STATE OF MINNESOTA
IN COURT OF APPEALS
A12-0111

In the Matter of the Welfare of: E. M. T., Child.

Filed September 4, 2012
Affirmed
Cleary, Judge

Washington County District Court
File No. 82-JV-11-992

Dakota County District Court
File Nos. 19HA-JV-10-3969, 19HA-JV-11-3490

David W. Merchant, Chief Appellate Public Defender, Benjamin J. Butler, Assistant Public Defender, St. Paul, Minnesota (for appellant child)

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

Peter Orput, Washington County Attorney, Anthony J. Zdroik, Assistant County Attorney, Stillwater, Minnesota; and

James C. Backstrom, Dakota County Attorney, Hastings, Minnesota (for respondent)

Considered and decided by Cleary, Presiding Judge; Chutich, Judge; and Hooten, Judge.

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

CLEARY, Judge

Appellant challenges her adjudication of second-degree assault with a dangerous weapon, arguing that the evidence presented at trial was insufficient to prove that she acted with intent to cause fear in another of immediate bodily harm or death. We affirm.

FACTS

In October 2011, appellant E.M.T., then 16 years old, went into a Wal-Mart store in Woodbury and placed a television into a shopping cart. Appellant removed the slippers she was wearing and placed them in her purse, which was sitting in the child-seat area of the cart. Appellant then went to the front entrance of the store and pushed the cart past the store's door greeter, who asked appellant to stop and show a receipt.

R.K., the store's loss-prevention officer, heard the door greeter ask for appellant's receipt, exited his office, and saw appellant beginning to leave the store with the television in the shopping cart. R.K. instructed appellant to stop and show a receipt, but appellant ran out of the store with the cart. R.K. followed appellant out of the store and eventually caught up to her. R.K. placed his hand on the front of the cart, identified himself as being with Wal-Mart security, and stated that he either needed to see a receipt for the television or needed it to be returned to the store. R.K. walked around to the side of the cart.

According to R.K., appellant then reached inside her purse, pulled out a knife, and lunged at him, with the knife coming within two to four inches of his chest.[1] R.K. testified that he fell to the ground to protect himself and avoid being struck by the knife; that he was scared and afraid for his life; and that appellant then dropped the knife and again began to run with the shopping cart. According to appellant, the knife fell out of her purse and onto the ground when R.K. grabbed the cart, and she did not touch the

[1] R.K. used the words "lunged," "swiped," and "swung" to describe the motion that appellant made with the knife, but testified during trial that those words do not have any difference in meaning to him.

knife or swing it at R.K. After appellant ran away, R.K. got up from the ground, picked up the knife, and returned to the store. He called 911and reported that a shoplifter had attempted to stab him.

An off-duty Wisconsin state trooper was shopping at the store at the time and saw R.K.'s hands go into the air and then saw R.K. fall to the ground. The trooper ran after appellant, caught up to her, and restrained her until the police arrived. Appellant was arrested and interrogated at the police station. During the interrogation, appellant maintained that the knife fell out of her purse, and she denied swinging it at R.K. or having any intent to hurt or stab him. Appellant admitted to stealing the television from the store. Appellant was subsequently charged with second-degree assault with a dangerous weapon, a felony in violation of Minn. Stat. § 609.222, subd. 1 (2010); fifth-degree assault, a misdemeanor in violation of Minn. Stat. § 609.224, subd. 1(2) (2010); and theft, a misdemeanor in violation of Minn. Stat. § 609.52, subd. 2(1) (2010).

A bench trial was held, during which a photograph of the knife was admitted as an exhibit. The photograph shows that the knife was serrated and approximately nine inches long, with an approximately four-and-a-half-inch handle and a four-and-a-half-inch blade. The district court subsequently found appellant guilty of theft and second-degree assault with a dangerous weapon, and not guilty of fifth-degree assault. The court stated that it found R.K.'s testimony credible as to the events that occurred in October 2011. Specifically, the court found credible R.K.'s testimony that appellant reached into her purse, pulled out the knife, took the knife by the handle, and quickly swung it toward R.K.'s chest, coming within a few inches of striking him, and that R.K. fell to the ground

to avoid being struck by the knife. The court further determined that the knife is a dangerous weapon and that appellant's actions were done with the intent to cause fear in R.K. of immediate bodily harm or death and to prevent her apprehension. The court stated that appellant's story that the knife accidentally fell out of her purse was "neither credible nor reasonable" in light of all of the other evidence presented and that appellant's "repeated denials of any intent to assault the victim with the knife do not negate other proof of her intent to assault [R.K.] with the knife." This appeal followed.

