STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1597

State of Minnesota,
Respondent,

vs.

William Daniel Finley,
Appellant.

Filed January 13, 2020
Affirmed
Larkin, Judge

Hennepin County District Court
File No. 27-CR-18-3125

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

Michael O. Freeman, Hennepin County Attorney, Linda M. Freyer, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Richard Schmitz, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Rodenberg, Presiding Judge; Larkin, Judge; and Slieter, Judge.

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

LARKIN, Judge

Appellant challenges his conviction of first-degree aggravated robbery, arguing that the evidence at trial was insufficient to prove that he inflicted bodily harm on the victim during the robbery. Appellant also challenges his sentence, arguing that the district court improperly counted his North Carolina conviction as a felony when calculating his criminal-history score. We affirm.

FACTS

Respondent State of Minnesota charged appellant William Daniel Finley with aggravated and simple robbery. The state alleged that A.B. arranged to sell an iPhone to Finley online and that they met at a restaurant in Minneapolis to complete the transaction. The state further alleged that Finley took the phone from A.B., "elbowed [A.B.] in the face in order to take the phone," causing A.B.'s mouth to bleed, and ran from the restaurant with the phone.

Finley waived his right to a jury trial, and the case was tried to the district court. A.B. testified at trial, and the district court received several exhibits, including video recordings from surveillance cameras at the crime scene.

The district court found Finley guilty as charged, entered judgment of conviction on the aggravated-robbery charge, and sentenced Finley to serve 88 months in prison. Finley appealed. This court granted Finley's motion to stay his direct appeal and remanded to allow Finley to pursue postconviction relief.

Finley petitioned for postconviction relief, asserting that the district court improperly calculated his criminal-history score by giving him a "felony criminal history point for a North Carolina conviction when the imposed sentence and probationary term from the North Carolina case [were] more consistent with a gross misdemeanor sentence rather than a felony sentence under Minnesota law." The postconviction court denied Finley's petition for postconviction relief, and this court reinstated his appeal.

D E C I S I O N

I.

Finley contends that the evidence was insufficient to sustain his conviction of aggravated robbery. When evaluating the sufficiency of the evidence to sustain a conviction, an appellate court carefully analyzes the record to determine whether the evidence, when viewed in a light most favorable to the conviction, was sufficient to permit the fact-finder to reach the verdict that it did. *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989). An appellate court uses the same sufficiency standard of review in both bench and jury trials. *State v. Petersen*, 910 N.W.2d 1, 6 (Minn. 2018). The appellate court assumes that the fact-finder "believed the state's witnesses and disbelieved contrary evidence." *State v. Brocks*, 587 N.W.2d 37, 42 (Minn. 1998). An appellate court will not disturb a guilty 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 state proved that the defendant was guilty of the offense charged.[1] *Bernhardt v. State*, 684 N.W.2d 465, 476-77 (Minn. 2004).

Finley was convicted under Minn. Stat. § 609.245, subd. 1 (2016), which provides that a person who, "while committing a robbery, . . . inflicts bodily harm upon another, is guilty of aggravated robbery in the first degree." A robbery occurs if an individual

> having knowledge of not being entitled thereto, takes personal property from the person or in the presence of another and uses or threatens the imminent use of force against any person to overcome the person's resistance or powers of resistance to, or to compel acquiescence in, the taking or carrying away of the property . . . .

Minn. Stat. § 609.24 (2016). "'Bodily harm' means physical pain or injury, illness, or any impairment of physical condition." Minn. Stat. § 609.02, subd. 7 (2016). "[T]he phrase 'any 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).

