STATE OF MINNESOTA
IN COURT OF APPEALS
A22-0432

State of Minnesota,
Respondent,

vs.

Earley Romero Blevins,
Appellant.

Filed February 21, 2023
Affirmed
Smith, Tracy M., Judge

Hennepin County District Court
File No. 27-CR-21-10509

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

Mary F. Moriarty, Hennepin County Attorney, Nicole Cornale, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Sara L. Martin, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Worke, Presiding Judge; Smith, Tracy M., Judge; and Wheelock, Judge.

NONPRECEDENTIAL OPINION

SMITH, TRACY M., Judge

Appellant Earley Romero Blevins appeals from judgments of conviction for two counts of second-degree assault (fear) with a dangerous weapon, arguing that respondent State of Minnesota failed to prove beyond a reasonable doubt that he was not acting in self-

defense. He makes additional arguments challenging his convictions in his pro se supplemental brief. Because the evidence was sufficient to prove beyond a reasonable doubt that Blevins failed to exercise his duty to retreat and the arguments in his supplemental brief lack merit, we affirm.

FACTS

This case concerns an altercation at a light-rail station in downtown Minneapolis involving Blevins; three unidentified persons—a female in a teal t-shirt (FTT), a male in a black tank top (MBT), and a male in a black sweatshirt (MBS); and another man, A.T.[1] The following facts are drawn from the findings of fact made by the district court following a bench trial, which Blevins does not challenge.

On the evening of June 2, 2021, Blevins was at the light-rail station at US Bank Stadium Plaza in Minneapolis. FTT, MBT, and MBS were present at the station. MBT had a child with him who appeared to be between five and eight years old. When Blevins walked past FTT, FTT said something to him and Blevins responded angrily. A verbal argument ensued. During that time, a train arrived, people got off the train, other people boarded, people walked past Blevins and FTT, and the train departed. Among the people who got off this train was A.T. A.T. noticed the verbal argument between FTT and Blevins, and he remained on the platform watching from several yards away.

MBS walked toward Blevins and FTT carrying a large knife and began arguing with Blevins. MBS told Blevins to come into the light-rail station shelter out of the camera's

[1] FTT, MBS, and MBT appeared on video from a security camera on the light-rail platform but were not identified and did not testify at trial. A.T. testified at trial.

view so that he could slit Blevins's throat. Blevins did not go in the shelter. He pulled a machete from his waist band, unsheathed it, and held the machete in his right hand and the sheath in his left. Blevins, with the machete at his side, yelled at FTT and MBS and moved towards them. Neither FTT nor MBS appeared afraid for their safety. During that time, A.T. remained behind Blevins, watching, but Blevins was unaware that A.T. was present.

MBT, who had been on the platform on the other side of the tracks, crossed the tracks and joined MBS and FTT. MBT walked aggressively toward the verbal confrontation while the child walked behind him. At this point, MBS put his knife away and stepped back and adjusted his shoe. Blevins felt surrounded and feared for his safety. Blevins did not try to walk away or get away due to his fear and instead moved forward toward FTT, pointing the machete at her and yelling. Blevins also lunged at MBT while holding his machete in an aggressive manner. This confrontation—during which Blevins yelled at FTT, MBT, and MBS and swung the machete around at them—lasted 58 seconds.

A.T. then decided to try to disarm Blevins. He lunged at Blevins from behind and grabbed the handle of the machete. At that time, FTT, MBT, and MBS were walking away. Blevins, trying to break free of A.T., pulled his arm holding the machete up and down and ended up slicing A.T.'s hand. Blevins and A.T. eventually ended up on the ground, grappling for the machete.

While Blevins and A.T. were wrestling, FTT watched as she walked away with the child. MBT approached Blevins and A.T. and stabbed Blevins with a knife. MBT then moved away but returned to yell some more.

Blevins eventually regained control of the machete and helped A.T. to his feet. A.T. walked himself to the nearby hospital, where he was treated. Blevins got on a train and departed the station. He was apprehended in St. Paul. At the time, Blevins was agitated and was likely under the influence of a controlled substance.

The state charged Blevins with second-degree assault with a dangerous weapon (harm), in violation of Minnesota Statutes section 609.222, subdivision 1 (2020), based on his altercation with A.T. The state later filed an amended complaint, adding two counts of second-degree assault with a dangerous weapon (fear), in violation of Minnesota Statutes section 609.222, subdivision 1, based on his actions against FTT and MBT.

