STATE OF MINNESOTA
IN COURT OF APPEALS
A16-1598

State of Minnesota,
Respondent,

vs.

Nathaniel Emmanuel Collins,
Appellant.

Filed August 21, 2017
Affirmed
Bratvold, Judge

Hennepin County District Court
File No. 27-CR-16-4075

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

Michael O. Freeman, Hennepin County Attorney, Michael Richardson, Assistant County Attorney, Minneapolis, Minnesota; (for respondent)

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

Considered and decided by Jesson, Presiding Judge; Rodenberg, Judge; and Bratvold, Judge.

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

BRATVOLD, Judge

In this appeal following a court trial, appellant argues that this court must reverse his conviction of first-degree burglary under Minn. Stat. § 609.582, subd. 1(c) (2014) because the evidence was insufficient. We affirm.

FACTS

On February 8, 2016, T.J. visited D.S. at an apartment D.S. shared with his roommate, who was moving out.[1] Early in the afternoon, T.J.'s estranged husband, appellant Nathaniel Emmanuel Collins, came to the apartment and D.S. said he could take a shower. After his shower, Collins attempted to get into bed with T.J., who was lying on a mattress in the living room. T.J. rebuffed Collins, who "went into the other room" and began drinking with D.S. and the roommate. Sometime during the afternoon, Collins and the roommate went to a nearby liquor store and bought more alcohol. Collins, D.S., and the roommate continued to drink throughout the day.

Later that evening, Collins helped the roommate load his belongings into a car. Collins attempted to re-enter the apartment to get his cell phone, but someone had locked the door. Collins became upset and "said he would count to three before kicking in the door." Collins then kicked in the door, damaging the door frame and breaking a mirror behind the door. Once inside the apartment, Collins grabbed T.J. and "slung" her by her sweatshirt hood into the bathroom, "causing her to hit the sink and suffer pain." Collins

[1] The district court order references a party with the initials G.S., but this appears to be a clerical error.

left and D.S. called the police.[2] Officers responded to the apartment and spoke to D.S. and T.J. One officer testified that D.S. appeared "very intoxicated," "confused," and "crawled around the floor" before lying down and "going to sleep."

The state charged Collins with one count of first-degree burglary. Collins waived a jury trial and testified in his own defense. Collins admitted to kicking in the apartment door, but denied having a physical altercation with T.J. The district court issued its written findings.

Because of the amount of alcohol the witnesses consumed, the district court determined "that the general testimony of D.S., T.J., and [Collins] was not credible." The district court also determined, however, that T.J.'s account "had the ring of truth" and that "several facts corroborate an assault." Moreover, the district court noted Collins's aggressive behavior during trial, especially while T.J. was testifying. Collins "glared" at T.J., "shook his head during [her] testimony," and "waived his arms wildly during a portion of testimony." The district court admonished Collins to stop the behavior, but noted in its findings that Collins did not stop. The district court also found that T.J. "was visibly upset and refused to look" at Collins during her testimony. The district court determined that the state proved its case beyond a reasonable doubt, convicted Collins of first-degree burglary, and imposed an executed sentence of 48 months. This appeal follows.

[2] The district court order states that the roommate called the police, but the record establishes otherwise.

D E C I S I O N

Collins challenges the sufficiency of the evidence to support his conviction of burglary, arguing that, because the district court discredited witnesses, this court should view the evidence under the circumstantial-evidence standard. Collins cites no authority for his argument and we conclude he forfeited the circumstantial evidence issue. *State v. Andersen*, 871 N.W.2d 910, 915 (Minn. 2015) (stating party waives allegations of error unsupported by authority).

When sufficiency of the evidence is raised on appeal, we thoroughly review the record "to determine whether the evidence, when viewed in a light most favorable to the conviction, was sufficient to permit the [factfinder] to reach the verdict which [it] did." *State v. Horst*, 880 N.W.2d 24, 40 (Minn. 2016) (quoting *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989)). Factfinders may make legitimate inferences from the evidence presented. *State v. Cooper*, 561 N.W.2d 175, 179 (Minn. 1997). The same standard of review applies for court trials and jury trials. *State v. Palmer*, 803 N.W.2d 727, 733 (Minn. 2011). When the factfinder has acted with due regard for the presumption of innocence, we will not disturb the verdict. *Bernhardt v. State*, 684 N.W.2d 465, 476 (Minn. 2004).

A person commits first-degree burglary when he enters a building without consent, commits a crime while in the building, and assaults a person within the building. Minn. Stat. § 609.582, subd. 1(c). An assault is "the intentional infliction of or attempt to inflict bodily harm upon another." Minn. Stat. § 609.02, subd. 10 (2014).

Collins argues that because the district court discredited his testimony and that of the state witnesses, the evidence was insufficient to support his conviction. But the district

court did not entirely discredit T.J. and D.S. Rather, it concluded that T.J.'s testimony had "the ring of truth," and that T.J.'s and D.S.'s testimony about Collins "slinging" T.J. into the bathroom was "consistent throughout the trial" and "corroborate[d]" the assault. While Collins is correct that T.J.'s and D.S.'s testimony was inconsistent on several points, his argument fails because inconsistencies are not indicative of false testimony, and factfinders are "free to accept part and reject part of a witness's testimony." *State v. Colbert*, 716 N.W.2d 647, 653 (Minn. 2006) (quotation omitted). Moreover, "[t]he resolution of conflicting testimony is the exclusive function of the [factfinder.]" *State v. Lloyd*, 345 N.W.2d 240, 245 (Minn. 1984).

Collins also ignores that the district court relied on other evidence, including physical evidence, that corroborated the assault. First, the district court noted the "anger and force required to break down the apartment door is consistent" with the testimony about the assault. Second, the district court found that Collins admitted he did not recover his cell phone during the incident, which is consistent with T.J.'s testimony that Collins was "angry about not being able to find his phone." Moreover, the district court noted Collins's "aggressive behavior" during trial. The district court was entitled to make legitimate inferences from the evidence presented, and it appropriately determined that the evidence of a broken door and mirror, and Collins's aggressive behavior during trial inferentially established that Collins assaulted T.J. by "slinging" her into the bathroom. *Cooper*, 561 N.W.2d at 179.

Because the district court credited consistent testimony and drew legitimate inferences from the evidence presented, the evidence was sufficient to support Collins's conviction of first-degree burglary based on the commission of an assault in the building.

Collins also submitted a pro se supplemental brief, but we do not specifically address the issues in the pro se brief because they are identical to the principle brief. We note, however, that in his pro se brief, Collins alleges the district court stated, "Though I have no evidence of an assault I'm going to assume that there was an assault." After a careful review of the record, we conclude that the district court did not say this.

Affirmed.