

*This opinion is nonprecedential except as provided by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
A22-1509**

State of Minnesota,
Respondent,

vs.

Cordell Martez Hall,
Appellant.

**Filed August 12, 2024
Affirmed
Bjorkman, Judge**

Stearns County District Court
File No. 73-CR-22-2212

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

Janelle P. Kendall, Stearns County Attorney, Ole Tvedten, Assistant County Attorney,
St. Cloud, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Gina D. Schulz, Assistant Public
Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Slieter, Presiding Judge; Bjorkman, Judge; and Smith,

Tracy M., Judge.

NONPRECEDENTIAL OPINION

BJORKMAN, Judge

Appellant challenges his conviction of fifth-degree assault, arguing that he is entitled to a new trial because defense counsel conceded his guilt without his consent or acquiescence. We affirm.

FACTS

On the evening of March 14, 2022, St. Cloud police officers responded to a reported robbery. Victim A.M.A. told the officers that he was riding his bike down the sidewalk when he encountered two men, one dressed in a red Lamborghini jacket and the other in a blue sweater. A.M.A. reported that the man in the red Lamborghini jacket punched him in the face, causing him to fall from his bike, and took \$21 from his pocket; the man in the blue sweater took the bike. A.M.A. was able to get away from the men, waived down a passing vehicle, and called 911. When the police arrived, A.M.A. directed them to the scene of the incident. The vehicle driver told police that when he stopped to help, A.M.A. was bleeding from his mouth, chin, and nose.

The officers followed A.M.A.'s directions and found his bike in a snowbank in the yard of a nearby home and saw blood and scrape marks in the snow consistent with A.M.A.'s injuries. A woman living in the home identified the man in the red Lamborghini jacket as appellant Cordell Martez Hall. Officers then located Hall standing in front of a gas station nearby wearing a red Lamborghini jacket. The officers arrested Hall but did not find any money when they searched his person.

Respondent State of Minnesota charged Hall by an amended complaint with first-degree aggravated robbery, third-degree assault, and fifth-degree assault.¹ After receiving a copy of the police report—which falsely stated that the arresting officers found the \$21 on his person—Hall contacted the St. Cloud Police Department to file a complaint. A police lieutenant went to the Stearns County Jail where Hall was being held to discuss the complaint. During that conversation, Hall voluntarily admitted to punching A.M.A. When the lieutenant realized that Hall was making an admission, he gave Hall a *Miranda*² warning. Hall continued to talk about the incident, again stating that he punched A.M.A.

After the district court denied Hall’s motion to suppress his statement to police, the case proceeded to a jury trial. Hall’s recorded admission to police that he punched A.M.A. was admitted as substantive evidence, and the prosecutor and two defense counsel discussed it during opening statements and closing arguments. The jury found Hall guilty of fifth-degree assault but acquitted him of first-degree aggravated robbery. The district court sentenced Hall to the time he had already served in jail (90 days) and ordered him to pay a \$50 fine.

Hall appealed. At his request, we stayed the appeal to permit Hall to seek postconviction relief in the district court. In that proceeding, Hall contended that defense

¹ The state dismissed the third-degree assault charge at the time of trial.

² *Miranda v. Arizona* requires that individuals who are in custody must be given a warning of their Fifth Amendment rights, including their right to remain silent and that anything said “can and will be used against the individual in court.” 384 U.S. 436, 467-69 (1966).

counsel were ineffective because they conceded his guilt to fifth-degree assault without Hall's consent. Following an evidentiary hearing, the district court denied Hall's petition.

We then reinstated Hall's appeal.

DECISION

Under the Sixth Amendment, a defendant has the right to maintain their innocence throughout trial. *McCoy v. Louisiana*, 584 U.S. 414, 422 (2018). Whether to concede guilt is a decision that only the defendant can make. *State v. Luby*, 904 N.W.2d 453, 457 (Minn. 2017). If defense counsel usurps this right by conceding the defendant's guilt without their consent, prejudice is presumed and "the defendant is entitled to a new trial, regardless of whether [they] would have been convicted without the admission." *Id.* (quotation omitted). This is so because counsel's unauthorized concession of guilt is a structural error; it attacks "the fundamental legal principle that a defendant must be allowed to make [their] own choices about the proper way to protect [their] own liberty," and creates a "fundamental unfairness." *McCoy*, 584 U.S. at 427-28 (quotation omitted).

