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**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0888**

State of Minnesota,
Respondent,

vs.

Angalie Naidu,
Appellant.

**Filed May 18, 2020
Affirmed in part, reversed in part, and remanded
Bratvold, Judge**

Hennepin County District Court
File No. 27-CR-18-23492

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

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

Cathryn Middlebrook, Chief Appellate Public Defender, Jenna Yauch-Erickson, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Bratvold, Presiding Judge; Reyes, Judge; and Bryan, Judge.

UNPUBLISHED OPINION

BRATVOLD, Judge

This appeal asks us to examine the sufficiency of the evidence for convictions following a jury trial. Appellant was one of several bus passengers involved in a physical

altercation with two other passengers, who were injured and lost property. Because there is insufficient evidence to sustain appellant's conviction for aiding and abetting in first-degree aggravated robbery, we reverse that conviction. And because there is sufficient evidence to sustain appellant's conviction for fifth-degree assault of one victim, and for appellant's conviction of aiding and abetting in third-degree assault of a second victim, we affirm in part and remand for sentencing of the fifth-degree assault conviction.

FACTS

These facts are from testimony and videotaped evidence received during trial. On the night of August 30, 2018, at about 10:00 p.m., T.B. and her boyfriend R.V. got on a Metro Transit bus in downtown Minneapolis and stood together near the front of the bus. Appellant Angalie Naidu was already on the bus and seated in the middle of the bus. Sharayah Batchelor, a friend of Naidu's, was also on the bus, and seated near the front of the bus with her child in a stroller. Also on the bus were D.B. and Darryl Billups; Naidu testified that she had "seen [Billups] around" but did not know him personally.

The bus stopped, and a man exited. As the bus began to pull away from the stop, the man apparently realized he no longer had his wallet, yelled, tried to get the bus to stop, but the bus kept moving. R.V. testified that he heard the man yelling, as well as a group of passengers talking about the contents of the wallet. R.V. walked toward the group, seated near the middle of the bus, "hoping that they would give [him] the wallet so [he] could bring it to the bus driver."

R.V. testified that the group became agitated, so he returned to stand with T.B. near the front of the bus. R.V. said that, as he did this, he put his hands up in a gesture to attempt

to “break the tension.” Batchelor, still seated near the front, began arguing with R.V. and T.B. Billups and D.B. walked to the front of the bus and also began arguing with R.V. and T.B. while the bus continued to move. At some point, Batchelor stood up and joined the others; all five argued in the front of the bus, standing just behind the driver.

Naidu remained seated in the middle of the bus while Batchelor, R.V., T.B., Billups, and D.B. argued in the front of the bus. When the bus stopped again, the argument continued. Naidu got up from her seat and moved a friend’s stroller off the bus while the friend moved Batchelor’s stroller off the bus, exiting from the middle of the bus. Naidu reentered the bus, approached the group at the front of the bus, and put her hands in front of T.B.’s face and between T.B. and Batchelor. Naidu then swung her arm over T.B. and knocked off R.V.’s hat. R.V. pushed Naidu onto a nearby seat, and testified that he did so “[b]ecause she was assaulting both of us at that point.” Naidu, picked up R.V.’s hat, and threw it toward him and T.B. D.B. reached up and grabbed the ceiling bars, pulled his body up, and kicked R.V. in the face. Naidu then took a few swings at T.B., who testified that Naidu hit her in the face. Naidu then was pushed, fell to the floor, got up, and walked to the back of the bus.

Billups and D.B. kicked and hit R.V., who returned blows, and the three tumbled out the front of the bus and kept fighting outside, near the front of the bus. While still on the bus, Batchelor pulled T.B.’s hair and then pulled her off the bus through the same front exit. Once they were on the sidewalk and grass outside the bus, Batchelor and T.B. continued to fight. As T.B. landed on the grass, Batchelor ran away. T.B. stood up,

removed her bright-pink backpack, dropped it on the grass, and also ran away. As T.B. ran away, Naidu exited the bus and picked up T.B.'s backpack.

