STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1074

State of Minnesota,
Respondent,

vs.

Edward Lataris Easton,
Appellant.

Filed December 21, 2020
Affirmed
Johnson, Judge

Hennepin County District Court
File No. 27-CR-18-28168

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

Michael O. Freeman, Hennepin County Attorney, Kelly O'Neill Moller, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Melissa A. Haley, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Frisch, Presiding Judge; Johnson, Judge; and Cleary, Judge.*

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

U N P U B L I S H E D O P I N I O N

JOHNSON, Judge

Edward Lataris Easton was convicted of first-degree assault and first-degree aggravated robbery based on evidence that he and an accomplice assaulted a pedestrian by stabbing, punching, and kicking him and stealing his wallet. The victim suffered extensive injuries with permanent consequences. We conclude that the evidence is sufficient to prove that Easton inflicted great bodily harm on the victim. We also conclude that there are substantial and compelling circumstances to justify an upward sentencing departure on the ground that Easton committed the offense with particular cruelty. Therefore, we affirm.

FACTS

During the evening of October 25, 2018, D.G. purchased groceries at a supermarket on West Broadway Avenue in Minneapolis. As he was walking home, he was attacked by two men. Two surveillance video-cameras recorded the attack. The video-recordings show that two men ran up behind D.G. and that one man struck him in the back, causing him to fall to the ground. While D.G. lay on the ground, the first attacker made motions "consistent with stabbing motions" at D.G.'s torso. The second attacker kicked D.G. and stomped on his head.

After the attack, D.G. was able to walk approximately one block to his apartment. Officer Womble went to the apartment in response to a 911 call. Officer Womble saw a trail of blood and followed it to D.G.'s apartment, where the officer found D.G. lying on the floor with a large gash on his back. While in the apartment, D.G. told Officer Womble that the attackers had stolen his wallet. Officer Womble rode with D.G. in an ambulance

to a hospital because he believed that D.G. might soon die. While riding in the ambulance, D.G. described the persons who had attacked him. In a subsequent interview with a police investigator, Easton admitted that he and Isaac Childress were the persons shown in the video-recordings of the attack.

The state charged Easton with first-degree assault, in violation of Minn. Stat. § 609.221, subd. 1 (2018), and first-degree aggravated robbery, in violation of Minn. Stat. § 609.245, subd. 1 (2018). A court trial was held in March 2019. The state called six witnesses: D.G., Officer Womble, a trauma surgeon who treated D.G. at the hospital, a forensic scientist who gathered evidence at the scene of the attack, Childress, and a police officer who conducted an investigation. Childress, who had pleaded guilty to aggravated robbery, testified that he and Easton decided to rob someone for money. Childress testified that he took D.G.'s wallet and that he and Easton left the scene and boarded a bus.

The trauma surgeon testified that D.G. had a large, deep cut on his back that appeared to be caused by a knife used with a "slicing motion." The surgeon also testified that D.G. had extensive facial fractures around his eyes, nose, cheeks, and skull; a fracture on his right hand; and a collapsed lung. He testified that D.G. required multiple surgeries to repair the injuries to his face. The surgeon characterized the injuries as very serious and potentially life threatening.

Easton testified on his own behalf. He admitted that he was the first attacker shown in the video-recordings, but he denied that he used a knife and claimed that he struck D.G. only with his fist.

The district court filed a nine-page order in which it found Easton guilty of both charges. The district court imposed a sentence of 156 months of imprisonment on the conviction of first-degree assault, which is an upward departure from the presumptive sentencing range of 104 to 146 months. The departure is based on a finding that Easton committed the offense with particularly cruelty. The district court did not impose a sentence on the conviction of first-degree aggravated robbery. Easton appeals.

D E C I S I O N

I. Sufficiency of the Evidence

Easton first argues that the district court erred by finding him guilty of first-degree assault on the ground that the evidence is insufficient to support the conviction. Specifically, he argues that the evidence is incapable of proving that he inflicted great bodily harm on D.G. He does not challenge the sufficiency of the evidence supporting the conviction of first-degree aggravated robbery.

