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**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-1193**

State of Minnesota,
Respondent,

vs.

Princess Victoria Burgos,
Appellant.

**Filed April 22, 2013
Affirmed
Worke, Judge**

Hennepin County District Court
File No. 27-CR-10-44102

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Michael D. Freeman, Hennepin County Attorney, Elizabeth Johnston, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Rochelle R. Winn, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Schellhas, Presiding Judge; Kalitowski, Judge; and Worke, Judge.

UNPUBLISHED OPINION

WORKE, Judge

Appellant challenges her conviction of aiding and abetting third-degree assault, arguing the evidence was insufficient to sustain the conviction. We affirm.

DECISION

Appellant Princess Victoria Burgos was convicted of aiding and abetting third-degree assault for her role in an incident that occurred on September 18, 2010. Appellant and a male companion entered M.S.'s home and kicked and beat M.S. As a result of the assault, M.S. was heavily bruised and suffered a broken nose. Appellant challenges the sufficiency of the evidence that M.S.'s nose was broken.

When reviewing a claim of insufficient evidence, we determine whether, given the record evidence and the legitimate inferences that can be drawn from the facts, “a jury could reasonably conclude that the defendant was guilty of the offense charged.” *State v. Stein*, 776 N.W.2d 709, 714 (Minn. 2010) (plurality opinion) (quotation omitted). We view the evidence in the light most favorable to the verdict and assume that the jury believed the state’s witnesses and rejected contrary testimony. *Id.*

To obtain a conviction for third-degree assault, the state must prove beyond a reasonable doubt that the defendant inflicted substantial bodily harm on the victim. Minn. Stat. § 609.223, subd. 1 (2010). “Substantial bodily harm” is defined as “bodily injury which involves a temporary but substantial disfigurement, or which causes a temporary but substantial loss or impairment of the function of any bodily member or organ, or which causes a fracture of any bodily member.” Minn. Stat. § 609.02, subd. 7a (2010). The jury, if properly instructed, is the judge of whether an injury constitutes substantial bodily harm. *See State v. Moore*, 699 N.W.2d 733, 737 (Minn. 2005) (concluding it was error to instruct the jury that loss of a tooth constituted “great bodily harm,” because this removed the question from jury consideration).

Here, the victim, M.S., testified that her nose was broken during the assault. The emergency room physician who treated M.S. testified, “[I]n both photographs I appreciated and documented the swelling to the bridge of her nose, the bruising that was present, and the tenderness [that] to my estimation suggested that she had a nasal bone fracture. So broken nose.” He went on to explain that a physician can diagnose a broken nose, either by obtaining an x-ray or by using another imaging technique, or by clinical observations. If the break is obvious, the physician usually chooses not to subject the patient to radiation exposure. Instead, the physician considers “the degree of swelling, the mechanism of injury, and the degree of tenderness that a patient might have.” He concluded, “I felt like clinically she had evidence of a nasal bone fracture. You know, these nasal bones are paper thin. So actually they break quite easily when there’s a direct blow applied to the nose. And so based on, again, the degree of swelling and experience as an ER physician, I felt it was very likely she had a broken nose.” The state published pictures of M.S.’s swollen, cut nose to the jury.

This evidence is sufficient to permit the jury to find that M.S. suffered a broken nose, which is a substantial bodily injury. *See State v. Carlson*, 369 N.W.2d 326, 327-28 (Minn. App. 1985) (concluding that victim’s testimony that she had been beaten, photographs of victim’s eyes and bloody nose, and pediatrician’s testimony stating that injuries were consistent with beating, were sufficient to sustain conviction for third-degree assault), *review denied* (Minn. Jul. 26, 1985); *State v. Strafford*, 340 N.W.2d 669, 670-71 (Minn. 1983) (holding that a broken nose is substantial bodily harm).

Affirmed.