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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1354**

State of Minnesota,
Respondent,

vs.

Rashad Eric Spicer,
Appellant.

**Filed January 21, 2020
Affirmed
Connolly, Judge**

Hennepin County District Court
File No. 27-CR-16-2020

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Michael O. Freeman, Hennepin County Attorney, Kelly O'Neill Moller, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

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

Considered and decided by Connolly, Presiding Judge; Worke, Judge; and Bratvold,
Judge.

UNPUBLISHED OPINION

CONNOLLY, Judge

Appellant challenges his conviction of felony malicious punishment of a child, arguing that the evidence was insufficient to prove beyond a reasonable doubt that he inflicted substantial bodily harm and that the district court erred by refusing to conduct a postconviction in-camera review of the victim's confidential records. Because the evidence was sufficient to permit the jury to reach its verdict and because the district court did not abuse its discretion in denying appellant's petition for postconviction in-camera review, we affirm.

FACTS

A.M., now 12, was born in May 2007. His mother is A.M.S.; his paternal grandmother is C.M. When A.M. was five or six, appellant Rashad Spicer began living with him and A.M.S.; she and appellant later married.

In December 2015, when A.M. was eight, C.M. noticed severe bruising on his arms, back, and legs and asked him what caused it. A.M. told her that appellant had hit him with a belt.

C.M. took A.M. to a doctor who was a member of a child-protection task force on abuse. After examining A.M., the doctor said his bruising was more extensive than she had ever seen on an assault victim and his injuries included multiple bruises on the back, bruises on the left side, a horseshoe-shaped bruise consistent with a belt buckle on the left calf, scattered bruising on the lower left leg, confluent bruising (completely covered with bruising) on the left lateral thigh, a horseshoe-shaped bruise on the front right thigh,

confluent bruising on the front and back of the right thigh, confluent bruising on the entire left side of the left arm; a puncture wound on the left wrist, a horseshoe-shaped bruise on the left wrist, and confluent bruising on the upper and lower side of the right arm.

A.M. said he did not want to go back to his mother or appellant, and he was released into the custody of C.M., with whom he felt safe. A.M. was interviewed at CornerHouse¹ in January 2016. Appellant and A.M.S. were arrested and were each charged with one count of malicious punishment of a child.²

In October 2016, the district court granted appellant's *Paradee*³ motion for in-camera review of A.M.'s behavioral and child-protection records and issued an order directing A.M.'s current caregiver to provide the defense with the name of A.M.'s care providers so the defense could obtain the records it wanted. In May 2017, in response to appellant's notice to remove the district court judge, a second district court judge was assigned.

In March 2018, the second district court judge and the parties addressed the nine motions appellant had filed. None of them mentioned in-camera review. Appellant's counsel mentioned the October 2016 order and said he told the district court judge about

¹ CornerHouse is "a nonprofit child abuse evaluation center." *State v. Zulu*, 706 N.W.2d 919, 923 (Minn. App. 2005).

² A.M.S. was convicted of terroristic threats against A.M., and her conviction was affirmed in *State v. McIntosh-Spicer*, No. A17-1565, 2018 WL 439473 (Minn. App. Sept. 17, 2018), review denied (Minn. Nov. 27, 2018).

³ See *State v. Paradee*, 403 N.W.2d 640, 642 (Minn. 1987) (holding that the "in camera approach strikes a fairer balance between the interest of the privilege holder in having his confidences kept and the interest of the criminal defendant in obtaining all relevant evidence that might help in his defense").

the previous judge's October 2016 order and said the defense had not obtained the records it wanted. The state pointed out that the order had been issued 18 months earlier and that appellant had done nothing about it since then. The complaint was amended to charge appellant with two counts of malicious punishment of a child, two counts of domestic assault—misdemeanor, and one count of third-degree assault. Appellant again notified the district court that he never received the items mentioned in the October 2016 order, but he then proceeded to trial without seeking a continuance or an order directing production of the records.

At trial, A.M. testified that appellant and A.M.S. hit him with a belt, made him stand for long periods in a squat position and kicked him if he moved, lifted him and threw him to the ground, and denied him food and water. Appellant testified that A.M.S. did not allow him to punish A.M. physically because he was not A.M.'s biological father and that he never physically punished A.M. or denied him food and water.

