

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A22-1820**

In the Matter of the Welfare of: D. K. B.-W., Child.

**Filed August 21, 2023
Affirmed
Connolly, Judge**

Hennepin County District Court
File No. 27-JV-21-2323

Cathryn Middlebrook, Chief Appellate Public Defender, Gina D. Schulz, Assistant Public Defender, St. Paul, Minnesota (for appellant D.K.B.-W.)

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

Mary F. Moriarty, Hennepin County Attorney, Adam Petras, Assistant County Attorney, Minneapolis, Minnesota (for respondent State of Minnesota)

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

NONPRECEDENTIAL OPINION

CONNOLLY, Judge

On appeal from the district court's order adjudicating appellant guilty of first-degree assault, appellant argues that the district court clearly erred in making credibility findings that are not based on the evidence and misapplied the law of self-defense. We affirm.

FACTS

On September 23, 2020, appellant D.K.B.-W., then 14 years old, and victim T.B., an adult man, engaged in a confrontation with each other and with several other teenagers

over a basketball that had been taken from T.B.'s sons. Appellant punched T.B. once in the face. T.B. sustained an injury to his left eye, where he had previously received a corneal transplant, and now has permanent vision loss. Appellant ran from the park where the confrontation took place. Respondent State of Minnesota charged appellant with first-degree assault in a juvenile delinquency petition.

The district court conducted a four-day bench trial between August and October 2022. Several witnesses testified, including appellant, T.B., T.B.'s wife, and friends of appellant who were present during the confrontation. Appellant and one friend testified that T.B. threw a punch at that friend and the punch hit appellant. Appellant testified that he then punched T.B. However, T.B., T.B.'s wife, T.B.'s neighbor, and a teenage girl testified that appellant punched T.B. first and T.B. did not throw a punch.

Appellant asserted the affirmative defense of self-defense. The district court found appellant guilty of assault in the first degree. In rejecting appellant's self-defense argument, the district court found T.B. more credible than appellant. In one of the conclusions of law the district court stated:

[Appellant], and by extension those close to him, *stands to lose more with the outcome of this case than any other witnesses*. Additionally, no other witness other than his close friend and [appellant], testified that [T.B.] threw a punch. [Eyewitnesses], who have nothing to lose, also saw no punch by [T.B.]. Weighing the testimony of all the witnesses and the evidence in the case, *this Court finds the testimony of [appellant] and his friend to be less credible due to what [appellant] has to lose.*"

(Emphasis added.) This appeal follows.

DECISION

Standard of Review

The parties dispute the standard of review that this court should apply when evaluating appellant's claim. Appellant argues the standard of review is clearly erroneous because he is challenging the district court's findings of fact regarding witness credibility. Respondent State of Minnesota counters that appellant is actually making a sufficiency-of-the-evidence argument: that the district court's credibility determinations were insufficient to support the verdict. Because this court defers to the factfinder's credibility determinations, we agree with the state. When reviewing a claim of insufficient evidence, this court views the record in the light most favorable to the conviction to determine whether the evidence was sufficient to permit the factfinder to reach the verdict. *State v. Ortega*, 813 N.W.2d 86, 100 (Minn. 2012). "In reviewing the sufficiency of the evidence the court applies the same standard to bench and jury trials." *In re M.E.M.*, 674 N.W.2d 208, 215 (Minn. App. 2004). Assessing a witness's credibility and the weight to be given a witness's testimony "is exclusively the province of the [factfinder]" and this court defers to the factfinder's credibility assessment. *State v. Mems*, 708 N.W.2d 526, 531 (Minn. 2006) (quotations omitted). This court assumes "the [factfinder] believed the state's witnesses and disbelieved any evidence to the contrary." *State v. Moore*, 438 N.W.2d 101, 108 (Minn. 1989). Witness testimony that is inconsistent or conflicting does "not necessarily constitute false testimony or serve as a basis for reversal." *Mems*, 708 N.W.2d at 531 (quotations omitted).

I. Witness Credibility Determination

The district court found that the state's witnesses were credible. In doing so, the court applied the factors from the criminal jury instructions. Appellant argues that the district court's credibility finding was error because the district court relied on evidence that appellant had the most to lose where the record does not include any evidence showing he had the most to lose; thus, the district court's consideration of what appellant had to lose violated the presumption of innocence and ultimately affected appellant's delinquency adjudication.