After Blevins waived his right to a jury trial, the case proceeded to a bench trial. The district court found Blevins not guilty of the count of second-degree assault with a dangerous weapon (harm) against A.T., determining that Blevins was acting in self-defense. The district court found Blevins guilty of two counts of second-degree assault with a dangerous weapon (fear) against FTT and MBT, determining that Blevins was not acting in self-defense because he failed to retreat. The court imposed a presumptive 39-month executed sentence.

Blevins appeals.

DECISION

Blevins contends that the evidence is insufficient to prove beyond a reasonable doubt that he was not acting in self-defense. In a pro se supplemental brief, Blevins also raises arguments related to inconsistent verdicts, the right to a speedy trial, and judicial misconduct. We address each argument in turn.

I. Because Blevins had a duty to retreat and failed to do so, the district court did not err by determining that Blevins was not acting in self-defense.

When evaluating the sufficiency of the evidence, we carefully examine the record to determine whether the evidence, viewed in the light most favorable to the verdict, is sufficient to permit a factfinder to reach its verdict. *See State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989). This standard of review applies when evaluating whether a necessary element is proved by direct evidence alone. *State v. Horst*, 880 N.W.2d 24, 40 (Minn. 2016) (citing *Webb*, 440 N.W.2d at 430). In performing our review, we assume the factfinder believed the state's witnesses and disbelieved any contrary evidence, and we defer to the fact-finder's credibility determinations. *See State v. Brocks*, 587 N.W.2d 37, 42 (Minn. 1998); *State v. Watkins*, 650 N.W.2d 738, 741 (Minn. App. 2002). When evaluating the sufficiency of the evidence, we use the same standard of review for bench trials and jury trials. *See State v. Palmer*, 803 N.W.2d 727, 733 (Minn. 2011).

"[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). Here, the videos of the incident presented at trial constitute direct evidence because they present an objective observation of the incident that requires no inferences. *See State v. McCormick*, 835 N.W.2d 498, 507 (Minn. App. 2013) (stating that a video of the offense constituted direct evidence for the purpose of sufficiency), *rev. denied* (Minn. Oct. 15, 2013). Thus, the issue presented is whether the direct evidence was sufficient to prove beyond a reasonable doubt that Blevins did not act in self-defense.

Minnesota's self-defense law provides that "reasonable force may be used upon or toward the person of another without the other's consent . . . when used by any person in resisting or aiding another to resist an offense against the person." Minn. Stat. § 609.06, subd. 1(3) (2020); *see also State v. Pollard*, 900 N.W.2d 175, 178 (Minn. App. 2017) (quoting Minn. Stat. § 609.06, subd. 1 (2014)). The elements of self-defense are (1) an absence of aggression or provocation by the defendant, (2) an actual and honest belief by the defendant that harm was imminent, (3) a reasonable basis for the defendant's belief, and (4) an absence of a reasonable means by which the defendant could have retreated or otherwise avoided the danger. *State v. Johnson*, 719 N.W.2d 619, 629 (Minn. 2006) (quotation omitted). With respect to the fourth element, the law imposes a duty to retreat when retreat appears "reasonably possible." *State v. Glowacki*, 630 N.W.2d 392, 399 (Minn. 2001). A defendant bears the burden of producing evidence to support a claim of self-defense. *State v. Devens*, 852 N.W.2d 255, 258 (Minn. 2014). Once the defendant meets that burden, the state must disprove one or more of the self-defense elements beyond a reasonable doubt. *Id.*

Blevins contends that the state failed to disprove several of the elements of self-defense beyond a reasonable doubt. Because we conclude that the evidence was sufficient to disprove the fourth element—the absence of an opportunity to retreat—our analysis begins and ends with that element.

The district court determined that Blevins had a duty and the opportunity to retreat from the confrontations with FTT and MBT that preceded the conduct on which the assault (fear) charges were based and that he failed to do so. In its written findings of fact,

conclusions of law, and order, the district court wrote that Blevins had "plenty of opportunity to retreat and instead chose to pull out his machete and swing it around, lunging forward and yelling for 58 seconds."

