STATE OF MINNESOTA
IN COURT OF APPEALS
A08-0597

In the Matter of the Welfare of: J. S. I., Child.

Filed February 3, 2009
Affirmed
Kalitowski, Judge

St. Louis County District Court
File No. 69HI-JV-07-73

Keala C. Ede, Special Assistant State Public Defender, Robins, Kaplan, Miller & Ciresi L.L.P., 2800 LaSalle Plaza, 800 LaSalle Avenue, Minneapolis, MN 55402 (for appellant J.S.I.)

Lori Swanson, Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101-2134; and

Melanie S. Ford, St. Louis County Attorney, Stacey Sundquist, Assistant County Attorney, St. Louis County Courthouse 1810 12th Avenue East, Hibbing, MN 55746 (for respondent)

Considered and decided by Halbrooks, Presiding Judge; Kalitowski, Judge; and Stoneburner, Judge.

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

KALITOWSKI, Judge

Appellant J.S.I. challenges the district court's delinquency adjudication, arguing that the evidence was insufficient to permit a conclusion that he committed fifth-degree assault. We affirm.

D E C I S I O N

This case arises from an incident occurring during a high school wrestling match. Appellant J.S.I. and the victim were wrestling and during the match, appellant struck the victim in the face. The state chose to prosecute the juvenile appellant for fifth-degree assault. Following a court trial, appellant was adjudicated delinquent. Appellant argues that the evidence is insufficient to uphold his delinquency adjudication for commission of fifth-degree assault. We disagree.

Our standard of review is limited and does not extend to the state's decision to prosecute. When assessing the sufficiency of evidence on appeal, we examine the record to determine whether the evidence, viewed in a light most favorable to the conviction, was sufficient to permit the fact-finder to reach the verdict that it did. *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989); *In re Welfare of S.A.M.*, 570 N.W.2d 162, 167 (Minn. App. 1997) (applying the same standard in a juvenile matter). We apply the same standard to bench trials as to jury trials when reviewing the sufficiency of the evidence. *Davis v. State*, 595 N.W.2d 520, 525 (Minn. 1999) (citation omitted).

In considering a claim of insufficient evidence, the reviewing court must assume the fact-finder believed the state's witnesses and disbelieved any evidence to the contrary. *In re Welfare of C.J.W.J.*, 699 N.W.2d 328, 334 (Minn. App. 2005) (citing *State v. Moore*, 438 N.W.2d 101, 108 (Minn. 1989)). The verdict will stand 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 the defendant was guilty of the charged offense based on the facts in evidence and the legitimate inferences

that can be drawn from those facts. *Id.* (citing *State v. Alton*, 432 N.W.2d 754, 756 (Minn. 1988)).

Appellant was charged with fifth-degree assault under Minn. Stat. § 609.224, subd. 1(2) (2006). That statute provides that fifth-degree assault occurs when a person "intentionally inflicts or attempts to inflict bodily harm upon another." Minn. Stat. § 609.224, subd. 1(2). "'Intentionally' means that the actor either has a purpose to do the thing or cause the result specified or believes that the act performed . . . , if successful, will cause that result." Minn. Stat. § 609.02, subd. 9(3) (2006). Intent may be proved by circumstantial evidence including the defendant's conduct, the character of the assault, and the events occurring before and after the crime. *Davis*, 595 N.W.2d at 525-26 (citations omitted). An assault involving the infliction of some sort of injury requires no abstract intent to do something further; only the intent to do the prohibited physical act of committing a battery. *State v. Lindahl*, 309 N.W.2d 763, 767 (Minn. 1981).

Appellant argues that his witnesses testified that the incident was the result of appellant's attempt to apply a legitimate wrestling move. Appellant also argues that his fist was not closed, and points out that eyewitness accounts differed on whether his fist was closed. Appellant further contends that the issuance of a flagrant misconduct penalty by the referee is insufficient to establish criminal intent. Therefore, appellant argues, the evidence is insufficient to prove beyond a reasonable doubt that he had the intent to inflict bodily harm upon the victim.

Viewed in the light most favorable to the verdict, we conclude that the evidence was sufficient. The referee of the match, the victim's father, and the victim all testified

that appellant was not attempting a wrestling move and that appellant struck the victim with a closed fist. The report the referee made to the Minnesota State High School League states that appellant "was ejected from the event for a flagrant misconduct situation in which he struck his opponent with a hard and deliberate punch to the face." And a video recording of the wrestling match shows appellant's hand hitting the victim's face.

The district court found this evidence credible. It is unfortunate that a heated moment during a high school wrestling match led to a criminal charge when the record indicates that a simple apology may have resolved the matter. But under our limited standard of review, we conclude that the evidence was sufficient to adjudicate appellant delinquent for committing fifth-degree assault.

Appellant asks us to adopt and apply a different standard to assaults that occur in the context of voluntary participation in an athletic competition. But this court, as an error-correcting court, is without authority to change the law. *Lake George Park, L.L.C. v. IBM Mid-America Employees Fed. Credit Union*, 576 N.W.2d 463, 466 (Minn. App. 1998), *review denied* (Minn. June 17, 1998). "The task of extending existing law falls to the supreme court or the legislature, but it does not fall to this court." *Tereault v. Palmer*, 413 N.W.2d 283, 286 (Minn. App. 1987), *review denied* (Minn. Dec. 18, 1987). Thus we decline to consider appellant's argument that we adopt a different standard for assaults alleged to occur during athletic competition.

Affirmed.