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**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0275**

State of Minnesota,
Respondent,

vs.

Craig Eugene Hawkins,
Appellant.

**Filed February 3, 2020
Affirmed
Jesson, Judge
Dissenting, Ross, Judge**

Hennepin County District Court
File No. 27-CR-18-5009

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

Michael O. Freeman, Hennepin County Attorney, Mark V. Griffin, Senior Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Steven P. Russett, Assistant Public Defender, St. Paul, Minnesota (for appellant)

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

UNPUBLISHED OPINION

JESSON, Judge

After punching his girlfriend in the head and damaging her eye, appellant Craig Eugene Hawkins was convicted of third-degree assault. Hawkins challenges that

conviction, arguing that the state failed to prove beyond a reasonable doubt that he inflicted substantial bodily harm. Further, he contends that the guilty verdict for domestic assault was not supported by sufficient evidence that he and the victim were in a significant romantic relationship. We affirm.

FACTS

On February 23, 2018, C.R. called 911 and reported that “my boyfriend beat me up.” She told the 911 operator that she was at his house in Rogers and he punched her in the head. Officers responded to the call and arrested appellant Craig Eugene Hawkins. While in custody, Hawkins admitted that he was arrested at “my house.” And, from the back of the squad car, he threatened the officer, stating “I whoop people’s a*s*s all the time . . . I see you in town, [I] beat you’re a*s*s.”

At the time of the arrest, the officers also took photographs of C.R., Hawkins, and Hawkins’s bedroom. The photographs of C.R. depicted scratches on her neck, bruising on her face, blood above her lip, and a missing clump of hair on top of her head. And a photograph of Hawkins showed bruising to his eye, forehead, ear, and neck. The photographs of Hawkins’s bedroom reveal bloodstains on his sheets and carpet, along with a large clump of hair atop a bloodstain on the carpet.

The day after the assault, C.R. was examined by Dr. Dane Peterson, an ophthalmologist. She came to Dr. Peterson complaining of a new floater, or flash of light, in her vision after being hit in the head multiple times. During his examination, Dr. Peterson detected that C.R. had a subconjunctival hemorrhage, or burst blood vessel, in her left eye, along with a posterior vitreal detachment in the same eye. A posterior vitreal

detachment is a separation of the material in the back of the eye from the retina or optic nerve—and it is a permanent injury, which increases the risk of retinal detachment for the rest of a person’s lifetime. During his examination, Dr. Peterson also observed swelling to the side of C.R.’s head and around her eye, and bruising under her eye, which indicated that the injuries to her left eye were caused by the recent blows to her head.

The state initially charged Hawkins with felony domestic assault by strangulation and misdemeanor domestic assault. While in jail following his arrest, Hawkins called an unknown woman. During that recorded conversation, he implicated himself in the physical fight with C.R. The state amended the complaint to add a charge of third-degree assault at the outset of trial.

The matter was tried to a jury. Dr. Peterson testified consistent with the facts set out above. C.R. did not testify, but her 911 call was played for the jury. The photographs depicting her injuries, Hawkins’s injuries, and the bloodstains and hair clump in his bedroom, were also shown to the jurors.¹ The jury then found Hawkins guilty of third-degree assault and misdemeanor domestic assault. The district court sentenced Hawkins to 32 months in prison on the third-degree assault charge, which it stayed for five years on conditions including 365 days in jail. It did not adjudicate Hawkins guilty of the misdemeanor domestic assault charge, because it was a lesser-included offense. Hawkins appeals.

¹ Following the close of evidence, the state dismissed the charge of felony domestic assault by strangulation.

DECISION

On appeal, Hawkins argues that insufficient evidence supports his conviction for third-degree assault and the charge of misdemeanor domestic assault for which he was found guilty but not adjudicated. In considering a claim of insufficient evidence, appellate courts review the record “to determine whether the evidence, when viewed in the light most favorable to the conviction, is sufficient to allow the jurors to reach their verdict.” *State v. Olhausen*, 681 N.W.2d 21, 25 (Minn. 2004).

