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STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0164

In the Matter of the Welfare of:
M. C. S., Child.

Filed September 9, 2013
Affirmed
Halbrooks, Judge

Clay County District Court
File No. 14-JV-12-1903

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

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

Brian J. Melton, Clay County Attorney, Cheryl Duysen, Assistant County Attorney, Moorhead, Minnesota (for respondent)

Considered and decided by Halbrooks, Presiding Judge; Stauber, Judge; and Hooten, Judge.

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

HALBROOKS, Judge

On appeal from a juvenile-delinquency adjudication of second-degree assault and possession of a dangerous weapon, appellant M.C.S. argues that the evidence is insufficient to prove beyond a reasonable doubt that he did not act in self-defense. Alternatively, he seeks a new trial on the ground that the district court violated his Sixth

Amendment right to confrontation by relying on an extra-record witness statement in reaching its verdict. We affirm.

FACTS

On May 27, 2012, M.C.S. entered a Stop-N-Go convenience store in Moorhead. As he walked down the candy aisle, M.C.S. encountered E.A., who was standing in the aisle with a friend. M.C.S. and E.A. recognized each other from school. M.C.S. was afraid of E.A. because he assaulted one of M.C.S.'s friends in the past and was reputed to carry a gun.

E.A. asked M.C.S. if he wanted to go outside to fight. After M.C.S. asked E.A. to repeat himself, E.A. pointed to the parking lot and asked, "Do you want to go?" Surveillance video from the convenience store shows the juveniles exiting the store immediately following their conversation. E.A. left first, followed closely by M.C.S. and E.A.'s friend.

M.C.S. followed E.A. to the nearest corner of the parking lot where the two juveniles stopped and began circling each other with their fists raised. E.A.'s friend looked on. After about 18 seconds of circling each other, E.A. struck M.C.S. in the face, knocking him to the ground. Within three seconds, M.C.S. got to his feet and lunged toward E.A. with his arm extended. E.A. immediately stumbled away in the opposite direction, and his girlfriend later took him to the emergency room.

The hospital where E.A. was admitted reported the incident to the Moorhead Police Department. Officers were dispatched to the hospital to interview E.A. who reported that M.C.S. had stabbed him at a Stop-N-Go earlier that night. Following

further investigation, the police conducted an interview with M.C.S., who was accompanied by his father. M.C.S. admitted that he was involved in an altercation with E.A. on May 27 at the Stop-N-Go, and that during the fight he stabbed E.A. in the leg with a knife he was carrying.

M.C.S. was charged by juvenile petition with second-degree assault, in violation of Minn. Stat. § 609.222, subd. 1 (2010); possession of a dangerous weapon, in violation of Minn. Stat. § 609.66, subd. 1(a)(5) (2010); possession of drug paraphernalia, in violation of Minn. Stat. § 152.092 (2010); and possession of a small amount of marijuana, in violation of Minn. Stat. § 152.027, subd. 4(a) (2010).

M.C.S. pleaded not guilty to all counts and filed a self-defense motion. At a bench trial, the parties stipulated to the evidence, and the district court received into evidence M.C.S.'s statement to law enforcement, photographs taken by law enforcement, and video-surveillance footage from the Stop-N-Go. E.A. was the only witness to testify.

Following trial, the district court denied M.C.S.'s self-defense motion and adjudicated him delinquent of second-degree assault and possession of a dangerous weapon. This appeal follows.

D E C I S I O N

I.

M.C.S. argues that the evidence is insufficient to prove that he did not act in self-defense when he stabbed E.A. On review of a claim of insufficient evidence, the same standard applies to a guilty verdict obtained following a jury trial or a bench trial. *State v. Hughes*, 355 N.W.2d 500, 502 (Minn. App. 1984), *review denied* (Minn. Jan. 2, 1985).

Accordingly, we review the record to determine whether the evidence, when viewed in the light most favorable to the verdict, is sufficient to allow the fact-finder to reach the verdict that it did. *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989). We assume that the fact-finder "believed the state's witnesses and disbelieved any evidence to the contrary." *State v. Moore*, 438 N.W.2d 101, 108 (Minn. 1989). This is especially true when resolution of the matter depends on conflicting testimony. *State v. Pieschke*, 295 N.W.2d 580, 584 (Minn. 1980). We will not disturb the verdict if 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 a defendant was guilty of the charged offense. *Bernhardt v. State*, 684 N.W.2d 465, 476-77 (Minn. 2004).