In reviewing the sufficiency of the evidence, we undertake "a painstaking analysis of the record to determine whether the evidence, when viewed in the light most favorable to the conviction, was sufficient." *State v. Ortega*, 813 N.W.2d 86, 100 (Minn. 2012) (quotation omitted). We "carefully examine the record to determine whether the facts and the legitimate inferences drawn from them would permit the [factfinder] to reasonably conclude that the defendant was guilty beyond a reasonable doubt of the offense of which he was convicted." *State v. Waiters*, 929 N.W.2d 895, 900 (Minn. 2019) (alteration in original) (quotation omitted). "The evidence must be viewed in the light most favorable to the verdict, and it must be assumed that the fact-finder disbelieved any evidence that

conflicted with the verdict." *State v. Griffin*, 887 N.W.2d 257, 263 (Minn. 2016). We will not reverse a verdict 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. This analysis applies in the same manner after either a jury trial or a court trial. *State v. Lopez*, 908 N.W.2d 334, 335 (Minn. 2018).

A person is guilty of first-degree assault if he "assaults another and inflicts great bodily harm." Minn. Stat. § 609.221, subd. 1 (2018). The term "great bodily harm" is defined by statute to mean "bodily injury [1] which creates a high probability of death, or [2] which causes serious permanent disfigurement, or [3] which causes a permanent or protracted loss or impairment of the function of any bodily member or organ, or [4] [which causes] other serious bodily harm." Minn. Stat. § 609.02, subd. 8; *see also State v. Moore*, 699 N.W.2d 733, 738 (Minn. 2005) (inserting four numerals to identify four alternative definitions).

In its findings of fact related to the offense of first-degree assault, the district court found as follows:

> As a result of the assault by Defendant and co-defendant Childress, D.G. suffered multiple fractures to the bones around his eyes, nose, cheeks, and skull. D.G. also suffered a punctured lung and a large laceration on his back. Dr. Farhat testified that these injuries were serious and could be life threatening. D.G. required multiple surgeries to repair the damage to his face. D.G. has permanent visible scars on his face and has suffered significant loss of vision in his right eye.

The district court concluded that "[t]he State has proven beyond a reasonable doubt that the Defendant committed the crime of Assault in the First Degree—Great Bodily Harm."

With respect to the first part of the definition of great bodily harm, Easton contends that "there was no evidence that an injury caused a *high probability of death.*" (Emphasis added.) To the contrary, the trauma surgeon testified that the size and depth of the knife wound in D.G.'s back, which had caused a lung to collapse, was life-threatening. D.G. testified that, when he was in his apartment after the attack, he believed that he was dying. Officer Womble testified that when he saw D.G.'s injuries, he believed that D.G. might soon die, so he rode in the ambulance with D.G. to make sure he could get a statement from him. That evidence is enough to satisfy the first part of the definition of great bodily harm, which is sufficient in itself to satisfy the element of great bodily harm.

With respect to the second part of the definition of great bodily harm, Easton contends that there is "no . . . evidence of *permanent substantial disfigurement*." (Emphasis added.) But D.G. testified that he has permanent scars. The district court, which was able to observe D.G. in the courtroom, made a specific finding that he "has permanent visible scars on his face." The district court's observations are corroborated by the trauma surgeon, who testified that multiple surgeries were required to address the injuries to D.G.'s face and head. That evidence is sufficient to satisfy the second part of the definition of great bodily harm.

With respect to the third part of the definition of great bodily harm, Easton contends that there is no evidence of "*permanent* and *protracted* substantial loss in function of a bodily member or organ." (Emphasis added.) This argument is undermined by D.G.'s

testimony that, at the time of trial, he could not see well out of his right eye. D.G. also testified that he has problems with his short-term memory and with the nerves around his nose and mouth. That evidence is sufficient to satisfy the third part of the definition of great bodily harm.

