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**STATE OF MINNESOTA
IN COURT OF APPEALS
A09-1899**

In the Matter of the Welfare of:
E. V. B., Child.

**Filed April 27, 2010
Affirmed
Johnson, Judge**

Ramsey County District Court
File No. 62-JV-09-2809

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

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

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

Considered and decided by Halbrooks, Presiding Judge; Worke, Judge; and Johnson, Judge.

UNPUBLISHED OPINION

JOHNSON, Judge

E.V.B. attempted to break into a corner grocery store with a hammer. When two police officers interrupted him, he threw the hammer at one of the officers before running away. The district court found E.V.B. guilty of third-degree burglary, second-degree

assault, and fourth-degree assault. On appeal, E.V.B. challenges the findings of guilt on the assault charges on the ground that the evidence was insufficient to prove that he acted with specific intent to inflict bodily harm on the officer. We affirm.

FACTS

On the evening of July 27, 2009, E.V.B. attempted to break into a corner grocery store in St. Paul. A person who lived directly across the street from the store heard the sound of breaking glass, looked out his front window, and saw a person hitting the front door of the store with a hammer and kicking the door. The neighbor called 911 and reported that someone was breaking into the store.

Officers Jeffrey Boyle and Lane Nock responded to the call. They parked their squad car approximately one-half block away from the store, on a side street behind the store. As the two officers approached the corner on foot, they heard a loud banging noise, so they drew their weapons. After they rounded the corner, they saw E.V.B. in the doorway of the store, attempting to enter the store. They shouted, "Police!," told E.V.B. that he was under arrest, and ordered him to lie on the ground. E.V.B. turned toward the officers and threw the hammer at Officer Boyle. The hammer hit Officer Boyle in the area of his abdomen. Officer Boyle's ballistic vest absorbed part of the impact, but he sustained bruises below the vest.

At the time, E.V.B. was 14 years old, but he weighed approximately 220 to 230 pounds. As E.V.B. threw the hammer at Officer Boyle, the officer fired one shot at E.V.B. After releasing the hammer, E.V.B. fled. The two officers pursued E.V.B. on foot and apprehended him in the back yard of a nearby residence. It later was revealed

that the bullet from Officer Boyle's firearm hit E.V.B. in the side and back of his torso, causing a surface wound but not affecting internal organs.

The state filed a petition alleging that E.V.B. committed second-degree assault with a deadly weapon, in violation of Minn. Stat. § 609.222, subd. 1 (2008); fourth-degree assault of a police officer, in violation of Minn. Stat. § 609.2231, subd. 1 (2008); and third-degree burglary, in violation of Minn. Stat. § 609.582, subd. 3 (2008). After a two-day bench trial in September 2009, the district court found E.V.B. guilty of each of the charged offenses. At the disposition hearing in late September 2009, the district court adjudicated E.V.B. delinquent of third-degree burglary but withheld adjudication on the two assault charges. The district court ordered E.V.B. to attend a residential treatment program. E.V.B. appeals.

D E C I S I O N

E.V.B. argues that the evidence is insufficient to support the findings that he is guilty of second-degree assault and fourth-degree assault. E.V.B. does not challenge the finding of guilt on the burglary charge or the district court's disposition. The rules of juvenile procedure permit E.V.B. to challenge the findings of guilt on the assault charges despite the district court's decision to withhold adjudication on those charges. *See* Minn. R. Juv. Delinq. P. 21.03, subd. 1(A)(2).

This court "review[s] criminal bench trials the same as jury trials when determining whether the evidence is sufficient to sustain convictions." *State v. Holliday*, 745 N.W.2d 556, 562 (Minn. 2008); *see also In re Welfare of M.E.M.*, 674 N.W.2d 208, 215 (Minn. App. 2004) (stating standard of review of juvenile delinquency trials).

Assessing a witness's credibility and weighing witness testimony is the exclusive province of the district court. *In re Welfare of A.A.M.*, 684 N.W.2d 925, 927 (Minn. App. 2004), *review denied* (Minn. Oct. 27, 2004). An appellate court will not disturb the verdict if the factfinder, 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. *State v. Fleck*, 777 N.W.2d 233, 236 (Minn. 2010); *see also In re Welfare of S.J.J.*, 755 N.W.2d 316, 318 (Minn. App. 2008).