Both parties agree that this conviction was obtained based on circumstantial evidence.² To review the sufficiency of circumstantial evidence, an appellate court uses a two-step process. *Loving v. State*, 891 N.W.2d 638, 643 (Minn. 2017). First, the appellate court identifies the circumstances that the state proved. *Id.* To do so, it “winnow[s] down the evidence . . . by resolving all questions of fact in favor of the [guilty] verdict” and disregarding any evidence inconsistent with the verdict. *State v. Harris*, 895 N.W.2d 592, 600 (Minn. 2017).

Second, the appellate court determines “whether the circumstances proved are consistent with guilt and inconsistent with any rational hypothesis other than guilt.” *State v. Bahtuoh*, 840 N.W.2d 804, 810 (Minn. 2013). “We examine independently the reasonableness of all inferences that might be drawn from the circumstances proved,” and whether the circumstances exclude any reasonable inference other than guilt.

² We note that both direct and circumstantial evidence supports Hawkins’s conviction. But, as is the case here, “[w]hen the direct evidence of guilt on a particular element is not alone sufficient to sustain the verdict,” appellate courts apply the circumstantial-evidence standard of review. *Loving v. State*, 891 N.W.2d 638, 643 (Minn. 2017).

State v. Silvernail, 831 N.W.2d 594, 599 (Minn. 2013) (quotation omitted). The appellate court evaluates the circumstances as a whole in determining whether an inference other than guilt is reasonable. *State v. Taylor*, 650 N.W.2d 190, 206 (Minn. 2002). At this step, the court does not give “deference to the fact finder’s choice between reasonable inferences.” *Silvernail*, 831 N.W.2d at 599 (quotation omitted).

I. Sufficient evidence supported Hawkins’s conviction for third-degree assault.

A person who assaults another and inflicts substantial bodily harm commits assault in the third degree. Minn. Stat. § 609.223, subd. 1 (2016). Hawkins challenges the sufficiency of the evidence supporting his conviction for third-degree assault on two bases. First, he asserts that there was insufficient evidence that *he* struck C.R. on February 23, 2018. Next, he argues that there was insufficient evidence that he caused the injuries to C.R.’s left eye which constituted substantial bodily harm.

A. Hawkins’s Participation

Despite Hawkins’s assertion that the evidence does not connect him to the assault of C.R., Hawkins directly implicated himself in the February 23, 2018 assault. On that date, C.R. called 911 and reported that 15 minutes before placing the call, her boyfriend beat her up at his apartment in Rogers. Police officers then arrived to the scene and took photographs of Hawkins, C.R., and Hawkins’s bedroom, which showed injuries to C.R.’s and Hawkins’s faces, and bloodstains and a clump of hair in Hawkins’s bedroom.

And following his arrest at the scene, Hawkins placed a call from jail. During this call, the other person on the line asked: “Were you just hell bent yesterday?” and Hawkins responded by stating: “Well, Mom fired me up, that didn’t help. *And [C.R.] continued to*

fire me up and I ended up with a lot worse than her I'll tell you right now, got a black eye and I'm all scratched up" Hawkins also stated: "[C.R.] *always told me . . . I'll never call the cops, don't worry . . . it's all over and done; once a cop caller, always a cop caller.*"

In this call, Hawkins directly admitted he had been in a fight with C.R. in his house and that she called the police—he even used her nickname in the admission. This is evidence that Hawkins was the “boyfriend” C.R. referred to during her 911 call. The photographs taken at the scene of the assault of the injuries to Hawkins and C.R., along with the bloodstains and clump of hair in his bedroom, further directly implicate Hawkins in the assault. Therefore, the inferences drawn from this evidence point solely to Hawkins as the person who assaulted C.R., and the evidence is inconsistent with any reasonable hypothesis other than the inference that Hawkins assaulted C.R. on February 23, 2018.

B. Substantial Bodily Harm

Hawkins next argues that there was insufficient evidence that he inflicted substantial bodily harm on C.R., which is a necessary element of third-degree assault. Minn. Stat. § 609.223, subd. 1. “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 (2016).