A person may use reasonable force to resist an offense against the person. Minn. Stat. § 609.06, subd. 1(3) (2010). A claim of self-defense requires proof 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) (footnote omitted). The defendant carries the initial burden of production in support of a claim of self-defense. *State v. Basting*, 572 N.W.2d 281, 286 (Minn. 1997). Once that burden is met, the state has the burden to disprove one or more of the elements of self-defense beyond a reasonable doubt. *Id.*

The evidence supports the district court's finding that M.C.S. was "a co-participant in provoking the fight" and, once involved in the fight, failed to decline to carry out the assault. M.C.S. told law enforcement that he "start[ed] to go home" when he left the store and engaged in the fight because E.A. approached him outside the store. But the surveillance-video footage, which the district court found to be the most accurate account of the events, wholly contradicts M.C.S.'s statement. The video shows, immediately after E.A.'s proposal to fight outside, M.C.S. exiting the store closely behind E.A. and following him to a corner of the parking lot where the two immediately began circling each other. The video footage defeats M.C.S.'s contention that he started to walk home when he exited the store and reveals no attempt on his part to evade E.A. In fact, as the district court noted, M.C.S. "never deviate[d] from the short path from the door of the convenience store to E.A.'s location." Furthermore, E.A. testified that, when he proposed that the two go outside to fight, M.C.S. replied: "Let's go," and immediately pulled out his knife once outside the store. This evidence is sufficient to establish that M.C.S. opted to engage in the fight and disproves beyond a reasonable doubt the first element of self-defense.

The evidence also supports the district court's finding that M.C.S. "never honestly tried to escape" the altercation despite reasonable opportunities to do so, such as yelling to one of the several customers in close proximity who were either using the gasoline pumps or walking into and out of the store, or simply by running back into the store himself. While M.C.S. may have feared E.A. and honestly believed that he faced danger, M.C.S. had ample opportunity to escape that danger. Once the juveniles were in the

parking lot, 18 seconds passed before E.A. made any contact with M.C.S. During that time, M.C.S. neither yelled for help, attempted to leave the area, nor withdrew from the fight. As such, the evidence disproves beyond a reasonable doubt the fourth element of self-defense.

Because the state met its burden to disprove one or more elements of self-defense, the district court did not err by rejecting M.C.S.'s self-defense claim.

II.

M.C.S. seeks a new trial on the ground that the district court violated his right to confrontation by relying on an extra-record witness statement. He contends this error prejudiced the district court's verdict.

The Confrontation Clause provides that the criminally accused shall enjoy the right to be confronted with the witnesses against them. U.S. Const. amend. VI. This bars the admission of a testimonial statement from a witness who does not appear at trial unless the witness is unavailable to testify and the defendant had a prior opportunity for cross-examination. *Crawford v. Washington*, 541 U.S. 36, 53-54, 124 S. Ct. 1354, 1365 (2004).

Confrontation Clause violations do not automatically require reversal of the defendant's conviction. *State v. Swaney*, 787 N.W.2d 541, 555 (Minn. 2010). Rather, they are subject to a harmless-error analysis in which reversal is not required if the error was harmless beyond a reasonable doubt. *Id.* An error is harmless beyond a reasonable doubt if the guilty verdict was surely unattributable to the error. *Id.* In reviewing the harm caused by a violation of one's right to confrontation, "we examine the record as a

whole and consider the manner in which the evidence was presented, whether the evidence was highly persuasive, whether it was used in closing argument, and whether it was effectively countered by the defense." *Id.* (quotation omitted).

In its adjudication order, the district court cited a statement by the Stop-N-Go employee who was on duty during the fight. The store clerk, who did not testify at trial, told law enforcement that, after their argument in the candy aisle, E.A. and M.C.S. left the store and went to the parking lot where they hopped around until E.A. hit M.C.S. This statement, which was neither admitted into evidence nor subject to cross-examination by M.C.S., was referenced in the charging document. The state concedes, and we agree, that the district court's consideration of that statement violated M.C.S.'s Sixth Amendment right to confrontation.

Our careful review of the record leads us to conclude that the district court's error was harmless beyond a reasonable doubt. The evidence admitted at trial sufficiently establishes M.C.S.'s guilt and disproves more than one element of self-defense. In reaching its verdict, the district court relied primarily on the video footage to find that M.C.S. did not act in self-defense, and that footage overwhelmingly defeats M.C.S.'s claim that he acted in self-defense. Furthermore, the extra-record statement of the Stop-N-Go store clerk did not assert any facts beyond those established by properly admitted evidence. Because it was merely a corroborative account of the assault, the defense had adequate opportunity to rebut the facts asserted in the extra-record statement. Finally, the state did not rely on the extra-record statement at any point during trial. Upon this record, the district court's verdict was surely not attributable to its improper consideration

of the store clerk's statement to law enforcement. Because the district court's error was harmless beyond a reasonable doubt, M.C.S. is not entitled to a new trial on this ground.

Affirmed.