Finley argues that the state's evidence "failed to establish that [he] inflicted bodily harm while taking [A.B.'s] iPhone." Specifically, he argues that "[A.B.] was injured while

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[1] Finley cites the sufficiency standard that applies to convictions based on circumstantial evidence, but he does not actually apply that standard on appeal. *See State v. Al-Naseer*, 788 N.W.2d 469, 471, 473 (Minn. 2010) (stating that if an element of an offense was proved with circumstantial evidence, appellate courts analyze "whether the reasonable inferences that can be drawn from the circumstances proved support a rational hypothesis other than guilt" (quotation omitted)). Circumstantial evidence is "evidence from which the factfinder can infer whether the facts in dispute existed or did not exist," and direct evidence is "evidence that is based on personal knowledge or observation and that, if true, proves a fact without inference or presumption." *State v. Harris*, 895 N.W.2d 592, 599 (Minn. 2017) (quotations omitted). Because the state proved the element that is contested in this appeal with direct evidence, we do not apply the circumstantial-evidence standard.

attempting to apprehend Finley" and that although he attempted to pull his legs out of A.B.'s grasp, "he did not strike [A.B.]." Finley concludes that because "[A.B.'s] injuries occurred as a consequence of [A.B.'s] attempt to apprehend Finley" and because he "did not commit a 'battery' in his attempts to escape . . . in that he did not 'lay a blow' on [A.B.], his actions cannot satisfy the 'inflicts bodily harm' element."

Finley relies on *State v. Dorn*, a first-degree assault case, in support of his argument. 887 N.W.2d 826 (Minn. 2016). In *Dorn*, the defendant pushed the victim two times in the chest, causing the victim to fall and land in the burning embers of a bonfire and sustain significant injuries. *Id.* at 828-29. The defendant was convicted of first-degree assault. *Id.* at 829. On appeal, the defendant argued that, because "her actions did not directly cause" the victim's injuries, "the evidence was insufficient to satisfy the definition of assault-harm under section 609.02, subdivision 10(2)," which required "the intentional infliction of or attempt to inflict bodily harm upon another." *Id.* (quoting Minn. Stat. § 609.02, subd. 10 (2014)).

The supreme court explained that given the actus reus element of the assault-harm statute, the action that results in bodily harm must "constitute a battery." *Id.* at 831-32. The supreme court noted that the assault-harm statute requires the "infliction" of bodily harm, and it defined "inflict" as "'to lay (a blow) on' or 'cause (something damaging or painful) to be endured'" and as "[t]he act or process of imposing or meting out something unpleasant." *Id.* at 832 (first quoting *Webster's Third New International Dictionary* 1160 (2002); and then quoting *The American Heritage Dictionary* 900-01 (5th ed. 2011)). The supreme court noted that "[t]he definitions of 'battery' and 'inflict' are . . . similar,

requiring the State to show that the defendant engaged in nonconsensual physical contact." *Id.*

The supreme court concluded that the evidence in *Dorn* was "sufficient to show that [the defendant's] conduct constituted a battery or 'infliction' of harm," reasoning that the defendant "had committed a battery because she intentionally applied nonconsensual force against [the victim]" and that her pushing the victim "also 'inflicted' harm because she imposed something unpleasant, 'a blow.'" *Id.* The supreme court further concluded that, "[a]ssuming without deciding that an 'infliction' requires direct causation," the evidence was sufficient to show that the defendant caused the victim to experience bodily harm because the defendant "pushed [the victim] hard enough to cause him to lose his balance within a few feet of hot embers, and [the victim] fell into the fire within moments of [the defendant's] push." *Id.* at 833.

Finley argues that "the pushing and pulling actions [that he used] to extricate himself from [A.B.'s] grasp squarely presents the avoided question in *Dorn* of what does it mean to inflict bodily harm." Although the supreme court did not decide whether an "infliction" of bodily harm requires direct causation, the supreme court defined "inflict" as explained above. We apply that definition to determine whether there was sufficient evidence to prove that Finley "inflict[ed] bodily harm" upon A.B. within the meaning of the first-degree aggravated robbery statute. *See* Minn. Stat. § 609.245, subd. 1.

At trial, the state presented two theories to prove that Finley inflicted bodily harm on A.B. First, the state argued that when A.B. initially "grabbed on to [Finley] . . . [Finley] used force, both by trying to pull himself away and by pushing back at [A.B.]" and that

"[t]he amount of force used by [Finley] caused [A.B.] to fall to his knees, causing a knee injury that is still ongoing today." Second, the state argued that Finley "fell back on top of [A.B.]" and "at that point, caused injury to [A.B.'s] face, that being a swollen lip that was slightly bleeding."

