STATE OF MINNESOTA
IN COURT OF APPEALS
A22-0605

State of Minnesota,
Respondent,

vs.

Manuel Braulio Barrios,
Appellant.

Filed February 6, 2023
Affirmed in part, reversed in part, and remanded.
Larkin, Judge

Hennepin County District Court
File No. 27-CR-21-9569

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

Mary F. Moriarty, Hennepin County Attorney, Sarah J. Vokes, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Jenna Yauch-Erickson, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Connolly, Presiding Judge; Larkin, Judge; and Slieter, Judge.

NONPRECEDENTIAL OPINION

LARKIN, Judge

Appellant challenges his convictions for first- and second-degree assault. He contends that the state failed to prove beyond a reasonable doubt that he did not act in self-

defense and that his warrant of commitment erroneously reflects judgments of conviction for both first- and second-degree assault. We affirm in part, reverse in part, and remand.

FACTS

In May 2021, respondent State of Minnesota charged appellant Manuel Braulio Barrios with one count of second-degree assault with a dangerous weapon after he stabbed the victim, causing a life-threatening injury. The state later amended the complaint to include one count of first-degree assault.

In November 2021, the state tried the charges to a jury. The victim and an eyewitness testified regarding the circumstances of the assault. Barrios testified, claiming self-defense. The district court instructed the jury on self-defense.

The jury returned verdicts of guilty on both charges. The district court announced a judgment of conviction on first-degree assault and sentenced appellant to serve 60 months in prison—a downward durational departure based on an imperfect self-defense claim.

Barrios appeals.

DECISION

I.

Barrios contends that his conviction must be reversed because the state failed to prove beyond a reasonable doubt that he did not act in self-defense. This contention raises a challenge to the sufficiency of the evidence to sustain the jury's guilty verdict.

Minnesota's self-defense law allows a person to use "reasonable force" to resist an offense by another. Minn. Stat. § 609.06, subd. 1(3) (2020); *State v. Pollard*, 900 N.W.2d 175, 178 (Minn. App. 2017). A defendant bears the burden of producing evidence to

support a claim of self-defense. *State v. Johnson*, 719 N.W.2d 619, 629 (Minn. 2006). If the defendant meets that burden, the state has the burden of disproving one or more of the following self-defense elements beyond a reasonable doubt: "(1) the absence of aggression or provocation on the part of the defendant; (2) the defendant's actual and honest belief that he or she was in imminent danger of death or great bodily harm; (3) the existence of reasonable grounds for that belief; and (4) the absence of a reasonable possibility of retreat to avoid the danger." *State v. Basting*, 572 N.W.2d 281, 285 (Minn. 1997).

When evaluating the sufficiency of the evidence, this court reviews the record to determine whether the evidence, when viewed in a light most favorable to the verdict, was sufficient to allow the jury to convict the defendant of the charged offense. *State v. Robertson*, 884 N.W.2d 864, 871 (Minn. 2016). We "assume the fact-finder disbelieved any testimony conflicting with that verdict." *State v. Balandin*, 944 N.W.2d 204, 213 (Minn. 2020) (quotation omitted). We defer to the jury's credibility determinations and will not reweigh the evidence on appeal. *State v. Pendleton*, 759 N.W.2d 900, 909 (Minn. 2009). "[W]e will not disturb the verdict if the jury, 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. Ortega*, 813 N.W.2d 86, 100 (Minn. 2012)

If the elements of an offense are proved with direct evidence, this court's review is limited to a careful "analysis of the record to determine whether the evidence, when viewed in a light most favorable to the conviction," was sufficient to allow the jurors to reach the

verdict that they did. *State v. Horst*, 880 N.W.2d 24, 40 (Minn. 2016) (quotation omitted).[1] "[D]irect evidence is evidence that is based on personal knowledge or observation and that, if true, proves a fact without inference or presumption." *State v. Harris*, 895 N.W.2d 592, 599 (Minn. 2017) (quotation and alteration omitted).

At trial, the victim testified that, on the day of the incident, Barrios came to an apartment where he was present and started arguing with him. The victim testified that Barrios hit him in the face and then reached for something. The victim saw the handle of a knife, prompting him to turn and grab a hammer. The victim testified that Barrios had a clear path to the door when the victim reached for the hammer. The victim faced Barrios and held up the hammer from about three feet away. Barrios was holding a knife. After the victim's girlfriend physically put herself between the two men, the victim turned his back to Barrios and put down the hammer. The victim testified that Barrios could see him put down the hammer. When the victim's back was to Barrios, Barrios stabbed him. Barrios then pulled the victim towards him and stabbed him one more time before the victim dropped to the floor and crawled out of the room. The victim testified that nothing prevented Barrios from walking out the front door during the altercation.