Naidu testified at trial that, after she exited the bus, she picked up T.B.'s backpack from the ground because her friends yelled, "grab our sh-t." She handed T.B.'s backpack to a friend, who was not involved in the fight, and her friend placed T.B.'s backpack in Batchelor's stroller. T.B. testified that she never saw her backpack again and it contained two new smart phones, T.B.'s birth certificate, her identification, and college textbooks. R.V. testified that his wallet and cell phone also were missing after the fight.

As a result of the fight, R.V. had a broken jaw and a fractured nose. He testified that he lacks feeling in part of his face because of the injuries he sustained. R.V. testified that he did not know which punches or kicks caused his injuries because they came from "multiple different people, including [Naidu]." R.V. testified that "[t]hey didn't seem to want to fight me one-on-one. It just seemed like they wanted to mob us." T.B. testified that, as a result of the fight, her tooth went through her lip and she needed stitches. T.B. testified that she did not know who caused her lip injury.

The state charged Naidu with two counts of first-degree aggravated robbery under Minn. Stat. § 609.245, subd. 1 (2018), two counts of third-degree assault under Minn. Stat. § 609.223, subd. 1 (2018), and one count of obstructing or interfering with a transit operator under Minn. Stat. § 609.855, subd. 2(a) (2018). The state later added two lesser-included charges—one count of fifth-degree assault under Minn. Stat. § 609.224, subd. 1 (2018), and one count of disorderly conduct under Minn. Stat. § 609.72, subd. 1 (2018).

At Naidu's jury trial, R.V. and T.B. testified, as did two Metro Transit officers, a Metro Transit sergeant, and a medical doctor who treated R.V. and T.B.'s injuries. The bus videos from more than one camera recorded what happened on the bus and some of what happened off of the bus. Although the videos include audio, it is hard to understand. The bus videos were played for the jury.

Naidu testified that she knew several people on the bus, including Batchelor, but she did not get on the bus with Batchelor, Billups, or D.B. Naidu testified that the reason she reentered the bus after removing her friend's stroller was to attempt to break up the fight. She testified that she put her arm out to separate Batchelor from T.B. She also testified that she told R.V., "Tell your b-tch to get out of my friend's face." During her testimony, she agreed that she swung her hand "at somebody" and testified that she did so because R.V. "just pushed me a little, and so I just got a little aggravated." She also admitted that she "did throw a punch" at T.B. When asked if she told a transit officer that "everybody joined in" on the fight and it "was a gang of all of us together," she replied, "Yes."

The jury found Naidu not guilty of first-degree aggravated robbery against R.V. and not guilty of third-degree assault against T.B. The jury found Naidu guilty of aiding and abetting the first-degree aggravated robbery of T.B., one count of fifth-degree assault against T.B., one count of aiding and abetting the third-degree assault of R.V., one count of obstructing or interfering with a transit operator, and one count of disorderly conduct. The district court entered convictions for all five guilty verdicts, imposed a 75-month prison sentence for the robbery conviction, and a concurrent sentence of 12 months and

one day for the third-degree assault of R.V. The district court imposed no sentence for the fifth-degree assault of T.B. because the court found that the offense was part of the same behavioral incident under Minn. Stat. § 609.035 (2018). This appeal follows.

D E C I S I O N

When addressing a sufficiency-of-the-evidence challenge, this court’s review “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. Webb*, 440 N.W.2d 426, 430 (Minn. 1989). This court assumes that “the jury believed the state’s witnesses and disbelieved any evidence to the contrary.” *State v. Moore*, 438 N.W.2d 101, 108 (Minn. 1989). This court will not reverse a conviction for insufficient evidence “if the jury, acting with due regard for the presumption of innocence” and the need for proof beyond a reasonable doubt, could reasonably conclude that the defendant was guilty of the offense. *Bernhardt v. State*, 684 N.W.2d 465, 476-77 (Minn. 2004).

A two-step analysis is applied when reviewing a conviction based on circumstantial evidence. *State v. Hanson*, 800 N.W.2d 618, 622 (Minn. 2011). The first step is identifying the circumstances proved by deferring to the fact-finder’s “acceptance of the proof of these circumstances and rejection of evidence” that conflicted with those circumstances. *State v. Silvernail*, 831 N.W.2d 594, 598-99 (Minn. 2013) (quotations omitted). Second, we independently examine “the reasonableness of all inferences that might be drawn from the circumstances proved” to determine whether they are “consistent with guilt and

inconsistent with any rational hypothesis except that of guilt” *Id.* at 599 (quotations omitted).