Hawkins does not contest that the injuries to C.R.’s left eye identified by Dr. Peterson—a posterior vitreal detachment and subconjunctival hemorrhage—constitute

substantial bodily harm.³ Indeed, after the close of testimony, when arguing for a judgment of acquittal under subdivision 18 of rule 26.03 of the Minnesota Rules of Criminal Procedure, Hawkins’s counsel stated:

There are injuries that have come into evidence. We get that. *Those could arguably be considered substantial bodily harm.* We get that. The question is: What connects those injuries to Mr. Hawkins? There is no evidence.⁴

Based on our review of the evidence, we disagree with Hawkins’s contention that “no evidence” connects him to C.R.’s substantial bodily injuries. The following circumstances were proven at trial:

- 1) C.R. called 911 and reported that her boyfriend punched her in the head.
- 2) While being transported to jail following his arrest, Hawkins bragged of his own ferocity, stating that he “woop[s] people’s asses all the time” and threatening to beat up the officer.
- 3) Hawkins called an unknown woman from jail following his arrest and said he got it worse in the fight with C.R. than C.R. did, and that their relationship was over because she was a cop caller.
- 4) Photographs taken at the scene depicted injuries to C.R.’s face and neck, along with bloodstains and clumps of hair in Hawkins’s bedroom.

³ We are mindful that arguably there is a distinction—when it comes to substantial bodily harm—between the vitreal detachment (which “never repairs itself”) and a subconjunctival hemorrhage (which is “essentially a bruise” according to Dr. Peterson’s testimony). But given that Hawkins does not contest that the overall injury to C.R.’s eye constitutes substantial bodily harm, that distinction is not directly before us.

⁴ On appeal, Hawkins notes that in denying the motion for judgment of acquittal, the district court described the state’s evidence as “relatively thin”. But read in context, the comment described the connection of Hawkins to the “interaction” with C.R. *not* whether the injuries to her left eye were substantial.

- 5) C.R. was examined by Dr. Peterson the following day, and she told him that she had a new floater in her vision caused by being hit in the head.
- 6) Dr. Peterson identified that C.R. had a posterior vitreal detachment (which he identified as a permanent injury) and a subconjunctival hemorrhage in her left eye.
- 7) Dr. Peterson also noted that C.R. had “swelling to the side of her head and around her eye, [with] bruising under the eye and along the skin” which supported his diagnosis that the injuries to her left eye were caused by the recent trauma to her head.

These proven circumstances are consistent with the rational hypothesis that the injuries to C.R.’s left eye identified by Dr. Peterson were caused by Hawkins punching her in the head on February 23, 2018. There was no circumstance proven at trial to support Hawkins’s proposed reasonable alternative hypothesis that C.R. had a preexisting condition in her left eye.

Still, Hawkins urges us to credit his alternative hypothesis: that the injuries were unrelated to the February 23 assault. He first argues that C.R.’s description of the floater in her vision as “new” indicates that she suffered floaters previously, and therefore supports his reasonable alternative hypothesis that the “new” floater was unrelated to the assault. This argument, however, isolates one word of the testimony and ignores its surrounding context. Dr. Peterson treated C.R. the day after the assault. He testified that her “[c]hief complaint was a new floater after trauma.” C.R. described this trauma as “hits to the sides of her head,” therefore connecting her complaint of a new floater to being hit in the head.

Furthermore, Dr. Peterson testified that a posterior vitreous detachment cannot be diagnosed by examining the outside of the eye. Rather, a patient's complaint of new floaters or flashes of light are how a doctor diagnoses the vitreous detachment condition.⁵ Which he did here. Dr. Peterson also testified that the detachment can be caused by trauma. Therefore, C.R.'s complaint that she had a new floater caused by trauma—which she described as being hit in the side of the head—connects Dr. Peterson's diagnosis of posterior vitreous detachment to Hawkins's assault.

Similar to his reliance on the word “new,” Hawkins next argues that C.R.'s statement to the 911 dispatcher that “I worried, [sic] I already have a [Inaudible]” supports his proposed reasonable alternative hypothesis that C.R.'s eye damage preexisted his assault. This hypothesis is not a reasonable interpretation of the statement. The key word is inaudible, and cannot be limited in the manner proposed by Hawkins. *See State v. Al-Naseer*, 788 N.W.2d 469, 473 (Minn. 2010) (explaining that the state is not required to remove all doubt, but only all reasonable doubt).

