STATE OF MINNESOTA
IN COURT OF APPEALS
A16-0926

State of Minnesota,
Respondent,

vs.

Matthew Howard Isensee,
Appellant.

Filed May 8, 2017
Affirmed
Rodenberg, Judge

Koochiching County District Court
File No. 36-CR-15-448

Lori Swanson, Attorney General, Karen B. McGillic, Assistant Attorney General, St. Paul, Minnesota; and

Jeffrey Naglosky, Koochiching County Attorney, International Falls, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Roy G. Spurbeck, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Rodenberg, Presiding Judge; Ross, Judge; and Smith, John, Judge.*

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

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

RODENBERG, Judge

On appeal from his second-degree assault conviction, appellant argues that the state failed to prove beyond a reasonable doubt that he was not acting in self-defense. We affirm.

FACTS

Appellant Matthew Isensee stabbed D.A. outside of a bar on July 1, 2015, and was charged with second-degree assault.[1] At trial, the state presented evidence that appellant and D.A. had not known each other before that night. The two socialized and consumed alcohol together, along with other friends, for several hours. When D.A. attempted to leave for the night, appellant stopped him in the parking lot. D.A. testified that appellant told him he "wasn't going anywhere" and then appellant shoved him a few times. D.A. shoved appellant back, and they began rolling on the ground and punching each other. Witnesses saw D.A. put appellant into a chokehold, and appellant then "tapped out." D.A. released appellant and began walking away.

Witnesses testified that 30 or 40 seconds later, D.A. and appellant began fighting again after appellant indicated that he could win a fight against D.A. with only two punches. D.A. responded, "Let me see you do it." Witnesses saw appellant produce a knife during the break in the fighting and then saw appellant charge D.A. D.A. testified that he rolled appellant onto his side and began hitting appellant hard; he then felt something piercing his

[1] The state also charged appellant with terroristic threats for comments made to a police officer following appellant's arrest. The terroristic-threats charge was tried separately and is not involved in this appeal.

arm. A witness saw appellant stab D.A. and attempt to place the knife near D.A.'s throat. Upon seeing appellant with a knife, D.A.'s friend kicked appellant and held appellant's wrist down because appellant was still holding the knife. Officers arrived and disarmed appellant, striking him repeatedly because he would not release the knife. D.A. was transported to the hospital for treatment of two stab wounds.

Appellant presented evidence tending to show that D.A. initiated the fight. Appellant testified that D.A. charged him after he accidentally knocked off D.A.'s hat. He testified that he only produced the knife after D.A. had him in a chokehold. Appellant testified that he warned D.A. that he would stab him if he did not release him from the chokehold. He testified that D.A. did not let go and began squeezing harder. Appellant produced the knife and cut D.A. while trying to remove D.A.'s hold on his neck. Appellant testified that he had begun to lose consciousness, either from loss of oxygen or from being kicked in the face.

Two other witnesses testified on appellant's behalf. M.W. testified that she saw appellant on the ground, with D.A. "choking him out," and D.A.'s friend punching and kicking appellant. She did not see the start of the fight or appellant with a knife. G.H. testified that he witnessed part of the fight from his bedroom window. G.H. testified that he saw a man, who he believed to be appellant, backing away with his hands up before he was tackled to the ground. He testified that he did not see the knife or who had it, but that a man in a white shirt cut himself when he tried to intervene in the fight. G.H. testified that the man who got cut then began kicking appellant in the head.

The district court instructed the jury on self-defense, including that the state was required to prove beyond a reasonable doubt that appellant did not act in self-defense. The jury found appellant guilty.

This appeal followed.

D E C I S I O N

Our review of the sufficiency of the evidence after a criminal conviction is limited to a thorough review of the record to determine whether the evidence, when viewed in the light most favorable to the verdict, is sufficient to support it. *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989). We assume that the jury believed evidence that supports the verdict and disbelieved conflicting evidence. *State v. Moore*, 438 N.W.2d 101, 108 (Minn. 1989). Additionally, "[a]ssessing witness credibility and the weight given to witness testimony is exclusively the province of the jury." *State v. Pendleton*, 759 N.W.2d 900, 909 (Minn. 2009). "We will not disturb a verdict if the jury could reasonably conclude, given the presumption of innocence and the requirement of proof beyond a reasonable doubt, that the defendant was guilty of the charged offense." *Id.*

Minnesota's self-defense statute permits the use of reasonable force against a person, without that person's consent, when "resisting or aiding another to resist an offense against the person." Minn. Stat. § 609.06, subd. 1(3) (2014). To prevail on a self-defense claim, the defendant must produce evidence supporting the four self-defense elements:

> (1) the absence of aggression or provocation on the part of the defendant; (2) the defendant's actual and honest belief that he or she was in imminent danger of . . . 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. Devens, 852 N.W.2d 255, 258 (Minn. 2014) (alteration in original) (quotation omitted). Self-defense also requires that the degree of force used "must not exceed that which appears to be necessary to a reasonable person under similar circumstances." *State v. Basting*, 572 N.W.2d 281, 286. The state has the burden of disproving one or more of the elements beyond a reasonable doubt. *Devens*, 852 N.W.2d at 258.

The first element of self-defense requires there to have been an absence of provocation or aggression on the part of appellant. *State v. Radke*, 821 N.W.2d 316, 324 (Minn. 2012). The state presented evidence that appellant was the aggressor during the fight, both initially, as D.A. testified that appellant would not let him leave and began to shove him, and in reengaging in the fight after D.A. released appellant. Appellant presented evidence that he was not the aggressor. Identifying whether appellant was the first or primary aggressor, and whether his fear of imminent danger was honest and reasonable, depends on which version of events the jury believed. When faced with varying versions of events, we assume that the jury believed the state's evidence and disbelieved evidence to the contrary; in this case, there was sufficient evidence from which the jury could reasonably conclude that appellant was the aggressor in the fight. Because the state disproved one element of appellant's self-defense claim beyond a reasonable doubt, the self-defense claim fails. *See id.* at 325 (concluding that the state disproved the first element of a self-defense claim, and therefore any evidence with respect to the other elements would not have changed the outcome).

Even if more were needed, the record here is adequate to support the jury's rejection of appellant's self-defense claim for another obvious reason. In conformity with Minn. Stat. § 609.06, subd. 1(3), the district court instructed the jury that appellant "is not guilty of a crime . . . if [he] used reasonable force against [D.A.] to resist an offense against the person, and such an offense was being committed or [appellant] reasonab[ly] believed that it was."[2] The state presented evidence that there was a 30 to 40 second break between the end of the first tussle, when D.A. was walking away, and the beginning of the second fight, when appellant pulled a knife and charged at D.A. The record evidence supports a conclusion by a jury that appellant was not resisting an offense against the person when he charged at and stabbed D.A. Although appellant argues that the state did not meet its burden of proof, appellant's claim of self-defense required the jury to make credibility determinations concerning the testimony of all of the witnesses. It did so, and found appellant guilty. As evidenced by the conviction, the jury did not believe appellant's version of events. The record supports the jury's conclusion.

Affirmed.

[2] The state argues that it sufficiently disproved all elements of appellant's self-defense claim. We note that the jury was not instructed on the duty to retreat in this case. This lack of instruction seemingly inured to the benefit of appellant because the record suggests there was an opportunity to retreat after appellant was released from the chokehold. But because the state sufficiently disproved other elements of self-defense, we need not consider whether the jury was properly instructed concerning this element.