Blevins makes two arguments. First, he argues that he had no reasonable opportunity of retreat. Second, he argues, that even if he had an opportunity to retreat, he was not required to do so before resorting to non-physical force. We address each argument in turn.

A. Opportunity

Blevins contends that the evidence is insufficient to show that he had a reasonable opportunity to retreat. The district court's findings of guilt of assault (fear) were based on Blevins's conduct in swinging his machete at FTT and MBT for 58 seconds. Thus, the key inquiry is whether Blevins had the opportunity to retreat at the time of those assaults.

Blevins argues that he had no available means of retreat because he had no car and was dependent on the light rail for transportation. He also argues that he could not retreat safely because the only avenue for retreat was behind him, given the station configuration and the threatening presence of FTT, MBT, and MBS in front of him, and that he could not reasonably have been expected to turn his back to them to retreat. We are not persuaded.

As is clear from the surveillance video at the station, for one minute immediately prior to the assaults, a train was present at the platform and people arrived at the station and boarded. Blevins could have boarded the train before it departed and thus could have retreated from the engagement with FTT.

Moreover, Blevins could have safely retreated even with FTT, MBT, and MBS in front of him. Blevins had the opportunity to retreat safely when the three moved away from him. Leading up to the assault of FTT, prior to MBT joining the altercation, the video shows FTT and MBS backing away from Blevins. And just before the assault of MBT, after MBS had already moved several feet away, the video shows FTT and MBT moving away from Blevins as well. When FTT, MBT, and MBS began backing away, Blevins could have safely retreated. Blevins asserts it would have been unsafe to turn his back on FTT, MBT, and MBS. But the video shows Blevins walking backwards away from FTT, MBT, and MBS, with FTT, MBT, and MBS in front of him, both before and after the assaults. His path was clear behind him to back away, or he could have walked to his left or right while keeping them in view. Nonetheless, even after FTT, MBT, and MBS began retreating, Blevins continued to walk towards them with the machete in his hand. Any right of self-defense that Blevins had ended when the aggressors withdrew, leaving him the opportunity to retreat. *See State v. Soine*, 348 N.W.2d 824, 826 (Minn. App. 1984), *rev. denied* (Minn. Sept. 12, 1984).

In sum, when the evidence is viewed in the light most favorable to the district court's determination of guilt, the evidence is sufficient to show that Blevins had at least one reasonable opportunity and means of safe retreat.

B. Duty to Retreat

Blevins also argues that, even if he had an opportunity to retreat, he was not required to exhaust it before resorting to non-physical force. He contends that the obligation to

exhaust the opportunity to retreat applies only before resorting to physical force. We disagree.

We have previously concluded that a defendant must exhaust any reasonable opportunity to retreat before engaging in non-physical force. In *In re W.A.H.*, we upheld a juvenile-delinquency determination based on second-degree assault when the juvenile waved a hunting knife at a man who had chased him down an alleyway and ultimately disarmed him. 642 N.W.2d 41, 43 (Minn. App. 2002). The juvenile claimed self-defense, which the district court rejected. *Id.* at 46. On appeal, we concluded that the juvenile's self-defense claim failed on two elements: (1) the circumstances did not amount to a reasonable belief of imminent danger of bodily harm and (2) the juvenile "did not exhaust his opportunities to retreat" and instead "turned and waved a hunting knife at [the victim] three or four times." *Id.* Thus, *W.A.H.* establishes that non-physical force cannot be used if there is an opportunity to retreat.

Our decision in *Soine* supports the same conclusion. In that case, the defendant was charged with second-degree assault (fear) after he shook a knife in a woman's face and then threatened a man with the knife. *Soine*, 348 N.W.2d at 825. The defendant had fought with several other men just before that incident. *Id.* The defendant claimed self-defense, but the jury rejected it. *Id.* We affirmed. *Id.* We concluded that the defense was unavailable since the two victims were not involved in the prior fight. *Id.* at 826. Significantly, we also observed that the previous aggressors had withdrawn, leaving the defendant alone. *Id.* We wrote, "Any right of self-defense the defendant might have had ended when the aggressors withdrew, leaving defendant the opportunity to retreat in safety." *Id.*

Blevins argues that *W.A.H.* and *Soine* are distinguishable because the self-defense claims in those cases failed for reasons in addition to the duty to retreat. Nevertheless, in both cases, we explicitly considered the defendant's opportunity to retreat in the context of an assault charge based on brandishing a weapon and concluded that the defendants had a duty to retreat and the opportunity to retreat, defeating their self-defense claims. The same reasoning applies here.