The state's arguments were based on A.B.'s testimony and the surveillance-video recordings from the crime scene. A.B. testified that he grabbed Finley when Finley started to run away with his phone and that, "as soon as [Finley] tried to pull away from [A.B.], [A.B.] fell down on [his] knee." A.B. testified that after he fell, Finley "started . . . grabbing and pushing and trying to . . . get rid of [A.B.'s] grip and . . . get away." A.B. testified that when he "fell down and . . . was trying to hold [Finley] . . . , [Finley] used [his] arm or . . . elbow to hit [A.B.'s] face" and "the front of [A.B.'s] lip and inside of [his] mouth got a little tor[n] up by that force." A.B. further testified that he felt a "burning" in his lip and that there was blood on it.

Finley does not dispute that A.B. sustained an injury to his lip during the incident or that the injury constitutes "bodily harm." But Finley argues that the "surveillance video recording[s] show[] that [he] did not inflict bodily harm on [A.B.]." Specifically, Finley argues that "the video recording does not corroborate [A.B.'s] belief that [A.B.] was struck with power in the face, in that, the recording does not show Finley throwing a punch or elbow at [A.B.'s] head." Finley further argues that his "loss of balance was caused by [A.B.] pulling [him] back onto [A.B.]" and that "[t]his action most likely resulted in the cut lip."

The video recordings do not clearly show whether Finley struck A.B.'s face after A.B. pulled Finley on top of him, partly because the view of Finley and A.B. is obscured by a table and chairs at that point in the recordings. However, the recordings do not refute A.B.'s testimony that Finley struck him in the face. When considering a sufficiency challenge, this court views the evidence "in a light most favorable to the [conviction]" and assumes that the fact-finder "believed the state's witnesses and disbelieved contrary evidence." *Brocks*, 587 N.W.2d at 42; *Webb*, 440 N.W.2d at 430. Under that deferential standard of review, we assume that the fact-finder believed A.B.'s testimony that Finley "used [his] arm or . . . elbow to hit [A.B.'s] face" and that "the front of [A.B.'s] lip and inside of [his] mouth got a little tor[n] up by that force."

Finley argues that his conduct is analogous to "[a] child wriggling out of a parent's grasp," "[a] running back escaping the tackle of a defender," and "[a] wrestler using leverage and technique to undo a takedown." Finley's analogy is not on point. As the state notes, Finley was "not playing with a parent or playing football." Finley was attempting to rob A.B.

When viewed in a light most favorable to the conviction, the evidence shows that Finley hit A.B.'s face with his arm or elbow and injured A.B.'s lip. Because that nonconsensual physical contact "cause[d] (something damaging or painful) to be endured," it constitutes an infliction of bodily harm. *See Dorn*, 887 N.W.2d at 832 (quotation omitted) (defining "inflict"). And because 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 Finley was guilty of aggravated robbery, we do not disturb the verdict. *See Bernhardt*, 684 N.W.2d at 476-77.

II.

Finley contends that the postconviction court erred by denying his challenge to the district court's criminal-history-score calculation because his prior North Carolina conviction should have been counted as a gross misdemeanor, and not a felony. This court reviews a denial of postconviction relief for an abuse of discretion. *Reed v. State*, 925 N.W.2d 11, 18 (Minn. 2019). In doing so, this court reviews the postconviction court's legal determinations de novo and its factual findings for clear error. *Brown v. State*, 895 N.W.2d 612, 617 (Minn. 2017).

When computing an offender's criminal-history score for sentencing under the Minnesota Sentencing Guidelines

> the offender is assigned a particular weight for every felony conviction for which a felony sentence was stayed or imposed before the current sentencing *or for which a stay of imposition of sentence was given for a felony level offense*, no matter what period of probation is pronounced, before the current sentencing.

Minn. Sent. Guidelines cmt. 2.B.101 (Supp. 2017) (emphasis added).

Convictions from other jurisdictions must be considered in calculating a defendant's criminal-history score. Minn. Sent. Guidelines 2.B.5.a (Supp. 2017). An out-of-state conviction is counted as a felony in a criminal-history score only if it would be defined as a felony in Minnesota and the offender received a sentence that would be a felony-level

sentence in Minnesota, "which includes the equivalent of a stay of imposition." Minn. Sent. Guidelines 2.B.5.b (Supp. 2017).

