

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2018).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0111**

State of Minnesota,
Respondent,

vs.

Danny Hugh Burns,
Appellant.

**Filed January 21, 2020
Affirmed
Hooten, Judge**

Clay County District Court
File No. 14-CR-18-1867

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Brian J. Melton, Clay County Attorney, Pamela L. Foss, Assistant County Attorney,
Moorhead, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Rachel F. Bond, Assistant Public
Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Hooten, Presiding Judge; Cleary, Chief Judge; and
Smith, Tracy M., Judge.

UNPUBLISHED OPINION

HOOTEN, Judge

In this direct appeal from the judgment of conviction for second-degree assault, appellant argues that the evidence was insufficient to prove beyond a reasonable doubt that he was not acting in self-defense. We affirm.

FACTS

On May 10, 2018, Dilworth police officers responded to a report of an assault at an apartment. The victim of the assault alleged that appellant Danny Hugh Burns arrived at the apartment, asked to speak with the victim's mother, and then "went crazy" when the request was denied. Burns responded by "cussing and swearing" and allegedly threatening to kill the victim.

The victim indicated that he asked Burns to leave and attempted to remove him from the apartment. A physical altercation between the two ensued in the apartment. The victim alleged that Burns punched him but admitted that he pushed Burns to the ground. During the scuffle, the two ended up under the kitchen table, with the victim on top of Burns, holding him by the beard, while Burns "was sticking [the victim] in the eyes with his thumbs and throwing punches."

The victim released Burns after about a minute because he believed that Burns "had given up the struggle," told him to leave, and went to check on his mother. The victim alleges that after the fight ended, he heard Burns searching for something in the kitchen and observed him "approaching him with a steak knife in his hand." As Burns approached the victim, "his lips were curled, his gums were visible, and he was screaming" that he was

“going to teach” the victim a lesson, and threatened to kill him. The victim grabbed a mirror in an attempt to protect himself and his mother as Burns began lunging toward the victim and his mother with the knife. The victim asked Burns to drop the knife, telling him “they could handle [this] like men.” Burns dropped the knife, and the victim grabbed him by the chest and threw him out of the door.

The victim called the police, who arrived a short time later and arrested Burns. The victim indicated that he and Burns were friends for several decades and Burns was married to the victim’s sister, but the relationship between the two men began to sour in recent years.

Burns was charged with second-degree assault with a dangerous weapon and threats of violence. Burns agreed to a bench trial and represented himself before the district court. He did not call any witnesses and did not testify, but presented the affirmative defense of self-defense, arguing that the victim was the aggressor in the assault. The district court rejected Burns’ contention that he assaulted the victim in self-defense and found him guilty of both counts. At sentencing, the district court determined that the two counts arose from the same behavioral incident and entered a sentence for second-degree assault with a dangerous weapon only. Burns was sentenced to 45 months’ imprisonment. Burns appeals.

D E C I S I O N

Burns challenges the sufficiency of the evidence to support his conviction for second-degree assault with a dangerous weapon, arguing that the state failed to prove that he was not acting in self-defense.

When reviewing a sufficiency of the evidence claim, we undertake a thorough review of the record to determine whether the evidence, viewed in the light most favorable to the verdict, was sufficient to permit the jury or fact-finder to reach the decision it did. *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989). Under this standard, we assume that the jury or the fact-finder “believed the state’s witnesses and disbelieved contrary evidence.” *State v. Brocks*, 587 N.W.2d 37, 42 (Minn. 1998). A court should not disturb a verdict unless it concludes that the jury could not have reached the decision that it did on the charged offense. *Bernhardt v. State*, 684 N.W.2d 465, 476–77 (Minn. 2004).

In Minnesota, a person may use reasonable force to defend himself against an assault. Minn. Stat. § 609.06, subd. 1(3) (2018). The supreme court has emphasized that the use of force for the purposes of self-defense is permitted if certain factors are present:

(1) the absence of aggression or provocation on the part of the [defendant]; (2) the actual and honest belief of the [defendant] that he was in imminent danger of death, great bodily harm, or some felony and it was necessary to take the action he did; (3) the existence of reasonable grounds for such belief; and (4) the duty of the [defendant] to retreat or avoid the danger if reasonably possible.

State v. Johnson, 152 N.W.2d 529, 532 (Minn. 1967). If a defendant argues his actions were in self-defense and presents evidence supporting this contention, the state has the burden of proving the nonexistence of one of the factors described above beyond a reasonable doubt. *State v. Spaulding*, 296 N.W.2d 870, 875 (Minn. 1980). The state need only show the absence of one of the factors to sustain the conviction. *State v. McKissic*, 415 N.W.2d 341, 344 (Minn. App. 1987).

Burns alleges that the state failed to prove the nonexistence of the four self-defense factors. We review only the factors that the district court clearly determined and do not address the first two factors laid out above.

A. The existence of reasonable grounds for an actual and honest belief by the defendant that he was in danger of imminent bodily harm

Burns alleges that he had a reasonable belief that he was at risk of imminent bodily harm because of the altercation with the victim in the kitchen and the cramped nature of the apartment. We conclude that the records support beyond a reasonable doubt that the district court's determination that Burns did not have reasonable grounds to believe he was in imminent danger. Although Burns may have believed he was in danger of imminent bodily harm during the altercation in the kitchen, the record supports the contention that the physical confrontation between Burns and the victim ended when the victim left the kitchen and told Burns to leave the apartment. There was no indication of any further physical altercation ensuing between the two men after the victim left the kitchen. Burns could have left the apartment, but chose to retrieve a knife from the kitchen and begin swinging it at the victim, threatening to kill him. This does not support a determination that there were reasonable grounds for an actual and honest belief of imminent bodily harm.

B. The duty to retreat to avoid the danger if reasonably possible

Burns next contends that the state failed to prove that he had a reasonable possibility of retreat because the apartment was so small and Burns could not leave the apartment without passing the victim. But there is no evidence in the record that supports Burns' claims that the victim would have stopped Burns' retreat from the apartment if he chose to

leave. Rather, the record supports the assertion that the altercation between Burns and the victim ended when the victim left the kitchen to console his mother and asked Burns to leave the apartment. Rather than leave, however, Burns retrieved a knife and attempted to swing it at the victim, threatening to kill him. Burns had the opportunity to retreat and failed to do so.

C. Reasonable use of force

A defendant who alleges that his use of force was in self-defense must also show that the use of force was reasonable. *State v. Glowacki*, 630 N.W.2d 392, 399 (Minn. 2001). Burns argues that the force he used was reasonable because the victim allegedly attacked him and the small nature of the apartment made him believe he could not leave the apartment without using force.

Our review of the record indicates that there is support beyond a reasonable doubt for the district court's determination that the force Burns used was unreasonable. At the end of the altercation between Burns and the victim in the kitchen, the victim left the kitchen to console his mother and asked him to leave. In response, Burns found a knife and began swinging it at the victim and his mother, threatening to kill the victim. Burns had ample opportunity to leave the apartment unscathed, but chose not to. This was not a reasonable use of force.

Because the evidence is sufficient to support the district court's findings that the state disproved one or more factors of self-defense, we affirm Burns' conviction for second-degree assault with a dangerous weapon.

Affirmed.