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**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A16-1129**

State of Minnesota,  
Respondent,

vs.

Paul Lawrence Wright,  
Appellant.

**Filed May 15, 2017  
Affirmed  
Stauber, Judge**

Hennepin County District Court  
File No. 27-CR-15-5018

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Michael O. Freeman, Hennepin County Attorney, Linda M. Freyer, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

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

Considered and decided by Johnson, Presiding Judge; Stauber, Judge; and  
Toussaint, Judge.\*

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\* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

## **UNPUBLISHED OPINION**

**STAUBER, Judge**

On appeal from his conviction of first-degree assault, appellant argues that (1) the evidence was insufficient to sustain his conviction because the state failed to prove that the victim suffered great bodily harm and (2) he was prejudiced by the district court's erroneous admission of testimony from a rebuttal witness who was not subject to sequestration. We affirm.

### **FACTS**

Appellant Paul Lawrence Wright was charged with one count of first-degree assault, infliction of great bodily harm, and one count of third-degree assault, infliction of substantial bodily harm. At trial, J.W. testified that in February 2015, she was assaulted by appellant, with whom she had been in a romantic relationship for “[j]ust short of two years.” J.W. also testified that as a result of the assault, she suffered a concussion, broken ribs, and a broken orbital bone.

J.W. testified that several days after the assault, she had surgery to repair the broken orbital bone. But in June 2015, J.W.'s orbital bone softened and could no longer support her eye, causing her eye to sink back into her head. A second surgery was then performed during which a titanium plate was inserted in J.W.'s face to hold the orbital contents in the correct position. According to J.W., her recovery from the second surgery lasted about two months, but she still feels “[n]umbness on [her] right side teeth,” and now can only eat soft foods on both sides of her mouth. J.W. also testified that she

occasionally has vertigo and double vision, and she still suffers from depression, anxiety, and post-traumatic-stress disorder, which results in nightmares.

After the state rested, appellant moved for judgment of acquittal on the first-degree assault charge, which was denied. Appellant then testified in his defense and claimed that he was never in a romantic relationship with J.W. Instead, he testified that they had a mutual crack-cocaine addiction and were “gettin’ high partners.” According to appellant, it was J.W.’s “cocaine dealer” who inflicted her injuries.

In response to appellant’s testimony, the state called J.W.’s daughter, T.B., as a rebuttal witness. Appellant objected to the admission of T.B.’s testimony because she had been present for the entire trial and had not been subject to the district court’s sequestration order. The district court overruled the objection, but permitted appellant to comment during closing argument on the fact that T.B. was present during the trial. T.B. then testified that she had never known her mother to smoke crack cocaine and had not seen anyone using crack cocaine on the day of the assault.

The jury found appellant guilty of first-degree assault. The district court then sentenced appellant to 117 months in prison. This appeal followed.

## **D E C I S I O N**

### **I.**

Our review of a sufficiency-of-the-evidence challenge is “limited to a painstaking analysis of the record to determine whether the evidence, when viewed in a light most favorable to the conviction, was sufficient to permit the jurors to reach the verdict which they did.” *State v. DeRosier*, 695 N.W.2d 97, 108 (Minn. 2005) (quotation omitted). We

must assume that “the jury believed the state’s witnesses and disbelieved any evidence to the contrary.” *State v. Caldwell*, 803 N.W.2d 373, 384 (Minn. 2011) (quotation omitted). The verdict will not be disturbed “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).

Appellant was convicted of first-degree assault under Minn. Stat. § 609.221, subd. 1 (2014). That statute provides that “[w]hoever assaults another and inflicts great bodily harm” commits first-degree assault. *Id.* “Great bodily harm” is defined as “bodily injury which creates a high probability of death, or which causes serious permanent disfigurement, or which causes a permanent or protracted loss or impairment of the function of any bodily member or organ or other serious bodily harm.” Minn. Stat. § 609.02, subd. 8 (2014). Whether an injury constitutes great bodily harm is a question for the jury. *State v. Moore*, 699 N.W.2d 733, 737 (Minn. 2005).

