COURT OF APPEALS
DECISION
DATED AND FILED

December 12, 2012

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2012AP1761-FT **Cir. Ct. No. 2011JV337**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT II

IN THE INTEREST OF DYLAN. T. W., A PERSON UNDER THE AGE OF 17:

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

V.

DYLAN T. W.,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Kenosha County: CHAD G. KERKMAN, Judge. *Affirmed*.

¶1 NEUBAUER, P.J.[1] Dylan T. W. was adjudicated delinquent for felony battery to a school district officer after he pushed a whiteboard into the teacher and then injured the same teacher with a door. Both incidents occurred while he was trying to leave a classroom. He claims that the evidence was insufficient to support the adjudication because it shows that Dylan acted with intent to leave the classroom rather than intent to cause bodily harm to the teacher. The State argues that Dylan's actions—pushing a whiteboard when someone is nearby and pulling a door open forcefully while someone is in its path—support the trial court's conclusion that Dylan had the requisite intent because he was aware that his actions were practically certain to cause bodily harm. We agree with the State and affirm.

¶2 The following are the facts as described by the victim at trial, whose testimony the trial court relied on as credible. Dylan was upset when he walked into the victim's classroom the morning of the offense.[2] He was loud and disruptive, and he resisted the victim's attempts to calm him. Eventually, he got up and declared his intention to leave the classroom.

¶3 As Dylan walked toward the door of the classroom, he pushed a five-foot- by six-foot dry erase board out of his way and it hit the teacher. The teacher was hurt when the board hit him but was able to "shrug[] it off" and follow Dylan to the door.

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(e) (2009-10). All references to the Wisconsin Statutes are to the 2009-10 version unless otherwise noted.

[2] It appears that Dylan was upset with his education assistant, who the victim described as "browbeating" Dylan and who was present in the classroom when Dylan arrived.

¶4 Dylan continued to the door. When he got there, he opened it with "extreme force" into the teacher, who was about one foot to one and one-half feet behind Dylan. The teacher was hit in his right wrist, which he said caused him "extreme pain." Dylan then attempted to close the door, so the teacher grabbed the door with his left arm to try to stop him. Shortly thereafter, the teacher passed out. According to another student in the classroom, the teacher "dropped to the floor." The teacher testified that he did not know whether he passed out from "pain in [his] wrist or pain in [his] head." The next thing he remembered was waking up in an ambulance. He was hospitalized for three nights because of his injuries, which included a concussion.

¶5 Based on Dylan's behavior, the State filed a petition alleging battery to a school officer and disorderly conduct. He was adjudicated delinquent on both counts. He now appeals the battery count, arguing that the State failed to prove his intent to harm the teacher.

¶6 We may not reverse the adjudication "unless the evidence, viewed most favorably to the [S]tate and the [adjudication], is so insufficient in probative value and force that it can be said as a matter of law that no trier of fact, acting reasonably, could have found guilt beyond a reasonable doubt." *See* ***State v. Poellinger***, 153 Wis. 2d 493, 501, 451 N.W.2d 752 (1990). In other words, in order to prevail, Dylan must show that no trier of fact could reasonably find that Dylan intended to harm his teacher.

¶7 As Dylan acknowledges, to be adjudicated of the battery, he need not have had the purpose of hurting the teacher to have the requisite intent. Instead, he only needs to have been "aware that his conduct was practically certain to cause bodily harm to another." WIS JI—CRIMINAL 1235); *see also* WIS. STAT.

§ 939.23. The trier of fact may infer intent from the defendant's conduct, including words and gestures taken in the context of the circumstances. ***State v. Stewart***, 143 Wis. 2d 28, 35, 420 N.W.2d 44 (1988).

¶8 Here, the trial court found intent from Dylan's actions. It explained:

> When one flings open a door forcefully, one knows that his [or her] conduct is practically certain to cause bodily harm to another who is behind him [or her]. When one pushes a dry eraser board into another person, whether his [or her] main intent was to leave the room or to harm that person, one should know and is aware that his [or her] conduct is practically certain to cause bodily harm.

Despite that finding, Dylan argues that based on his "age, personal limitations and the stressful situation" he "could not have been aware of any potential collateral consequences" of his actions because he was "singularly focused on leaving the classroom." He further argues that statements made by Dylan and another student in the classroom show that there was a "tug-of-war" at the door that resulted in injury to the teacher rather than Dylan opening the door into the teacher the way the teacher described.[3] We disagree that either of these points undermine Dylan's adjudication.

¶9 First, to the extent that witnesses made conflicting statements, the trial court was free to accept or reject the testimony of various witnesses, and it explicitly relied on the teacher's version of events. *See* ***Poellinger***, 153 Wis. 2d at 503-04 (credibility of witnesses is for the trier of fact). Second, evidence that

[3] Dylan also implies that the teacher's testimony is somewhat unreliable because, when interviewed by the police while he was still in the hospital, the teacher could not recall the details of what led to his injuries. We do not find that argument persuasive. The teacher testified under oath as to what his recollection was at the time of trial, and the trial court was free to find that testimony credible, as it did.

Dylan was focused on leaving the classroom when he injured the teacher does not negate the plausibility of the trial court's finding that his actions show an awareness that his conduct was practically certain to cause bodily harm. The evidence shows that Dylan was in conflict with the teacher when he decided to leave the classroom against the teacher's wishes. On his way out the door, he pushed a whiteboard into the teacher and opened the door into the teacher using enough force that the teacher sustained injuries requiring hospitalization. Thus, the evidence was sufficient in probative value and force to support the trial court's finding of intent and Dylan's adjudication.

By the Court.—Order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)4.