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**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-1735**

Bill Jacob Byers, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed June 18, 2012
Affirmed
Johnson, Chief Judge**

Wright County District Court
File No. 86-CR-08-7432

David W. Merchant, Chief Appellate Public Defender, Suzanne M. Senecal-Hill,
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Lori Swanson, Attorney General, St. Paul, Minnesota; and

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

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

UNPUBLISHED OPINION

JOHNSON, Chief Judge

In 2009, Bill Jacob Byers was convicted of second-degree assault with a dangerous weapon based on evidence that he pointed a shotgun at his father during an argument and physical altercation. Byers did not pursue a direct appeal. In 2011, Byers petitioned for postconviction relief on the ground that the evidence was insufficient to support the conviction. The postconviction court denied the petition. We affirm.

FACTS

Byers was 31 years old in the spring and summer of 2008, when he was living with his parents, K.B. and W.B., in their home in the city of Otsego. Byers had an increasingly strained relationship with his parents. In early August 2008, his parents told him that he no longer was welcome inside their home. He then began living in a pole barn on the property.

On August 27, 2008, Byers's father arrived home and found Byers in the basement, sitting on a couch, watching television, drinking beer, and smoking a cigarette. The father asked Byers to leave, but Byers refused. The two men argued for approximately half an hour. Byers's father threw his drink at Byers, which prompted Byers to throw his beer at his father. Byers's father said that he was going to call the police, and he walked upstairs.

When Byers's father returned downstairs, he saw Byers standing in the basement, pointing a shotgun at him. The father testified at trial that he was frightened by the gun, that he charged Byers and grabbed the shotgun, and that he hit Byers with the butt of the

gun while trying to wrestle it away. The father eventually pulled the shotgun away and ran back upstairs to call 911. Byers confronted his father again and knocked the telephone out of his father's hand. Byers ran outside to the pole barn as sheriff's deputies arrived.

The state charged Byers with three offenses: (1) second-degree assault with a dangerous weapon, a violation of Minn. Stat. § 609.222, subd. 1 (2008); (2) felony domestic assault, a violation of Minn. Stat. § 609.2242, subd. 4 (2008); and (3) interference with an emergency call, a violation of Minn. Stat. § 609.78, subd. 2 (2008).

The district court held a court trial in March 2009. The state called five witnesses: K.B., W.B., Sheriff's Deputy Cody Thompson, Sheriff's Sergeant Sean Deringer, and Sheriff's Deputy Christopher Grew. After the state rested its case, Byers testified that he entered his parents' home with the intention of taking a shower. He testified that he could not leave the basement after his father came home because his father had trapped him in a corner of the basement. Byers testified that he picked up an unloaded shotgun after his father first went upstairs because he was afraid that his father would return with a firearm. Byers also testified that he did not point the shotgun directly at his father but, instead, held it diagonally across his body, pointed at the ceiling. Byers further testified that he had no intention of hurting his father.

The district court issued an order in which it found Byers guilty on all counts. The district court rejected Byers's affirmative defense of self-defense, concluding that the defense "is not available to Defendant because he failed to retreat and communicate his

intention to retreat.” In April 2009, the district court imposed a sentence on the first count of 36 months of imprisonment but stayed the sentence for seven years. The district court also ordered Byers to participate in an intensive residential treatment program to address issues of mental health and substance abuse. The district court did not impose sentences on the second and third counts.

Byers did not appeal directly from his conviction or sentence. In April 2011, he petitioned the district court for postconviction relief, arguing that the state had failed to prove the offenses charged beyond a reasonable doubt. The postconviction court denied Byers’s petition in August 2011 on the ground that the state had proved each element of the offenses charged beyond a reasonable doubt. Byers appeals.

D E C I S I O N

Byers argues that the postconviction court erred by denying his petition for postconviction relief. This court generally applies an abuse-of-discretion standard of review to postconviction decisions. *Moua v. State*, 778 N.W.2d 286, 288 (Minn. 2010). When the sufficiency of the evidence is challenged in a direct appeal or in a postconviction proceeding, we conduct “a painstaking analysis of the record to determine whether the evidence, when viewed in a light most favorable to the conviction, was sufficient to permit the jurors to reach the verdict which they did.” *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989); *see also Bernhardt v. State*, 684 N.W.2d 465, 473, 476-77 (Minn. 2004) (articulating standard of review of sufficiency of evidence in postconviction appeal). The analysis of the sufficiency of the evidence is the same for bench trials as for jury trials. *State v. Hough*, 585 N.W.2d 393, 396 (Minn. 1998). In

either type of case, we will not overturn the adjudications of guilt so long as the fact-finder, acting with due regard for the presumption of innocence and the requirement of proof beyond a reasonable doubt, could “reasonably conclude that [the] defendant was proven guilty of the offense charged.” *Bernhardt*, 684 N.W.2d at 476-77 (quotation omitted).