Appellant contends that “the issue in this case requires interpreting the phrase ‘protracted loss or impairment of the function of any bodily member’ as used in the definition of ‘great bodily harm.’” Appellant argues that because J.W.’s injuries were temporary and “do not meet the degree of harm contemplated in the phrase ‘protracted loss or impairment of the function of any bodily member,’” the evidence was insufficient to sustain his conviction of first-degree assault.

We disagree. The word “protracted” is not defined by statute. When a statute does not contain a definition of a word or phrase, we look to the “common dictionary

definition of the word or phrase” to discover its “plain and ordinary meaning.” *See State v. Brown*, 792 N.W.2d 815, 822 (Minn. 2011). The common dictionary definition of the word “protracted” is “draw[n] out,” or “lengthen[ed] in time.” *The American Heritage Dictionary of the English Language* 1417-18 (5th ed. 2011).

Here, J.W. testified at length regarding the nature of her injuries and the extent of her recovery. According to J.W., she was hit in the face and head multiple times, resulting in the orbital bone breaking “down into [her] sinus cavity.” J.W. also testified that surgery on the orbital bone could not be performed until the swelling subsided, and that she was “completely bedridden” for five days and was told not to “blow her nose.” J.W. further testified that after the surgery, the recovery was “horrible”; she had “a lot of pain,” double vision, and headaches, and she was unable to feel the teeth on her right side due to nerve damage. Moreover, J.W. testified that several months after the first surgery, her eye “kind of just caved in.” As a result, a second “more extensive” surgery had to be performed because it had to be done “through facial reconstruction.” J.W. explained that in order to avoid facial scarring, the surgeons had to “go in through [her] mouth and up, cut right under the cheekbone, go in through that area, through the sinus, push the eye back in the socket and put a titanium metal implant in to hold [her] eye in place.” J.W. claimed that at the time of trial, more than a year after the first surgery and more than eight months after the second surgery, she still suffers from numbness in her teeth, her vision is “off,” and she has problems with her equilibrium.

The surgeons that performed J.W.’s surgeries also testified at trial. The surgeon who performed the first surgery, testified that an incision was made inside the eyelid and

down to the bone in the front part of the eye, the tissue entrapped in the broken bone was lifted up, dissolvable material was placed behind the eye to support this tissue during healing, and a large piece of bone that had been pushed down was lifted up and realigned. The first surgeon testified that when the eye “dropped down again,” a CT scan showed that J.W. would need “fairly extensive” reconstructive surgery to support the eye, which she does not perform.

The surgeon who performed the second surgery termed J.W.’s midface injury as a “blowout fracture,” where there is trauma to the eye as a result of a direct hit to the eye and the floor supporting the orbital cavity breaks. The second surgeon also explained the procedure he performed on J.W. and stated that “it’s pretty typical” for a patient to experience nerve pain for several months after surgery as the sensory nerve “comes back.” The second surgeon further testified that he “usually tell[s] people that [the numbness] should improve, but it may not ever get back to normal.”

The evidence in the record, including the testimony of J.W. and both surgeons, is sufficient to support a conclusion that J.W. experienced a “permanent or protracted loss or impairment of the function” of her teeth and eye. J.W. was required to undergo two surgeries as a result of the injuries inflicted by appellant, with the second surgery performed several months after the assault. In fact, at the time of trial, more than a year after the assault occurred, J.W. was still dealing with the effects of her injuries. Based on the lengthy nature of her recovery, a jury could reasonably conclude that J.W. experienced a “protracted” impairment of her teeth and eye.

