This opinion is nonprecedential except as provided by Minn.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
A23-0409

State of Minnesota,
Respondent,

vs.

Jonquil Bernard Neal,
Appellant.

Filed March 4, 2024
Affirmed
Florey, Judge[*]

Ramsey County District Court
File No. 62-CR-22-3727

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

John J. Choi, Ramsey County Attorney, Peter R. Marker, Assistant County Attorney, St. Paul, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, St. Paul, Minnesota; and

Peter Dahlquist, Assistant Public Defender, Edina, Minnesota (for appellant)

Considered and decided by Reyes, Presiding Judge; Larson, Judge; and Florey, Judge.

[*] Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

NONPRECEDENTIAL OPINION

FLOREY, Judge

In this direct appeal from the judgment of conviction and sentence for first-degree assault, appellant argues the conviction should be reversed because there was insufficient evidence of great bodily harm. We affirm.

FACTS

According to the complaint, on the night of July 3, 2022, officers from the St. Paul Police Department (SPPD) responded to a report of a woman lying in the backyard of a residence on Van Buren Avenue. The woman was reportedly bloody and unconscious after being assaulted by her boyfriend.[1] The 911 caller told the dispatcher, "This gal got the sh-t kick[ed] outta her by her boyfriend, obviously."

Officers found the victim lying "down on the ground" with her face covered in blood. The victim told officers that appellant Jonquil Bernard Neal had assaulted her for thirty minutes, striking her body and head with his hands. After fearing for her life, the victim brandished a firearm and shot appellant once in the leg. The victim reported that appellant took the gun from her and then hit her in the head with it several times. The victim also told officers that appellant tried to fire the gun at her, but the gun "did not go off." Appellant then took the victim's car keys and drove away with her vehicle, which law enforcement later found in North Minneapolis.

[1] The victim later told medical staff in the emergency room that appellant was her husband and that they were living together at the time of the incident.

SPPD eventually learned that appellant was at North Memorial Hospital receiving treatment for a gunshot wound to the leg. Officers arrested appellant once he was discharged from the hospital. Law enforcement obtained a search warrant and recovered the victim's gun from inside her residence, near "a spent casing and a live round." Officers observed that the trigger guard on the gun was broken. The victim told police that the trigger guard was not broken before appellant assaulted her.

Respondent State of Minnesota charged appellant with first-degree assault in violation of Minnesota Statutes section 609.221, subd. 1 (Supp. 2021); felony domestic assault, in violation of Minnesota Statutes section 609.2242, subd. 4 (2020); and violation of a no-contact order, under Minnesota Statutes section 629.75, subd. 2(d)(1) (2020).

The complaint was later amended to charge appellant with first-degree assault, in violation of Minnesota Statutes section 609.221, subd. 1; ineligible person in possession of a firearm, in violation of Minnesota Statutes section 624.713, subd. 1(2) (2020); second-degree assault—dangerous weapon, in violation of Minnesota Statutes section 609.222, subd. 1 (2020); and violation of a no-contact order under Minnesota Statutes section 629.75, subd. 2(d)(1).

The case proceeded to a jury trial in October 2022. The victim did not testify. The state presented a recording of the 911 call. The district court also allowed the jury to view body-camera footage of SPPD officers responding to the incident.

In the body-camera footage, the victim can be heard pleading for help as officers search for her in the darkness. The first thing the victim tells the officer(s) is that appellant beat her up and knocked her teeth out. An officer encourages the victim to continue talking

to him. The victim then reports that appellant hit her with his bare hands for thirty minutes. Then he hit her with "the gun" after she shot him with it, and also hit her with a vodka bottle. She also tells officers that appellant "dragged [her] to the room," but she "climbed out" (into the neighboring yard), and that appellant tried to kill her. The victim states that appellant hit and choked her and pulled her hair. The officer testified that he told the victim to "keep talking to [him]" because he was concerned that she might lose consciousness. The jury was shown photos of the victim taken when she was put on the stretcher and when she was inside the ambulance.

Another officer testified about photos he took inside the victim's residence. He described seeing "blood smeared everywhere," "a gun sitting out in the open [,] . . . a bullet on the floor and then a bullet casing and then some magazines[.]" The photos show the victim's home in disarray; a firearm covered in blood; and blood smeared on the floors and various items of clothing/fabric.

A sergeant investigator testified that he spoke with the victim at Regions Hospital in the morning on July 4. He observed that the victim appeared to be in a lot of pain with lacerations on her face and head and injuries all over her body. The victim's wounds were stitched and there was a metal bar placed across the front of her teeth. Medical staff told the investigator that the metal bar was placed on the victim's teeth to keep them from falling out.

The state displayed photos of the victim taken by the investigator while the victim was in the emergency room. The photos show bruising on the victim's arms, shoulders, and chest, as well as broken blood vessels in her left eye. The investigator told the jury that

he could not "say for sure" but "[t]he bruising below the eye and the U-shaped laceration on the side of the face" appeared to be consistent with "the butt of a gun in shape."

