STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1589

State of Minnesota,
Respondent,

vs.

Emanuel Chol Alfred,
Appellant.

Filed August 20, 2018
Affirmed
Reyes, Judge

Olmsted County District Court
File No. 55-CR-17-1579

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

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

Cathryn Middlebrook, Chief Appellate Public Defender, Rochelle R. Winn, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Reyes, Presiding Judge; Worke, Judge; and Johnson, Judge.

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

REYES, Judge

Appellant challenges his conviction of first-degree aggravated robbery,[1] arguing that the evidence is insufficient to prove that the victim suffered bodily harm. We affirm.

FACTS

On the evening and early morning of March 9 and 10, 2017, J.P. hosted a party at his home for his friend, S.V., who planned to turn himself in to jail the next day. S.V. and appellant Emanual Chol Alfred attended the party and were contacted by the victim, their mutual friend, whom they invited over.

At trial, testimony by the victim and J.P. established the following. The victim arrived at J.P.'s home with a backpack of marijuana for sale. S.V. improvised a plan to pay the victim a partial sum of $400 for the marijuana and then rob him of both the $400 and the marijuana with appellant's assistance. J.P. provided S.V. with $400, and he, S.V., and appellant discussed S.V.'s plan to rob the victim. The victim subsequently agreed to sell the marijuana to S.V. for $750. S.V. paid the victim $400 and convinced him to wait at the party to collect the rest of the money.

[1] Appellant also challenges his "conviction" of fifth-degree assault. However, the district court did not enter a conviction of fifth-degree assault because it is a lesser-included offense of first-degree aggravated robbery. Appellate courts do not consider sufficiency-of-the-evidence challenges to charges on which a defendant was found guilty but neither formally adjudicated nor sentenced. *See State v. Ashland*, 287 N.W.2d 649, 650 (Minn. 1979); *see also State v. Hoelzel*, 639 N.W.2d 605, 609 (Minn. 2002) (concluding that verdict of guilt, without recorded judgment of conviction, is not final, appealable judgment).

The victim stayed at the party, where he consumed Xanax and alcohol and gambled on games of beer pong. The victim and S.V. each wagered $80 on one game and placed their money on the table. After the victim won the game, S.V. took the money and ran to the bathroom. When the victim noticed that the money was missing, he announced that whoever took his money was a "b—h."

S.V. and appellant then confronted the victim. Appellant approached and restrained the victim from behind while the others punched him, reached into his pockets, and stole his money.[2] At some point, the victim was on the ground. S.V. grabbed a rifle from another room and pointed it at the victim. Appellant told S.V. to put the gun away. The victim was made to remove some of his clothing to show that he was not wearing a wire, and then he was released. Appellant walked the victim outside. The victim left in his vehicle and then called the police to report being robbed of approximately $400. The police executed a search warrant on J.P.'s home later that day and found an AR-15 rifle along with a backpack containing marijuana, cocaine, and pills.

Respondent State of Minnesota charged appellant with aiding and abetting first-degree aggravated robbery in violation of Minn. Stat. § 609.245, subd. 1 (2016), aiding and abetting simple robbery in violation of Minn. Stat. § 609.24 (2016), with both charges

[2] Despite admitting that he knew the robbery was going to occur, J.P. denied any involvement in the physical altercation or the robbery itself, and testified that, as he witnessed the robbery, "me and the girls were just sitting down talking – all three of us was talking saying that's kind of messed up."

referencing Minn. Stat. § 609.05, subd. 1 (2016) (liability for crimes of another),[3] and fifth-degree assault in violation of Minn. Stat. § 609.224, subd. 1(2) (2016). The jury found appellant guilty on all counts. The district court convicted appellant of first-degree aggravated robbery, entered no conviction on the lesser-included offenses of simple robbery and fifth-degree assault, and sentenced appellant to 78 months in prison.

This appeal follows.

D E C I S I O N

Appellant argues that the evidence is insufficient to prove that the victim suffered bodily harm during the robbery because the victim did not specifically testify that he experienced pain and provided minimal testimony on his injuries. We disagree.

