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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0392**

State of Minnesota,
Respondent,

vs.

Cosmas Oseko Nyatwori,
Appellant.

**Filed December 4, 2017
Affirmed
Larkin, Judge**

Olmsted County District Court
File No. 55-CR-16-4892

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

Mark A. Ostrem, Olmsted County Attorney, James P. Spencer, Senior Assistant County Attorney, Jennifer D. Plante, Assistant County Attorney, Rochester, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Chang Y. Lau, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Larkin, Presiding Judge; Schellhas, Judge; and Hooten, Judge.

UNPUBLISHED OPINION

LARKIN, Judge

Appellant challenges his conviction of fifth-degree assault, arguing that the uncorroborated testimony of a single eyewitness was insufficient to sustain the factfinder's guilty verdict. We affirm.

FACTS

Respondent State of Minnesota charged appellant Cosmas Oseko Nyatwori with fourth-degree assault of a vulnerable adult and fifth-degree assault for an incident that occurred while Nyatwori was working as a certified nursing assistant at the Samaritan Bethany Home ("SBH"). The complaint alleged that Nyatwori forcefully pulled E.W.K., a 79-year-old resident at SBH, back into his wheelchair when E.W.K. tried to stand up. The complaint also alleged that Nyatwori then punched E.W.K. three to five times in the "upper shoulders and head area."

E.W.K. passed away before trial. After a two-day bench trial, the district court found Nyatwori not guilty of fourth-degree assault and guilty of fifth-degree assault, based on the testimony of a single eyewitness. Nyatwori appeals.

DECISION

Nyatwori challenges his conviction, arguing that the state did not present sufficient evidence to prove him guilty of fifth-degree assault. In considering a claim of insufficient evidence, this court's review is limited to a close review of the record to determine whether the evidence, when viewed in the light most favorable to the conviction, was sufficient to allow the fact-finder to reach its verdict. *State v. Webb*, 440 N.W.2d 426, 430 (Minn.

1989). This court “use[s] the same standard of review in both bench and jury trials in evaluating the sufficiency of the evidence.” *State v. Barshaw*, 879 N.W.2d 356, 363 (Minn. 2016). The reviewing court must assume the fact-finder “believed the state’s witnesses and disbelieved any evidence to the contrary.” *State v. Moore*, 438 N.W.2d 101, 108 (Minn. 1989). The reviewing court will not disturb the 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 the defendant was guilty of the charged offense. *Bernhardt v. State*, 684 N.W.2d 465, 476-77 (Minn. 2004).

Anyone who “intentionally inflicts or attempts to inflict bodily harm upon another” is guilty of misdemeanor fifth-degree assault. Minn. Stat. § 609.224, subd. 1(2) (2016). “Intentionally” means the actor “has a purpose to do the thing or cause the result specified or believes that the act performed by the actor, if successful, will cause that result.” Minn. Stat. § 609.02, subd. 9(3) (2016). “Bodily harm” is defined as “physical pain or injury, illness, or any impairment of physical condition.” Minn. Stat. § 609.02, subd. 7 (2016). “[A]ny impairment of physical condition’ in Minn. Stat. § 609.02, subd. 7, means any injury that weakens or damages an individual’s physical condition.” *State v. Jarvis*, 665 N.W.2d 518, 522 (Minn. 2003). The state is not required to prove significant injury; evidence is sufficient to prove “bodily harm” if the fact-finder reasonably concludes the victim experienced pain from being struck. *State v. Johnson*, 152 N.W.2d 768, 773 (Minn. 1967).

The state’s case at trial was based on the testimony of a single eyewitness, K.S. K.S. testified she was at SBH visiting her father when she saw Nyatwori assault E.W.K. in a

hallway. K.S. identified Nyatwori at trial. She testified that she saw Nyatwori forcefully yank E.W.K. into his wheelchair twice, and that Nyatwori “then wound up with his fist and punched [E.W.K.] . . . on the back of the neck and head.” She testified that Nyatwori forcefully swung three times with a closed fist and that E.W.K. reacted by reaching for the back of his neck. K.S. used a whiteboard to show where she was sitting in relation to Nyatwori and E.W.K. when she witnessed the assault, and both Nyatwori’s counsel and the district court examined K.S. regarding her vantage point.