In sum, based on Dr. Peterson's testimony, and the supporting photographs of C.R.'s injuries taken at the scene, it is reasonable to infer that Hawkins caused the substantial bodily injuries to C.R.'s left eye. Hawkins's reliance on isolated or inaudible words does not undermine the sole rational hypothesis that he caused those injuries. To hold otherwise, one must ignore the fact that C.R. did not appear in Dr. Peterson's office simply with an

⁵ This is the only testimony in the record regarding the diagnosis of a vitreal detachment—that a patient's complaint of a “new” floater is how a treating physician diagnoses that a detachment has occurred.

eye injury—she came after she reported a violent assault. She came with significant bruising and swelling. We decline to wipe these facts from the scene. Hawkins’s conviction for third-degree assault was supported by sufficient evidence that he caused C.R.’s substantial bodily injury.

II. Because Hawkins was not adjudicated guilty of domestic assault, we do not reach the sufficiency of the evidence supporting this charge.

Hawkins also argues that there was insufficient evidence that he and C.R. were in a significant romantic or sexual relationship, which is a necessary element of domestic assault. *See* Minn. Stat. §§ 609.2242, subd. 1 (stating that whoever intentionally inflicts bodily harm upon a family or household member is guilty of misdemeanor domestic assault), 518B.01, subd. 2(b)(7) (defining “family or household member” for the purpose of domestic abuse to include “persons involved in a significant romantic or sexual relationship”) (2016).

However, while the jury found Hawkins guilty of misdemeanor domestic assault, the district court did not adjudicate him on that charge, and did not impose a sentence for domestic abuse. Therefore, we do not address the sufficiency of the evidence supporting the jury’s guilty verdict for domestic abuse. *See State v. Ashland*, 287 N.W.2d 649, 650 (Minn. 1979) (stating that an appellate court need not decide whether the evidence was sufficient to support convictions for counts for which the defendant was neither sentenced nor adjudicated guilty).

Affirmed.

ROSS, Judge (dissenting)

I agree with the majority in all regards except its conclusion that the circumstantial evidence was sufficient on the element of whether Craig Hawkins's actions caused C.R. to suffer substantial bodily harm. I therefore respectfully dissent.

I agree that the circumstantial evidence proves beyond a reasonable doubt that Hawkins's attack caused C.R. to suffer bruising. But the majority says too little by acknowledging only "that *arguably* there is a distinction" (emphasis added) between a permanent vitreal detachment and a mere hemorrhage, "which is 'essentially . . . a bruise,'" as it regards the statutory standard of "substantial bodily harm." Minn. Stat. § 609.223, subd. 1 (2016). I do not think it is merely an "arguable" distinction but an obviously legally significant distinction that separates a permanent injury carrying identifiable and substantial consequences from a temporary injury carrying no significant consequences at all. A bruise, even a bruise to the eye, is not disfiguring, does not substantially impair any bodily function, and does not constitute a fracture, and these alone are the kinds of bodily harms that qualify as "substantial" under Minnesota Statutes section 609.02, subdivision 7a (2016). The majority dismisses this distinction because Hawkins does not emphasize it on appeal and because his trial counsel conceded that the injuries "*could* be considered" (not "*are* considered") substantial bodily harm. Hawkins hints at the difference by recognizing on appeal that the vitreal detachment is the "most serious injur[y]." Regardless, the distinction is important because the only one of C.R.'s reported injuries that could possibly meet the definition of a "substantial bodily harm" is her vitreal detachment.

I differ strongly from the majority's view of the evidence about C.R.'s vitreal detachment. A vitreal detachment produces specific indicia—floaters or flashes of light—and is permanent. Dr. Dane Peterson testified that a vitreal detachment is manifested by “floaters” in the eye visible to the patient and that a “vitreal detachment never repairs itself. Once it detaches, it's always detached.” So if C.R. had a vitreal detachment before Hawkins's assault, his assault did not cause her vitreal detachment and he cannot be guilty of third-degree assault. The record establishes that, at the time Dr. Peterson examined C.R., she had a vitreal detachment as evidenced by her seeing a new floater in her left eye. From this testimony, and from testimony that Hawkins attacked C.R., the jury received only circumstantial evidence supporting the element that Hawkins's attack caused C.R.'s vitreal detachment. “When the State relies entirely on circumstantial evidence to prove an element of the offense, we use a two-step test to determine whether the State presented sufficient evidence to prove the element.” *State v. Cox*, 884 N.W.2d 400, 411 (Minn. 2016). And we must reverse a conviction that rests on circumstantial evidence if the circumstances proved are consistent with “any rational hypothesis other than guilt.” *Id.* For the following reasons I think the dearth of evidence related to causation is dispositive, but to the extent one can say there is any such evidence on the issue, it supports a rational hypothesis other than guilt because it supports the hypothesis that C.R.'s vitreal detachment preexisted the assault.