Blevins also contends that public policy supports his position that there is no duty to retreat before a person uses non-physical force. He contends that self-defense is intended to allow people to defend themselves while also preventing unnecessary harm or death and that removing the duty to retreat before the use of non-physical force strikes the right balance between those interests. We are not persuaded that that is the proper balance. Requiring reasonable retreat will still permit people to reasonably defend themselves but will also serve to end altercations and prevent escalation to the point that someone actually uses physical force and causes bodily harm or death.

In light of our decisions in *W.A.H.* and *Soine*, we conclude that Blevins had a duty to retreat before brandishing the machete. As a result, because Blevins had a duty and a reasonable opportunity to retreat and failed to do so, sufficient evidence supports the district court's determination that Blevins did not act in self-defense.

II. Blevins's pro se arguments are unavailing.

In his supplemental brief, Blevins argues that (1) the verdicts were inconsistent, (2) he was denied a speedy trial, and (3) the district court judge did not act impartially

because it assumed the role of the prosecutor.[2] We address each argument in turn and conclude that they are unavailing.

A. Blevins was not subject to inconsistent verdicts.

It is possible for a verdict to be so inconsistent as to be invalid. However, a mere logical inconsistency will not invalidate the verdict; only a legal inconsistency may do so. *State v. Juelfs*, 270 N.W.2d 873, 873-74 (Minn. 1978); *State v. Moore*, 458 N.W.2d 90, 93-95 (Minn. 1990). "Verdicts are legally inconsistent only 'when proof of the elements of one offense negates a necessary element of another offense.'" *Steward v. State*, 950 N.W.2d 750, 755 (Minn. 2020) (quoting *State v. Cole*, 542 N.W.2d 43, 50 (Minn. 1996)). Thus, a defendant is generally not entitled to a new trial or dismissal because they were found guilty of one count in a multicount complaint but acquitted of others. *Juelfs*, 270 N.W.2d at 873-74. "Whether verdicts are legally inconsistent is a question of law, which we review de novo". *Steward*, 950 N.W.2d at 755 (citing *State v. Leake*, 699 N.W.2d 312, 325 (Minn. 2005)).

Blevins appears to argue that he was subject to inconsistent verdicts because he was found not guilty of assaulting A.T. since he was acting in self-defense but was found guilty of assaulting FTT and MBT since he was not acting in self-defense. Blevins reasons that the verdicts are inconsistent because the elements of assault were the same for all three counts.

[2] In his supplemental brief, Blevins also asserts arguments regarding self-defense. Those arguments are the same as the arguments raised in his counseled brief and we have addressed them above.

But it is not legally inconsistent that Blevins's self-defense claim was successful on the count involving A.T. but not on the counts involving FTT and MBT. Blevins was charged with three counts of second-degree assault against three different victims. The first count related to the physical altercation that took place when A.T. attempted to disarm Blevins. The other two counts related to Blevins's brandishing his machete and yelling at FTT and MBS. The counts related to separate incidents that were factually and temporally distinct. There is no legal or logical inconsistency in finding that Blevins was defending himself against A.T. but not against FTT and MBS.

B. Blevins's right to a speedy trial was not violated.

Blevins argues that his right to a speedy trial was violated when his trial was held 89 days after his not-guilty plea and demand for a speedy trial.

The federal and state constitutions afford criminal defendants the right to a speedy trial. U.S. Const. amend. VI; Minn. Const. art. I, § 6. Although neither constitution defines "speedy," by rule a Minnesota defendant's trial must begin within 60 days of his demand for a speedy trial, absent good cause justifying a delay. Minn. R. Crim. P. 11.09(b). "Whether a defendant has been denied a speedy trial is a constitutional question subject to de novo review." *State v. Osorio*, 891 N.W.2d 620, 627 (Minn. 2017). In reviewing the issue, we consider the four so-called *Barker* factors: (1) the length of the delay, (2) the reason for the delay, (3) whether the defendant asserted his speedy-trial right, and (4) whether the delay prejudiced the defendant's case. *See State v. Windish*, 590 N.W.2d 311, 315 (Minn. 1999) (citing *Barker v. Wingo*, 407 U.S. 514, 530-33 (1972)). "None of the *Barker* factors is 'either a necessary or sufficient condition to the finding of a

deprivation of the right of speedy trial. Rather, they are related factors and must be considered together with such other circumstances as may be relevant.'" *Osorio*, 891 N.W.2d at 628 (quoting *Barker*, 407 U.S. at 533).

