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**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-1904**

In the Matter of the Welfare of: P. E. O., Child

**Filed May 13, 2013
Affirmed
Hudson, Judge**

Hennepin County District Court
File No. 27-JV-12-3380

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

Michael O. Freeman, Hennepin County Attorney, Calvin Giles, Assistant County Attorney, Minneapolis, Minnesota (for respondent state)

David W. Merchant, Chief Appellate Public Defender, Susan J. Andrews, Assistant Public Defender, St. Paul, Minnesota (for appellant child)

Considered and decided by Kirk, Presiding Judge; Stoneburner, Judge; and Hudson, Judge.

UNPUBLISHED OPINION

HUDSON, Judge

Appellant challenges the district court's adjudication of delinquency for gross-misdemeanor fifth-degree assault, arguing that the state failed to prove beyond a reasonable doubt that she was not acting in self-defense when she bit a security guard.

We affirm.

FACTS

On January 23, 2012, M.V. was working as a security guard at a Walgreens store in Minneapolis. Around 5:30 p.m., M.V. was informed by a Walgreens employee that two teenage girls inside the store, later identified as appellant P.E.O. and M.S., were attempting to steal a can of hair spray. Each girl was carrying a large purse with a shoulder strap. M.V. positioned himself by the door to see if either girl would set off the store alarm when they left.

M.S. exited the store without incident, but appellant set the alarm off as she followed M.S. out of the store. M.V. asked to see the contents of her purse, and appellant opened her purse, quickly shut it, and proceeded out the exit. Because appellant made it difficult for him to inspect her bag, M.V. followed appellant out of the store and grabbed her purse strap as she was exiting. Appellant returned into the store as M.V. continued to hold her purse strap, despite M.S. encouraging appellant to leave. M.S. eventually followed appellant and M.V. back into the store.

M.V. looked through appellant's purse a second time, found no stolen goods, and the girls started to leave again. After M.S. had already left and as appellant was exiting the store, M.V. grabbed appellant's purse strap a second time because he wanted to search M.S.'s purse. All three parties were a few feet outside of the store at this point. M.V. refused to release appellant's purse strap until he was able to search M.S.'s purse, and threatened to call the police if the girls did not cooperate. After appellant urged M.S. to "give up the stuff," M.S. took a packet of cough medicine out of her purse and tossed it to M.V. M.V. asked her where the can of hair spray was, and in response M.S. took a

container of hair spray from her purse, cocked her arm, and prepared to throw the canister at M.V.

The accounts differ as to what happened next. M.V. testified that when M.S. threw the can of hair spray, he moved to the side to dodge the can, pulling appellant with him because he was still holding her purse strap. M.V. claimed that as he did so, appellant moved her head towards his hand and bit his right middle finger. After he was able to pull his hand away from appellant, M.V. threw appellant to the ground, eventually putting her in handcuffs.

Appellant testified that M.V. continued to restrain her by holding onto her purse strap, even though he had inspected her purse twice. She asserted that he then grabbed her by the shoulder and “tried to slam” her to the ground. Appellant claimed that she bit M.V. to get away from him after he had slammed her to the ground.

The testimony of M.S. supported appellant’s version of events, but a bystander and a Walgreens employee testified that M.V. did not touch appellant until she had bitten his finger. Both appellant and M.S. were handcuffed outside the store, and eventually the police arrived and issued citations to both girls.

Appellant was charged with fifth-degree assault in violation of Minn. Stat. § 609.224, subds. 1, 2(b) (2010). After a bench trial, the district court issued a written order holding that appellant committed the charged offense. The district court concluded that appellant committed the offense by intentionally biting M.V. in the finger. And because appellant had previously been adjudicated delinquent of a similar offense, her offense constituted a gross misdemeanor under Minn. Stat. § 609.224, subd. 2(b).

The district court rejected appellant's self-defense claim because appellant was the aggressor; was not assaulted by M.V.; and had not been threatened by M.V. The district court further found that appellant did not have reasonable grounds to believe that she was in imminent danger, because even though M.V. was holding her shoulder strap, he was permitted to detain appellant pursuant to Minn. Stat. § 629.366, subd. 1 (2010), as a merchant's employee with reasonable cause to believe that appellant had taken property without paying for it. Appellant's disposition was stayed pending this appeal.