The jury found appellant guilty as charged. He waived a trial on the *Blakely* factors and was sentenced on one count of malicious punishment of a child to a stayed prison term of 42 months, an upward durational departure, and placed on probation. He filed a notice of appeal. An order of this court stayed the appeal to enable appellant to file a second motion for in-camera review of materials not provided to the previous district court judge who had granted appellant's motion for in-camera review and remanded the matter to the district court. The district court denied appellant's motion for in-camera review, and an order of this court reinstated the appeal.

On appeal, appellant argues that the evidence, viewed in the light most favorable to the verdict, was not sufficient to permit the jurors to reach their verdict and that the district court abused its discretion in denying appellant's postconviction petition for in-camera review of A.M.'s documents.

DECISION

1. Sufficiency of the evidence

When evaluating the sufficiency of the evidence, appellate courts carefully examine the record to determine whether the facts and the legitimate inferences drawn from them would permit the jury to reasonably conclude that the defendant was guilty beyond a reasonable doubt of the offense of which he was convicted. The evidence must be viewed in the light most favorable to the verdict, and it must be assumed that the fact-finder disbelieved any evidence that conflicted with the verdict. The verdict will not be overturned if the fact-finder, upon application of the presumption of innocence and the State's burden of proving an offense beyond a reasonable doubt, could reasonably have found the defendant guilty of the charged offense.⁴

State v. Griffin, 887 N.W.2d 257, 263 (Minn. 2016) (quotation and citations omitted). All inconsistencies in the evidence are resolved in favor of the state. *State v. Budreau*, 641 N.W.2d 919, 929 (Minn. 2002).

⁴ Appellant argues that the standard of review for sufficiency of the evidence of substantial bodily harm, an element of malicious punishment and of third-degree assault, is de novo. But Minnesota appellate courts have applied a deferential standard of review to a jury's finding on this issue. See, e.g., *State v. Harlin*, 771 N.W.2d 46, 51 (Minn. App. 2009) ("When viewed in the light most favorable to the verdict, there is sufficient evidence for a jury to reasonably conclude that [the victim] suffered substantial disfigurement and therefore substantial bodily harm as the result of appellant's attack."), review denied (Minn. Nov. 17, 2009).

“Substantial bodily harm” is an element of felony malicious punishment of a child; “less than substantial bodily harm” is an element of gross misdemeanor malicious punishment. Minn. Stat. § 609.377, subds. 2, 5 (2018). Appellant argues that A.M.’s injuries were not “substantial bodily harm,” i.e., “bodily injury which involves a temporary but substantial disfigurement, or which causes a temporary but substantial loss or impairment of the function of any bodily member or organ, or which causes a fracture of any bodily member,” Minn. Stat. § 609.02, subd. 7a (2018), but only “bodily harm,” i.e., “physical pain or injury, illness, or any impairment of physical condition,” Minn. Stat. § 609.02, subd. 7 (2018). The doctor who examined A.M. testified that he had bruising all over his body, some areas had “confluent” bruising, or were completely covered in bruises, and some areas had deep bruises that went down to the bone. A.M.’s ability to walk, sit, or use his arms was impaired, and, at trial in March 2018, he still had a scar from a puncture wound caused when a belt buckle punctured his skin in December 2015.

Appellant concedes that these injuries were “more pervasive than [the] black eye” that was classified as “bodily injury” rather than “substantial bodily injury” in *State v. Whaley*, 389 N.W.2d 919, 926 (Minn. App. 1986), but argues that “something more than bruising and a small puncture wound is needed to prove substantial bodily harm.” Among the cases appellant relies on is *Harlin*, but that case explicitly concludes that a scar on the victim’s head and bruising on 15% of her back were sufficient evidence for a jury to reasonably conclude that the victim suffered substantial bodily harm. *Harlin*, 771 N.W.2d at 51. The injuries to A.M. were at least as extensive as those of the victim in *Harlin*: the doctor testified that A.M. had “extensive bruising, more than I’d ever seen . . . [m]ore than

I've seen probably on any other victim of assault . . . On the mid upper back, there was a 10 [centimeter] x 3 area of bruising. Another 10 x 4 and another 10 x 8. So, probably this big area of bruising. And he was a small child.”⁵ When asked if this was “more so than you'd ever seen on a patient in terms of bruising,” the doctor answered, “Yes. There were multiple areas where there was no normal skin. It was just all bruised.”