I. The evidence is insufficient to sustain Naidu’s conviction for aiding and abetting in the first-degree aggravated robbery of T.B.

A robbery occurs when one “having knowledge of not being entitled thereto, takes personal property from the person or in the presence of another and uses or threatens the imminent use of force against any person to overcome the person’s resistance or powers of resistance to, or to compel acquiescence in, the taking or carrying away of the property.” Minn. Stat. § 609.24 (2018). A person commits first-degree aggravated robbery when she “while committing a robbery . . . inflicts bodily harm upon another.” Minn. Stat. § 609.245, subd. 1. “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. 1 (2018). An accomplice must know that her “alleged accomplice was going to commit a crime and the defendant intended [her] presence or actions to further the commission of that crime.” *State v. Huber*, 877 N.W.2d 519, 524 (Minn. 2016) (quotation omitted).

Naidu argues that the state failed to offer evidence that a robbery occurred. Naidu contends that the evidence shows that neither she nor Batchelor took T.B.’s backpack from her. Rather, T.B. dropped her backpack voluntarily and then ran away at about the same time that Naidu exited the bus. She argues that “picking up an item of personal property from the ground where its owner has discarded it, without force or threat of force—is not

a robbery.” In its brief to this court, the state concedes that T.B. “dropped her backpack” and ran away before “Naidu picked up” the backpack.

We agree with Naidu’s summary of the evidence. The bus video depicted T.B. wearing a bright-pink backpack when she entered the bus and throughout the fight. Once Batchelor forced T.B. outside the bus, they continued to fight until Batchelor ran away. The bus video also depicted that, after Batchelor ran away, T.B. removed her backpack, dropped it on the ground, and then ran away. The bus video finally depicted that, as Batchelor and T.B. fled, Naidu exited the bus, picked up T.B.’s backpack from the ground, and handed it to a third person, who placed the backpack in Batchelor’s stroller.

Because T.B.’s backpack was not taken by force, no robbery occurred. Aggravated robbery “requires only that the use of force or threats precede or accompany either the taking or the carrying away and that the force or threats be used to overcome the victim’s resistance or compel his acquiescence in the taking or carrying away.” *State v. Kvale*, 302 N.W.2d 650, 653 (Minn. 1981). As explained in a recent supreme court decision, “[t]he use of force is the characteristic element that differentiates robbery from theft.” *State v. Townsend*, 941 N.W.2d 108, 112 (Minn. 2020). “Simple robbery is basically a theft accomplished by means of an assaultive act.” *State v. Stanifer*, 382 N.W.2d 213, 220 (Minn. App. 1986). Although there may be sufficient record evidence to show that Naidu aided and abetted in a theft, the state did not charge her with nor was she convicted of theft. Thus, we conclude that the evidence cannot sustain Naidu’s conviction for first-degree

aggravated robbery of T.B. and we reverse in part and remand to vacate the conviction and sentence imposed for this offense.¹

II. The evidence is sufficient to support Naidu’s conviction for fifth-degree assault of T.B.

In the alternative to her sufficiency challenge to the aggravated robbery conviction, Naidu argues that her conviction for fifth-degree assault of T.B. should be reversed and remanded to the district court to be vacated because it is a lesser-included offense of aggravated robbery. “Whoever . . . (1) commits an act with intent to cause fear in another of immediate bodily harm or death; or (2) intentionally inflicts or attempts to inflict bodily harm upon another” is guilty of fifth-degree assault. Minn. Stat. 609.224, subd. 1. Fifth-degree assault is a lesser-included offense of simple robbery. *Stanifer*, 382 N.W.2d at 220. Because we have reversed Naidu’s conviction for aggravated robbery, her lesser-included argument fails. And because Naidu admitted at trial that she swung at and punched T.B., there is sufficient evidence to sustain her fifth-degree assault conviction. As a result, we affirm Naidu’s conviction for fifth-degree assault of T.B. and remand for sentencing.

III. The evidence is sufficient to sustain Naidu’s conviction for aiding and abetting in the third-degree assault of R.V.