The district court found K.S.’s account of the assault credible and “that [Nyatwori] intentionally . . . punched . . . [E.W.K.] three times in the back of his neck.” The district court found that K.S. was in a position to see Nyatwori strike E.W.K. and that E.W.K. immediately reacted by reaching for the back of his neck. The district court determined the punches were not accidental. The district court inferred Nyatwori’s intent to inflict bodily harm from the nature of the blows that he inflicted on E.W.K.

Nyatwori notes that K.S. observed him from a distance of “60 to 70 feet,” that he and E.W.K. “were facing away from [K.S.],” and that he was standing between K.S. and E.W.K. Nyatwori argues that K.S. “could have easily misperceived [him] physically guiding E.W.K. back into his wheelchair as an assault.” He further argues that K.S.’s “dubious account of what happened” was further called into question by the fact that there was no physical evidence of an assault on E.W.K.’s body.

Nyatwori advanced these arguments at trial and had the opportunity to cross-examine K.S. regarding these theories. Moreover, the district court questioned K.S. regarding her opportunity to view the assault. “Assessing the credibility of a witness and

the weight to be given a witness's testimony is exclusively the province of the [fact-finder]." *State v. Mems*, 708 N.W.2d 526, 531 (Minn. 2006). This court will not consider a witness's credibility on appeal. *State v. Garrett*, 479 N.W.2d 745, 747 (Minn. App. 1992), *review denied* (Minn. Mar. 19, 1992). We therefore defer to the district court's express finding that "[K.S.'s] account [was] credible."

Nyatwori argues that "given [K.S.'s] questionable credibility regarding the alleged assault, the evidence that the assault occurred is insufficient without some independent corroboration." Nyatwori acknowledges that "[i]t is well-settled that a conviction can rest on the uncorroborated testimony of a single credible witness." *State v. Hill*, 172 N.W.2d 406, 407 (Minn. 1969). But he argues that "in cases where 'additional reasons to question the victim's credibility' exist and the state presented no corroborating evidence, Minnesota's appellate courts will reverse convictions," citing *State v. Foreman*, 680 N.W.2d 536, 539 (Minn. 2004).

In *Foreman*, the supreme court described cases in which it held that the uncorroborated testimony of an alleged victim was insufficient because there were "additional reasons to question the victim's credibility" as follows:

In *State v. Huss*, we determined that the testimony of the alleged victim of child abuse was insufficient because there was expert testimony that the victim had been exposed by the state to highly suggestive material and her testimony was not sufficiently credible. 506 N.W.2d 290, 292-93 (Minn. 1993). In *State v. Langteau*, we held that the uncorroborated testimony of the victim was insufficient to find the defendant guilty of aggravated robbery because the actions by the victim were questionable or unexplained. 268 N.W.2d 76, 77 (Minn. 1978). Finally, in *State v. Gluff*, we held that uncorroborated identification of the defendant did not have probative value

because the witness had seen the perpetrator for only a short time and there had been errors in the lineup process. 285 Minn. 148, 151, 172 N.W.2d 63, 65 (1969).

Id. The supreme court did not require corroboration in *Foreman* because “there were no other reasons to question [the victim’s] credibility.” *Id.* It concluded that the victim’s “positive and uncontradicted testimony provided sufficient evidence to support the conviction.” *Id.*

Unlike the circumstances in *Huss*, *Langteau*, and *Gluff*, K.S. was not the victim of the charged crime. She is an adult, and her actions were not “questionable or unexplained.” K.S. had no apparent reason to falsely accuse Nyatwori, and there are no identification issues in this case. Moreover, K.S.’s description of the assault to the responding police officer was consistent with her trial testimony. Given these circumstances, there is no basis to depart from the rule that a conviction can rest on the uncorroborated testimony of a single credible witness.

In sum, Nyatwori challenged the sole eyewitness’s credibility at trial, but the district court determined that “[K.S.] was in a position to see what she says she saw.” We defer to this credibility determination, and corroboration of K.S.’s testimony is not required. Because the district court could reasonably conclude that the state proved beyond a reasonable doubt that Nyatwori was guilty of fifth-degree assault based on K.S.’s testimony, we do not disturb the guilty verdict.

Affirmed.