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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0605**

State of Minnesota,
Respondent,

vs.

Lawrence Fredrick Pope,
Appellant.

**Filed February 12, 2018
Affirmed
Halbrooks, Judge**

Hennepin County District Court
File No. 27-CR-16-22647

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

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

Cathryn Middlebrook, Chief Appellate Public Defender, Steven P. Russett, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Kirk, Presiding Judge; Halbrooks, Judge; and Schellhas, Judge.

UNPUBLISHED OPINION

HALBROOKS, Judge

Appellant challenges (1) his first-degree-assault conviction, arguing that the evidence is insufficient to establish that he inflicted great bodily harm and (2) his sentence,

contending that the district court abused its discretion by assigning him a probation custody-status point. We affirm.

FACTS

In August 2016, appellant Lawrence Fredrick Pope and E.M. were standing on the Lake Street light-rail platform.¹ J.O., who was on his way to work, started walking on the platform when Pope asked him for a dollar. J.O. stopped, told Pope he did not have a dollar, and tried to walk away. Pope confronted J.O., asking him why he was walking away. J.O. continued walking.

After J.O. took a few steps, Pope wound up his right hand, lunged forward, and punched J.O. across the right side of J.O.'s head, the force of which threw J.O. off the platform and onto the light-rail tracks. J.O. did not stand up right away. Pope jumped down onto the tracks and pulled his jacket hood over his head. J.O. grabbed a few rocks but then dropped them. J.O. saw what he perceived as a shiny object near Pope's waistline, so he climbed back onto the platform and ran in the direction of a staircase leading down to the street below.

E.M. chased J.O., and Pope followed. Before starting down the stairs, J.O. turned and saw E.M. and Pope chasing him. As he ran down the stairs, J.O. slipped or fell and landed on his left shoulder at the bottom of the stairs. J.O., at that time, could feel that he had badly damaged his shoulder in the fall.

¹ The Lake Street light-rail platform is above street level, accessible only by staircase, escalator, or elevator. The light-rail tracks lie a few feet beneath the platform, so that an arriving light-rail train's doors are flush with the platform.

Pope and E.M. caught up to J.O. at the bottom of the stairs. E.M. kicked J.O. twice in the area of J.O.'s injured shoulder. Pope rolled J.O. over, reached into his pockets, and took J.O.'s wallet and cell phone. J.O. stood up and started walking toward an exit. E.M. and Pope started heading for a different exit. But then Pope turned around, walked back toward J.O., and removed J.O.'s backpack from his injured shoulder. Pope left with E.M. and a few others who had observed the incident. Because there are security cameras in the area, the entire incident was captured on videotape.

After a stranger stopped and called an ambulance, J.O. was taken to Hennepin County Medical Center (HCMC). Upon his arrival, J.O. was going in and out of consciousness; had injuries to his face, arm, and leg; and a bone protruding out of his left arm. HCMC's chief orthopedic surgeon Andrew Schmidt, M.D., evaluated J.O., diagnosing a highly displaced, comminuted fracture of J.O.'s left humerus.² Dr. Schmidt surgically repaired J.O.'s humerus by affixing a metal plate inside his shoulder.

The state subsequently charged Pope with first-degree aggravated robbery. After learning the severity of J.O.'s injuries, the state offered Pope a plea deal whereby he would plead guilty to first-degree aggravated robbery so as to avoid an added count of first-degree assault. Pope rejected the offer, and the state amended the complaint, adding a first-degree assault-harm count under Minn. Stat. § 609.221, subd. 1 (2016). Pope waived a jury and appeared before the district court for trial.

² Dr. Schmidt testified that a comminuted fracture is one where a bone breaks into multiple fragments.

J.O. testified at trial that he feared for his life and only ran down the stairs because he “thought [Pope and E.M.] were going to kill [him].” J.O. also testified that, as a result of the incident, he was unable to lift heavy things, had lost sensation in his fingers, and had not worked for three months. Dr. Schmidt testified that J.O.’s injury resulted in numbness and tingling in his hand and nerve damage, explaining that there was “really no connection between the ball, the head of the humerus and the shaft of the humerus.” He further testified that J.O.’s range of motion is limited and that “it’s very likely and almost a certainty that he’ll have some loss of motion.” Pope testified in his defense that he was drunk and punched J.O. because J.O. spat at him.

The district court found Pope guilty of both charges, reasoning that Pope committed first-degree assault because his “physical acts, including the vicious punch and the continuance of the assault by chasing J.O., were intentional and were a substantial causal factor to the bodily harm that J.O. suffered in the fall.” The district court then sentenced Pope, factoring in one criminal-history point for Pope’s probationary status in the State of Washington. This appeal follows.

D E C I S I O N

Pope maintains that the evidence is insufficient to establish that he caused great bodily harm to J.O. and that the state did not prove his probation status in Washington by a preponderance of the evidence.

I.

Pope contends that the district court applied the wrong legal standard for first-degree assault-harm, arguing that the district court improperly determined that Pope’s conduct was

a “substantial factor” in causing J.O.’s injuries. Pope maintains that, under *State v. Dorn*, 887 N.W.2d 826, 833 (Minn. 2016), “inflict” means something more direct than “cause,” and, therefore, his conviction must be reversed because the evidence does not support a finding that Pope directly caused J.O.’s injuries.

Statutory interpretation is a question of law that we review de novo. *Dorn*, 887 N.W.2d at 830. When interpreting statutes, appellate courts seek to “effectuate the intention of the legislature.” *Id.* (quotation omitted). “If the Legislature’s intent is discernible from the statute’s plain and unambiguous language, the letter of the law shall not be disregarded under the pretext of pursuing its spirit.” *Id.* (quotation omitted).