There was sufficient evidence for the jury to reasonably conclude that A.M. suffered substantial bodily harm.

2. Denial of appellant's motion for in-camera review

Appellant asks this court to order the district court to grant his postconviction motion for in-camera review. As a threshold matter, the state argues that this motion was actually a motion for postconviction relief. Appellant did not file a reply brief refuting this argument. As happened here, “[w]hen a defendant initially files a direct appeal and then moves for a stay to pursue postconviction relief, we review the postconviction court's decisions using the same standard that we apply on direct appeal.” *State v. Beecroft*, 813 N.W.2d 814, 836 (Minn. 2012). This court will “review the denial of a petition for postconviction relief for an abuse of discretion. . . . [It does] not reverse the postconviction court's findings unless they are clearly erroneous.” *Pearson v. State*, 891 N.W.2d 590, 596 (Minn. 2017) (quotation omitted).

The district court concluded that appellant had waived his right to in-camera review of A.M.'s medical and behavioral records by choosing to proceed to trial without them and

⁵ A.M., who weighed 56 pounds at the time, was about waist-high on appellant, who is 6'2” and then weighed about 310 pounds.

that “[s]ince [appellant] waived the in camera review and elected to proceed to trial, the [c]ourt cannot find at this time that he has made a plausible showing that the information would still be material and favorable to his defense.” See *State v. Burrell*, 697 N.W.2d 579, 605 (Minn. 2005) (holding that a defendant requesting in-camera review must make a plausible showing that the information sought to be reviewed would be material and favorable to the defense). The district court concluded:

Although [the judge formerly assigned to this case] ordered the disclosure of documentation pursuant to a *Paradee* motion, [appellant] chose not to have such records provided to the [c]ourt, and instead elected to proceed to trial without the assistance of any relevant documents that may have been provided from such process. Accordingly, [appellant’s] motion for an in camera review of those same records is denied.

Appellant argues that he is entitled to one review by either an appellate or a postconviction court and that the denial of his motion for in-camera review impedes this process. In his direct appeal, appellant raised the issue of sufficiency of the evidence, which this court addresses in this opinion. Arguably this satisfied appellant’s right to one review. However, in the interest of completeness, we address his other arguments.

He argues on appeal that in-camera review is necessary to determine whether: (1) his counsel was ineffective in failing to ensure that the review had been completed prior to trial, (2) there was a *Brady* violation because material favorable to appellant was suppressed, and (3) there was newly discovered evidence. But none of these arguments was raised to the district court, either in connection with appellant’s motion for in-camera review, or in his pretrial motions, or in the pretrial statement that the documents had not been produced, or in the postconviction motion for in-camera review. Therefore, the

district court did not address these arguments, and there is nothing for this court to review. “[A] party may not raise issues for the first time on appeal from denial of postconviction relief.” *Azure v. State*, 700 N.W.2d 443, 447 (Minn. 2005) (quotation and citations omitted).

Nor did appellant show the district court that there was anything material to appellant’s defense in A.M.’s school, medical, and therapy records. A.M. testified repeatedly that the bruises on his body had been caused by appellant’s and A.M.S.’s treatment of him; there was nothing to suggest an alternative perpetrator was responsible. Appellant’s argument that such information could have undermined A.M.’s credibility has been rejected. *See United States v. Nixon*, 418 U.S. 683, 701, 94 S. Ct. 3090, 3104 (1974) (“Generally, the need for evidence to impeach witnesses is insufficient to require its production in advance of trial.”). In addition, appellant declined to cross-examine A.M.’s therapists or personnel from his school who were witnesses at trial, indicating that information in these areas would not have been “material and favorable” to his defense. *See Burrell*, 697 N.W.2d at 605.

The district court did not abuse its discretion in denying appellant’s postconviction motion to reopen discovery and grant in-camera review of A.M.’s school, medical, and therapy records.

Affirmed.