STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0770

James Lindley Limper, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

Filed December 30, 2019
Affirmed
Smith, John, Judge[*]

Polk County District Court
File No. 60-CR-15-1894

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

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Greg Widseth, Polk County Attorney, Scott A. Buhler, Assistant County Attorney, Crookston, Minnesota (for respondent)

Considered and decided by Hooten, Presiding Judge; Smith, Tracy M., 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

SMITH, JOHN, Judge

We affirm the district court's order denying postconviction relief because the evidence was sufficient to support the state's proof beyond a reasonable doubt that appellant did not act in self-defense.

FACTS

In 2015, a fight broke out in a Crookston bar. Appellant James Lindley Limper punched R.A. in the head and knocked him unconscious. The state charged him with third-degree assault. He claimed self-defense, and the matter proceeded to a jury trial.

According to testimony, R.A. was at the bar with others, including M.A. and J.F. Appellant knew the men from his work on the railroad. He had reported that railroad employees were using drugs on the job, and because of this, on the day of the fight, R.A. and M.A. were harassing appellant and calling him a "snitch." Appellant invited R.A. to step outside to settle the matter, but things did not become physical until the fight, which was recorded by surveillance cameras.

The video evidence showed R.A. approach appellant, who was sitting at the end of the bar. Appellant got out of his seat, and the two squared off. R.A. turned his back to appellant and began to walk away, with his head turned back towards appellant. Appellant stepped towards R.A., in pursuit of him. R.A. turned to face appellant, and the two squared off again. The two stood very close, and R.A. shoved appellant. Appellant then bounced in place, not unlike a boxer, and assumed a fighting position. R.A. stood with his hands at his side. Appellant then punched R.A. in the head.

During this exchange, M.A. was in the background. When appellant and R.A. squared off, right before the shove and punch, M.A. began moving towards the two soon-to-be combatants. When appellant punched R.A., M.A. was several feet behind appellant, and appellant was turned away from him. After appellant punched R.A., M.A. grabbed appellant, and appellant punched M.A. and knocked him to the ground. J.F., who had been sauntering towards the scuffle, then punched appellant and knocked him to the ground.

R.A. testified that he arrived at the bar around noon, had a few beers, and met up with M.A. and J.F. He testified that there was no bad blood between himself and appellant, but he acknowledged having a couple verbal interactions with appellant that day. According to R.A., appellant stated that he wanted to "go outside" to fight, but R.A. did not want to fight. R.A. remembered "turning to walk out the door" of the bar, but he did not remember the fight.

Appellant testified that, as R.A. was leaving the bar, he was keeping an eye on him because he knew "that these guys want to kick my -ss," and he knew from their body language that "it was getting close." When R.A. approached him, he got out of his chair and "stepped away to get in a more defensive posture." He "was afraid that [R.A] was just going to attack [him] at that moment." He noticed M.A. "coming up just to [his] rear," and he was aware of M.A. and J.F.'s position because he "knew that they were going to try to kick [his] -ss." When R.A. shoved him, he had "nowhere to go backwards," and he could tell "it was going to go down." He had no reasonable possibility to retreat because he had his "back to the bar" and did not want to turn his back "to anybody," especially J.F.

On cross-examination, appellant acknowledged that he stepped towards R.A. prior to the shove. He admitted that R.A. did not make fists with his hands and had his hands at his side. He also admitted that he "could have turned away" instead of stepping towards R.A., but he was worried about M.A. Appellant stated that he was aware that M.A. was coming up on his right side because he "kept him in [his] peripheral vision."

One of the bar patrons testified that, "within a second of when the fight started," appellant said to R.A. something to the effect of, "Do you want to fight?"

The parties stipulated that R.A. suffered substantial bodily harm. The jury returned a guilty verdict. In October 2016, the district court sentenced appellant to 15 months' imprisonment.[1] He did not directly appeal.

In October 2018, appellant petitioned for postconviction relief, arguing that the state failed to prove beyond a reasonable doubt that he did not act in self-defense. The postconviction court denied the petition. The court concluded that there was sufficient direct evidence to defeat the claim of self-defense because appellant was the aggressor and was able to retreat.