With respect to the fourth part of the definition of great bodily harm, there was evidence of multiple additional injuries, the laceration on D.G.'s back, a collapsed lung, a broken wrist, a broken thumb, and the need for a hospitalization of more than two weeks in light of the totality of his injuries. That evidence is sufficient to satisfy the fourth part of the definition of great bodily harm. *See State v. Barner*, 510 N.W.2d 202, 202 (Minn. 1993).

Easton relies on two opinions in which this court held that the evidence of great bodily harm was insufficient. But those cases are distinguishable. Both opinions relate only to the first part of the definition of great bodily harm. In *State v. Gerald*, 486 N.W.2d 799 (Minn. App. 1992), the victim suffered knife cuts on the back of his neck and his ear. *Id.* at 802. The state argued that one of the cuts was near a major artery and *could have* caused death if it had hit the major artery. *Id.* This court rejected the argument, reasoning that "the injury itself must be life-threatening" and that the first part of the statutory definition is not satisfied if the injury merely "could have been more serious." *Id.* Similarly, in *State v. Dye*, 871 N.W.2d 916 (Minn. App. 2015), a bullet passed through the victim's body without harming any internal organs. *Id*. at 920. The state argued that a bullet passing through a person's torso could hit "critical body parts" and cause death. *Id.* at 921. This court rejected the argument, reasoning that a gunshot wound is life-threatening

only if it actually caused life-threatening injuries, not if it *might have* done so. *Id.* at 922. These two opinions are distinguishable because the injuries Easton inflicted on D.G. actually put his life in danger. Easton has not cited any caselaw in which an appellate court has reversed a conviction of first-degree assault based on injuries as serious as those suffered by D.G.

Thus, the evidence is sufficient to support the district court's finding that Easton inflicted great bodily harm on D.G.

II. Aggravating Factor

Easton also argues that the district court erred by departing upward from the presumptive sentencing range after finding that his commission of the offense of first-degree assault was particularly cruel.

The Minnesota Sentencing Guidelines specify presumptive sentences for felony offenses. Minn. Sent. Guidelines 2.C (2018). For any particular felony offense, the presumptive sentence is "presumed to be appropriate for all typical cases sharing criminal history and offense severity characteristics." Minn. Sent. Guidelines 1.B.13 (2018). Accordingly, a district court "must pronounce a sentence . . . within the applicable [presumptive] range unless there exist identifiable, substantial, and compelling circumstances to support a departure." Minn. Sent. Guidelines 2.D.1 (2018). "Substantial and compelling circumstances are those demonstrating that the defendant's conduct in the offense of conviction was significantly more or less serious than that typically involved in the commission of the crime in question." *State v. Hicks*, 864 N.W.2d 153, 157 (Minn. 2015) (quotations omitted).

The sentencing guidelines provide a non-exclusive list of aggravating factors that may justify an upward departure. Minn. Sent. Guidelines 2.D.3.b. Among them is the aggravating factor that "[t]he victim was treated with particular cruelty for which the individual offender should be held responsible." Minn. Sent. Guidelines 2.D.3.b.(2). In this context, the term "particular cruelty" means "the gratuitous infliction of pain and cruelty of a kind not usually associated with the commission of the offense in question." *Tucker v. State*, 799 N.W.2d 583, 586 (Minn. 2011) (quotations omitted).

In reviewing a departure from the applicable sentencing range, this court generally applies an abuse-of-discretion standard of review. *State v. Soto*, 855 N.W.2d 303, 307-08 (Minn. 2014). A district court "has broad discretion to depart" from the sentencing guidelines "if aggravating or mitigating circumstances are present." *State v. Best*, 449 N.W.2d 426, 427 (Minn. 1989) (emphasis omitted). But "if aggravating or mitigating circumstances are not present, the trial court has no discretion to depart." *Id.* One way that a district court may abuse its discretion is by basing its decision "on an erroneous view of the law." *Soto*, 855 N.W.2d at 308 n.1 (quotations omitted). Whether an aggravating circumstance is present is, in essence, a question of law. *See Best*, 449 N.W.2d at 427. "[T]o the extent a decision to depart turns on a question of law, reviewing the decision for an abuse of discretion . . . calls for resolving the legal question de novo." *Soto*, 855 N.W.2d at 308 n.1; *accord State v. Jackson*, 749 N.W.2d 353, 357 (Minn. 2008); *State v. Dentz*, 919 N.W.2d 97, 101 (Minn. App. 2018); *Dillon v. State*, 781 N.W.2d 588, 595 (Minn. App. 2010), *review denied* (Minn. July 20, 2010); *State v. Grampre*, 766 N.W.2d 347, 350 (Minn. App. 2009), *review denied* (Minn. Aug. 26, 2009). If an aggravating circumstance

