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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0450**

State of Minnesota,
Respondent,

vs.

Delmonte Daquan Rudolph,
Appellant.

**Filed January 14, 2019
Affirmed
Bjorkman, Judge**

Hennepin County District Court
File No. 27-CR-17-21474

Keith M. Ellison, 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, St. Paul, Minnesota (for appellant)

Considered and decided by Worke, Presiding Judge; Bjorkman, Judge; and
Klaphake, Judge.*

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

UNPUBLISHED OPINION

BJORKMAN, Judge

Appellant challenges his first-degree robbery conviction, arguing that the state violated his due-process rights by failing to preserve an exculpatory surveillance video recording and that the evidence was insufficient to show that he struck the victim for the purpose of taking his cell phone. We affirm.

FACTS

F.C. and appellant Delmonte Daquan Rudolph engaged in an altercation at a Minneapolis bus stop on August 26, 2017. According to F.C., a heated exchange began when Rudolph accused F.C. of staring at him, and Rudolph suddenly hit him in the mouth and took his cell phone while he was lying dazed on the ground. Police arrested Rudolph soon after the confrontation.

The state charged Rudolph with first-degree robbery. Rudolph moved to dismiss the charge on due-process grounds, asserting that the state failed to timely disclose security footage obtained by the Minneapolis Public Housing Authority (MPHA) that captured the incident. The state obtained from MPHA a two-minute video of the incident on August 30 and disclosed it to Rudolph on September 13. That same day, Rudolph requested additional video. By the time the state clarified how much video Rudolph was requesting and reconnected with the MPHA, the whole video had been recorded over pursuant to MPHA policy. The district court denied the motion, finding no due-process violation because the police never possessed the additional security footage, had no obligation to obtain it, and did not interfere with Rudolph's ability to obtain it.

Rudolph waived his right to a jury and proceeded with a bench trial. At trial, Rudolph conceded that he and F.C. had argued, but he testified that F.C. was the aggressor and had punched him in the face and stabbed him in the hand with a small knife.¹ According to Rudolph, his friends tried to diffuse the situation by separating the two men, but when he saw that he was bleeding, he became enraged and struck F.C. He then began to walk away but returned to retrieve F.C.'s phone as an act of retribution. Rudolph denied using force in order to take the phone.

The district court found Rudolph guilty, determining that the evidence supported Rudolph's testimony that F.C. punched him in the face and cut his hand, but also finding that Rudolph later intended to and did use force to take F.C.'s cell phone. Rudolph appeals.

D E C I S I O N

I. The state did not violate Rudolph's due-process rights.

A prosecutor must disclose "all matters within the prosecutor's possession or control that relate to the case," including "[m]aterial or information in the prosecutor's possession and control that tends to negate or reduce the defendant's guilt." Minn. R. Crim. P. 9.01, subd. 1(6); *see also State v. Williams*, 593 N.W.2d 227, 235 (Minn. 1999) (stating that the prosecutor has a duty to learn of any favorable evidence known to others acting on the government's behalf, including the police).

Under *Brady v. Maryland*, 373 U.S. 83, 87, 83 S. Ct. 1194, 1196-97 (1963), the state's suppression of evidence favorable to the accused violates due process if the evidence

¹ F.C. admitted that he took a swing at Rudolph but denied that he was carrying a knife.

is material to the issue of guilt or punishment. See Minn. R. Crim. P. 9.01, subd. 1 (codifying evidence disclosure required by *Brady*). Exculpatory evidence falls within the *Brady* prohibition. *United States v. Bagley*, 473 U.S. 667, 676, 105 S. Ct. 3375, 3380 (1985). “To establish a *Brady* violation, [an] appellant must show (1) that the evidence at issue was favorable to him; (2) that the evidence was willfully or inadvertently suppressed by the state; and (3) that he was thereby prejudiced.” *Woodruff v. State*, 608 N.W.2d 881, 886 (Minn. 2000). Whether a *Brady* violation occurred is a mixed question of law and fact that we review de novo. *Pederson v. State*, 692 N.W.2d 452, 460 (Minn. 2005).

Rudolph’s *Brady* claim fails for two reasons. First, Rudolph has not shown that the missing video footage was favorable to him. By all accounts, F.C. initiated the physical contact by punching Rudolph. And it is undisputed that the initial confrontation ended when others intervened. The dispositive trial issue was what happened next, when Rudolph re-engaged with F.C. The two-minute video captured those events. Even if video that preceded Rudolph’s punching F.C. and taking his phone showed that F.C. was the initial aggressor in a quarrel, that evidence would not have negated or reduced Rudolph’s culpability flowing from his second encounter with F.C.² Rudolph’s claim therefore fails on the first *Brady* prong.

