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Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0291**

State of Minnesota,
Respondent,

vs.

James Anthony Niesen,
Appellant.

**Filed January 19, 2021
Affirmed
Worke, Judge**

Hennepin County District Court
File No. 27-CR-19-1143

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, Sara L. Martin, Assistant Public Defender, St. Paul, Minnesota (for appellant)

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

NONPRECEDENTIAL OPINION

WORKE, Judge

Appellant argues that the evidence was insufficient to prove that he was the person who committed the crimes of which he was convicted. We affirm.

FACTS

Appellant James Anthony Niesen went to trial on three charges: third-degree drug possession, giving a false name to a peace officer, and fourth-degree criminal damage to property. The central issue at Niesen's jury trial was whether he was the man who committed the offenses.

Minneapolis homeowners were in their duplex in the early morning of September 30, 2018. Homeowner-wife testified that she heard pounding on the back door. She looked out a second-floor window and saw a man in her backyard. The man was going between the doors of the garage and the homeowners' vehicle trying to break the locks with a large screwdriver. Homeowner-husband shouted to the man, and the man replied, "I am Lucifer's apprentice. This is my house. These are my cars. You must go." The homeowners called 911.

Two officers arrived on the scene. Homeowner-wife, who was still looking out her window, saw the man leave her neighbor's mud room. She testified, "I immediately knew it was the same individual who was in our backyard, and he began to run down the property sidewalk to the alley." Homeowner-wife called down to the officers that the man was running away.

One officer pursued the man on foot while the other drove to the vacant lot where the man was eventually apprehended. A third officer drove to the scene and followed the man to the vacant lot, where he exited his vehicle and pursued on foot. A fourth officer arrived at the scene, parked at a distance, and planned to approach on foot. While he approached, the man ran past the officer, and the officer pursued him. After the man was

detained, he gave the officers the alias of Lucifer Sufrentis. The officers called an ambulance to take the man to the hospital because of suspected mental-health issues.

The next day, a fifth officer began an investigation. The file listed the name Lucifer Sufrentis and a September 16, 1982 date of birth, which yielded no results in the system. The officer obtained a search warrant for access to the medical records of the man who identified as Lucifer Sufrentis in the crisis hold, but the records did not contain any identifying information. The investigating officer then used still images from the body-camera footage of the officers on the scene to create a state-wide bulletin shared electronically between law-enforcement agencies to help identify unknown individuals. The officer received five responses “right away,” all identifying Niesen as the man pictured in the images.

The jury found Niesen guilty as charged. The district court sentenced Niesen to 60 months in prison for third-degree drug possession for drugs he discarded while running from the officers, and concurrent 90-day sentences for giving a peace officer a false name and fourth-degree property damage. This appeal followed.

DECISION

Niesen argues that the evidence was insufficient to prove that he was the man who committed the crimes.

When reviewing a challenge to the sufficiency of the evidence, this court reviews the record “to determine whether the evidence, direct and circumstantial, viewed most favorably to support a finding of guilt is sufficient to permit the jury to reach that conclusion.” *Francis v. State*, 729 N.W.2d 584, 589 (Minn. 2007). Appellate courts will

not overturn a verdict if the jury, “upon application of the presumption of innocence and the [s]tate’s burden of proving an offense beyond a reasonable doubt, could reasonably have found the defendant guilty of the charged offense.” *State v. Griffin*, 887 N.W.2d 257, 263 (Minn. 2016). “We do not retry the facts; we assume the jury believed the state’s witnesses and disbelieved the defendant’s witnesses.” *State v. Thao*, 649 N.W.2d 414, 420 (Minn. 2002).

“The identification testimony of a witness need not be positive and certain; it is enough for him to testify that his belief, opinion, impression, or judgment is that [the] accused is the person whom he saw commit the crime.” *State v. Sutton*, 138 N.W.2d 46, 47 (Minn. 1965) (quotation omitted). “[A] verdict may be based on the testimony of a single witness no matter what the issue” *State v. Burch*, 170 N.W.2d 543, 552 (Minn. 1969).

The jury heard testimony from the homeowner-wife about the appearance of the man and her description of him from the 911 call. The jury also heard the testimony of three arresting officers who spent around 10-15 minutes with the man while he was detained. All three officers identified Niesen as the man. The state also played three of the officers’ videos from their body cameras that showed their pursuit and detention of the man.

The jury also heard testimony from the officer who investigated the file after the incident. The officer testified that he received five responses unanimously identifying the man captured in the officers’ body-camera footage. After receiving the responses, the investigating officer looked into Niesen’s file. He testified that Niesen’s date of birth is

only one day off from the false date of birth provided. Three law-enforcement employees who responded to the identification request testified at trial. One testified that he recognized Niesen because he had law-enforcement contacts with him “many times.” Another testified that he recognized Niesen because he met with him about ten times in his professional capacity. Finally, the jury looked at the still photos that the investigating officer took from the arresting officers’ body-camera videos. When viewing this evidence in a light favoring the conviction, the jury could have reasonably found that Niesen was guilty of the charged crimes. The state provided sufficient evidence to support Niesen’s convictions.

Niesen argues that the evidence is insufficient because some of the factors articulated in *Burch* were not satisfied. *See id.* at 553-554. This argument is unpersuasive. First, *Burch* lists five factors considered for a jury instruction about eyewitness credibility: (1) whether the witness saw the defendant when the crime was committed, (2) the length the individual was in the witness’s view, (3) whether the witness was under stress at the time, (4) the lapse of time between the incident and the identification, and (5) “the effect of the procedures followed by the police as either testing the identification or simply reinforcing the witness’ initial determination that the defendant is the one who committed the crime.” *Id.* *Burch* does not provide clear guidance on an appellate review for the sufficiency of the evidence supporting a conviction. Second, this argument targets only a portion of the identification evidence—the state still provided homeowner-wife’s description of the man on her 911 call which took place during the incident, the testimony of three law-enforcement personnel who identified the man in the bulletin, and the body-

camera footage and still pictures taken from the footage. Finally, *Burch* provides factors only in weighing credibility. *See id.* Because two factors are not met does not make the jury's credibility determination erroneous. In fact, three of the five factors support the credibility of the officers' testimony.

Niesen next argues that the officers "could have done a number of things to ensure an accurate identification." But that is not the standard on appeal. The issue is whether the state provided sufficient evidence to support all of the elements of the jury's verdict.

Finally, Niesen argues that "while the person was captured on video, the video did not unequivocally show the person was Niesen. This is evidenced by the fact that the jury needed a second look at a video during deliberations." Niesen is referencing the jury's request to rewatch the videos of two officers' pursuit and apprehension of the man. Niesen's argument is unpersuasive for several reasons. First, these videos capture the pursuit, so the jurors may have watched related to Niesen's drug-possession charge to see if he threw the drugs during pursuit. Even if they were watching to see Niesen's identity, viewing the evidence again does not make the evidence ambiguous. The jury also had photographs of the man's face taken from the videos—an easier method to check identity. The evidence was sufficient to sustain Niesen's convictions.

Affirmed.