D E C I S I O N

We review the denial of a postconviction petition for an abuse of discretion. *Riley v. State*, 819 N.W.2d 162, 167 (Minn. 2012). An abuse of discretion occurs when a postconviction court's decision "is based on an erroneous view of the law or is against logic and the facts in the record." *Id*. (quotation omitted). We review legal issues de novo,

[1] At appellant's request, the sentence was executed.

but our review of factual issues "is limited to whether there is sufficient evidence in the record to sustain the postconviction court's findings." *Matakis v. State*, 862 N.W.2d 33, 36 (Minn. 2015) (quotation omitted).

Appellant argues that his conviction should be reversed because the state did not prove beyond a reasonable doubt that he did not act in self-defense. In considering a claim of insufficient evidence, we conduct a thorough analysis of the record to determine whether the evidence, when viewed in the light most favorable to the conviction, was sufficient to allow the jury to reach the verdict that it did. *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989). We assume "the jury believed the state's witnesses and disbelieved any evidence to the contrary." *State v. Moore*, 438 N.W.2d 101, 108 (Minn. 1989).

Appellant was convicted of third-degree assault under Minn. Stat. § 609.223, subd. 1 (2014), which criminalizes the assault of another resulting in substantial bodily harm. Assault includes "the intentional infliction of . . . bodily harm upon another." Minn. Stat. § 609.02, subd. 10(2) (2014). Appellant conceded at trial that he assaulted R.A., and he stipulated to the fact that R.A. suffered substantial bodily harm. *See* Minn. Stat. § 609.02, subd. 7a (2014) (defining substantial bodily harm to include bodily injury "which causes a temporary but substantial loss or impairment of the function of any bodily member"). Therefore, direct evidence clearly supports the underlying offense. *See Bernhardt v. State*, 684 N.W.2d 465, 477 n.11 (Minn. 2004) (defining direct evidence as evidence that proves a fact without resort to inference or presumption). Direct evidence also shows that two of the four elements of self-defense were not met.

The right of self-defense justifies a person to use reasonable force against another to resist an offense. Minn. Stat. § 609.06, subd. 1(3) (2018). 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). The elements of self-defense are: (1) the absence of aggression or provocation by the party claiming self-defense; (2) the party's actual and honest belief that great bodily harm could otherwise result; (3) a reasonable basis for this belief; and (4) the lack of reasonable means to retreat or avoid the physical conflict. *State v. Soukup*, 656 N.W.2d 424, 428 (Minn. App. 2003). "If a defendant has not attempted to evade or retreat from combat, but instead has needlessly joined into it, that use of force is not self-defense." *Id.* at 429. To disprove a claim of self-defense, the state need only demonstrate that one of the four elements of the defense has not been met. *Id.*

Here, direct evidence showed that appellant was the aggressor and provocateur. Testimony indicated that it was appellant, not R.A., that was seeking a fight. R.A. was the first to initiate physical contact by pushing appellant away, but it was appellant who pursued R.A. prior to that shove, it was appellant who threw the first punch, and when the punch was thrown, R.A. was not in an aggressive or combative posture.

Direct evidence also showed that appellant had a reasonable means to retreat. The video showed that appellant was not surrounded, and he had a clear egress route away from R.A. R.A. was not attacking appellant or taking a combative stance when appellant threw the punch. After R.A. approached appellant, R.A. began to walk away, and it was appellant

who pursued. Appellant admitted that he "could have turned away" instead of stepping towards R.A. *See id.*

Appellant argues that we should apply the heightened circumstantial-evidence standard. We disagree. "[W]hen a disputed element is sufficiently proven by direct evidence alone, . . . it is the traditional standard, rather than the circumstantial-evidence standard, that governs." *State v. Horst*, 880 N.W.2d 24, 39 (Minn. 2016). The direct evidence was sufficient for the jury to conclude, beyond a reasonable doubt, that appellant did not act in self-defense. The postconviction court did not abuse its discretion by denying relief.

Affirmed.