Second, Rudolph has not shown that any missing video prejudiced him. See *Campbell v. State*, 916 N.W.2d 502, 510-11 (Minn. 2018) (defining prejudice prong of *Brady* in terms of materiality, which requires “a reasonable probability that, had the

² Rudolph did not claim self-defense.

evidence been disclosed to the defense, the result of the proceeding would have been different” (quotation omitted)); *Walen v. State*, 777 N.W.2d 213, 216 (Minn. 2010) (“[A] new trial is not required simply because a defendant uncovers previously undisclosed evidence that would have been possibly useful to the defendant but unlikely to have changed the verdict.”). As noted above, Rudolph did not establish that video footage of the events preceding the charged offense was material to the charged offense or favorable to him. And, as more fully discussed below, the evidence adduced at trial amply supports Rudolph’s conviction.

In sum, Rudolph failed to establish the first and third *Brady* prongs. Accordingly, we discern no error by the district court in denying Rudolph’s motion to dismiss.

II. Sufficient evidence supports Rudolph’s first-degree robbery conviction.

“When reviewing the sufficiency of the evidence leading to a conviction, this court will view the evidence in the light most favorable to the verdict and assume that the factfinder disbelieved any testimony conflicting with that verdict.” *State v. Chavarria-Cruz*, 839 N.W.2d 515, 519 (Minn. 2013) (quotation omitted). The same standard applies in actions tried to the district court. *State v. Stevenson*, 656 N.W.2d 235, 239 (Minn. 2003). We will not overturn a verdict “if, giving due regard to the presumption of innocence and the prosecution’s burden of proving guilt beyond a reasonable doubt, the jury could reasonably have found the defendant guilty of the charged offense.” *Chavarria-Cruz*, 839 N.W.2d at 519 (quotation omitted).

A person commits first-degree robbery when he, “while committing a robbery . . . inflicts bodily harm upon another.” Minn. Stat. § 609.245, subd. 1 (2016). Rudolph argues

the evidence is insufficient because “[t]he State did not provide evidence that [he] struck [F.C.] for the purpose of taking [F.C.’s] phone.” He contends the evidence shows he struck F.C. “for the sole purpose of retaliation for the earlier assault.” We are not persuaded.

Rudolph’s argument depends on a factual determination that he took F.C.’s phone as an afterthought, separate from his assaultive conduct. The district court determined otherwise, expressly finding that Rudolph punched F.C., walked away, returned to a prone F.C., and the two had an additional “brief physical altercation” during which Rudolph “lunged” at F.C., F.C. “swung his arms at” Rudolph, and Rudolph took F.C.’s phone. And the district court found that Rudolph “used force to overcome [F.C.’s] impaired ability to resist,” and that it “was one continuous course of conduct even though [Rudolph] walked away briefly after punching [F.C.] but before taking the property.” We do not second guess a district court’s credibility determinations. *See State v. Fleck*, 777 N.W.2d 233, 236 (Minn. 2010) (“The [fact-finder] is in the best position to weigh credibility and thus determines which witnesses to believe and how much weight to give their testimony.”).

In *State v. Kvale*, our supreme court discussed the correlation between use of physical force and the taking of property during an aggravated robbery. 302 N.W.2d 650, 652-53 (Minn. 1981). Kvale took money from his victim after threatening to use force. He then struck the victim on the head and cut his throat after the victim refused to say that Kvale had not damaged his vehicle earlier that evening. *Id.* at 651. Kvale argued that the evidence was insufficient to support an aggravated robbery conviction because “his infliction of bodily harm on the victim was unconnected with the taking” of the property. *Id.* at 652. The supreme court rejected this argument, acknowledging that “one must do

more than merely use force to escape with stolen property [in order] to commit robbery,” but also stating that the offender’s use of force need not “precede or accompany the taking”; it is sufficient if the force was “used to overcome the victim’s resistance.” *Id.* at 652-53.

Consistent with *Kvale* and viewing the evidence in the light most favorable to Rudolph’s conviction, we conclude the evidence was sufficient to prove both that Rudolph took F.C.’s cell phone during the assault and that he assaulted F.C. to effectuate a robbery. *See State v. Fardan*, 773 N.W.2d 303, 321 (Minn. 2009) (noting that intent “is an inference drawn by the [fact-finder] from the totality of circumstances” (quotation omitted)). F.C. testified that Rudolph saw the cell phone in his hand, knocked him to the ground, and took the phone as F.C. tried to defend himself. The video corroborates F.C.’s account. It shows that Rudolph took F.C.’s cell phone after knocking him to the ground, and that the use of force facilitated the taking. F.C. sustained head and facial injuries from the assault. On this record, we conclude that sufficient evidence supports Rudolph’s first-degree robbery conviction.

Affirmed.