Applying the law to Pope’s conduct requires an evaluation of the sufficiency of the evidence. *Id.* Under such painstaking review, we “will not disturb the verdict if the factfinder, acting with due regard for the presumption of innocence and the requirement of proof beyond a reasonable doubt, could have reasonably concluded that the defendant was guilty of the charged offense.” *Id.* We view the evidence in the light most favorable to the verdict and assume that the fact-finder, whether judge or jury, disbelieved any testimony conflicting with that verdict. *Id.*

Pope concedes that he committed a fifth-degree assault by punching J.O. and that J.O. suffered great bodily harm after falling down the stairs. But Pope argues his conviction must be reversed because his punch did not inflict J.O.’s great bodily harm. Pope’s theory is that J.O.’s significant injury resulted from J.O.’s fall on the stairs—for which he is not responsible.

“Whoever assaults another and inflicts great bodily harm” is guilty of first-degree assault.³ Minn. Stat. § 609.221, subd. 1. Assault-harm is the “intentional infliction” of bodily harm. See Minn. Stat. § 609.02, subd. 10(2) (2016). Pope argues that the district court applied the wrong legal standard by determining that Pope’s conduct was a *substantial causal factor* in causing J.O.’s great bodily harm, reasoning that, under *Dorn*, 887 N.W.2d at 832, and because the legislature defines assault-harm using the verb “inflict” and assault-fear using the verb “cause,” Minn. Stat. § 609.02, subd. 10, an assault-harm battery must directly cause the resulting harm.⁴

In *Dorn*, the defendant challenged her first-degree-assault conviction that stemmed from her act of pushing a person into a bonfire. 887 N.W.2d at 829. She argued that “inflict” requires direct causation and that she did not cause the victim’s injuries because the victim tripped over debris before falling into the fire. *Id.* at 832-33. The supreme court in *Dorn* assumed, without deciding, that “an infliction requires direct causation.” See *id.* at 833 (quotation omitted). The supreme court concluded that, even under Dorn’s proposed interpretation, “the evidence [was] sufficient to show that Dorn directly caused D.E.’s bodily harm,” reasoning that “[e]ven if D.E. stumbled on debris as he fell, Dorn pushed

³ “Great bodily harm” is defined as “bodily injury . . . which causes a permanent or protracted loss or impairment of the function of any bodily member.” Minn. Stat. § 609.02, subd. 8 (2016).

⁴ The district court issued its verdict, findings of fact, and conclusions of law on the same day that the supreme court filed *Dorn*. 887 N.W.2d at 829. The district court did not have the opportunity to consider the supreme court’s decision and therefore based its reasoning on this court’s *Dorn* opinion. See *State v. Dorn*, 875 N.W.2d 357, 359 (Minn. App. 2016) (applying substantial-causal-factor standard), *aff’d*, 887 N.W.2d 826 (Minn. 2016).

D.E. hard enough to cause him to lose his balance within a few feet of hot embers, and D.E. fell into the fire within moments of Dorn's push." *Id.*

We are guided by the supreme court's analysis of this issue in *Dorn*. Therefore, assuming, without deciding, that "inflict" requires direct causation, Pope directly caused J.O.'s great bodily harm. The evidence establishes that Pope punched J.O. with such force that (1) J.O. was thrown onto the light-rail tracks; (2) he was so dazed by the punch, that he was unable to stand up right away; (3) J.O. saw E.M. and Pope start to chase him down the stairs; and (4) J.O. feared for his life and ran down the stairs *only* because he believed that E.M. and Pope were going to kill him. Even under Pope's proposed, narrower interpretation, viewing the evidence in the light most favorable to the verdict, the evidence is sufficient to establish that he committed first-degree assault.

II.

Pope also contends that the district court abused its discretion by assigning him a probation custody-status point because the state failed to establish by a preponderance of the evidence that he was on probation in Washington.

We will not reverse a district court's determination of a defendant's criminal-history score absent an abuse of discretion. *State v. Stillday*, 646 N.W.2d 557, 561 (Minn. App. 2002), *review denied* (Minn. Aug. 20, 2002). "The basic rule assigns offenders one point if they were under some form of criminal justice custody following conviction of a felony or gross misdemeanor when the offense was committed for which they are now being sentenced." *Bolstad v. State*, 439 N.W.2d 50, 52-53 (Minn. App. 1989) (citing Minnesota Sentencing Guidelines II.B.201 commt.). "Criminal justice custodial status includes

probation.” *Id.* at 53 (quotation omitted). “The state has the burden of establishing a defendant’s criminal history for sentencing guideline purposes,” *id.* (quotation omitted), beyond “a preponderance of the evidence,” *State v. Maley*, 714 N.W.2d 708, 712 (Minn. App. 2006).

At Pope’s sentencing hearing, the state called an employee from Hennepin County Community Corrections (HCCC) who authored Pope’s presentence investigation report. The employee testified that a warrant check for Pope revealed that “there [was] an outstanding warrant in the State of Washington” and that Pope is on active probation in Washington. The state introduced an email confirming that information. Pope testified that he was no longer on probation in Washington. The district court concluded that the “evidence indicates that [Pope] was on probation . . . whether he knew it or not . . . in Washington.”

Pope contends that “while it can be inferred . . . that Pope has an outstanding warrant[,] the exhibit does not establish that Pope was still on probation for his 2012 third-degree assault conviction when he committed the instant offense.” We disagree. The state introduced evidence establishing Pope’s probationary status, and the HCCC employee testified that Pope’s probation in Washington remained active when he committed the instant offense. To counter that evidence, Pope testified only that his probation in Washington is not active. Pope did not introduce any other evidence. We therefore conclude that the district court acted within its discretion in assigning Pope a probation custody-status point.

Affirmed.