In Minnesota, a felony is defined as "a crime for which a sentence of imprisonment for more than one year may be imposed." Minn. Stat. § 609.02, subd. 2 (2016). In contrast, a misdemeanor is defined as "a crime for which a sentence of not more than 90 days . . . may be imposed," and a gross misdemeanor is defined as "any crime which is not a felony or misdemeanor." *Id.*, subds. 3-4 (2016).

"A 'stay of imposition' occurs when the court accepts and records a finding or plea of guilty, but does not impose (or pronounce) a prison sentence." Minn. Sent. Guidelines 1.B.19.a (Supp. 2017). "If the offender successfully completes the stay, the case is discharged, and the conviction is deemed a misdemeanor . . . but is still included in criminal history under section 2.B." *Id.; see* Minn. Stat. § 609.13, subd. 1(1) (2016) (stating that notwithstanding that a conviction is for a felony, "the conviction is deemed to be for a misdemeanor or a gross misdemeanor if the sentence imposed is within the limits provided by law for a misdemeanor or gross misdemeanor as defined in section 609.02"). In contrast, a "'stay of execution' occurs when the court accepts and records a finding or plea of guilty, and a prison sentence is pronounced, but is not executed." Minn. Sent. Guidelines 1.B.19.b (Supp. 2017).

When sentencing Finley, the district court used a criminal-history score of three, which included one felony point for Finley's 2017 North Carolina conviction of "Common Law Robbery Conspiracy." Finley argues that the district court erred because "the state

cannot prove that [he] received a sentence that in Minnesota would qualify as a felony-level sentence under Minnesota's Sentencing Guidelines."

Finley received an 8-to-19 month suspended sentence for his 2017 North Carolina conviction. The postconviction court concluded that Finley's North Carolina conviction was properly counted as a felony in his criminal-history score, reasoning that the sentence "is comparable to a stay of imposition in Minnesota," because "[s]imilar to a stay of imposition in Minnesota, the court in North Carolina accepted and recorded a plea of guilty to a felony offense, but did not pronounce a definitive prison sentence."

Finley argues that "[t]he post-conviction court was wrong because the *sine qua non* of a stay of imposition is that no sentence is imposed and no number is pronounced." He notes that "[his] North Carolina sentence was in fact imposed and an imposed number range was announced." Finley further argues that "because it is impossible for the state to show that he will actually serve a sentence longer than one year," "the state cannot prove that [he] received a sentence that in Minnesota would qualify as a felony-level sentence."

Finley relies on *State v. Stewart*, 923 N.W.2d 668 (Minn. App. 2019), *review denied* (Minn. Apr. 16, 2019). In *Stewart*, the defendant received a stay of imposition and was placed on probation for theft of property exceeding $5,000 in value, a felony. 923 N.W.2d at 678. The district court later "amended the sentence and executed a sentence of 342 days." *Id.* (quotation marks omitted). This court concluded that because that amended 342-day sentence was "within gross misdemeanor sentencing limits . . . [the defendant's] prior conviction is deemed a gross misdemeanor" and should have been counted as a gross misdemeanor when calculating his criminal-history score. *Id.* at 678, 680; *see* Minn. Sent.

Guidelines 2.B.1.h (Supp. 2017) (stating that if "a prior felony conviction resulted in a non-felony sentence (misdemeanor or gross misdemeanor), the conviction must be counted in the criminal history score as a misdemeanor or gross misdemeanor conviction").

Finley argues that "[t]he same reasoning as used in *Stewart* supports the conclusion that [his] North Carolina conviction and sentence should be construed as a gross misdemeanor for purposes of criminal history in this case." We disagree. In *Stewart*, the district court amended the sentence and imposed an executed, determinate gross-misdemeanor term of incarceration. 923 N.W.2d at 678. Unlike the circumstances in *Stewart*, the North Carolina court did not impose a determinate gross-misdemeanor term of incarceration, that is, fewer than 366 days. Instead, the North Carolina court imposed an indeterminate sentence that could result in either a gross-misdemeanor or felony term of incarceration. Thus, the reasoning of *Stewart*—that a defendant should not receive a felony point for a felony conviction that resulted in a gross-misdemeanor sentence—does not apply here.

