, this Court established that “reasonable apprehension of bodily injury” does not necessarily mean fear, but it does require that the victim “clearly show that [s]he apprehends the reality of the attack.” *McMahon*, ¶¶ 19-21 (*citing State v. LaMere*, 190 Mont. 332, 336, 621 P.2d 462, 464(1980)). In *McMahon*, the defendant walked into the bar where her husband worked. *McMahon*, ¶ 4. After being invited to leave, the defendant refused to walk away and had to be forcibly escorted out. *McMahon*, ¶¶ 4-6. Before leaving, the defendant pulled a gun out of her purse, and had her finger on the trigger. *McMahon*, ¶ 7. The husband tackled the defendant to the floor and tried to keep the gun flat. *McMahon*, ¶ 7. Other patrons helped and managed to wrestle the gun from the defendant. *McMahon*, ¶ 7. The husband stated at trial that he was not afraid of the defendant, but the Court concluded that he understood and took seriously the possibility of getting injured, and that was sufficient evidence to establish the

necessary element of reasonable apprehension of bodily injury.

McMahon, ¶¶ 19-21.

In stark contrast to the facts in *McMahon*, Helm was invited into the trailer before the verbal altercation started, and although he and Misty began arguing, there was no testimony or evidence showing that *Misty* perceived or apprehended any attack from Helm. (Trial Tr. at 208, 127-48; D.C. Doc. 2). Taylor and Boone both testified that after the struggle between Alan and Helm was broken up, Helm walked away. (Trial Tr. at 144-45, 152-153.) It was Misty who came out of the trailer and started yelling at and approaching Helm. (Trial Tr. at 153.) Taylor then got in between them, and Helm continued to walk away. (Trial Tr. at 153.) Nothing in Misty's behavior outside the trailer suggests that she was apprehensive of being injured moments before while inside the trailer, or that she perceived a possibility of being injured by Helm.

McMahon, ¶¶ 19-21.

Finally, in *Pingree*, the defendant was charged with partner family member assault after he discharged a gun near his wife. *Pingree*, ¶ 3. The wife was subpoenaed but did not appear for trial. *Pingree*, ¶ 5. In lieu of her testimony, the State introduced the wife's testimony from

a civil order of protection hearing. *Pingree*, ¶ 5. Additionally, the State presented evidence of the victim’s 20-minute 911 phone call. *Pingree*, ¶¶24-26. Then, the State called five witnesses: the 911 dispatcher who spoke directly with the victim; one deputy and two detectives who testified as to the role of the gun and the bullets fired from it; and, finally, a Montana Crime Laboratory forensic scientist who testified as to the probability of the gun accidentally discharging. *Pingree*, ¶¶ 24-26. During deliberations, the jury asked to review the transcript of the order of protection hearing. *Pingree* ¶ 5. Pingree was convicted.

On appeal, this Court determined that the introduction at trial of the wife’s testimony from the hearing on the order of protection violated the defendant’s confrontation rights. *Pingree*, ¶¶ 10-11. This Court reversed his conviction. *Pingree*, ¶ 28. However, this Court explained that “while not sufficient to establish harmless error, the State may have had sufficient evidence to pursue the prosecution without using [the] statements from the prior hearing.” *Pingree*, ¶ 24. The Court in *Pingree* cited to *Finley* for the proposition that introducing circumstantial evidence of the non-testifying victim’s mental state—such as 911 recordings, multiple witnesses describing the behavior and

appearance of the victim and property damage—is an appropriate “evidence-based approach[] to domestic violence prosecution.” *Pingree*, ¶ 23 (citing *Finley*, ¶ 31).

Like the victim in *Pingree*, Misty did not appear for trial to testify even though she had been subpoenaed. Nevertheless, the State had the obligation to present evidence sufficient for a rational trier of fact to find the essential elements of the crime beyond a reasonable doubt.

Vukasin, ¶ 16. Unlike the five witnesses in *Pingree*, the witnesses for the State in this case did not testify in any meaningful way about Misty’s appearance or state of mind. In fact, Taylor testified that Misty appeared intoxicated and that she yelled at and moved towards Helm to confront him about the scuffle between him and Alan. (Trial Tr. at 159, 153-54.) Taylor further testified that Misty had confronted Helm, and she appeared aggressive “towards the situation.” (Trial Tr. at 153.)

Thus, only Boone’s testimony about his own fears for Misty could have been relied upon by the jury to infer that Misty herself apprehended bodily injury or acknowledged the possibility of getting injured.

McMahon, ¶¶ 19-21.

The evidence the State marshalled in this case to prove that Misty was apprehensive about Helm causing her bodily injury falls far short of what this Court has previously required to prove this element beyond a reasonable doubt. *See Pingree*, ¶ 23; *Finley*, ¶ 31. That the jury also requested a transcript of Helm’s testimony while they were deliberating suggests that they were placing considerable emphasis on what occurred inside the trailer as Helm left and walked away after the fight. (Trial Tr. at 277; D.C. Doc 54.) In commenting on the record about the substance and character of the evidence, the district court admitted “there was some testimony about his demeanor and the element of fear, but I agree there’s not a lot . . . I’m not sure that it’s as strong as some of the other case, but I think there was testimony from Mr. Boone that he -- from his observation of the scene, he feared that Mr. Helm was going to assault Ms. Helm.” (Trial Tr. at 200, 241.) It was on that basis that the district court denied Helm’s motion.

The Court has consistently maintained that a verdict must be supported by substantial evidence. *Merseal*, 167 Mont. at 415, 538 P.2d at 1368. The State’s evidence in this case, primarily presented through Boone’s testimony, is neither of sufficient volume nor of sufficient

quality to constitute “substantial evidence.” *Id.* The district court therefore abused its discretion when it denied Helm’s motion for a directed verdict on the charge of partner family member assault. Section 46-16-403, MCA.

CONCLUSION

The victim of the charged partner family member assault in this case did not testify, and there was no testimony from any witness about the victim’s apparent mental state. The district court abused its discretion by denying Helm’s motion for a directed verdict because no rational trier of fact could have found, based on the evidence at trial, that the victim reasonably apprehended bodily injury. Therefore, this Court should reverse the district court’s denial of Helm’s motion for a directed verdict on Count I, and remand with instructions to dismiss that count for insufficient evidence.

Respectfully submitted this 17th day of August, 2018.

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CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11 of the Montana Rules of Appellate Procedure, I certify that this principal brief is printed with a proportionally-spaced roman text, Century Schoolbook, and a typeface of 14 points, and is double-spaced except for footnotes and quoted, indented material. This brief contains 4,191 words, as calculated by Microsoft Word for Windows, excluding the Cover, Table of Contents, Table of Authorities, Certificate of Compliance, Certificate of Service, and Appendix.

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APPENDIX

Order Denying Motion for Directed Verdict.....	App. A
Second Amended Judgment and Commitment.....	App. B

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I, Samir F. Aarab, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellant's Opening to the following on 08-17-2018:

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