

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0355**

State of Minnesota,
Respondent,

vs.

Derrick Lamar Tallman,
Appellant.

**Filed March 1, 2021
Affirmed
Worke, Judge**

Dakota County District Court
File No. 19HA-CR-19-1041

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

James C. Backstrom, Dakota County Attorney, Anna Light, Assistant County Attorney,
Hastings, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Charles F. Clippert, Assistant
Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Worke, Presiding Judge; Reyes, Judge; and Jesson,
Judge.

NONPRECEDENTIAL OPINION

WORKE, Judge

Appellant challenges his first-degree aggravated-robbery conviction, arguing that the evidence was insufficient to prove beyond a reasonable doubt that he inflicted bodily harm during the robbery. We affirm.

FACTS

In October 2019, appellant Derrick Lamar Tallman went to trial on a first-degree aggravated-robbery charge. C.E. testified that in the evening of April 26, 2019, he was repairing a vehicle—a Thunderbird—when he received a text message from a friend, Samantha Deuel, stating that she needed somewhere to go. C.E. invited Deuel to his place. When Deuel arrived, C.E. was fixing the passenger door of the Thunderbird and Deuel jumped into the driver’s seat.

Deuel had arrived in a Pontiac and asked C.E. for gas money for the driver of the Pontiac. C.E. gave Deuel money. Two men then approached from the Pontiac, “trying to fight” C.E. and take his cell phone. Following a struggle, Deuel drove away in the Thunderbird and the two men left in the Pontiac. C.E. saw the two vehicles stop about a block away and watched one of the men exit the Pontiac and get into the Thunderbird. C.E. called the police. An officer testified that officers pursued the Thunderbird, which Deuel eventually crashed. An officer pulled up alongside the passenger side of the Thunderbird, identified the passenger as Tallman, and arrested him.

C.E. testified that at least one of the men hit him. C.E. did not know if the man hit him with his hands or with an object, but C.E. had seen one of the men holding a black “rod or a crowbar or something.” C.E. did not feel pain at the time of the robbery because “adrenaline was rushing.” But the next day, C.E. “woke up in pain,” was sore, and his right arm hurt. A responding officer testified that C.E. reported that two men “rushed” at him and one “swung a pipe or a crowbar.” C.E. stated that he “raised his right arm to block the strike” and was struck in the arm. The officer observed a mark on C.E.’s right elbow.

Deuel testified that she pleaded guilty to the robbery. When she pleaded guilty, she admitted that she saw Tallman and the other man “inflict bodily harm on [C.E.] while doing the robbery,” the men “were hitting [C.E.] in some way,” she saw that C.E. was injured, and she was aware that the men “caused bodily harm to [C.E.]”

The district court found Tallman guilty of aiding and abetting first-degree aggravated robbery, in violation of Minn. Stat. § 609.245, subd. 1 (2018). The district court sentenced Tallman to 129 months in prison. This appeal followed.

DECISION

Tallman argues that the evidence was insufficient to show that he inflicted bodily harm during the robbery. We review a sufficiency-of-the-evidence challenge by carefully examining the record to determine whether the evidence, viewed in the light most favorable to the conviction, was sufficient to support the conviction. *See State v. Ortega*, 813 N.W.2d 86, 100 (Minn. 2012). In doing so, we assume that “the [fact-finder] believed the state’s witnesses and disbelieved any evidence to the contrary.” *See State v. Caldwell*, 803 N.W.2d 373, 384 (Minn. 2011) (quotation omitted). A guilty verdict will not be disturbed “if the [fact-finder], acting with due regard for the presumption of innocence and the requirement of proof beyond a reasonable doubt, could reasonably conclude that the defendant was guilty of the charged offense.” *Ortega*, 813 N.W.2d at 100.

Because this was a court trial, in order for the district court to find Tallman guilty of aiding and abetting aggravated first-degree robbery, the state had to prove that Tallman “intentionally aid[ed], advise[d], hire[d], counsel[ed], or conspire[d] with or otherwise procure[d] [another] to commit” a robbery, and during the commission of the robbery,

“inflict[ed] bodily harm upon another.”¹ Minn. Stat. §§ 609.245, subd. 1, .05, subd. 1 (2018).

