STATE OF MINNESOTA
IN COURT OF APPEALS
A13-1160

In the Matter of the Welfare of: D.D.S., Child

Filed March 31, 2014
Reversed
Klaphake, Judge[*]

Anoka County District Court
File No. 02-JV-13-652

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

Mark Metz, Carver County Attorney, Jennifer L. Christensen, Assistant County Attorney, Chaska, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Susan J. Andrews, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Connolly, Presiding Judge; Chutich, Judge; and Klaphake, Judge.

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

KLAPHAKE, Judge

Appellant, a juvenile, challenges his delinquency adjudication for fifth degree assault and disorderly conduct. Because the state failed to prove beyond a reasonable doubt that appellant did not act in self defense, we reverse.

[*] Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

FACTS

During the lunch hour on September 6, 2012, J.M., a student at Chaska High School, repeatedly taunted and yelled at appellant D.D.S. in the lunch room. D.D.S. removed himself from the situation by leaving the lunch room and walking towards his next class. But J.M. immediately left the lunch room as well, followed D.D.S., and caught up to him in the student filled hallway. The two stopped and exchanged words. During this exchange, J.M. gestured with his hands and folded his arms across his chest; D.D.S. kept his arms near his sides. J.M. then jumped in front of D.D.S., faced D.D.S., and appeared to be blocking D.D.S.'s path. J.M. then shoved D.D.S. into a wall. As D.D.S. was stumbling, he clenched his two fists and raised his arms in front of his torso. After additional words, D.D.S. unclenched his fists and lowered his arms as J.M. began to walk way. Moments later, J.M. swung around, again facing D.D.S., and punched D.D.S. in the face, breaking off one of D.D.S.'s teeth. J.M. punched D.D.S. several more times, while D.D.S. backed up down the hallway, and only then did D.D.S. respond by punching and wrestling J.M. At one point J.M. was near the ground, but he stood back up and the mutual "brawling" continued until other students physically intervened. As a result of the fight, D.D.S. was left with half a tooth, J.M. suffered a broken finger, and both parties sustained cuts and bruises. Significant portions of the altercation were captured on video, by a school security camera and a student's cell phone.

Respondent State of Minnesota charged both J.M and D.D.S. with fifth degree assault, in violation of Minn. Stat. § 609.224, subd. 1 (2012). J.M. pleaded guilty to the charge, but D.D.S. proceeded to trial, asserting self-defense. At trial, the state added a

charge of disorderly conduct, in violation of Minn. Stat. § 609.72, subd. 1(1) (2012). After a bench trial, the district court issued a written order rejecting D.D.S.'s claim of self defense and adjudicating D.D.S. delinquent as charged. Thereafter, D.D.S. was placed on six months' probation.

D E C I S I O N

D.D.S. argues that the evidence is insufficient to prove beyond a reasonable doubt that he did not act in self defense throughout the altercation. We assess the sufficiency of the evidence supporting an adjudication of delinquency by determining whether the facts in the record and the legitimate inferences drawn from those facts reasonably support the fact finder's conclusion that the defendant committed the charged offense. *In re Welfare of J.R.M.*, 653 N.W.2d 207, 210 (Minn. App. 2002). In doing so, we view the evidence in the light most favorable to the conclusion and assume that the fact finder believed the evidence supporting the conclusion and disbelieved any evidence to the contrary. *Id.* The fact finder is to determine the credibility and weight given to the testimony of each witness. *In re Welfare of S.A.M.*, 570 N.W.2d 162, 167 (Minn. App. 1997). In reviewing the sufficiency of the evidence we apply the same standard to bench and jury trials. *In re Welfare of M.E.M.*, 674 N.W.2d 208, 215 (Minn. App. 2004).

A person may use reasonable force to resist an offense against the person. Minn. Stat. § 609.06, subd. 1(3) (2012); *State v. Soukup*, 656 N.W.2d 424, 428 (Minn. App. 2003), *review denied* (Minn. Apr. 29, 2003).[1] The use of force is reasonable when four

[1] It is undisputed that self defense is a defense to the adjudications at issue. *See Soukup*, 656 N.W.2d at 429 (self defense is a defense to charges of assault and "disorderly

elements are satisfied: (1) the absence of aggression or provocation by the defendant; (2) an actual and honest belief that the defendant was in imminent danger of death or great bodily harm; (3) the existence of reasonable grounds for that belief; and (4) the absence of a reasonable possibility of retreat to avoid the danger. *State v. Basting*, 572 N.W.2d 281, 285 (Minn. 1997). And "[t]he degree of force used in self-defense must not exceed that which appears necessary to a reasonable person under similar circumstances." *Id.* at 286. A defendant claiming self defense carries the burden of presenting evidence that creates a reasonable doubt as to whether the force used was justified. *Soukup*, 656 N.W.2d at 429. Once a defendant has met this burden, self defense is at issue and the state bears the burden of proving that the defendant's use or level of force was unreasonable. *State v. Glowacki*, 630 N.W.2d 392, 402 (Minn. 2001); *Soukup*, 656 N.W.2d at 429. "Respecting the presumption of innocence, any doubt regarding the legitimacy of a self-defense claim should be resolved in a defendant's favor." *Soukup*, 656 N.W.2d at 429.

After a careful examination of the record, we are not persuaded that the state disproved self defense beyond a reasonable doubt. The uncontroverted evidence establishes that J.M. was the aggressor and D.D.S. declined the invitation to physically fight as J.M. committed multiple acts of aggression—including shoving D.D.S. into a wall. D.D.S. only responded with force after J.M. punched him several times, and broke his tooth. D.D.S. testified that he felt his tooth break and sensed "a lot of pain." This

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conduct where the behavior forming the basis of the offense presents the threat of bodily harm").

injury clearly established reasonable grounds for D.D.S. to believe that he was in imminent danger of great bodily harm, *see State v. Bridgeforth*, 357 N.W.2d 393, 394 (Minn. App. 1984) (the loss of a tooth can satisfy the statutory definition of great bodily harm), *review denied* (Minn. Feb. 6, 1985), and the record demonstrates that D.D.S. had no reasonable possibility of retreat—the punch was thrown in a crowded hallway and was succeeded by several more punches. On this record, it is unreasonable to conclude that the state proved beyond a reasonable doubt that D.D.S.'s *use* of force was unreasonable. And in light of D.D.S.'s broken tooth, it is also unreasonable to conclude that the state proved beyond a reasonable doubt that D.D.S.'s *level* of force was unreasonable. Because the state failed to negate any element of D.D.S.'s self defense claim, the district court erred by adjudicating D.D.S. guilty of fifth degree assault and disorderly conduct.

Reversed.