A doctor from Regions Hospital testified that the victim presented to the emergency room on July 3 with "[p]rimarily left-sided pain, as well as facial pain." The victim told the doctor she was assaulted by her husband. The doctor observed that the victim had facial swelling and scalp lacerations, as well as "bruising over her face and upper chest." After doctors treated the victim with pain medication, the victim complained of facial and mouth pain. Upon examination the doctor determined that the victim "had cracked front teeth essentially." The doctor explained that the victim's front teeth were "cracked kind of horizontally." The doctor testified that typical treatment in the emergency room for this type of injury entails placing a splint on the teeth to keep them steady. The doctor also stated that teeth "take some more time to heal compared to our [other] bones."

A computed tomography (CT) scan of the victim's head revealed "swelling of the scalp with no obvious bleed" and a facial CT revealed "a minimally displaced fracture of the right nasal arch[.]" Additionally, a chest X-ray showed that one of the victim's ribs was fractured. The doctor described the rib fracture as "kind of a break in the bone without significant malalignment," which is painful.

A physician's assistant (PA) from the emergency department at Regions Hospital testified that she repaired a laceration on the victim's cheek with stitches. The laceration was two and one-half centimeters, "large and gaping," and required nine stitches. A three-centimeter laceration on the victim's scalp required seven stitches. The victim also had two "superficial" lacerations below her left eye. The PA explained that the victim's teeth "were

fractured horizontally or across in half, so much so that when [she] pushed on the bottom part of the teeth, they sort of folded into the mouth, so they were not stable." The PA stabilized the victim's teeth with Dermabond glue and a metal bracket. The PA described the treatment as a "temporary repair," as the victim's teeth were "fractured through the pulp and the dentin[.]" The pulp is the "inside of the teeth where you have nerves and nutrients and blood vessels." The dentin is "[t]he covering between enamel." The PA stated that the victim would need to follow up with a dentist to repair the teeth permanently.

The victim remained in the hospital's care for about eight hours before being discharged to the Tubman women's shelter on July 4. A second doctor from Regions Hospital testified about his examination of the victim when she returned to the emergency room later in the day on July 4. The second doctor reported that the victim told him she went to the women's shelter after she was discharged, but "wasn't able to ambulate safely. The women's shelter did not think she should stay." The victim complained of significant pain in her extremities, arms, legs, and chest. After performing an "ambulation trial," the doctor determined the victim could not walk and "needed to be admitted to the hospital."

Appellant did not testify. After deliberating, the jury returned guilty verdicts on all four counts charged against appellant. The district court sentenced appellant to 161 months in prison for the first-degree assault conviction, and 60 months for the ineligible-person-in-possession-of-a-firearm conviction.

This appeal followed.

DECISION

Appellant argues the evidence presented at trial was insufficient to convict him of first-degree assault because there was no evidence of (1) a high probability of death, (2) serious permanent disfigurement, (3) permanent or protracted loss or impairment of the function of a bodily member or organ, or (4) other serious bodily harm. We disagree and conclude that the evidence was sufficient to find that appellant inflicted serious permanent disfigurement and other serious bodily harm.

"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." *State v. Griffin*, 887 N.W.2d 257, 263 (Minn. 2016) (quotation omitted). The reviewing court considers the evidence in the light most favorable to the verdict. *Id.* "Because the meaning of a criminal statute is intertwined with the issue of whether the State proved beyond a reasonable doubt that the defendant violated the statute, it is often necessary to interpret a criminal statute when evaluating an insufficiency-of-the-evidence claim." *State v. Vasko*, 889 N.W.2d 551, 556 (Minn. 2017). Issues of statutory interpretation are subject to de novo review. *Id.*

A person who assaults another and inflicts great bodily harm is guilty of first-degree assault. Minn. Stat. § 609.221, subd. 1. Great bodily harm is bodily injury that creates: (1) a high probability of death, (2) serious permanent disfigurement, (3) a permanent or protracted loss or impairment of any bodily member or organ, or (4) other serious bodily harm. Minn. Stat. § 609.02, subd. 8 (2020). "The question of whether a particular injury

constitutes great bodily harm is a question for the jury." *State v. Moore*, 699 N.W.2d 733, 737 (Minn. 2005).

Serious permanent disfigurement

Not all disfiguring injuries are life-threatening. *State v. Currie*, 400 N.W.2d 361, 366 (Minn. App. 1987), *rev. denied* (Minn. April 17, 1987). Permanent scarring that is highly visible can constitute serious permanent disfigurement. *See State v. Anderson*, 370 N.W.2d 703, 706 (Minn. App. 1985) (concluding that a long scar running the length of the victim's upper body, which was still present two and one half years after the injury was inflicted, constituted serious permanent disfigurement), *rev. denied* (Minn. Sept. 19, 1985); *see also State v. McDaniel*, 534 N.W.2d 290, 293 (Minn. App. 1995) (concluding that the victim's injuries caused serious permanent disfigurement because the victim had an almost one-inch-long permanent raised scar on his chest, and a "highly visible" six-centimeter permanent raised scar on the front of his neck), *rev. denied* (Minn. Sept. 20, 1995).