Third-degree assault occurs when one “assaults another and inflicts substantial bodily harm.” Minn. Stat. § 609.223, subd. 1. Substantial bodily harm “means bodily injury

¹ Because we conclude that the evidence is insufficient to prove that a robbery occurred, we do not reach Naidu’s alternate argument that the evidence was insufficient to establish that she intentionally aided the aggravated robbery.

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). Liability for aiding and abetting occurs when one “intentionally aids, advises, hires, counsels, or conspires with or otherwise procures the other to commit [the] crime.” Minn. Stat. § 609.05, subd. 1. For accomplice liability, the state must show more than a person’s mere presence at the scene of the crime. Presence “does not alone prove that a person aided or abetted, because inaction, knowledge or passive acquiescence does not rise to the level of criminal culpability.” *State v. Ostrem*, 535 N.W.2d 916, 924 (Minn. 1995). To impose liability for aiding and abetting a crime, the state must prove that Naidu “knew [her] alleged accomplices were going to commit a crime and that [she] intended [her] presence or actions to further the commission of that crime.” *State v. Mahkuk* 736 N.W.2d 675, 682 (Minn. 2007).

Naidu admits that R.V. suffered a broken jaw and a broken nose, and that these injuries are substantial bodily harm. She, however, contests her role in the assault of R.V., arguing that she entered the fight only to stop the argument and that she “neither knew D.B. would break [R.V.’s] bones nor intended to aid D.B. in assaulting [R.V.]”

Knowledge and intent are generally proved by circumstantial evidence. *State v. Ali*, 775 N.W.2d 914, 919 (Minn. App. 2009) *review denied* (Minn. Feb. 16, 2010). Thus, we identify the circumstances proved for the assault of R.V.: (1) Naidu, Billups, D.B., Batchelor, R.V., and T.B. were all passengers on the same bus; (2) while standing near the front of the bus, R.V., T.B., Batchelor, Billups, and D.B. engaged in a verbal argument;

(3) while the verbal argument continued, Naidu walked from the middle of the bus to the front of the bus and put her hands in T.B.'s face and between T.B. and Batchelor; (4) Naidu then swung her arm over T.B., knocking off R.V.'s hat; (5) R.V. pushed Naidu onto a nearby seat; (6) D.B. pulled himself up on the ceiling bars and kicked R.V.'s face; (7) Naidu then stood up and swung at T.B., who testified Naidu hit her in the face; (8) after being pushed, Naidu fell, then got up and walked to the back of the bus, and did not reengage in the fight; (9) Batchelor and T.B. continued physically to fight on the bus; (10) D.B. and Billups kicked and hit R.V., who returned some blows; (11) while exiting the front bus door, D.B. and Billups continued to fight R.V. outside the bus; and (12) as a result of the fight, R.V. sustained a broken jaw and nose.

Naidu claims that the evidence is insufficient to show that she knew that Batchelor, Billups, and D.B. would inflict substantial bodily harm on R.V. We are not persuaded. Naidu knowingly involved herself physically in the bus fight. She inserted herself into the fight while it was going on; in fact, it appears there were no physical blows until after she approached the group arguing at the front of the bus. Naidu waved her hands in T.B.'s face, placed her arm between T.B. and Batchelor, and, as Naidu swung at T.B., Naidu knocked off R.V.'s hat. R.V. pushed Naidu, knocking her onto nearby a seat. Right after Naidu and R.V. interacted, D.B. kicked R.V. in the face. Naidu then rejoined the fight and punched T.B. D.B. and Billups continued to fight with R.V., while Batchelor fought with T.B. Naidu then extricated herself from the fight and moved to the back of the bus. Billups and D.B. continued to hit and kick R.V.

Even though Naidu may have only hit T.B., she made physical contact with R.V. by knocking off his hat. When we view the evidence favorably to the jury's verdict, it shows that Naidu intended her presence to assist D.B. and Billups's assault of R.V. by keeping T.B. occupied. It is not reasonable to contend otherwise. Because there is sufficient evidence to support the jury's determination that Naidu took a knowing role in R.V.'s assault, we affirm her conviction for aiding and abetting the third-degree assault on R.V.

Affirmed in part, reversed in part, and remanded.