STATE OF MINNESOTA
IN COURT OF APPEALS
A08-1819

In the Matter of the Welfare of:
D. L. H., Child.

Filed August 11, 2009
Reversed and remanded
Lansing, Judge

Rice County District Court
File No. 66-JV-07-876

Marie L. Wolf, Interim Chief Appellate Public Defender, Jodie L. Carlson, Assistant Public Defender, Suite 300, 540 Fairview Avenue North, St. Paul, MN 55104 (for appellant D. L. H.)

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

G. Paul Beaumaster, Rice County Attorney, Benjamin Bejar, Assistant County Attorney, 218 Northwest Third Street, Faribault, MN 55021 (for respondent state)

Considered and decided by Halbrooks, Presiding Judge; Lansing, Judge; and Shumaker, Judge.

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

LANSING, Judge

The district court adjudicated DLH delinquent based on its determination of guilt on a charge of second-degree assault. On appeal from adjudication, DLH argues that the district court erred by ruling that he had been restored to competency, by denying his

motion for a continuance to obtain updated reports, and by finding that the evidence was sufficient to establish his guilt on the charges of second-degree assault and terroristic threats. Although we reject DLH's claim that the evidence is legally insufficient to support adjudication, we agree that the proceedings did not comply with the rules of juvenile delinquency procedure and that there is an insufficient basis to establish that DLH had been restored to competency. We, therefore, reverse and remand for further proceedings.

F A C T S

In a March 2007 delinquency petition, the state alleged that DLH committed second-degree assault and terroristic threats against his mother on the afternoon of December 13, 2006. DLH, who suffers from an autism spectrum disorder, was then twelve years old. After DLH returned home from school, his mother had instructed him to do his homework. He became agitated and grabbed his mother's hair. When DLH let go of her hair, she ran into the back room of the house, locked herself in the room, and called the police.

DLH began hammering nails in the front door and braced a chair underneath the handle to prevent the door from opening. He then went to the door of the locked room where his mother had taken refuge and began hammering on the door. He stopped hammering when the police arrived. When the police finally got into the house, they found DLH in the kitchen holding a steak knife. DLH complied with the police request to drop the knife.

Following issuance of the delinquency petition, DLH moved for a competency evaluation under Minn. R. Juv. Delinq. P. 20.01 and 20.02. The district court granted the motion. Dr. Penny Zwecker completed and filed the evaluation in September 2007. She concluded that DLH did not have a defense of mental deficiency under Minn. R. Juv. Delinq. P. 20.02 because he was capable of understanding the nature of his acts at the time of the offense and also capable of understanding that "the acts were wrong." Zwecker diagnosed DLH with Asperger's syndrome, an autism spectrum disorder, and concluded that, under Minn. R. Juv. Delinq. P. 20.01, he did not "appear competent to proceed with the pending [c]ourt matters" because he was not sufficiently able to consult with his counsel or to participate in his defense.

The district court reviewed Dr. Zwecker's report and determined under Minn. R. Juv. Delinq. P. 20.01 that DLH was not competent to proceed. The court suspended proceedings on the two felony charges and ordered DLH's therapist, Simon Zeller, to work with DLH "to restore him to competency." The court order required Zeller to "file with this [c]ourt and [to] provide to the child's counsel and the prosecuting attorney, a report on the child's mental condition and competency to proceed" every six months following the September 2007 finding of incompetence.

After working with DLH for a total of fifteen hours, Zeller wrote a letter to DLH's mother on March 20, 2008. He stated that he believed DLH "is responsible for his actions," "can understand the consequences of defiant behavior," and "should be handled by you, as his parent, and by the court system as a young boy who can make judgments regarding matters of how to treat and react to others." Zeller sent his letter to DLH's

mother, the district court, and the state, but failed to comply with the court order to provide a copy to DLH's attorney. In an affidavit presented to the court, DLH's attorney stated that he received a copy from DLH's mother only a few days before a hearing that was held on April 14, 2008.

At the April hearing, the state brought Zeller's letter to the district court's attention and requested that the district court proceed on the felony charges. The district court noted that DLH had not filed a challenge to the March 20 letter. Relying on the failure of DLH's attorney to challenge the contents of the letter, the district court determined that DLH was competent to proceed and vacated the suspension of the felony charges. The district court accepted DLH's plea of not guilty and placed the case on the scheduling calendar for an evidentiary hearing on the charges in the petition. DLH did not object.