is present, an appellate court applies an abuse-of-discretion standard of review to the district court's decision to depart from the presumptive sentence. *State v. Robideau*, 796 N.W.2d 147, 150 (Minn. 2011); *Best*, 449 N.W.2d at 427.

In this case, the district court made an oral finding of particular cruelty at the sentencing hearing:

> This act was particularly violent, particularly extreme, the injuries inflicted were multiple. The victim was treated with particular cruelty. Stomped, stabbed, and hit over the head for absolutely no reason. . . . So I do find that this victim was treated with particular cruelty . . . .

Easton contends that particular cruelty is not a substantial and compelling reason for a departure in this case "[b]ecause the multiple, extensive injuries D.G. suffered are an essential element of the offense of conviction" and thus "can't also be the basis for a decision to depart based on particular cruelty." Easton relies on *State v. Osborne*, 715 N.W.2d 436 (Minn. 2006), in which the supreme court stated that "the elements of an offense cannot be used as aggravating factors to impose an upward sentencing departure for that same offense." *Id.* at 446. He contends further that the district court "did not identify specific additional facts that were proven beyond the elements of the offense."

In response, the state contends that, despite the principle stated in *Osborne*, the particular cruelty of Easton's conduct is demonstrated by "the extent of D.G.'s injuries." The state cites *Dillon*, a case of first-degree assault in which this court stated that the nature and extent of a victim's injuries are "a useful indicator of the degree of brutality involved beyond the typical case and beyond what is necessary to meet the elements of first-degree assault" and, furthermore, that the nature and extent of the victim's injuries "can inform

the factfinder of the attacker's particular conduct, including the number of blows, the force used, and the nature of the attack." 781 N.W.2d at 601. We affirmed an upward departure in *Dillon* because the victim's injuries were numerous and serious and "satisf[ied] all four categories of injuries that constitute great bodily harm." *Id.* We also affirmed an upward departure in *State v. Felix*, 410 N.W.2d 398 (Minn. App. 1987), *review denied* (Minn. Sept. 29, 1987), another first-degree assault case, in similar circumstances. *Id.* at 401-02. We reasoned that the victim's injuries "did not simply involve one of the factors defining 'great bodily harm;' it involved *all* of them." *Id.* at 401.

In this case, we have determined that D.G.'s injuries satisfy all four of the alternative definitions of great bodily harm. *See supra* part I. First, the knife wound to D.G.'s back caused a high probability of death because it led to extensive bleeding and a collapsed lung. Second, the injuries to D.G. caused permanent substantial disfigurement in the form of scars on his face. Third, D.G. suffered permanent and protracted substantial loss in function of a bodily member or organ because of impaired vision in his right eye, short-term memory problems, and nerve damage around his nose and mouth. Fourth, D.G. also suffered a broken wrist and a broken thumb, and he required hospitalization for more than two weeks because of all of his injuries. The district court was justified in finding that D.G. sustained "multiple" injuries and that the assault was "particularly violent" and "particularly extreme." As in *Dillon* and *Felix*, the variety and severity of D.G.'s injuries demonstrate that Easton's offense was particularly cruel.

Thus, the district court did not err by imposing a sentence that is an upward departure from the presumptive sentencing range based on the aggravating factor of particular cruelty.

Affirmed.