Completely lacking in the record is any evidence whatsoever that could establish beyond a reasonable doubt that Hawkins's attack caused C.R.'s vitreal detachment. In criminal cases involving the interpretation of physical injuries, the state routinely recognizes the need to support an inculpatory interpretation with convincing medical

testimony. *See, e.g., State v. McBride*, 666 N.W.2d 351, 365–66 (Minn. 2003) (holding evidence sufficient because examining physician “testified that to a reasonable degree of medical certainty, McBride was the source of the bite marks at the base of Dillon’s penis, on the left side of Dillon’s scrotum, and on Dillon’s tongue”); *State v. Morris*, 606 N.W.2d 430, 437–39 (Minn. 2000) (affirming conviction based in part on physical evidence and on medical testimony that the victim died in the course of criminal sexual conduct); *State v. Harris*, 589 N.W.2d 782, 792 (Minn. 1999) (“Such evidence led the medical examiner to testify that, to a reasonable degree of medical certainty, McGrath had been sexually assaulted at or about the time of death. This evidence is sufficient to support the jury’s conclusion that Harris killed McGrath while committing or attempting sexual assault.”).

By contrast to these cases, here the jury received no testimony by a treating physician or expert medical witness opining to *any* degree of certainty that Hawkins’s attack caused C.R.’s vitreal detachment. The closest the state came to introducing evidence of causation was presenting the testimony of Dr. Dane Peterson, C.R.’s treating optometrist. Dr. Peterson’s causation testimony fell far short of meeting the state’s burden of proof of causation. He testified only that vitreal detachment is “*usually* a spontaneous . . . occurrence” (emphasis added) and that the condition *can* also be caused by trauma “or through connective tissue disorders.” He never said what he thought caused C.R.’s detachment particularly. In fact, the prosecutor never even asked Dr. Peterson whether he had concluded (or even suspected) that Hawkins’s actions caused the detachment. Nor did the prosecutor ask whether C.R. informed the doctor that she had no

previous floaters or whether she had a prior diagnosis regarding her vitreal detachment. The jury received no physical evidence establishing that Hawkins's attack caused C.R.'s vitreal detachment. It received no medical records or any other evidence indicating that C.R.'s vitreal detachment was a new medical condition occurring only after the attack rather than being a preexisting condition. In my view, the utter absence of *any* evidence on the element concerning the cause of C.R.'s vitreal detachment requires this court to reverse and remand for entry of conviction on a lesser-included assault.

Although I believe that this lack of evidence alone demands reversal, there is more. According to Dr. Peterson, C.R. complained to him only about having a "new floater" after the incident, not about having merely a "floater." If a patient reports to a physician, "I've noticed I have a *new* mole" or "a *new* bruise" or a *new* anything, it is at least reasonable (if not compelling) to infer that the *new* thing presupposes the existence of an *old*, other, prior thing. That C.R. had a "new floater" does not establish that the vitreal detachment was new where no evidence supports the inference that by "new floater" she meant "first and only floater." The majority too easily dismisses the possibility that, by reporting a "new floater," C.R. may have been reporting a floater that was in addition to a floater she had been experiencing before the attack. The majority has not explained how dismissing the natural implication of the adjective "new" is consistent with our standard of review in circumstantial-evidence challenges.

But again, most important, my dissent arises from the lack of sufficient causation evidence. The lack of any medical evidence or even lay testimony on the question of the timing of C.R.'s vitreal detachment makes it impossible for me to agree with the majority's

conclusion that “it is reasonable to infer that Hawkins caused substantial bodily injuries to C.R.’s left eye.” And the evidence at the very least allows for an exculpatory reasonable inference, which is that the condition preexisted Hawkins’s assault.