Barrios testified in contrast that, after exchanging some heated words with the victim, the victim started to swing at Barrios, and he started swinging back but neither man made contact with the other. Barrios testified that the victim then went into the bedroom

[1] This court applies a heightened standard if any element is proved with circumstantial evidence. *See Loving v. State*, 891 N.W.2d 638, 643 (Minn. 2017). Barrios does not argue that this court should apply the circumstantial standard.

and came out with a hammer raised. Barrios stated that the victim swung the hammer at him, prompting him to grab a knife from his back pants pocket. Barrios testified that he was afraid the victim was going to hit him with the hammer, so he lunged at the victim and stabbed him. Barrios acknowledged that no one physically prevented him from leaving the apartment when the victim emerged with the hammer, but he testified that the furniture blocked his exit.

The victim's girlfriend provided eyewitness testimony that both refuted and supported Barrios' claim. On one hand, she testified that when the victim left the room to get the hammer, nothing prevented Barrios from leaving, and that when Barrios stabbed the victim, the victim was moving towards the bedroom. On the other hand, she testified that the victim came back from the bedroom with a hammer and was swinging it right over Barrios as if the victim was going to hit him and that Barrios stabbed the victim in response.

Under our standard of review, we assume that the jury credited the testimony of the victim and rejected Barrios' testimony. *See Pendleton*, 759 N.W.2d at 909 ("We may assume that the jury credited the state's witnesses and rejected any contrary evidence."). The victim's testimony that Barrios hit him in the face and then reached for a knife was sufficient to disprove the absence of aggression or provocation on the part of Barrios. And although Barrios claimed that he did not have a reasonable possibility of retreat, that claim was refuted by the victim's testimony that nothing prevented Barrios from leaving during the altercation.

In challenging the sufficiency of the evidence, Barrios relies on his own testimony at trial. But under our standard of review, we presume that the jury rejected his testimony.

For example, in *Basting*, there was conflicting testimony about who initiated an attack. *Basting*, 572 N.W.2d at 286. The supreme court concluded that "the [district] court was free to credit the testimony that was adverse to [the defendant's] position." *Id.*; *see also State v. Bliss*, 457 N.W.2d 385, 390 (Minn. 1990) ("it is necessary to assume that the jury believed the state's witnesses and disbelieved any contrary evidence" (quotation omitted)).

Viewing the evidence in the light most favorable to the verdict, the evidence was sufficient to disprove Barrios' self-defense claim beyond a reasonable doubt. We therefore do not disturb the verdict.

II.

Barrios contends that his warrant of commitment should be corrected to reflect one conviction for first-degree assault and no conviction for second-degree assault.

At the sentencing hearing, the district court sentenced Barrios on one count of first-degree assault. The district court stated, "I'm not going to sentence or even adjudicate on Count 1 as I believe it is a lesser included of Count 2 . . . I will sentence solely on the more severe count, Count 2." But the warrant of commitment indicates that Barrios was convicted of both first- and second-degree assault.

The parties agree that the warrant of commitment is erroneous. We do as well. Minnesota law provides that "[u]pon prosecution for a crime, the actor may be convicted of either the crime charged or an included offense, but not both." Minn. Stat. § 609.04, subd. 1 (2020). An "included offense" may be "a lesser degree of the same crime" or "a crime necessarily proved if the crime charged were proved." *Id.*, subd. 1(1), (4). The Minnesota Supreme Court has "consistently held that section 609.04 bars multiple

convictions under different sections of a criminal statute for acts committed during a single behavioral incident." *State v. Jackson*, 363 N.W.2d 758, 760 (Minn. 1985). This court reviews whether an offense constitutes a lesser-included offense de novo. *State v. Cox*, 820 N.W.2d 540, 552 (Minn. 2012).

If a defendant is convicted of more than one charge for the same act, the district court should formally adjudicate and sentence the defendant on one count only. *State v. LaTourelle*, 343 N.W.2d 277, 284 (Minn. 1984). The district court should not adjudicate the remaining conviction(s). *Id.* If the district court later vacates the adjudicated conviction "for a reason not relevant to the remaining unadjudicated conviction(s), one of the remaining unadjudicated convictions can then be formally adjudicated and sentence imposed." *Id.*

Second-degree assault is a lesser-included offense of first-degree assault. *See State v. Hackler*, 532 N.W.2d 559, 559 (Minn. 1995) (vacating defendant's conviction for second-degree assault "on the ground that it is a lesser included offense of the offense of assault in the first degree"). We therefore reverse in part and remand for the district court to vacate the judgment of conviction for second-degree assault, while leaving the jury's guilty verdict on second-degree assault intact. *See State v. Walker*, 913 N.W.2d 463, 467-68 (Minn. App. 2018) (reversing and remanding to district court with instructions to vacate the formal adjudication of lesser-included offense, but not the finding of guilt regarding that offense). We note that the district court's statements at the sentencing hearing indicate that this is nothing more than a clerical error.

Affirmed in part, reversed in part, and remanded.