Hall contends that defense counsel were ineffective because they conceded his guilt by referencing his admission to police without his consent. In assessing this contention, we apply a two-step analysis. *Luby*, 904 N.W.2d at 457. We first conduct a de novo review of the record to determine whether counsel conceded the defendant's guilt. *Id.* And if they did, the defendant is entitled to a new trial unless they "acquiesced in that concession." *Id.* (quotation omitted). We may infer that the defendant acquiesced if the concession strategy was apparent throughout the trial and the defendant failed to object or if "the concession was an understandable strategy and the defendant was present [and] understood a

concession was being made, but failed to object.” *Id.* at 459 (quotation omitted).³ But an unconsented-to concession of a single element of a crime is not necessarily a concession of guilt warranting a new trial. *State v. Huisman*, 944 N.W.2d 464, 468 (Minn. 2020).

To convict Hall of fifth-degree assault, the state was required to prove that Hall “intentionally inflict[ed] or attempt[ed] to inflict bodily harm upon [A.M.A.]” Minn. Stat. § 609.224, subd. 1(2) (2020). “Bodily harm” is defined as “physical pain or injury, illness, or any impairment of a person’s physical condition.” Minn. Stat. § 609.02, subd. 7 (2020). Hall argues that counsel’s references to his police statement in opening statement and closing argument conceded his guilt because, in the context of his trial, admitting to punching A.M.A. effectively conceded guilt to the offense as the bodily harm element is “baked into” the admission. We are not persuaded.

The prosecutor highlighted Hall’s admission to police in their opening statement: “Most importantly, you will hear [Hall’s] own words that he punched the victim.” In response, defense counsel stated, “What the State will show, what they can prove is that Mr. Hall did admit to punching [A.M.A.], but that’s it, and that’s by Mr. Hall’s own admission. That’s the only thing the State can prove.” At the conclusion of the trial, after the jury heard the audio recording of Hall’s police statement and the recording was admitted as an exhibit, defense counsel again referenced the statement:

³ Hall’s ineffective-assistance-of-counsel claim is limited to the claimed unauthorized concession of his guilt. He acknowledges that his trial counsel “vigorously—and successfully—defended against the aggravated robbery charge,” and does not present an argument under the ineffectiveness standard set out in *Strickland v. Washington*, 466 U.S. 668, 687 (1984).

And, again, you heard Mr. Hall's statement that he had prior contacts with [A.M.A.]. You heard that in the statement that was played today, the statement that Mr. Hall voluntarily gave to law enforcement. I ask you to weigh that in contrast from what you heard from [A.M.A.]. You heard Mr. Hall's statement where he said, "I punched this guy." Here's our beef that led up to it. Weigh that in contrast to [A.M.A.'s] statement that, "I just seen this guy once before. We never interacted."

Defense counsel then explicitly asked the jury to find Hall not guilty of both first-degree aggravated robbery and fifth-degree assault.

This record does not convince us that defense counsel conceded Hall's guilt. A plain reading of counsel's challenged statements demonstrates that counsel simply acknowledged an undisputed fact—that Hall admitted to police that he punched A.M.A.—and urged the jury to nevertheless find Hall not guilty of the charged offenses. Telling the jury that the prosecution can prove Hall admitted to police that he punched A.M.A. and telling the jury that the prosecution can prove Hall committed fifth-degree assault are two different things. The jury still had to find that the state proved beyond a reasonable doubt that A.M.A. sustained bodily harm—an offense element defense counsel undisputedly did not concede.

Huisman guides our analysis. In that case, defense counsel's written closing argument made concessions regarding the victims' ages and where the alleged criminal sexual conduct occurred, effectively conceding two elements of the charged offenses. 944 N.W.2d at 466-67. Our supreme court rejected Huisman's invitation to rule that conceding any single element of an offense without the defendant's consent constitutes a concession of guilt. *Id.* at 468. The supreme court reasoned that "[s]uch a rule would be a disincentive

for the parties to focus on the issues in dispute, and would prevent defense counsel from making what may well be appropriate, tactical concessions.” *Id.* Because Huisman’s counsel conceded only offense elements that were undisputed at trial and defended the disputed offense element, the supreme court concluded that there was no concession of guilt. *Id.*

As in *Huisman*, defense counsel conceded an element of the offense that was undisputed at trial. The jury heard Hall himself repeatedly admit to police that he punched A.M.A. Nothing defense counsel could say would change that undisputed fact. And the record shows Hall’s counsel provided a robust defense as to both charged offenses. Indeed, defense counsel secured a favorable outcome on the more serious first-degree aggravated robbery charge—a verdict of acquittal. In sum, because defense counsel did not concede Hall’s guilt to fifth-degree assault, no new trial is required.

Affirmed.