Moreover, J.W. testified that she lost consciousness during the assault. Minnesota cases have noted that head injuries resulting in loss of consciousness may constitute great bodily harm. *See, e.g., State v. Stafford*, 340 N.W.2d 669, 670 (Minn. 1983) (“Arguably, ‘great bodily harm’ is inflicted if one knocks someone out briefly . . .”). Thus, viewing the evidence in the light most favorable to the conviction, there was sufficient evidence presented at trial for a jury to reasonably conclude that J.W. suffered a permanent or protracted loss or impairment of the function of a bodily member or organ.

## II.

“Evidentiary rulings rest within the sound discretion of the [district] court and will not be reversed absent a clear abuse of discretion. On appeal, the appellant has the burden of establishing that the [district] court abused its discretion and that appellant was thereby prejudiced.” *State v. Amos*, 658 N.W.2d 201, 203 (Minn. 2003) (citation omitted).

“The prosecutor may rebut the defense evidence . . .” Minn. R. Crim. P. 26.03, subd. 12(g). “[I]n general, rebuttal evidence consists of that which explains, contradicts, or refutes the defendant’s evidence.” *State v. Swaney*, 787 N.W.2d 541, 563 (Minn. 2010) (quotation omitted). “The determination of what constitutes proper rebuttal evidence rests almost wholly in the discretion of the [district] court.” *State v. Williams*, 586 N.W.2d 123, 126 (Minn. 1998) (quotations omitted).

Appellant argues that the district court abused its discretion by admitting rebuttal testimony from T.B., who was present for the entire trial and was not subjected to the sequestration order, “because it was impossible to remove the danger that [T.B.’s]

testimony was influenced, consciously or subconsciously, by the testimony and statements of other witnesses.” We disagree. Rebuttal evidence may be admitted to show that the defense’s version of events is untrue. *See State v. Stevens*, 580 N.W.2d 75, 80 (Minn. App. 1998) (determining district court did not abuse its discretion in admitting rebuttal evidence to refute appellant’s alibi), *review denied* (Minn. Aug. 18, 1998); *State v. Turnbull*, 267 Minn. 428, 434, 127 N.W.2d 157, 161-62 (1964) (finding “no error” in district court’s admission of rebuttal testimony to clarify differing versions of events).

Here, appellant testified that he and J.W. had a mutual crack-cocaine addiction and were “getting’ high partners.” He also testified that he did not assault J.W. and indicated that she was, in fact, assaulted by her “cocaine dealer” when she went to buy crack cocaine on the night of the assault. In response to appellant’s testimony that J.W. was a crack addict, the state called T.B., J.W.’s daughter, who testified that she has never known her mother to use crack cocaine. This is proper rebuttal testimony. *See Stevens*, 580 N.W.2d at 80. In fact, if appellant’s argument were accepted, it would likely bar *any* rebuttal witness from testifying who was not sequestered and was therefore in the courtroom during other witnesses’ testimony. Therefore, the district court acted within its discretion by allowing T.B. to testify as a rebuttal witness.

In any event, “a new trial is not required unless there is a reasonable possibility that the wrongfully admitted evidence significantly affected the verdict.” *State v. Asfeld*, 662 N.W.2d 534, 544 (Minn. 2003) (quotation omitted). Appellant has not met this burden. Although appellant claims he was prejudiced because T.B.’s testimony was likely influenced “by having heard what the other witnesses said,” the district court took

steps to protect against any unfair prejudice by permitting appellant to comment during closing argument on the fact that T.B. was present during the trial. Moreover, the record reflects that appellant's two defenses at trial were that (1) he did not commit the assault and (2) J.W.'s injuries did not constitute great bodily harm. T.B.'s testimony had no impact on whether the injuries constituted great bodily harm, and T.B. never testified that appellant committed the assault. In fact, the state did not use T.B.'s testimony to bolster J.W.'s credibility. Instead, T.B.'s testimony was elicited simply to counter appellant's testimony that J.W. was addicted to crack cocaine. The record reflects that the evidence against appellant was very strong, and there is no reasonable possibility that T.B.'s testimony that she had never known her mother to use crack cocaine significantly affected the verdict. Appellant is not entitled to a new trial.

**Affirmed.**