STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0462

In the Matter of the Welfare of: D. L. H., Child

Filed October 21, 2013
Affirmed
Smith, Judge

Scott County District Court
File No. 70-JV-12-24728

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

Patrick J. Ciliberto, Scott County Attorney, Shakopee, Minnesota; and

Peter Orput, Washington County Attorney, Erin A. Johnson, Assistant County Attorney, Stillwater, Minnesota (for respondent state)

David Merchant, Chief State Public Defender, Susan Andrews, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Smith, Presiding Judge; Worke, Judge; and Rodenberg, Judge.

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

SMITH, Judge

We affirm appellant's misdemeanor adjudication for violating a harassment restraining order (HRO) and conclude that the state established, beyond a reasonable doubt, that appellant directly or indirectly had contact with the complainant.

FACTS

In November 2011, T.E. secured an HRO against D.L.H., both of whom are minors. On May 2, 2012, the Washington County Sherriff's Office issued a juvenile misdemeanor citation to D.L.H. for yelling names at T.E. as she walked past a local park. The Washington County Sherriff's Office issued the citation because the HRO forbade D.L.H. from having even "mere communication" with T.E. According to the violation report, T.E. and her sister left their home to go to a local gas station. Due to past instances of harassment against T.E., her father followed his daughters in his car. As the girls passed by a local park, T.E.'s father noticed D.L.H. in the park area and heard D.L.H. yell his daughter's name. T.E. informed the officer that "a guy named Wade" yelled her name and that she then heard D.L.H. call her a "whore" three times. D.L.H. denied the allegations.

In September 2012, the district court held a bench trial on the HRO violation. T.E. testified that she saw D.L.H. in the park area and "heard someone say whore . . . then someone said, yah you." T.E. explained that the person who yelled "whore" had "a female voice" and that she observed D.L.H. and two males in the park. T.E. related that she was positive D.L.H. was the one who yelled at her because D.L.H. and T.E. "used to be friends" and T.E. knew D.L.H.'s voice. T.E.'s sister testified that she heard voices from the park area but could not understand any specific words. However, on cross-examination, T.E.'s sister testified that she heard someone yell "hey you" and that she "heard the word whore." T.E.'s father testified that he followed his daughters in his car and kept his windows down and the radio off. As the girls approached the park he "heard

[T.E.'s] name being called." T.E.'s father observed D.L.H. and two males in the park and testified that it was a female voice that yelled T.E.'s name. The officer who issued the citation testified consistent with his violation report. However, the officer added that a female friend was with D.L.H. in the park area.

D.L.H. testified that she was in the park area with one male and one female friend and that a "kid . . . named Wade was not that far away from us." According to D.L.H., it was Wade who called out T.E.'s name. D.L.H. stated that she "told [Wade] not to [yell at T.E.] because [she] had a restraining order." D.L.H. denied saying anything to T.E. or her sister. D.L.H.'s male friend testified that he was in the park area with D.L.H. and another female friend. The male friend stated that it was Wade who yelled at T.E. and called her a whore.

The state requested that the district court find that D.L.H. violated the HRO because "[T.E.] testified that [D.L.H.] yelled [T.E.'s] name and called her a whore . . . . You heard from the defense that there was [another female] who may have been present but that's not corroborated by any testimony beyond [D.L.H's] friends and family." D.L.H. contended that the district court received "significant and substantial evidence that there were two females in that park." The district court concluded that D.L.H. violated the HRO "based upon the expansive wording of the harassment restraining order." The district court explained that the HRO forbade "any contact with [T.E.], direct or indirect, and . . . indirect could mean even through third parties." After D.L.H. requested further clarification, the district court stated that "whore," "hey you," and

T.E.'s name were all yelled and that "[the contact was] direct or indirect, whether or not it's from the actual defendant or a third party on the defendant's behalf."

The district court placed D.L.H. on 90 days' probation and subjected her to a number of conditions, including community service and a requirement that she apologize to T.E.

D E C I S I O N

D.L.H. argues that "the trial court could not reasonably find based on the evidence presented that appellant violated the restraining order, and her delinquency adjudication must be reversed." Essentially, D.L.H.'s argument amounts to a challenge of the sufficiency of the evidence. It is undisputed that the state must prove each essential element of a juvenile-delinquency petition beyond a reasonable doubt. *In re Welfare of S.S.E.*, 629 N.W.2d 456, 461 (Minn. App. 2001).

In considering a claim of insufficient evidence, our 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 finder of fact to reach the verdict it did. *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989). Direct eyewitness testimony regarding what occurred constitutes direct evidence. *See State v. Clark*, 739 N.W.2d 412, 421 n.4 (Minn. 2007) (explaining that direct evidence "is evidence that is based on personal knowledge or observation and that, if true, proves a fact without inference or presumption" (quotation omitted)). We must assume that the finder of fact "believed the state's witnesses and disbelieved any evidence to the contrary." *State v. Moore*, 438 N.W.2d 101, 108 (Minn. 1989). This is especially true when resolution of

the matter mainly depends on conflicting testimony. *State v. Pieschke*, 295 N.W.2d 580, 584 (Minn. 1980). We will not disturb the verdict if the finder of fact, acting with due regard for the presumption of innocence and the requirement of proof beyond a reasonable doubt, could reasonably conclude that the defendant is guilty of the charged offense. *Bernhardt v. State*, 684 N.W.2d 465, 476-77 (Minn. 2004).

The fulcrum of this case is the competing stories regarding what was yelled, and by whom, as T.E. and her sister passed the local park. The record establishes that T.E. was positive that it was D.L.H. who called her name and made a derogatory remark. T.E.'s certainty stems from the fact that she used to be friends with D.L.H. and is familiar with her voice. As an appellate court, we are compelled to assume that the finder of fact "believed the state's witnesses and disbelieved any evidence to the contrary." *Moore*, 438 N.W.2d at 108. D.L.H. and her male friend testified that D.L.H. did not interact with T.E. However, the district court credited T.E.'s testimony over D.L.H.'s version of events when it adjudicated D.L.H. guilty of violating the HRO. Such credibility determinations are within the sole province of the trier of fact. *See Peterson v. Johnson*, 755 N.W.2d 758, 761 (Minn. App. 2008). Because we are bound to discredit evidence contrary to the verdict and accept the credibility determinations of the district court, we must conclude that the state established that D.L.H. violated the HRO.

Affirmed.