The evidentiary hearing was scheduled for May 22, 2008. A day before the hearing, DLH filed a motion to continue the hearing to allow for updated competency reports from Dr. Zwecker and DLH's current therapist, Mary Casey, and to reconsider the competency determination based on the updated reports. At the beginning of the evidentiary hearing, the district court denied DLH's motion. The basis for the denial was that the motion was untimely because the competency issue had been decided at the April 14 hearing without objection.

At the end of the evidentiary hearing, the district court found DLH guilty of both second-degree assault and terroristic threats. Following a disposition hearing, it adjudicated DLH delinquent for committing second-degree assault but not for terroristic threats because the offenses arose "out of the same course of conduct." DLH challenges

the procedure and the substantive rulings on competency and also appeals the district court's determination of guilt on the charges of second-degree assault and terroristic threats.

D E C I S I O N

The issues raised in this appeal are procedural and substantive challenges to the district court's determination that DLH was restored to competency. DLH also raises a sufficiency-of-evidence issue on the underlying offenses of second-degree assault and terroristic threats. We first address the competency issues and, second, the sufficiency-of-evidence issues, which implicate double jeopardy.

I

"Under the Fifth and Fourteenth Amendment Due Process Clauses, a criminal defendant may not be tried and convicted unless the defendant is legally competent." *State v. Camacho*, 561 N.W.2d 160, 171 (Minn. 1997). The right not to be tried or convicted while incompetent is a fundamental right that applies in the context of juvenile-delinquency proceedings as well as adult criminal proceedings. *In re Welfare of S.W.T.*, 277 N.W.2d 507, 511 (Minn. 1979). In Minnesota, a child is incompetent and may not "be tried, or receive a disposition for any offense when the child lacks sufficient ability to (A) consult with a reasonable degree of rational understanding with the child's counsel; or (B) understand the proceedings or participate in the defense due to mental illness or mental deficiency." Minn. R. Juv. Delinq. P. 20.01, subd. 1.

DLH challenges the district court's April 2008 competency determination on procedural grounds. The rules of juvenile delinquency procedure govern competency

determinations. Minn. R. Juv. Delinq. P. 20.01. The rules provide that, before a district court may make a competency determination, the child's counsel must receive a competency report, the child must be given notice of a hearing on the issue of the child's competency to proceed, and the hearing must be held within ten days of receiving the report. *Id.*, subds. 3(D), 4(A). "If the court determines that the child is competent by the greater weight of the evidence, the court shall enter a written order finding competency." *Id.*, subd. 4(E). The rules are less specific in setting forth a procedure for determining restoration to competency. They do require, at a minimum, that the child's counsel receive copies of subsequent reports prepared by "the person charged with the child's supervision." *Id.*, subd. 6.

Related, in part, to Zeller's failure to provide DLH's attorney with a copy of the letter to DLH's mother in advance of the hearing, the April 2008 proceedings took several irregular turns. First, because of the short notice, DLH's attorney understood the letter to be a provisional report, not one that could result in a dispositive order on competency, and failed to challenge the letter. Second, because the attorney did not challenge Zeller's letter, the district court did not require a formal competency report and relied, instead, on the letter to DLH's mother. Third, the hearing consisted only of the district court's brief inquiry into the competency issue and did not allow for consideration of conflicting evidence. And fourth, the district court did not enter a "written order finding competency" to explain or document its finding of restored competency. *Id.*, subd. 4(E).

Shortly after the hearing, DLH's attorney filed a motion to request a continuance of the evidentiary hearing on the petition. A child's counsel may bring a motion to determine the competency of the child at any time during the delinquency proceedings "if there is reason to doubt" the child's competency. *Id.*, subd. 3. A district court "has a continuing obligation to inquire into a juvenile's fitness for trial" and, when there is sufficient doubt as to the juvenile's fitness to proceed, must observe procedures adequate to ensure competency. *S.W.T.*, 277 N.W.2d at 512; *see also State v. Bauer*, 310 Minn. 103, 114, 245 N.W.2d 848, 854 (1976) (addressing district court's similar obligation in adult criminal proceedings).