When assessing witness credibility, the factfinder can consider a witness's: "interest or lack of interest" in the case, relationship to the parties, ability to know facts, manner, age and experience, frankness and sincerity, reasonableness of their testimony in light of all the other evidence, impeachment, and "any other factors that bear on believability and weight." *State v. Pak*, 787 N.W.2d 623, 628 (Minn. App. 2010) (concluding the district court could instruct a jury to weigh witness credibility using CRIMJIG 3.12); *see* 10 *Minnesota Practice*, CRIMJIG 3.12 (2022). A district court's general witness-credibility instruction may include a witness's "interest or lack of interest in the outcome of [the] case" and whether each witness had "something to gain or lose." *State v. Horst*, 880 N.W.2d 24, 39 (Minn. 2016) (quotations omitted).

The district court, sitting as the factfinder, analyzed appellant's claim of self-defense by determining "who threw the first punch," and answered this question by relying, in part, on the witnesses' "interest or lack of interest in the outcome of the case." The district court found that the testimony of appellant and his friend was less credible than other witness

testimony due to what appellant “ha[d] to lose” and found that the testimony of T.B.’s neighbor and a teenage girl more credible because they had “nothing to lose.”

The district court’s order, read as a whole, clearly used the correct legal standard reflected in the criminal jury instruction.¹ First, the district court included the factors it considered:

[P]art of this Court’s obligation as the fact finder in a Juvenile Court trial is weighing the credibility of witnesses. *See generally* 10 Minn. Prac., CRIMJIG 3.12 (6th ed.). In order to determine the credibility of a witness, the finder of fact may look at a variety of factors including: (1) *interest or lack of interest in outcome of the case*, (2) the relationship of the witness to the other parties, (3) their ability to know or remember, (4) their “manner,” (5) their age, (6) their level of sincerity, (7) the reasonableness or unreasonableness of the testimony compared to the other evidence, (8) whether or not they are impeached by other evidence, and (9) any other relevant factors.

(Emphasis added.) Then, the district court concluded in the next paragraph, “[Appellant], and by extension those close to him, *stands to lose* more with the outcome of this case than any other witnesses” (emphasis added).

The district court also considered the witnesses’ relationships to the parties in weighing credibility. The district court found appellant’s friend was less credible than T.B., T.B.’s wife, T.B.’s neighbor, and the teenage girl, in part due to the “long friendship”

¹ In *State v. Larson*, 281 N.W.2d 481 485 n.3 (Minn. 1979), the Minnesota Supreme Court recommended the civil witness credibility instruction be used in a criminal case. The civil jury instruction for evaluation of credibility of witnesses includes the guideline of “[w]ill a witness gain or lose if this case is decided a certain way.” 4 *Minnesota Practice*, CIVJIG 12.15 (2022). The criminal jury instruction phrases this guideline as the witness’s “interest or lack of interest in the outcome of the case.” 10 *Minnesota Practice*, CRIMJIG 3.12 (2022).

between appellant and his friend. The district court's consideration of the "long friendship" between appellant and his friend is supported by the record, because appellant's friend testified that he had been friends with appellant "since elementary school." These findings are consistent with the factors identified in the jury instruction guides and approved by caselaw as stating the correct legal standard for evaluating witness credibility. *See Pak*, 787 N.W.2d at 628.

Appellant cites *State v. Underwood*, 281 N.W.2d 337, 344 (Minn. 1979), to argue that "the defendant should not be singled out as more or less believable because of his status as the accused." However, in *Underwood* the Minnesota Supreme Court reversed a jury's conviction due to five cumulative errors, and only one error was the jury instruction on the defendant's credibility. *Underwood*, 281 N.W.2d at 344. The supreme court held the instruction may have "create[d] unwarranted suspicion" because it specifically singled out the defendant:

The Defendant has given his testimony, and you are the judges of the weight which ought to be attached to it. His testimony should be weighed as the testimony of any other witness; considerations of interest, appearance, manner, and other matters bearing upon the credibility apply to the defendant in common with all witnesses. He is directly interested in the result of the trial. In determining the weight to be given to the testimony of the Defendant, it is proper for you to take such interest into consideration. You are to give to his testimony such weight as under all of the circumstances you think it is entitled to. You have the right to consider his situation, his interest in the result of the trial, the temptation which may exist under the circumstances to testify falsely.

Id. at 343.

