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**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1263**

State of Minnesota,
Respondent,

vs.

Charles Yovontre Powell,
Appellant.

**Filed June 8, 2020
Affirmed
Jesson, Judge**

Sherburne County District Court
File No. 71-CR-18-461

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

Kathleen A. Heaney, Sherburne County Attorney, George R. Kennedy, Assistant County Attorney, Elk River, Minnesota (for respondent)

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

Considered and decided by Worke, Presiding Judge; Hooten, Judge; and Jesson, Judge.

UNPUBLISHED OPINION

JESSON, Judge

During a hearing regarding an alleged violation of prison rules at the St. Cloud Correctional Facility, appellant Charles Yovontre Powell began acting out of control.

Powell said “I’m still going to spit on you,” and then spat on the hearing officer. After being convicted of fourth-degree assault, Powell challenges the sufficiency of the evidence supporting the district court’s determination that he actually spat on the hearing officer. In his pro se supplemental brief, Powell challenges the lack of testing of the physical evidence. We affirm.

FACTS

On January 25, 2018, appellant Charles Yovontre Powell appeared in the hearing-room office of the St. Cloud Correctional Facility regarding an alleged violation of the prison’s rules. Powell appeared before Sergeant Deppa for a waiver-offer hearing.¹ Powell declined to sign the offer and became violent and angry. Powell swore at Sergeant Deppa and threatened to spit on him.

Sergeant Deppa attempted to de-escalate the situation, but was unsuccessful. Sergeant Deppa contacted the segregation staff and asked them to return Powell to his cell. Powell said “I’m still going to spit on you,” and then spat on Sergeant Deppa. Another officer who responded to the call for assistance observed Powell spit on Sergeant Deppa. The sergeant then radioed that he had been assaulted, left the hearing-room office, and went to the emergency room to get evaluated. After hearing Sergeant Deppa’s radio call for assistance, an investigator with the Department of Corrections immediately met with Sergeant Deppa. The investigator observed areas on Sergeant Deppa’s uniform that looked

¹ When an offender is accused of violating the prison’s rules, a hearing officer can offer the offender an opportunity to admit the infraction, waive their right to a hearing, and accept a penalty. If the offender declines the waiver offer, the matter proceeds to a hearing.

like they had a substance similar to spit or saliva on them. The investigator took photographs to document this observation.

The investigator also met with Powell and asked if he spat on Sergeant Deppa. Powell responded: “What happened happened.” Powell also told the investigator: “I did what I did[,]” and when asked to elaborate, he stated: “You know what I did. I ain’t got to say it. What happened happened.” Powell also told the investigator “[w]hat you all say happened happened.”

Powell was charged with fourth-degree assault for intentionally transferring bodily fluid onto a corrections officer. Minn. Stat. § 609.2231, subd. 3(2) (2016). Powell waived his right to a jury trial, and the matter was tried to the district court. The district court found Powell guilty of fourth-degree assault and sentenced him to a year-and-a-day in prison to run consecutively to the sentence for which he is currently incarcerated. This appeal follows.

D E C I S I O N

Sufficiency of the Evidence

Powell argues that the state failed to prove beyond a reasonable doubt that he spat on Sergeant Deppa. When an element of the offense is supported by direct evidence, this court’s review is limited to analyzing the record to determine whether the evidence, when viewed in the light most favorable to the conviction, is sufficient to have allowed the fact-finder to reach the verdict that it did. *State v. Horst*, 880 N.W.2d 24, 40 (Minn. 2016). This court must assume that 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).

Powell's conviction was supported by sufficient direct evidence. Sergeant Deppa testified that Powell threatened to spit on him, and then spat on him. The officer who responded to the disturbance testified that he saw Powell spit on Sergeant Deppa. Photographs taken by the investigator show a white substance on the front of Sergeant Deppa's uniform. The investigator also testified that Powell told her: "What you all say happened happened."

Powell argues that due to the length of time between the assault and when the investigator took the photos of Sergeant Deppa's uniform,² the district court should not have found the officers' testimony credible. We disagree. First, "[t]he assessment of a witness's credibility is exclusively the province of the [fact-finder]." *State v. McCray*, 753 N.W.2d 746, 754 (Minn. 2008) (quotation omitted). Second, as discussed above, the testimony of Sergeant Deppa, the responding officer, and the investigator directly supports the district court's determination that Powell spat on Sergeant Deppa.

Pro se Issue

In his pro se supplemental brief, Powell asserts, without citation to relevant authority, that his conviction should be reversed because the saliva on Sergeant Deppa's uniform was not DNA tested. This argument, however, is forfeited. *State v. Taylor*, 869 N.W.2d 1, 22 (Minn. 2015) (stating that arguments in a pro se supplemental brief not

² Powell asserts that over an hour elapsed between the assault and the photographing of Sergeant Deppa's uniform. However, the investigator testified that she "immediately" went to meet with Sergeant Deppa after hearing his radio for assistance. Also, the district court did not make a finding regarding the timing of when the photographs were taken, stating only that the meeting between Sergeant Deppa and the interviewer occurred "[l]ater."

supported by argument or citation to legal authority are deemed waived unless prejudicial error is obvious on mere inspection).

Affirmed.