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**STATE OF MINNESOTA
IN COURT OF APPEALS
A09-1701**

State of Minnesota,
Respondent,

vs.

Juan Pachuco Silva,
Appellant.

**Filed August 17, 2010
Affirmed
Toussaint, Chief Judge**

Ramsey County District Court
File No. 62-CR-09-3384

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

Susan Gaertner, Ramsey County Attorney, Mitchell L. Rothman, Assistant County Attorney, St. Paul, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Gurdip S. Atwal, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Toussaint, Chief Judge; Klaphake, Judge; and Minge, Judge.

UNPUBLISHED OPINION

TOUSSAINT, Chief Judge

Appellant Juan Pachuco Silva argues that the evidence presented at his jury trial was insufficient to support his conviction. Because the record evidence supports the

conviction, we affirm.

DECISION

Appellant was charged with second-degree assault after he cut the victim's face with a kitchen knife during an altercation at appellant's residence. Appellant pleaded not guilty and asserted self-defense. Following a jury trial, he was found guilty and received a presumptive sentence of 57 months imprisonment. Appellant now argues that the evidence was insufficient to support his conviction as a matter of law because the state failed to prove beyond a reasonable doubt that appellant did not act in self-defense.

When considering a claim of insufficient evidence, "this court's review is limited to a painstaking analysis of the record to determine whether the evidence, when viewed in a light most favorable to the conviction, was sufficient to allow the jurors to reach the verdict which they did." *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989). The reviewing court must assume that "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). "The assumption that the jury believed the state's witnesses is particularly appropriate when resolution of the case depends on conflicting testimony, as it is the function of the jury to evaluate the credibility of the witnesses." *State v. Pippitt*, 645 N.W.2d 87, 92 (Minn. 2002). This court will not disturb a verdict if the jury, 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 guilty of the charged offense. *Bernhardt v. State*, 684 N.W.2d 465, 476-77 (Minn. 2004).

The elements of self-defense are (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 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. Basting, 572 N.W.2d 281, 285 (Minn. 1997). A person who claims self-defense must use only the degree of force “necessary to a reasonable person under similar circumstances.” *Id.* at 286. A defendant has the burden of going forward with evidence supporting a self-defense claim. *Id.* “Once it is raised, the state has the burden of disproving one or more of these elements beyond a reasonable doubt.” *Id.*

Appellant contends that the jury should have believed his testimony and discredited the victim's testimony. But weighing the credibility of witnesses is the exclusive province of the jury. *State v. Doppler*, 590 N.W.2d 627, 635 (Minn. 1999). Because resolution of the matter depended on conflicting testimony, it is especially important that we defer to the jury's determination. *See, e.g., State v. Pieschke*, 295 N.W.2d 580, 584 (Minn. 1980) (rejecting challenge to sufficiency of evidence when prior statements of two witnesses were contrary to defendant's testimony).

Here, the jury heard two accounts of what occurred—one from appellant and one from the victim. Appellant claimed that he feared for his safety and was acting in self-defense against the much larger and aggressive victim. The victim, on the other hand, testified that appellant was the aggressor, threatened him with a knife, and cut him on the face. The victim testified that he never threatened appellant and was sitting on the couch before he escaped to his vehicle and called the police.

Appellant argues that he presented credible testimony showing that he could have acted in self-defense and that the victim's testimony was inconsistent with what he told the officer who arrived on the scene. This court, however, is required to view the evidence in the light most favorable to the conviction and assume that the jury believed the state's witnesses. *Moore*, 438 N.W.2d at 108. Even when a witness's credibility is seriously called into question, the fact-finder is entitled to believe the witness. *Pippitt*, 645 N.W.2d at 94. All inconsistencies in the evidence are resolved in favor of the verdict. *State v. Bergeron*, 452 N.W.2d 918, 924 (Minn. 1990). Furthermore, this court will not re-weigh evidence. *State v. Franks*, 765 N.W.2d 68, 73 (Minn. 2009).

Viewed in this light, the state produced sufficient evidence to show the nonexistence of several self-defense elements. Specifically, the victim testified that appellant was the aggressor in the situation and that he did not threaten appellant. Appellant also agreed that the victim never had a weapon of any kind during the incident. The jury heard testimony that the victim was not armed and was seated while appellant stood brandishing the knife. Contrary to appellant's assertions, the victim's testimony was consistent with what he told the 9-1-1 operator and the officers who responded to the scene. Even if the victim's testimony was inconsistent, the jury was free to reject a portion of his testimony and accept the rest. *State v. Johnson*, 568 N.W.2d 426, 436 (Minn. 1997). Assuming that the jury believed the state's witnesses and disbelieved any evidence to the contrary, the evidence is sufficient to sustain the verdict.

Affirmed.