Although the victim's teeth were not completely knocked out, the evidence nevertheless is sufficient to support a finding of serious permanent disfigurement. The PA testified that the victim's teeth "were fractured horizontally or across in half, so much so that when [she] pushed on the bottom part of the teeth, they sort of folded into the mouth, so they were not stable." Emergency room staff temporarily stabilized the victim's teeth with Dermabond glue and a metal bracket. But the victim's teeth were fractured down to the nerve and needed to be repaired permanently by a dentist. And one of the victim's treating physicians testified that teeth "take some more time to heal compared to our [other] bones."

The injuries to the victim's face and teeth were also highly visible. The victim had a two and one-half centimeter "gaping" laceration on her cheek that required nine stitches; and a three-centimeter laceration on her scalp that required seven stitches. She also had superficial lacerations below her left eye. Although the victim did not testify at trial and the state did not present evidence of permanent scarring, given how pronounced and visible the victim's injuries are in the photos, it was not unreasonable for the jury to conclude that she was permanently disfigured. Furthermore, in a nonprecedential opinion, which we find persuasive though not binding, this court concluded that it was reasonable for the district court to find that a broken tooth constituted serious permanent disfigurement, even though the victim later had it repaired. *State v. Aleman*, No. A15-1453, 2016 WL 4723340, *4 (Minn. App. Sept. 12, 2016), *rev. denied* (Minn. Nov. 23, 2016).

Thus, the evidence was sufficient to establish serious permanent disfigurement.

Other serious bodily harm

Based on the totality of the evidence presented to the jury—photographs of the victim's injuries, the officer's body-camera footage, testimony from SPPD officers, and medical testimony related to the severity and treatment of the victim's injuries—the evidence was sufficient for the jury to reasonably conclude that appellant inflicted other serious bodily harm.

There is no statutory definition of "other serious bodily harm," but this court has said, "it should be taken in the context of the other three alternative definitions." *State v. Dye*, 871 N.W.2d 916, 922 (Minn. App. 2015) (quotation omitted). When determining whether injuries constitute other serious bodily harm, we must consider the totality of the

victim's injuries. *Id.* In *Anderson*, this court concluded that the victim's injuries, "taken as a whole, constitute[d] 'other serious bodily harm.'" 370 N.W.2d at 706. The victim suffered "a lacerated liver, a laceration on her head which required stitches, bruises, other head injuries which caused lapses of consciousness, and a long scar running the length of her upper body." *Id.* The treating physician testified that the liver laceration was a "life-threatening" injury. *Id.* And the victim remained in the hospital for a week. *Id.* at 705.

But, in *Dye*, the victim was shot through the abdomen, and the court determined the evidence was insufficient to sustain the first-degree assault conviction because: (1) the bullet "did not hit any critical body parts"; (2) the victim walked to the ambulance when emergency responders arrived; (3) the bullet was removed after a "small incision"; and (4) although she was hospitalized, she was released the next day. 871 N.W.2d at 922. Without testimony from the victim about "the extent of her pain and whether she ha[d] any permanent scarring," the court concluded the evidence did not support a finding that the victim suffered "other serious bodily injury within the meaning of the statute." *Id.* And in *State v. Gerald*, 486 N.W.2d 799, 802 (Minn. App. 1992), this court held that "two relatively small cuts"—one inside the victim's ear, and one behind the victim's ear—did not amount to "other serious bodily harm." We also relied on the victim's testimony that he chased the assailant in his cab after being injured. *Id.*

Here, however, the victim did not chase her assailant, nor did she walk to the ambulance after appellant brutally assaulted her. SPPD officers located the victim lying on the ground, in the dark, with her face covered in blood. One of the responding officers testified that he told the victim to "keep talking to [him]" because he was concerned that

the victim might lose consciousness. The victim told officers that appellant hit her multiple times in the head with her gun. And the sergeant investigator later testified that the bruising below the victim's eye and laceration on the side of her face were consistent with the shape of the butt of a gun.

The victim was placed on a stretcher and taken by ambulance to the hospital where emergency room staff stitched the gaping laceration on her cheek and the laceration on her scalp. A facial CT revealed that the victim's nose was fractured, and X-rays showed the victim's rib was also fractured. Moreover, after she was treated and discharged, the victim returned to the emergency room later in the day with significant pain and was admitted to the hospital because she could not walk.

Based on a totality of the evidence presented to the jury about the victim's injuries—fractured teeth, cheek and scalp lacerations, lacerations and bruising below the victim's eye, fractured nose, fractured rib, bruising on the victim's arms, shoulders, and chest, as well as broken blood vessels in the victim's left eye, and the victim's admittance to the hospital after being unable to walk the next day—there was sufficient evidence for a jury to reasonably conclude that appellant caused the victim other serious bodily harm.

Thus, we conclude that the evidence is sufficient to sustain appellant's first-degree assault conviction.

Affirmed.