However, we agree with Finley that his North Carolina suspended sentence does not constitute a "stay of imposition" under the Minnesota Sentencing Guidelines. As noted above, a stay of imposition occurs when the court "does not impose (or pronounce) a prison sentence," Minn. Sent. Guidelines 1.B.19.a (Supp. 2017). The North Carolina court pronounced an indeterminate stayed prison sentence.

Nor is Finley's North Carolina sentence "the equivalent of a stay of imposition" under Minn. Sent. Guidelines 2.B.5.b (Supp. 2017). Equivalent means "[e]qual, as in value, force, or meaning" and "[b]eing essentially equal, all things considered." *The*

American Heritage Dictionary of the English Language 602 (5th ed. 2018). Because Finley's prison sentence was pronounced, it lacks the key distinguishing feature of a stay of imposition. Moreover, there is no indication that the North Carolina conviction will be deemed a misdemeanor upon successful completion of probation. *See* Minn. Stat. § 609.13, subd. 1(1). In sum, Finley's sentence is not "essentially equal, all things considered" to a stay of imposition under Minnesota law. *See American Heritage*, *supra*, at 602. Instead, because Finley's prison sentence was pronounced but not executed, it constitutes a stay of execution. *See* Minn. Sent. Guidelines 1.B.19.b (Supp. 2017).

Nonetheless, caselaw supports counting Finley's North Carolina conviction as a felony in his criminal-history score. For example, in *State v. Watson*, the district court in Illinois sentenced the defendant "to a probationary term but reserved the right to revoke probation and impose a sentence of up to three years in prison." 925 N.W.2d 658, 660 (Minn. App. 2019), *review denied* (Minn. May 28, 2019). This court concluded that the sentence was "the equivalent of a stay of imposition for a felony" and that the district court therefore did not abuse its discretion by counting it as a felony in Watson's criminal-history score. *Id.*

Even though *Watson* involved the equivalent of a stay of imposition and the North Carolina sentence in this case is a stay of execution, the circumstances of both cases share one important feature: the *possibility* of more than one year of imprisonment. We do not discern a reason why a stay of imposition with the possibility of more than one year of imprisonment should be treated any differently than a stay of execution with the possibility

of more than one year of imprisonment. In either case, a felony sentence is possible, and the offenses should be weighted the same, that is, as felonies.

Finley's argument that the state must show "that he will actually serve a sentence longer than one year" before his conviction may be counted as a felony is unsupported by legal authority. It is also inconsistent with the Minnesota Sentencing Guidelines.[2] When a district court stays imposition of sentence for a felony offense, the precise term of any future incarceration is unknown. Thus, the state generally cannot show that an offender with a stay of imposition "will actually serve a sentence longer than one year" as Finley demands in his case. Nonetheless, the underlying conviction is counted as a felony under the sentencing guidelines. Minn. Sent. Guidelines 2.B.1 (Supp. 2017).

If a prior out-of-state offense would be defined as a felony in Minnesota and more than one year of imprisonment is a possibility, either because the sentencing court stayed imposition of sentence or because it imposed an indeterminate range that exceeds one year of imprisonment, the offense should be counted as a felony when calculating the offender's criminal-history score. Any other approach—including Finley's—would yield a result that is inconsistent with the purpose of the sentencing guidelines. *See State v. Reece*, 625 N.W.2d 822, 824 (Minn. 2001) (stating that the sentencing guidelines "provide uniform standards for the inclusion and weighting of criminal history information that are intended

[2] The sentencing guidelines do not appear to address the precise circumstances here: a stayed sentence with a pronounced range of incarceration that is both below and above the demarcation for a felony sentence (i.e., 366 days).

to increase the fairness and equity in the consideration of criminal history" (quotation omitted)).

In sum, even though Finley's North Carolina stayed sentence is not the equivalent of a stay of imposition, it warrants similar treatment because it authorizes more than one year of imprisonment. Thus, the district court did not err by counting it as a felony in Finley's criminal-history score, and the postconviction court did not abuse its discretion in denying Finley's petition for postconviction relief.

Affirmed.