Byers argues that his convictions should be reversed if our careful scrutiny of the record raises “grave doubts” about his guilt. *See State v. Housley*, 322 N.W.2d 746, 751 (Minn. 1982). The supreme court sometimes applied a “grave doubts” standard of review in the early part of the 20th century. *See, e.g., State v. Wulff*, 194 Minn. 271, 273, 260 N.W. 515, 516 (1935); *State v. Jacobson*, 130 Minn. 347, 352, 153 N.W. 845, 847 (1915); *State v. McLarne*, 128 Minn. 163, 168, 150 N.W. 787, 789 (1915); *State v. Cowing*, 99 Minn. 123, 133, 108 N.W. 851, 855 (1906). The supreme court has not applied the grave-doubts standard since *Housley*. For the past 30 years, the supreme court consistently has applied the standard of review typified by *Webb*, which appears to have originated in *State v. Kline*, 266 Minn. 372, 124 N.W.2d 416 (1963), in which the supreme court stated, “Our responsibility extends no further than to make a painstaking review of the record to determine whether the evidence, direct and circumstantial, viewed most favorably to support a finding of guilt, was sufficient to permit the jury to reach that conclusion.” *Id.* at 374, 124 N.W.2d at 418. Thus, it is appropriate for this court to apply the standard of review applied in *Webb*, *Hough*, and *Bernhardt*. *Cf. State v. Jackson*, 741 N.W.2d 146, 153 n.1 (Minn. App. 2007).

I. Count I

Byers first argues that the evidence presented at trial was insufficient to support his conviction of second-degree assault with a dangerous weapon.

The statute criminalizing second-degree assault with a dangerous weapon incorporates the concept of assault. *See* Minn. Stat. § 609.222, subd. 1. The term “assault” is defined by statute to mean “(1) an act done with intent to cause fear in another of immediate bodily harm or death; or (2) the intentional infliction of or attempt to inflict bodily harm upon another.” Minn. Stat. § 609.02, subd. 10 (2008). It appears that the postconviction court relied on the first prong of this definition by focusing on whether Byers intended to cause fear in his father of immediate bodily harm or death.

It is undisputed that Byers held a shotgun in his hands when his father returned to the basement. It is immaterial whether the shotgun was loaded because the term “dangerous weapon” is defined by statute to mean “any firearm, whether loaded or unloaded.” Minn. Stat. § 609.02, subd. 6. In *LaMere v. State*, 278 N.W.2d 552 (Minn. 1979), the supreme court stated, “[s]o long as a firearm has the apparent ability to inflict injury, the victim of an assault or robbery will respond in the same way whether or not the gun is loaded.” *Id.* at 556. On appeal, Byers does not challenge the premise that the shotgun was a dangerous weapon.

The parties dispute whether Byers pointed the shotgun at his father. Byers’s father testified that Byers pointed the shotgun in his direction. Byers testified that he did not point the shotgun at his father but, rather, held the shotgun diagonally across his chest so that it was pointed toward the ceiling. The district court found that the father’s testimony

was more credible than Byers's testimony. The district court rested its credibility determination in part on testimony by deputy sheriffs that Byers appeared "noticeably" intoxicated when they arrived on the scene but that the father did not appear intoxicated. We must defer to these credibility determinations because of the district court's superior vantage point. *See DeMars v. State*, 352 N.W.2d 13, 16 (Minn. 1984).

Nonetheless, whether Byers pointed the shotgun directly at his father, or pointed the shotgun in his father's general direction, or brandished the shotgun while it was pointed toward the ceiling is not determinative. The ultimate question is whether Byers used the shotgun to commit "an act done with intent to cause fear in another of immediate bodily harm or death." Minn. Stat. § 609.02, subd. 10(1). Byers's conduct satisfies the statute even if he did not point the shotgun directly at his father, so long as he intentionally used the firearm to cause fear. Byers's father testified that he was afraid when he saw Byers holding the shotgun. When analyzing "intent to cause fear," the focal point of the inquiry is the intent of the actor, not the effect on the victim. *Hough*, 585 N.W.2d at 396. But in the context of an argument and physical brawl such as occurred in this case, Byers's brandishing of a firearm is sufficient evidence of an intent to cause "fear in another of immediate bodily harm or death." *See* Minn. Stat. §§ 609.02, subd. 10(1), .222, subd. 1; *see also State v. Cole*, 542 N.W.2d 43, 51 (Minn. 1996).

Thus, the evidence, when viewed in a light most favorable to the conviction, supports the postconviction court's conclusion that Byers committed second-degree assault with a dangerous weapon.

II. Counts II and III

Byers also argues that the evidence presented at trial was insufficient to support his convictions of felony domestic assault and interference with an emergency call. But the district court dismissed those two counts at the sentencing hearing, with the consent of the prosecutor. Generally, if a defendant is found guilty of multiple counts, and the district court is prohibited from imposing a sentence on each count, the district court will formally adjudicate the defendant guilty of one or more counts and impose a sentence on each of those counts but will not formally adjudicate the defendant on the remaining counts. *See State v. LaTourelle*, 343 N.W.2d 277, 284 (Minn. 1984). In that event, the remaining convictions remain available to be formally adjudicated at a later date if the adjudicated counts ever are vacated. *Id.* In this case, however, the district court dismissed the second and third counts. Accordingly, Byers has not been convicted of those two offenses. *See id.* Thus, we need not analyze whether the evidence is sufficient to support the district court's findings of guilt on the second and third counts.

Affirmed.