Blevins appears to argue that the state violated his right to a speedy trial because there was no proof of "good cause" justifying a delay. Here, the state concedes, and we agree, that the first and third *Barker* factors favor Blevins because the delay was longer than 60 days and he asserted his right to a speedy trial. Thus, we turn to the second and fourth factors.

The second factor—the reason for the delay—favors the state or at least does not weigh in favor of Blevins. The trial was scheduled to begin within the 60-day window. But on the date of trial, the prosecutor relayed that the victim A.T.—a key prosecution witness—was hospitalized and sedated and thus unable to testify. "Normally, the unavailability of a witness constitutes good cause for delay. However, a prosecutor must be diligent in attempting to make witnesses available and the unavailability must not prejudice the defendant." *State v. Strobel*, 921 N.W.2d 563, 569 (Minn. App. 2018) (quotation omitted), *aff'd* 932 N.W.2d 303 (Minn. 2019). Here, the state diligently attempted to make A.T. available, and the district court monitored A.T.'s health and availability in consultation with A.T.'s doctors and lawyer. We are not persuaded by Blevins's assertions, unsupported by the record, that A.T. was not in the hospital or was in the hospital only because he was attempting to avoid the legal system.

The fourth factor also favors the state. Assessing whether a delay prejudiced a defendant, we consider three interests: "(1) preventing oppressive pretrial incarceration;

(2) minimizing the anxiety and concern of the accused; and (3) preventing the possibility that the defense will be impaired." *Windish*, 590 N.W.2d at 318. The impairment of a defendant's defense is the most serious concern. *Id.* Blevins asserts that his right to speedy trial was violated but does not explain how this prejudiced his case. Upon mere inspection of the record, there is no obvious prejudicial error. *See State v. Modern Recycling, Inc.*, 558 N.W.2d 770, 772 (Minn. App. 1997). At the time, Blevins was in custody on these charges and on another case. Thus, the delay did not extend Blevins's time in custody. In addition, because the entire incident was caught on camera, the evidence was completely preserved and the delay posed little risk to Blevins's case.

In sum, we conclude that, considering all of the *Barker* factors together, Blevins's speedy trial right was not violated.

C. Blevins was not denied a trial before an impartial judge.

Under the Fourteenth Amendment, due process of law includes the right to an impartial judge. *McKenzie v. State*, 583 N.W.2d 744, 747 (Minn. 1998). "There is the presumption that a judge has discharged his or her judicial duties properly." *State v. Mems*, 708 N.W.2d 526, 533 (Minn. 2006). Thus, a defendant must assert allegations of impropriety sufficient to overcome this presumption. *See McKenzie*, 583 N.W.2d at 747.

Blevins appears to argue that he was denied a trial before an impartial judge because the judge took on the role of a prosecutor. Blevins argues that the district court acted as a prosecutor when it reviewed the video of the incident and, he claims, determined that he was guilty of committing multiple crimes when, at the time, he was only charged with one. This argument is unsupported by the record.

The district court viewed the video of the incident in the course of considering Blevins's motion to dismiss the assault charge related to A.T.—the only charge against Blevins at the time—for lack of probable cause. At a hearing on the motion, the district court stated that there were "a lot of potential crimes" by several people in the video but no probable cause for the charge related to A.T. At a follow-up hearing on the issue, however, the district court decided not to dismiss the charge related to A.T. for lack of probable cause and permitted the state to amend the complaint to add the two counts related to FTT and MBT. The district court explained to Blevins that it was not deciding whether he was guilty or not guilty of the charges, just that there was probable cause to go forward with the charges. In discussing the evidence and ruling on probable cause, the district court was performing its role and was not taking on the role of a prosecutor. Blevins was not denied an impartial judge.

Affirmed.