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Minn. Stat. § 480A.08, subd. 3 (2016).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A16-1930**

State of Minnesota,
Respondent,

vs.

Reggie Demetrius Pierre Bishop,
Appellant.

**Filed October 16, 2017
Affirmed
Larkin, Judge**

Hennepin County District Court
File No. 27-CR-15-32497

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

Michael O. Freeman, Hennepin County Attorney, Michael Richardson, Assistant County
Attorney, Minneapolis, Minnesota (for respondent)

Charles F. Clippert, St. Paul, Minnesota (for appellant)

Considered and decided by Larkin, Presiding Judge; Worke, Judge; and Johnson,
Judge.

UNPUBLISHED OPINION

LARKIN, Judge

Appellant challenges his convictions of first-degree criminal sexual conduct, arguing that the evidence was insufficient to sustain his convictions. Appellant also appears to argue, in a pro se brief, that he received ineffective assistance of counsel. We affirm.

FACTS

In November 2015, respondent State of Minnesota charged appellant Reggie Demetrius Pierre Bishop with six counts of criminal sexual conduct and four counts of burglary. The complaint alleged that Bishop and two other men broke into a house while armed with firearms and sexually assaulted a mother and her 14-year-old daughter. Although the intruders were masked, the mother identified Bishop as an acquaintance of her boyfriend based on his height, build, and voice. Bishop was also placed at the scene by a taxi driver who transported the three men to the victims' residence. Moreover, pictures on Bishop's Facebook page showed him with a mask and firearms that were similar to those used by the intruders. Lastly, the intruders left a lemonade container on the kitchen counter at the scene. Analysis of DNA recovered from the container indicated that Bishop could not be excluded as a contributor, although 99.99% of the general population could be excluded.

Bishop agreed to try the case to the court based on stipulated evidence and facts. In exchange, the state agreed to dismiss all charges except two of the charges for first-degree

criminal sexual conduct and one first-degree burglary charge. The state also agreed to a 30-year cap on sentencing.

The stipulated evidence included the original complaint, the grand jury transcript, police reports, BCA reports, statements made by Bishop and his co-defendants, Facebook photos, witness statements, transcripts associated with the above evidence, and “[a]ny other evidence that [had] already been provided as discovery.”

Bishop agreed to the following factual stipulations.¹ The victims reported that “three masked men, armed with guns, had entered the home.” The 14-year-old daughter “was grabbed by her throat and led upstairs at gunpoint.” “The three masked men put pillowcases over [the victims’] heads, bound them, and led them around the house demanding money.” “The three masked men threatened to burn [the victims] with hot water, an iron, and to rape them in order to find out where the money was.” “[The victims] were placed in separate bedrooms,” the 14-year-old daughter “was sexually penetrated in her vagina while held at gunpoint,” and “[the mother] was sexually penetrated when one of the masked men placed his penis into [her] mouth.” “[The mother] was also sexually digitally penetrated in her vagina by one of the masked men.” “The three masked men also placed [the victims] into the shower and turned on the hot water in an attempt to burn them. However, the water did not get hot enough.” “The three masked men also threatened to burn [the victims] with an iron, but were unable to find an iron.” “After approximately

¹ These factual stipulations are contained in a document entitled “Stipulated Facts Pursuant to Minn. R. Crim. Pro. 26.01, subd. 3,” which was signed by Bishop, his attorney, and the prosecuting attorneys.

one-and-one-half hours, the three masked gunmen left the home, taking with them televisions, [the mother's] cell phone, cash, and various other items.”

The district court found Bishop guilty of one count of first-degree burglary and two counts of first-degree criminal sexual conduct. The district court specifically found that all three men played a role in binding the victims' hands and otherwise creating the environment that preceded the sexual assault. The district court noted that even though one of the men may not have actively participated in the sexual assaults, reasonable efforts were not made to stop them. The district court sentenced Bishop to serve 30 years in prison, consistent with the parties' agreement.

DECISION

I.

