STATE OF MINNESOTA
IN COURT OF APPEALS
A11-1069

In the Matter of the Welfare of: S. J. T., Jr.

Filed March 5, 2012
Affirmed
Hudson, Judge

Kandiyohi County District Court
File No. 34-JV-10-432

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

Jennifer K. Fischer, Kandiyohi County Attorney, Dain Olson, Assistant County Attorney, Willmar, Minnesota (for respondent State)

David Merchant, Chief Appellate Public Defender, Susan Andrews, Assistant Public Defender, St. Paul, Minnesota (for appellant S.J.T., Jr.)

Considered and decided by Johnson, Chief Judge; Hudson, Judge; and Huspeni, Judge.*

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

HUDSON, Judge

On appeal from his adjudication of third-degree assault, appellant argues that the evidence was insufficient to support his adjudication because the state failed to prove beyond a reasonable doubt that he was not acting in self-defense. Alternatively, appellant argues that his right to self-defense was revived. Because the state proved beyond a

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

reasonable doubt that appellant did not act in self-defense and his right to self defense was not revived, we affirm.

FACTS

On December 6, 2010, the state charged appellant S.J.T. with third-degree assault in violation of Minn. Stat. § 609.223 (2010). The state's juvenile petition alleged that S.J.T. assaulted N.R. by inflicting substantial bodily harm.

S.J.T. and N.R. knew each other through a mutual friend, Z.D. The disagreement between S.J.T. and N.R. began after N.R. left his cell phone in S.J.T.'s car. N.R. testified that S.J.T. delayed returning the phone and, once he did receive the phone, N.R. believed that S.J.T. owed him an apology. On November 1, Z.D. called N.R. to see if he wanted to hang out, and N.R. said that he was not interested if S.J.T. would be there because he was still upset over the phone incident. Z.D. was with S.J.T. at the time, and Z.D. told N.R. that S.J.T. would not be accompanying him. However, while Z.D. was speaking with N.R., S.J.T. grabbed Z.D.'s phone and called N.R. a "p---y." N.R. told S.J.T. to "f--- off" and then hung up.

Around 8:30 that night, Z.D. picked up N.R. and drove to the Valley Side Townhomes, an area with which N.R. was unfamiliar. N.R. testified that, as Z.D. pulled in to the parking lot, he thought he saw S.J.T.'s car parked there. Z.D. asked N.R. to get out of the car to open the driver's side door because it was broken. N.R. testified that, as he walked around the car, S.J.T. approached him. N.R. testified that S.J.T. pushed him several times and said, "Say f--- me again." N.R. then tackled S.J.T. to the ground and

put him in a headlock for about 40 seconds. S.J.T. freed an arm and punched N.R. twice in the face, and N.R. released S.J.T. from the headlock.

S.J.T. provided a different version of events at trial, testifying that N.R. was the aggressor. S.J.T. testified that he was visiting a friend at Regency West, a trailer park nearby Valley Side Townhomes, when S.J.T. called Z.D. to invite him over and Z.D. asked to borrow gas money. S.J.T. testified that he walked from Regency West to meet Z.D. in the Valley Side parking lot. S.J.T. testified that, as he approached Z.D.'s car, N.R. got out and rushed him. S.J.T. stated that he pushed back and N.R. tackled S.J.T. and put him in a headlock. According to S.J.T., the only way that he could get out of the headlock was to hit N.R.

After the fight, S.J.T. retrieved a lighter from Z.D.'s car. N.R. testified that S.J.T. held the lighter up to N.R., who thought it may have been a knife. N.R. called his guardian and asked her to pick him up. She testified that he was crying and asked her to come get him, that he was being beaten up, and that S.J.T. had a knife. S.J.T. testified that, after the altercation, he walked back to Regency West. N.R.'s guardian located N.R. walking on County Road 5 and took him to the hospital, where he was treated for a broken nose and a cut over his eye.

A Willmar police officer who investigated the incident interviewed S.J.T. Several of S.J.T.'s statements to the officer differed from his testimony, including how the encounter with N.R. came about that night and where the altercation took place.

Following a bench trial, the district court found S.J.T.'s testimony not credible, rejected his self-defense claim, and adjudicated S.J.T. delinquent for third-degree assault.

The district court ordered supervised probation with 40 hours of community service. This appeal follows.

D E C I S I O N

I

S.J.T. argues that the evidence is insufficient to support his adjudication for third-degree assault because the state failed to prove beyond a reasonable doubt that he was not acting in self-defense. A sufficiency-of-the-evidence challenge requires "a painstaking analysis of the record to determine whether the evidence, when viewed in a light most favorable to the conviction, was sufficient" for the fact-finder to reach its verdict. *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989). On appeal from the adjudication of delinquency, "an appellate court is limited to ascertaining whether, given the facts and the legitimate inferences, a fact[-]finder could reasonably make [the] determination" that each element of the delinquency petition was proved beyond a reasonable doubt. *In re Welfare of S.M.J.*, 556 N.W.2d 4, 6 (Minn. App. 1996). Because the fact-finder is in the best position to weigh the evidence and judge witness credibility, this court defers to the fact-finder's credibility determinations. *State v. Al-Naseer*, 788 N.W.2d 469, 473 (Minn. 2010).