It is undisputed that the relevant evidence before the district court at the time DLH moved for a continuance was Dr. Zwecker's competency evaluation, Zeller's letter to DLH's mother, and an affidavit from DLH's counsel. Taking into account due process considerations, appellate courts in Minnesota have reviewed competency determinations on undisputed facts "to determine whether the district court gave proper weight" to the evidence in the record. *Camacho*, 561 N.W.2d at 174 (stating standard of review for adult competency determination). This review standard has also been applied to competency determinations in juvenile proceedings. *See In re Welfare of D.D.N.*, 582 N.W.2d 278, 281 (Minn. App. 1998) (reviewing to determine whether district court properly weighed materially undisputed evidence).

Dr. Zwecker's initial competency evaluation concluded that DLH has Asperger's syndrome; that he does not "appear competent to proceed with the pending [c]ourt matters, by virtue of his qualitative impairment in communication and the difficulty that

he would have participating in his defense"; and that DLH "may never attain the competency to proceed" because his disorder "is not a mental illness that can be 'fixed' with psychiatric medication." *See Camacho*, 561 N.W.2d at 172 (stating that "prior medical opinion on competence to stand trial [is] relevant in determining whether there is reason to doubt the defendant's competence"). The evaluation was twenty-nine pages of single-spaced type and was based on five interview sessions with DLH, four interviews with DLH's mother, psychological testing, court documents, and DLH's mental health and educational records. Although the length of a report is not always indicative of the seriousness of the juvenile's condition, the thoroughness of the report and the relative complexity of DLH's mental condition is evident in the content of the report. The evaluation concluded that, as of September 2007, DLH was incompetent under Minn. R. Juv. Delinq. P. 20.01, subd. 1, because he lacked sufficient ability to consult with his counsel and participate in his defense.

In stark contrast, Zeller's one-page, summary letter dated March 20, 2008, does not refer to any part of the previous report and does not address the pivotal question—whether DLH had attained the ability to consult with counsel and participate in his defense. The letter indicates that Zeller had spent fifteen hours with DLH; that Zeller was submitting the letter to DLH's mother for "your consumption that can be referred onto the court for consideration"; that, in addition to Asperger's syndrome, "we should also be looking at depression"; that Zeller believed DLH "is responsible for his actions and can understand the consequences of defiant behavior"; that DLH's mother and the court system should treat DLH "as a young boy who can make judgments regarding

matters of how to treat and react to others" and should not make exceptions "for him any more than [for] any other child his own age"; and that her "parental leadership will be very important for [DLH]." The letter simply does not address whether DLH has developed a sufficient understanding of the criminal proceedings or skills that would allow him to consult with his attorney and participate in his defense.

In denying DLH's motion to continue the adjudication hearing to allow for updated competency reports, the district court relied primarily on the fact that DLH did not object to the district court's April 2008 determination that DLH had been restored to competency. The court's reliance on DLH's failure to object at the earlier hearing was misplaced not only because of the flawed notice, but, more importantly, because the right not to be tried or convicted while incompetent is a fundamental, nonwaivable right that can be raised at any time during the delinquency proceedings. *See* Minn. R. Juv. Delinq. P. 20.01, subd. 3 (noting that motion to determine competency shall be brought during proceedings when there is reason to doubt competency); *S.W.T.*, 277 N.W.2d at 511 (noting that right is fundamental).

The state emphasizes that DLH testified competently at trial. We agree that a defendant's demeanor at trial may be considered "in determining whether there is reason to doubt the defendant's competence." *Camacho*, 561 N.W.2d at 172. But the issue of competency was raised and decided in this case before DLH testified. Furthermore, DLH's testimony reveals little about his understanding of the proceedings and ability to communicate because it consists mainly of "yes" and "no" answers. DLH's mother told Dr. Zwecker that, at earlier court proceedings, DLH answered questions affirmatively and

later told his mother he did not understand the questions that were asked. She indicated that DLH does not easily admit that he does not understand something.

We conclude that the district court's determination in April 2008 that DLH's competency had been restored did not comport with the rules of juvenile delinquency procedure, and the May 2008 determination that the competency issue did not warrant further inquiry was based on inadequate evidence of competency. We therefore reverse and remand.