Tallman argues that the state failed to prove that he, or a codefendant, inflicted bodily harm on C.E. during the robbery because the evidence showed only that C.E. “may have had some pain or soreness the day after the incident.” This court reviews de novo whether an appellant’s conduct satisfies the statutory definition of an offense. *State v. Hayes*, 826 N.W.2d 799, 803 (Minn. 2013). Whether an injury constitutes a particular degree of bodily harm is a question for the fact-finder. *See State v. Moore*, 699 N.W.2d 733, 737 (Minn. 2005) (holding that whether an injury constitutes great bodily harm is a question for the jury). “In making its factual determination, the [fact-finder] [is] entitled to make reasonable inferences from the evidence, including inferences based on their experiences or common sense.” *See State v. Russell*, 503 N.W.2d 110, 114 (Minn. 1993) (quotation omitted).

Under the criminal code, “bodily harm” is defined as “physical pain or injury, illness, or any impairment of physical condition.” Minn. Stat. § 609.02, subd. 7 (2018). Under the statute “[a]ll that need be shown . . . is that the victim . . . was subjected to pain

¹ The statute also provides that, alternatively, the state can prove the offense by showing that, while committing the robbery, the offender was “armed with a dangerous weapon or any article used or fashioned in a manner to lead the victim to reasonably believe it to be a dangerous weapon.” Minn. Stat. § 609.245, subd. 1. At the end of trial, however, Tallman moved for judgment of acquittal. The district court granted the motion in part, stating that the evidence did not establish the dangerous-weapon part of the statute, and ruled that it would determine whether the state proved that Tallman inflicted bodily harm upon C.E.

or injury . . . and that the evidence was sufficient for the [fact-finder] to find that he did experience pain.” *State v. Johnson*, 152 N.W.2d 768, 773 (Minn. 1967) (concluding that evidence was sufficient to show bodily harm when the victim experienced pain from being struck).

C.E. testified that at least one of the men hit him, but he did not feel hurt at the time because “adrenaline was rushing.” The day after the robbery, however, C.E. “woke up in pain” and was sore. He stated that he hurt his right arm. A responding officer testified that C.E. reported that he was struck in the arm, and the officer observed a mark on C.E.’s right elbow. Deuel agreed that Tallman participated in “hitting” C.E. in some way, and that Tallman was involved in causing bodily harm to C.E.

Based on this evidence, the district court found that Tallman and another man “rushed” C.E., one of them hit C.E., and both struggled with him. The district court found that “C.E. was sore and felt pain in his arm the following day.” The evidence and these findings show that the state proved that Tallman inflicted “bodily harm”—“physical pain or injury”—on C.E. *See* Minn. Stat. § 609.02, subd. 7.

Tallman seems to suggest that he did not inflict bodily harm *during* the robbery because C.E. testified that he did not feel pain during the robbery, but only did so the day after. But the statute describes the offender’s conduct—“inflicts bodily harm upon another.” Minn. Stat. § 609.245, subd. 1. It focuses on the act of causing bodily harm. It does not include an element of when the victim felt the pain from the inflicted bodily harm.

Tallman also argues that his conviction violates due process because robbing someone while in possession of a dangerous weapon is a more serious offense than robbing

someone who suffers soreness from contact after the fact. Essentially, Tallman argues that it is not fair to punish these offenders the same—the one who is armed with a dangerous weapon and the one who inflicts bodily harm—because it is a more serious offense to be armed with a dangerous weapon. *See State v. Melde*, 725 N.W.2d 99, 102 (Minn. 2006) (stating that “[e]ssential to the guarantee of due process is fundamental fairness”). But that is not necessarily true, because the statute uses the terms “*armed* with a dangerous weapon” and “*inflicts* bodily harm.” *See* Minn. Stat. § 609.245, subd. 1 (emphasis added). Inflicting bodily harm upon another may result in a more serious situation than being armed with a dangerous weapon, but not using the dangerous weapon. The evidence sufficiently supports Tallman’s conviction.

Affirmed.