The elements of self-defense include (1) the absence of provocation or aggression on the defendant's part; (2) the defendant's honest and actual belief of imminent danger of great bodily harm or death; (3) reasonable grounds for that belief; and (4) the lack of "a reasonable possibility of retreat to avoid the danger." *State v. Basting*, 572 N.W.2d 281, 285 (Minn. 1997). A defendant has the initial burden to produce evidence

supporting a claim of self-defense. *Id.* at 286. If the defendant has met that burden, "the state has the burden of disproving one or more of these elements beyond a reasonable doubt." *Id.* The state satisfies this burden by disproving any one of the four self-defense elements. *State v. Soukup*, 656 N.W.2d 424, 429 (Minn. App. 2003), *review denied* (Minn. Apr. 29, 2003). Assuming S.J.T. satisfied his burden of production, we conclude that the state proved beyond a reasonable doubt that S.J.T. did not act in self-defense.

First, the record provides ample evidence that S.J.T. was the aggressor. N.R. testified that S.J.T. called N.R. a p---y shortly before the altercation began, approached N.R. in the parking lot while saying "say f--- me again," and pushed N.R. The district court determined that N.R.'s testimony was more credible than S.J.T.'s, a determination that is afforded great deference on review. *See Basting*, 572 N.W.2d at 286 (affirming district court's crediting of testimony adverse to defendant's position on self-defense claim when testimony conflicted as to who initiated attack). Additionally, physical evidence of blood discovered by the investigating police officer at the parking lot where N.R. said the fight took place corroborates N.R.'s initial accounting to police and his trial testimony. Further, S.J.T.'s assertion that N.R. gained the upper hand by using a headlock does not diminish S.J.T.'s status as the initial aggressor. *See State v. Gray*, 456 N.W.2d 251, 258 (Minn. 1990) (concluding that sufficient evidence existed that defendant was aggressor, in part, because facts indicating victim "may have had the upper hand in the struggle at times . . . do[] not detract from defendant's status as the initial aggressor"). The evidence is sufficient to demonstrate that S.J.T. was the aggressor.

Second, S.J.T. arranged and instigated the altercation and, therefore, cannot claim an honest belief of imminent danger. Though the record indicates that S.J.T. believed he was in danger while N.R. held him in a headlock, the district court found that S.J.T. was the aggressor and set up the meeting with N.R. Based on the testimony of N.R. and N.R.'s guardian, this finding is reasonable. *See In re Welfare of S.M.J.*, 556 N.W.2d at 6 (limiting review of fact-finder's determination to whether fact-finder could reasonably make determination). As the instigator, S.J.T. may not claim that he held an honest belief of danger. *See State v. Edwards*, 717 N.W.2d 405, 411 (Minn. 2006) ("[T]he law does not permit or justify one who intends to commit an assault upon another to design in advance his own defense by instigating a quarrel . . . to create a situation wherein the infliction of the intended injury will appear to have been done in self-defense." (quotation omitted)). Because S.J.T. may not claim he had an honest belief of imminent danger, reasonable grounds do not exist for any purported belief of such danger.

Finally, S.J.T. could have avoided the danger. According to his testimony, he arrived by foot and, therefore, could have retreated on foot rather than approaching and pushing N.R. and stating "say f--- me again." If he arrived by car, as N.R. testified, S.J.T. also could have retreated by car. Further, rather than retreat, S.J.T. chose to meet N.R., with whom he had traded insults by phone earlier that night, which indicates he pursued, rather than avoided, the danger. *See State v. Buchanan*, 431 N.W.2d 542, 548 (Minn. 1988) (concluding that jury could have reasonably found that the defendant, rather than retreat, chose to meet victim with whom he had disagreement earlier in day, which included name calling, "and thereby insured a conflict would ensue").

To prove S.J.T. did not act in self-defense, the state need only have disproved one of the four self-defense elements. *Soukup*, 656 N.W.2d at 429. Because the evidence demonstrates that the state disproved each of the four elements, sufficient evidence existed to support S.J.T.'s adjudication.

II

In the alternative, S.J.T. argues that, even if he was the initial aggressor, he may claim self-defense because his right to self-defense was revived when N.R. put S.J.T. into a headlock. An aggressor's right to self-defense may be revived if he clearly manifests a good-faith intention to withdraw and removes a victim's apprehension or fear. *Bellcourt v. State*, 390 N.W.2d 269, 272 (Minn. 1986). S.J.T. argues that he did not have an opportunity to withdraw because when N.R. responded to S.J.T.'s pushing with a headlock, he could not breathe. But evidence that a victim may have had the upper hand during a struggle does not constitute a legally sufficient withdrawal. *Gray*, 456 N.W.2d at 258. Further, that N.R. used a debilitating headlock, possibly preventing S.J.T. from withdrawing, does not give rise to revival. "If the circumstances are such that it is impossible for defendant to communicate the withdrawal, it is attributable to his own fault and he must abide by the consequences." *Bellcourt*, 390 N.W.2d at 272 (quotation omitted). S.J.T. failed to establish a clear and good-faith withdrawal from the conflict and, therefore, his right to self-defense was not revived.

Affirmed.