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STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1465

State of Minnesota,
Respondent,

vs.

Richard A. Martin,
Appellant.

Filed August 26, 2008
Affirmed
Klaphake, Judge

Sherburne County District Court
File No. K4-06-2015

Lori Swanson, Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101-2134; and

Arden J. Fritz, Assistant County Attorney, Sherburne County Attorney's Office, 13880 Highway 10, Elk River, MN 55330 (for respondent)

Lawrence Hammerling, Chief Appellate Public Defender, Roy G. Spurbeck, Assistant State Public Defender, 540 Fairview Avenue North, Suite 300, St. Paul, MN 55104 (for appellant)

Considered and decided by Klaphake, Presiding Judge; Toussaint, Chief Judge; and Worke, Judge.

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

KLAPHAKE, Judge

Appellant Richard A. Martin challenges his conviction for third-degree assault, Minn. Stat. § 609.223, subd. 1 (2004), arguing that the evidence was insufficient to sustain the jury's verdict. Appellant also filed a pro se supplemental brief, generally alleging ineffective assistance of trial counsel.

Because the record evidence is sufficient to sustain the verdict and does not support a claim of ineffective assistance of counsel, we affirm.

D E C I S I O N

Sufficiency of the Evidence

In a sufficiency of the evidence claim, our court's role is limited to ascertaining whether the facts in the record and the inferences drawn from those facts would permit a jury to reasonably conclude that the defendant was guilty of the charged offense. *Bernhardt v. State*, 684 N.W.2d 465, 476 (Minn. 2004). The reviewing court views the evidence in the light most favorable to the verdict and assumes that the jury believed the state's witnesses and disbelieved contradictory testimony. *State v. Pippitt*, 645 N.W.2d 87, 92 (Minn. 2002). This is particularly true when the jury is faced with conflicting testimony, because the task of evaluating the credibility of witnesses belongs to the jury. *Id.*

Appellant claims that the state failed to prove beyond a reasonable doubt that he did not act in self-defense. The concept of self-defense permits a person to use reasonable force against another "when used . . . in resisting or aiding another to resist an

offense against the person[.]" Minn. Stat. § 609.06, subd. 1(3) (2006). The defendant has the burden of producing evidence to support a self-defense claim, but the state retains the burden of proving beyond a reasonable doubt that a defendant did not act in self-defense. *State v. Penkaty*, 708 N.W.2d 185, 207 (Minn. 2006).

A self-defense claim involves four elements: (1) an absence of aggression or provocation by the party claiming self defense; (2) an actual and honest belief that great bodily harm could result; (3) a reasonable basis for this belief; and (4) lack of reasonable means to retreat or avoid the physical conflict. *State v. Soukup*, 656 N.W.2d 424, 428 (Minn. App. 2003), *review denied* (Minn. Apr. 29, 2003). A defendant may claim self-defense only when there was no reasonable alternative to his actions and when he has not needlessly joined in combat. *Id.* at 429.

The person claiming self defense may use only the level of force reasonably needed to protect himself or herself. *Id.* Various factors are relevant to determine whether the force used was reasonable, including (1) the relative ages and sizes of victim and defendant, (2) the victim's reputation for violence, (3) previous threats or fights between victim and defendant, (4) the defendant's level of aggression, and (5) provocation by the victim. *Id.*

Unlike *Penkaty* and *Soukup*, in which the district court refused to give a self-defense instruction, the district court here did instruct the jury on the elements of self-defense. Our review, therefore, is limited to whether in light of the evidence produced, the jury, acting with due regard for the presumption of innocence and the requirement of

proof beyond a reasonable doubt, could reasonably find defendant guilty. *Bernhardt*, 684 N.W.2d at 476.

While some evidence might have suggested that appellant acted in self-defense, other evidence showed that appellant was the aggressor and used force beyond a reasonable level. We generally defer to the jury when its verdict involves reconciliation of conflicting testimony and credibility determinations. *Pippitt*, 645 N.W.2d at 92. There is sufficient evidence here to support the jury's verdict and to rebut appellant's self-defense claim beyond a reasonable doubt.

Ineffective Assistance of Counsel

In a pro se supplemental brief, appellant makes what appears to be an ineffective assistance of counsel claim. Appellant's brief is a narrative of his version of the facts and includes some claims of actions taken by his attorney with which he disagrees. Appellant cites no authority and presents no legal arguments. Generally, a party waives claims by failing to cite legal authority or make legal arguments in the appellate brief. *State v. Krosch*, 642 N.W.2d 713, 719 (Minn. 2002).

To the extent that appellant makes a cognizable claim of ineffective assistance of counsel, this court must determine whether appellant has shown by a preponderance of evidence that (1) his trial counsel's performance was so deficient that it fell below an objective standard of reasonableness, and (2) he was so prejudiced thereby that a different outcome would have resulted but for the error. *Dukes v. State*, 621 N.W.2d 246, 252 (Minn. 2001). An attorney acts within an objective standard of reasonableness if the attorney exercises the customary skills and diligence of a reasonably competent attorney.

Id. There is a strong presumption that an attorney acts competently. *Id.* As a general rule, matters of trial strategy do not provide a basis for an ineffective assistance of counsel claim. *State v. Doppler*, 590 N.W.2d 627, 633 (Minn. 1999). Trial strategy includes such decisions as what evidence to present to a jury, which witnesses to call, and other trial tactics. *Id.* Appellant alleges the following attorney errors: (1) his attorney did not address the incident step by step; (2) he permitted the jury to see pictures of the victim in an ambulance; (3) the voices on a 911 tape were inadequately identified; and (4) his attorney failed to question 25 instances of testimony with which appellant disagreed. Because these claims are either not supported by the record or are matters of trial strategy, they do not provide a basis for an ineffective assistance of counsel claim.

Affirmed.