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**STATE OF MINNESOTA
IN COURT OF APPEALS
A09-764**

State of Minnesota,
Respondent,

vs.

Alex Eugene Dotson, Sr.,
Appellant.

**Filed March 9, 2010
Affirmed
Peterson, Judge**

Stearns County District Court
File No. 73-CR-08-6960

Lori Swanson, Attorney General, John B. Galus, Assistant Attorney General, St. Paul,
MN 55101-2134; and

Janelle P. Kendall, Stearns County Attorney, St. Cloud, MN 56303 (for respondent)

John E. Mack, Mack & Daby, P.A., New London, MN 56273 (for appellant)

Considered and decided by Peterson, Presiding Judge; Shumaker, Judge; and
Collins, Judge.*

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

UNPUBLISHED OPINION

PETERSON, Judge

In this appeal from two convictions of second-degree assault, appellant argues that the evidence of intent is insufficient to support his convictions and that he received ineffective assistance of counsel. We affirm.

FACTS

Appellant Alex Dotson got into an argument with J.M. outside appellant's apartment. To calm down appellant and break up the argument, appellant's family brought him inside their apartment. When someone began banging on the door of the apartment, appellant grabbed a knife and went outside. With the knife in his raised hand, appellant advanced toward J.M. Appellant was within five feet of J.M. when appellant's son, A.D., tackled or grabbed appellant from behind. Thinking that A.D. was a man he knew as "K," appellant stabbed A.D. twice, which caused injuries that required surgery.

Appellant was arrested shortly after the stabbing and gave a statement to police. In his statement, appellant acknowledged that he had wanted to kill J.M. He also said that he had thought A.D. was "K," coming to stop him from attacking J.M., and that he just kept swinging to get "K" off him.

Appellant was charged with two counts of second-degree assault, in violation of Minn. Stat. § 609.222, subd. 1 (2006), one count related to J.M. and the other related to A.D. Appellant waived his right to a jury trial. The district court found appellant guilty on both counts and sentenced him to concurrent prison terms of 21 and 27 months. This appeal follows.

DECISION

I.

In 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 the light most favorable to the conviction, 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); *see also Davis v. State*, 595 N.W.2d 520, 525 (Minn. 1999) (stating that same standard applies to bench trials as to jury trials when reviewing sufficiency of evidence). A reviewing court must assume that the fact-finder believed the state's witnesses and disbelieved any contrary evidence. *State v. Moore*, 438 N.W.2d 101, 108 (Minn. 1989). Accordingly, this court 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 the defendant was guilty of the charged offense. *Bernhardt v. State*, 684 N.W.2d 465, 476-77 (Minn. 2004).

To establish that appellant was guilty of second-degree assault, the state needed to prove that appellant "assault[ed] another with a dangerous weapon." Minn. Stat. § 609.222, subd. 1. "Assault" is defined as "an act done with intent to cause fear in another of immediate bodily harm or death," or "the intentional infliction of or attempt to inflict bodily harm upon another." Minn. Stat. § 609.02, subd. 10 (2006). Second-degree assault is a specific-intent crime. *State v. Cole*, 542 N.W.2d 43, 51 (Minn. 1996).

Assault on A.D.

Appellant argues that his conviction for assaulting A.D. should be reversed because there was no claim that appellant intended to stab his son, and the prosecutor was incorrect when he argued that the doctrine of transferred intent applies to the assault on A.D. “The doctrine of transferred intent is frequently applied in cases where the accused intends to kill one person, but, because of bad aim, kills another.” *State v. Hough*, 585 N.W.2d 393, 395 n.1 (Minn. 1998). One commentator has explained:

In the unintended-victim (or bad-aim) situation—where *A* aims at *B* but misses, hitting *C*—it is the view of the criminal law that *A* is just as guilty as if his aim had been accurate. Thus where *A* aims at *B* with a murderous intent to kill, but because of a bad aim he hits and kills *C*, *A* is uniformly held guilty of the murder of *C*. . . . So too, where *A* aims at *B* with intent to injure *B* but, missing *B*, hits and injures *C*, *A* is guilty of battery of *C*. . . .

These proper conclusions of law as to criminal liability in the bad-aim situation are sometimes said to rest upon the ground of “transferred intent”: To be guilty of a crime involving a harmful result to *C*, *A* must intend to do harm to *C*; but *A*’s intent to harm *B* will be transferred to *C*; thus *A* actually did intend to harm *C*; so he is guilty of the crime against *C*.