Our review of a sufficiency-of-the-evidence challenge is "limited to a painstaking analysis of the record to determine whether the evidence, when viewed in a light most favorable to the conviction, was sufficient to permit the jurors to reach the verdict which they did." *State v. DeRosier*, 695 N.W.2d 97, 108 (Minn. 2005) (quotation omitted). The reviewing court will not disturb the verdict if the jury, in 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. *Bernhardt v. State*, 684 N.W.2d 465, 476-77 (Minn. 2004). "[We] construe the record most favorably to the state and will assume the evidence supporting the conviction was believed and the

[3] A defendant is criminally liable for the crime of another if the defendant "intentionally aids, advises, hires, counsels, or conspires with or otherwise procures the other to commit the crime." *Id.*

contrary evidence disbelieved." *State v. Pieschke*, 295 N.W.2d 580, 584 (Minn. 1980). This is particularly true with conflicting testimony because weighing the credibility of witnesses is the exclusive function of the jury. *State v. Thao*, 649 N.W.2d 414, 421 (Minn. 2002). Evidence presented through a single witness may be sufficient to sustain a conviction. *State v. Johnson*, 811 N.W.2d 136, 149 (Minn. App. 2012), *review denied* (Minn. Mar. 28, 2012) (citing State *v. Miles*, 585 N.W.2d 368, 373 (Minn. 1998)).

First-degree aggravated robbery is defined as:

> Whoever, while committing a robbery, is armed with a dangerous weapon or any article used or fashioned in a manner to lead the victim to reasonably believe it to be a dangerous weapon, or inflicts bodily harm upon another, is guilty of aggravated robbery in the first degree . . . .

Minn. Stat. § 609.245. "Bodily harm" is defined as "physical pain or injury, illness, or any impairment of physical condition." Minn. Stat. § 609.02, subd. 7 (2016). Either a "minimal amount of physical pain," *State v. Jarvis*, 665 N.W.2d 518, 522 (Minn. 2003), or a "minimal injury [is] sufficient to establish bodily harm under section 609.02," *State v. Bowser*, 307 N.W.2d 778, 779 (Minn. 1981). The evidence of bodily harm is sufficient if, for example, "the jury could find that the victim suffered physical pain." *State v. Johnson*, 277 Minn. 230, 237, 152 N.W.2d 768, 773 (1967). Even scratches establish "physical injury, sufficient to sustain a conviction of aggravated robbery." *State v. Slaughter*, 691 N.W.2d 70, 76 (Minn. 2005).

At trial, the state alleged that appellant aided and abetted an aggravated robbery in which he or another inflicted bodily harm on the victim. The victim testified that S.V. first threatened him with the rifle and that appellant then restrained him by holding his arms

behind his head so that he did not try to fight. The victim stated that, "I kind of felt like [appellant] was somewhat protecting me [from being shot]." He was "hit a couple times" with "weak punches" by others while appellant restrained him and then was dragged to the ground or let go, but he did not remember appellant slamming him to the ground. The victim did not testify that he experienced any pain during the robbery, and he denied being choked, but he stated that, following the robbery, "I think I had one mark on my eye." The victim also testified extensively about consuming a combination of Xanax, marijuana, and alcohol that night, which he acknowledged could have affected his memory, and he admitted that he felt the effects of the drugs, could not remember every detail, and was "caught up in [his] own little world."

J.P. testified that the robbery began when appellant choked the victim from behind by wrapping his arm around the victim's neck while S.V. "s[u]cker punched" the victim in the face. S.V. continued to punch the victim as he went to the ground, and appellant then placed his knee on the victim's neck near his throat and applied pressure, to the point that the victim said he couldn't breathe. Appellant held his knee on the victim's neck while S.V. went through the victim's pockets, picked up a rifle, and pointed it at the victim. S.V. then hit the victim with the bottom of the rifle.

Viewing the evidence in the light most favorable to the conviction, the jury could reasonably conclude that the victim, at the very least, suffered "a minimal amount of physical pain" during the robbery sufficient to prove bodily harm, based on J.P.'s testimony that the victim was punched multiple times, choked by appellant, and hit with a rifle. Because we defer to the jury's credibility determinations, the victim's testimony in which

he denied being choked and described the punches as "weak," is contrary evidence that we may assume the jury disbelieved. Additionally, the victim's testimony that he sustained a mark on his eye during the robbery is evidence of minimal injury sufficient to establish bodily harm. *See Bowser*, 307 N.W.2d at 779. Therefore, the evidence is sufficient to support the jury's verdict that appellant aided and abetted a first-degree aggravated robbery in which he or another inflicted bodily harm on the victim.[4]

Affirmed.

[4] The state also argues that mere physical restraint is sufficient to satisfy the statutory definition of bodily harm by impairment of physical condition under Minn. Stat. § 609.02, subd. 7. *See generally Jarvis*, 665 N.W.2d at 522 (defining impairment of physical condition as "any injury that weakens or damages an individual's physical condition"). Because we conclude that the evidence is sufficient to establish that the victim suffered bodily harm by physical pain or injury, we need not address this argument.