We are not persuaded that *Underwood* is applicable. First, the case in *Underwood* was a jury trial and this case was a court trial. We are less concerned that a district court judge would find the defendant less believable because of his status as the accused than a jury of laypersons, who could be influenced by a jury instruction that singled out defendant's status as the accused. See *State v. Burrell*, 772 N.W.2d 459, 467 (Minn. 2009) (“The risk of unfair prejudice to [the appellant] is reduced because there is comparatively less risk that the district court judge, as compared to a jury of laypersons, would use the evidence for an improper purpose or have his sense of reason overcome by emotion”). Second, the district court did not single out appellant but applied the jury instruction to evaluate the credibility of all witnesses. The district court framed what appellant “ha[d] to lose” in terms of appellant’s interest in the case, and a witness’s interest in the case is a permissible factor for the factfinder to consider when making a credibility determination. See *Pak*, 787 N.W.2d at 628. The district court did not elaborate further on what appellant “ha[d] to lose” or on appellant’s interest in the case. The district court also did not elaborate on why it determined T.B.’s neighbor and the teenage girl had “nothing to lose.”

Appellant fails to show that the district court’s credibility determination in light of the witnesses’ testimony was improper or that there was insufficient evidence in the record to conclude that appellant was not acting in defense of self or others when he struck T.B.

Even if the district court erred by considering what appellant “ha[d] to lose,” the error was harmless. An error is harmless “[w]hen there is no reasonable possibility that it substantially influenced the jury’s decision.” *State v. Harvey*, 932 N.W.2d 792, 810 (Minn. 2019) (quotations omitted). “An error in jury instructions is not harmless and a new trial

should be granted if it cannot be said beyond a reasonable doubt that the error had no significant impact on the verdict.” *State v. Pendleton*, 567 N.W.2d 265, 270 (Minn. 1997).

There is no likelihood that considering what a witness “has to lose” in this case had a significant impact on the verdict because the district court could still find beyond a reasonable doubt that appellant threw the first punch. T.B.’s neighbor and a teenage girl, who have no relationship to T.B. or his wife, consistently testified that they did not see T.B. throw the first punch.

II. Duty to Retreat Applied to Self-Defense Law

Appellant next argues that the district court misapplied the law of self-defense and defense of others by applying an unqualified duty to retreat to appellant’s claim that he acted in defense of others. The district court stated “[appellant] would need to have no ability to reasonably retreat for self-defense to be valid.” Whether a district court has properly interpreted and applied the duty to retreat is a question of law reviewed de novo. *State v. Devens*, 852 N.W.2d 255, 257 (Minn. 2014).

Minnesota law authorizes a person to use reasonable force “in resisting or aiding another to resist an offense against the person.” Minn. Stat. § 609.06, subd. 1(3) (2020). There are four elements to a self-defense claim: “(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, 285–86 (Minn. 1997). The

defense of self-defense is available only to those who act honestly and in good faith. *State v. Baker*, 160 N.W.2d 240, 242 (Minn. 1968).

In weighing the evidence in the record, the district court determined appellant and his friend were not credible when they testified that T.B. threw the first punch and held that appellant's self-defense claim failed because "the [s]tate [proved] beyond a reasonable doubt that [T.B.] did not throw the first punch and that [appellant] did not act upon his duty and ability to retreat." The district court then analyzed the issue of appellant's self-defense claim under a "hypothetical scenario" in which T.B. threw the first punch and whether appellant had a duty to retreat in that circumstance. Consequently, the district court did not err in analyzing the law of self-defense under a "hypothetical scenario." Because the district court properly weighed witness credibility, and this court defers to its credibility determinations, it is not necessary to address the district court's application of the duty to retreat in a "hypothetical scenario" in which T.B. threw the first punch.

Appellant alternatively argues that, even if appellant threw the first punch, appellant still had a valid self-defense claim, because appellant reasonably believed force was necessary to prevent harm. In applying the four elements of self-defense, the district court reasoned the "first three elements of self-defense in this case can be boiled down to one question: who threw the first punch." Again, this question is resolved by the district court's conclusion that appellant did. The district court concluded appellant entered the confrontation between T.B. and another teenager on his own, and T.B. did not specifically confront appellant. The district court concluded "there [was] no indication that [appellant and his friends] would have been pursued had they [run] or that they had an inability to do

so.” Thus, the district court did not misapply Minnesota’s self-defense law by requiring appellant to retreat, based on its finding that appellant was the initial aggressor.

III. Cumulative Error

Finally, in the alternative, appellant argues the district court’s two errors—a clearly erroneous credibility finding and a misapplication of the law of self-defense—have the cumulative effect of depriving appellant of a fair trial. In rare cases, “the cumulative effect of trial errors can deprive a defendant of his constitutional right to a fair trial when the [errors], none of which alone might have been enough to tip the scales,” prejudice the defendant by producing a biased jury. *State v. Davis*, 820 N.W.2d 525, 538 (Minn. 2012). Here, the district court made a valid credibility determination and did not misapply the law of self-defense concerning appellant’s duty to retreat. Therefore, there was no error, let alone cumulative error.

Affirmed.