1 Wayne R. LaFare, *Substantive Criminal Law* § 6.4(d), at 473-75 (2d ed. 2003). The commentator explained further:

The situation, discussed above, concerning the unintended victim of an intentional crime—which we have referred to for short as the bad-aim situation—is to be distinguished from an entirely different unintended-victim case—the mistaken-identity situation— which is governed by a quite separate set of legal rules. Thus in the semi-darkness *A* shoots, with intent to kill, at a vague form he supposes to be his enemy *B* but who is actually another person *C*; his well-aimed bullet kills *C*. Here too *A* is guilty of murdering *C*, to

the same extent he would have been guilty of murdering *B* had he made no mistake. *A* intended to kill the person at whom he aimed, so there is even less difficulty in holding him guilty than in the bad-aim situation. And of course *A*'s conceivable argument that his mistake of fact (as to the victim's identity) somehow negatives his guilt of murder would be unavailing: his mistake does not negative his intent to kill; and on the facts as he supposes them to be *A* is just as guilty of murder as he is on the facts which actually exist.

Id. at 478.

The district court found:

[A.D.] tackled or grabbed his father to prevent him from striking [J.M.] with the knife. [Appellant], thinking it was another person named "K," stabbed his son, [A.D.] twice in the left side injuring [A.D.'s] spleen, requiring surgery. . . . [Appellant] said that he thought it was "K" who tried to stop [appellant] from attacking [J.M.], and that he kept swinging to get "K" off of him.

Based on these findings, the district court found appellant guilty of second-degree assault because "[appellant], by stabbing [A.D.] with a dangerous weapon, namely, a knife, intentionally inflicted bodily harm upon [A.D.]"

A fact-finder may "infer that a person intends the natural and probable consequences of [his] actions." *State v. Johnson*, 616 N.W.2d 720, 726 (Minn. 2000). Because inflicting bodily harm is a natural and probable consequence of appellant's swinging a knife to get the person that he believed to be "K" off him, the district court could infer that appellant intended to inflict bodily harm upon "K." Consequently, the evidence supports the district court's determination that appellant assaulted A.D.; appellant's mistaken belief that he was swinging at "K" does not negative his intent to inflict bodily harm.

Assault on J.M.

Appellant challenges the sufficiency of the evidence of intent to prove that he assaulted J.M. Although it is undisputed that appellant did not harm J.M., the evidence supports the district court's conclusion that appellant acted with the intent to cause J.M. fear of bodily harm or death.

Intent is an inference drawn from the totality of the circumstances. *State v. Fardan*, 773 N.W.2d 303, 321 (Minn. 2009). As noted above, a fact-finder may infer that a defendant intended the natural and probable consequences of his actions. *Johnson*, 616 N.W.2d at 726. The manner in which the defendant approaches the victim can be evidence of intent. *Fardan*, 773 N.W.2d at 321. Pointing a weapon at another person “has been held to supply the requisite intent to cause fear.” *In re Welfare of T.N.Y.*, 632 N.W.2d 765, 770 (Minn. App. 2001). And although a victim's experiencing fear is not an element of assault, evidence of actual fear may be relevant to a determination regarding a defendant's intent. *See Hough*, 585 N.W.2d at 396 (recognizing that effect on victim may be evidence of intent). *But see T.N.Y.*, 632 N.W.2d at 767, 769 (holding that effect on victim may not be only evidence of intent).

There is evidence that appellant and J.M. were so angry that appellant's family felt that they needed to separate appellant from J.M. After appellant's family took him inside, J.M. turned and was trying to leave. Appellant then went after J.M. Appellant ran toward J.M. with a knife in his upraised right hand. Appellant's actions made J.M. “concerned for [his] safety.” And appellant was within five feet of J.M. when A.D. caught up to appellant and tackled him. Also, on the day after the incident, appellant

acknowledged to police that he wanted to kill J.M. Viewed as a whole and in the light most favorable to the district court's finding of guilty, the evidence is sufficient to support the determination that appellant intended to cause J.M. fear of bodily harm or death.

II.

Appellant argues that his trial counsel was ineffective in (1) requesting a court trial, (2) failing to assert the affirmative defenses of insanity and self-defense, (3) presenting only a perfunctory closing argument, and (4) failing to seek a downward dispositional departure at sentencing.¹ To prevail on an ineffective-assistance-of-counsel claim, appellant must “affirmatively prove that his counsel’s representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *Gates v. State*, 398 N.W.2d 558, 561 (Minn. 1987) (quotation omitted). Appellant failed to raise his ineffective-assistance claims in a postconviction petition for relief, and there has been no postconviction hearing that could provide additional facts that explain defense counsel’s decisions. Consequently, the record before us does not provide the information needed to evaluate counsel’s decisions, and we decline to reach the merits of appellant’s ineffective-assistance-of-counsel claims. *See State v. Gustafson*, 610 N.W.2d 314, 321 (Minn. 2000) (declining to reach merits of ineffective-assistance

¹ The record reflects that appellant’s counsel moved for a downward dispositional departure based on appellant’s asserted mental illness. But because appellant did not provide a sentencing-hearing transcript, we cannot determine whether the district court addressed the motion.

claims when appellant did not raise claims in postconviction petition and any conclusion whether counsel's assistance was deficient would be pure speculation by court).

Affirmed.