The district court found E.V.B. guilty of second-degree assault and fourth-degree assault. The term "assault" is defined by the criminal code as "(1) an act done with intent to cause fear in another of immediate bodily harm or death; or (2) the intentional infliction of or attempt to inflict bodily harm upon another." Minn. Stat. § 609.02, subd. 10 (2008). A person is guilty of second-degree assault if he or she "assaults another with a dangerous weapon." Minn. Stat. § 609.222, subd. 1. A person is guilty of fourth-degree assault against a peace officer if he or she "physically assaults a peace officer . . . when that officer is effecting a lawful arrest or executing any other duty imposed by law." Minn. Stat. § 609.2231, subd. 1.

E.V.B. argues that the evidence is insufficient because the state did not prove beyond a reasonable doubt that he acted with the requisite intent. Assault is a specific-intent crime, which means that the state must prove "that the defendant acted with the intent to produce a specific result." *State v. Vance*, 734 N.W.2d 650, 656 (Minn. 2007). "Therefore, to prove assault, '[t]he prosecutor must prove beyond a reasonable doubt that the defendant . . . intentionally inflicted or attempted to inflict bodily harm on another.'"

Id. (alteration in original) (quoting *State v. Edrozo*, 578 N.W.2d 719, 723 (Minn. 1998)). Intent is a state of mind that generally may be proved by inferences from the defendant's words and actions in light of surrounding circumstances. *State v. Thompson*, 544 N.W.2d 8, 11 (Minn. 1996).

The district court found that E.V.B. “threw the red and black, construction-like hammer overhand in the direction of or at Officer Boyle, as if throwing a hatchet, striking Officer Boyle in the lower left part of his abdomen and causing visible injury.” In contrast, E.V.B. contends on appeal that he was “startled by the officers’ arrival” and “acted instinctively” by “throwing the hammer to distract the officers as he took flight.” The testimony of the state’s witnesses, however, is inconsistent with E.V.B.’s argument and consistent with the district court’s findings. Officer Boyle and Officer Nock testified that E.V.B. threw the hammer in an overhand manner toward Officer Boyle from a distance of approximately six feet. Officer Boyle testified that E.V.B. threw the hammer as if he were throwing a hatchet, “stepping forward, lunging, [and] throwing.” Officer Nock testified that E.V.B. threw the hammer as if he were “pitching a baseball” with “great velocity towards . . . Officer Boyle.” The neighbor who called 911 also witnessed the confrontation between the officers and E.V.B., and he testified that E.V.B. threw the hammer at Officer Boyle with an overhand motion, with full force, from approximately five or six feet.

E.V.B.’s appellate argument is based on his testimony at trial that he tossed the hammer over his shoulder as he turned to run away and that he did not intend to hit the officer with the hammer. But the district court explicitly stated that E.V.B.’s testimony

was “not credible.” The district court instead credited the testimony of Officers Boyle and Nock and the neighbor who witnessed the events. We must defer to those credibility determinations. *See A.A.M.*, 684 N.W.2d at 927 (noting that assessment of witness’s credibility is exclusive province of factfinder). The district court also relied on other evidence that corroborated the testimony of the state’s witnesses and undermined E.V.B.’s testimony. The district court referred to a photograph of Officer Boyle’s injuries, which the district court stated were consistent with a hammer being thrown with force. The district court also noted that E.V.B. had smoked marijuana shortly before the incident, which may have impaired his perception and recollection of the incident.

E.V.B. also contends that the veracity of his version of events is demonstrated by the fact that the bullet from Officer Boyle’s firearm hit him in his side or back, thus “showing that he was in motion, trying to run away, when he threw the hammer.” The evidence to which E.V.B. refers is not necessarily inconsistent with the district court’s findings or the testimony of the state’s witnesses. There are several possible reasons why E.V.B.’s side or back was turned toward Officer Boyle at the moment the firearm was discharged. For example, E.V.B. may have turned his body while following through on his throwing motion. In any event, the evidence concerning the injuries sustained by E.V.B. is not inherently inconsistent with the state’s evidence.

In sum, the testimony of Officer Boyle, Officer Nock, and the neighbor is sufficient to prove that E.V.B. acted with the intent to inflict bodily harm on Officer Boyle. E.V.B. does not challenge the evidence on any other element of the assault

charges. Thus, the evidence is sufficient to support the district court's findings that E.V.B. is guilty of second-degree assault and fourth-degree assault.

Affirmed.