II

DLH further contends that a new adjudication hearing is barred by double-jeopardy principles because the evidence is insufficient to support the determination of guilt on the second-degree-assault and terroristic-threats charges. *See Breed v. Jones*, 421 U.S. 519, 531, 95 S. Ct. 1779, 1786-87 (1975) (holding that double-jeopardy protection applies to delinquency proceedings); *State v. Clark*, 755 N.W.2d 241, 256 (Minn. 2008) (stating that Double Jeopardy Clause bars retrial when evidence at first trial was legally insufficient).

A person commits second-degree assault when he uses a dangerous weapon to "intentional[ly inflict] or attempt to inflict bodily harm upon another" or uses a dangerous weapon with the "intent to cause fear in another of immediate bodily harm or death." Minn. Stat. §§ 609.222, subd. 1 (2006) (defining second-degree assault with dangerous weapon), .02, subds. 6 (defining "dangerous weapon"), 10 (2006) (defining "assault"). A person commits terroristic threats when he "threatens, directly or indirectly, to commit any crime of violence with purpose to terrorize another" or makes the threat "in a

reckless disregard of the risk of causing such terror." Minn. Stat. § 609.713, subd. 1 (2006).

In reviewing a claim of insufficient evidence, we are limited to ascertaining whether, given the facts and legitimate inferences drawn from them, the district court could reasonably determine that the state proved the allegations in the delinquency petition beyond a reasonable doubt. *See* Minn. R. Juv. Delinq. P. 13.09 (stating that court shall find whether allegations have "been proved beyond a reasonable doubt"); *In re Welfare of S.M.J.*, 556 N.W.2d 4, 6 (Minn. App. 1996) (applying general appellate deference standards to juvenile proceeding). We review the record in the light most favorable to the determination. *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989). And we assume that the court believed testimony supporting the determination and disbelieved contrary evidence. *S.M.J.*, 556 N.W.2d at 6.

Viewing the record in the light most favorable to the district court's determinations, the evidence supports the findings of guilt. Relevant to the second-degree-assault charge, DLH's mother testified that DLH grabbed her hair when she showed him his homework, that she had to get away from him, that she went to the den to let him cool down, that she put her foot in front of the door, that DLH tried to get into the room and "became very angry," that she was afraid because she had never seen DLH act like that before, that she told him she "had to call the police," that DLH then went from "very angry to extremely angry," that she could hear DLH "wrecking the phone" outside the door because he did not realize she had her cell phone with her, that she called the

police on her cell phone, and that DLH then "got a hammer and knocked a hole through the door."

DLH argues that the evidence shows only that he used the hammer to damage the door and not to assault his mother. DLH emphasizes that, according to his mother, he dropped the hammer once he was able to see her face. But, as the district court noted, second-degree assault requires only that a person use a dangerous weapon with the intent to cause fear in another of immediate bodily harm. Minn. Stat. §§ 609.02, subds. 6, 10, .222, subd. 1. And intent may be proved circumstantially with evidence of the defendant's conduct before and after the crime. *Davis v. State*, 595 N.W.2d 520, 525-26 (Minn. 1999). The direct and circumstantial evidence provides a sufficient basis for concluding that DLH used the hammer with the intent to cause fear in his mother of immediate bodily harm.

Similarly, the evidence is sufficient to support the determination of guilt on terroristic threats. The same evidence that supports the determination on second-degree assault supports the district court's finding that, while committing assault, DLH directly or indirectly threatened to commit a crime of violence and that he did so with the purpose to terrorize or recklessly disregarded the risk of causing terror. *See* Minn. Stat. § 609.713, subd. 1 (defining terroristic threats). Specifically, the evidence permitted the inference that DLH, with a reckless disregard of causing terror, threatened to commit second-degree assault by using the hammer in a way that presented a further threat to intentionally inflict bodily harm. *See* Minn. Stat. §§ 609.02, subd. 10 (defining "assault" as "the intentional infliction of or attempt to inflict bodily harm upon another"), .222,

subd. 1 (defining second-degree assault as assault with dangerous weapon); *see also* Minn. Stat. § 624.712, subd. 5 (2006) (stating that second-degree assault is "crime of violence").

Because the evidence is sufficient to support the determinations of guilt on the second-degree-assault and terroristic-threats charges, a new evidentiary hearing on the charges in the petition is not barred by double-jeopardy principles.

Reversed and remanded.