Bishop challenges his convictions of aiding and abetting first-degree criminal sexual conduct, arguing that the evidence was insufficient to sustain his convictions because the offenses were not a reasonably foreseeable consequence of the burglary.² When considering a sufficiency-of-the-evidence claim, this court carefully analyzes the record to determine whether the evidence, when viewed in a light most favorable to the conviction, was sufficient to permit the fact-finder to reach its verdict. *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989). This court “view[s] the evidence in a light most favorable to the verdict and assume[s] that the [fact-finder] believed the state's witnesses and disbelieved contrary evidence.” *State v. Brocks*, 587 N.W.2d 37, 42 (Minn. 1998). “[Appellate courts] give

² Bishop's principal brief does not challenge his first-degree burglary conviction.

great deference to a district court's findings of fact and will not set them aside unless clearly erroneous." *State v. Andersen*, 784 N.W.2d 320, 334 (Minn. 2010). This court will not disturb the fact-finder's verdict if the fact-finder, 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 proved guilty of the offense charged. *Bernhardt v. State*, 684 N.W.2d 465, 476-77 (Minn. 2004). This court applies the same standard of review for trials in which the district court, rather than a jury, acted as the fact-finder. *State v. Palmer*, 803 N.W.2d 727, 733 (Minn. 2011).

Minn. Stat. § 609.05, subd. 1 (2014), provides that a "person is criminally liable for a crime committed by another if the person intentionally aids, advises, hires, counsels, or conspires with or otherwise procures the other to commit the crime." Minn. Stat. § 609.05, subd. 2 (2014), provides: "A person liable under subdivision 1 is also liable for any other crime committed in pursuance of the intended crime if reasonably foreseeable by the person as a probable consequence of committing or attempting to commit the crime intended." Bishop's primary argument on appeal is that the evidence is insufficient to sustain his criminal-sexual-conduct convictions because the underlying sexual assaults "were not reasonably foreseeable as a probable consequence of a burglary." We are not persuaded.

The district court found that Bishop was one of the three men who entered the victims' home. That finding is supported by sufficient evidence, including the identification evidence from the mother and the taxi driver, as well as the DNA evidence. Because the evidence establishes Bishop's presence at the scene, our analysis ends with the parties' factual stipulations. The fourth stipulated fact was that "[t]he three masked

men threatened to burn [the victims] with hot water, an iron, and to rape them in order to find out where the money was.” Given this factual stipulation, it is clear that the ensuing criminal sexual conduct was foreseeable—as were the attempts to burn the victims with hot water and an iron—because the intruders threatened that very conduct.

Bishop argues that the depravity and sadistic nature of the offenses show that they are not the sort of conduct one could reasonably expect during a home invasion. Bishop also argues there was no evidence that the men planned to assault the victims if they did not find the money. These arguments disregard Bishop’s factual stipulation that the intruders “threatened . . . to rape [the victims] in order to find out where the money was.” Even if the men did not enter the house with a plan to sexually assault the victims, that conduct was certainly foreseeable after it was threatened.

II.

Bishop’s pro se supplemental brief expresses his concern that a potential alibi defense “was not looked into during [his] trial.” Insofar as Bishop raises a claim of ineffective assistance of counsel based on his attorney’s failure to investigate or present an alibi defense, an appellate court generally will not review an ineffective-assistance-of-counsel claim that is based on trial strategy, which includes determining which witnesses to call, the extent of counsel’s investigation, and the selection of evidence to present at trial. *Staunton v. State*, 784 N.W.2d 289, 302 (Minn. 2010). Bishop’s ineffective-assistance-of-counsel claim stems from decisions made by his trial counsel about what investigation to pursue and what evidence to present at trial. These trial decisions “should not be reviewed by an appellate court, which, unlike the counsel, has the benefit of

hindsight.” *State v. Jones*, 392 N.W.2d 224, 236 (Minn. 1986). We therefore do not pass judgment on those strategic decisions here.

Bishop’s pro se brief also suggests that the evidence was insufficient to sustain his convictions. He appears to argue that the evidence did not establish his presence at the scene of the crime. For the reasons set forth above, we disagree.

In conclusion, because the fact-finder, acting with due regard for the presumption of innocence and the requirement of proof beyond a reasonable doubt, could reasonably conclude that Bishop was proved guilty of first-degree criminal sexual conduct, we do not reverse his convictions.

Affirmed.