D E C I S I O N

Appellant argues that the evidence was insufficient to prove beyond a reasonable doubt that she did not act in self-defense in biting M.V. 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 verdict and assume that the fact-finder believed the evidence supporting the guilty verdict 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) (2010). The defendant carries the initial burden of production

in order to raise a claim of self-defense. *State v. Johnson*, 719 N.W.2d 619, 629 (Minn. 2006).

A valid claim of self-defense requires the existence of four elements: (1) the absence of aggression or provocation on the part of the defendant; (2) the defendant's actual and honest belief that he 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. Radke, 821 N.W.2d 316, 324 (Minn. 2012).

Additionally, “[t]he degree of force used in self-defense must not exceed that which appears necessary to a reasonable person under similar circumstances.” *State v. Basting*, 572 N.W.2d 281, 286 (Minn. 1997). Once the defendant has met the burden of production, the state has the burden to disprove one or more of the elements beyond a reasonable doubt. *Radke*, 821 N.W.2d at 324.

Appellant argues that M.V. acted with aggression by holding the strap of her purse after he had already searched the purse twice and found no stolen goods. Appellant argues that, by continuing to hold her purse and refusing to let her go, M.V. created an actual and honest belief that appellant was in danger of suffering bodily harm and that she therefore acted in self-defense when she bit M.V. to compel him to release her. Though the district court did not assess whether appellant met her burden of production to raise a claim of self-defense, because M.V. seized appellant's purse strap more than once and pulled appellant toward him before she bit him, we will assume that appellant has met the burden of production.

Appellant's self-defense claim appears to rely upon appellant's assertion that she did not bite M.V. until he was "slamming" her to the ground. Yet M.V. testified that he never touched appellant and only pulled her purse strap to dodge the can of hair spray that M.S. threw at him. This version of events was corroborated by two witnesses, and the district court found this testimony credible. The district court concluded that because M.V. had not acted aggressively toward appellant, she was in no imminent danger of bodily harm, and any such belief that she may have had was not reasonable. The testimony was sufficient to support this conclusion, and was therefore sufficient to defeat the second and third elements of appellant's claim of self-defense.

Appellant argues that, even if the district court found M.V.'s version of events credible, once M.V. had searched appellant's purse and not found any stolen goods, he was under an immediate duty to release appellant. By failing to release her, appellant argues, M.V. acted aggressively if not illegally. This argument lacks merit for multiple reasons. First, as the district court observed, appellant knew that M.V. was investigating a suspected theft and therefore had no reason to believe that by grasping her purse strap M.V. posed a threat of immediate bodily harm. Second, according to his account, M.V. was merely holding appellant's purse strap, not touching her, giving her no reason to believe she was in danger of immediate bodily harm. Third, the record shows, and the parties do not dispute, that appellant and M.S. were associated parties. Thus even after M.V. found no stolen items in appellant's purse, he still had reasonable suspicion that the two girls were stealing goods from the store. In fact, M.S. had already pulled a stolen packet of cold medicine as well as a can of hair spray from her purse before appellant bit

M.V. Under Minn. Stat. § 629.366, “a merchant or merchant’s employee may detain a person if the merchant or employee has reasonable cause to believe that the person has taken, or is taking, an article of value without paying for it.” *Id.* Because M.V. still had a reasonable suspicion that the two girls were stealing items from Walgreens—even after looking in appellant’s purse a second time—he was legally permitted to detain appellant while completing his search of each girl’s purse and person.

Neither party disputes that appellant intentionally bit M.V. in the finger. Viewed in the light most favorable to the verdict, the evidence was sufficient to prove beyond a reasonable doubt that appellant acted as the aggressor and was in no danger of suffering great bodily harm. According to M.V.’s testimony as well as that of two other observers, any belief that appellant may have had that she was in danger was not reasonable. The evidence was therefore sufficient to sustain the district court’s adjudication of delinquency.

Affirmed.