D E C I S I O N

Appellant argues that the evidence was insufficient to prove her guilty of second-degree assault with a dangerous weapon. "When reviewing a sufficiency of the evidence claim, this court carefully reviews whether the record and any legitimate inferences drawn from it reasonably support the fact-finder's conclusion that the defendant committed the offense charged." *In re Welfare of J.R.M.*, 653 N.W.2d 207, 210 (Minn. App. 2002) (citing *State v. Ulvinen*, 313 N.W.2d 425, 428 (Minn. 1981)). "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)). "We will not reverse a decision if the fact-finder, acting with proper respect for the principles of presumed innocence and proof beyond a reasonable doubt, could have reasonably found as it did." *In re Welfare of W.A.H.*, 642 N.W.2d 41, 46 (Minn. App. 2002) (citing *State v. Alton*, 432 N.W.2d 754, 756 (Minn. 1988)).

Whoever assaults another with a dangerous weapon is guilty of assault in the second degree. 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 (2010). Appellant does not challenge the district court's findings that she swung the knife toward R.K.'s chest, coming within inches of striking him, and that the knife is a dangerous weapon. Rather, appellant argues that the evidence was insufficient to prove that she acted with intent to cause fear in R.K. of immediate bodily harm or death.

In analyzing this argument, the intent of appellant, rather than the effect upon R.K., is the focal point. *See State v. Hough*, 585 N.W.2d 393, 396 (Minn. 1998). "With intent to" means that "the actor either has a purpose to do the thing or cause the result specified or believes that the act, if successful, will cause that result." Minn. Stat. § 609.02, subd. 9(4) (2010). A trier-of-fact may infer that a person intends the "natural and probable consequences" of his or her actions. *State v. Cooper*, 561 N.W.2d 175, 179 (Minn. 1997). Because intent is a state of mind, it is generally proved circumstantially "by drawing inferences from the defendant's words and actions in light of the totality of the circumstances." *Id*.

In this case, appellant reached into her purse, pulled out the knife, took the knife by the handle, and swung it toward R.K.'s chest, coming within a few inches of striking him. A "natural and probable" consequence of such actions is that they would cause R.K. to fear immediate bodily harm or death, and the district court could reasonably infer from appellant's actions that she intended this consequence. *See Cooper*, 561 N.W.2d at 179;

see also State v. Patton, 414 N.W.2d 572, 573–74 (Minn. App. 1987) (upholding a jury's finding that a defendant acted with intent to cause fear in another of immediate bodily harm when the defendant brandished a knife within one to two feet of a victim but did not swing it at the victim or attempt to stab him); *State v. Soine*, 348 N.W.2d 824, 825–26 (Minn. App. 1984) (upholding a jury's finding that a defendant acted with intent to cause fear in another of immediate bodily harm when the defendant pointed a knife at a victim and waved it within inches of the victim's face and chest), *review denied* (Minn. Sept. 12, 1984).

Appellant relies on *In re Welfare of T.N.Y.*, in which this court reversed a district court's finding that a 13-year-old defendant acted with intent to cause a police officer to fear immediate bodily harm or death. 632 N.W.2d 765 (Minn. App. 2001). In *T.N.Y.*, the defendant came out of a bedroom pointing a gun down a hallway in the officer's direction, was instructed by the officer to drop the gun, and hesitated before doing so. *Id.* at 767–68. The defendant did not point the gun directly at the officer or make any threatening comments or motions to indicate that he intended to shoot. *Id*. at 770. The facts of *T.N.Y.* are distinguishable from what occurred in this case, where appellant swung the knife toward R.K.'s chest and came within inches of striking him.

Appellant argues that another reasonable inference as to her intent is that, by her actions, she may merely have been "trying to remove herself from the bad situation." However, even if appellant was trying to get away from R.K., the reasonable inference that follows is that she intended for her actions to cause R.K. to fear immediate bodily harm or death long enough to allow her to get away. The evidence presented at trial was

sufficient to prove beyond a reasonable doubt that appellant is guilty of second-degree assault with a dangerous weapon.

Affirmed.