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**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-56**

State of Minnesota,
Respondent,

vs.

Andrew William Agnes,
Appellant.

**Filed January 17, 2012
Affirmed
Minge, Judge**

Dakota County District Court
File No. 19HA-CR-09-4624

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

James C. Backstrom, Dakota County Attorney, Kevin J. Golden, Assistant County Attorney, Hastings, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Suzanne M. Senecal-Hill, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Kalitowski, Presiding Judge; Minge, Judge; and Ross, Judge.

UNPUBLISHED OPINION

MINGE, Judge

Appellant challenges his convictions, claiming that the district court erred in allowing the state to amend the complaint to include a charge of possession of a

controlled substance and that there was not sufficient evidence for his assault convictions. Because appellant does not claim that his defense was prejudiced by the amendment and because sufficient evidence was offered at trial to support appellant's assault convictions, we affirm.

FACTS

Appellant Andrew Agnes was involved in an early-morning altercation on the patio of a bar in Inver Grove Heights. During the course of the altercation, Agnes hit another patron of the bar on the head with a beer bottle. The bar's bouncer restrained Agnes near the front entrance of the bar while waiting for the police to arrive. While the bouncer was restraining Agnes, the bouncer was attacked from behind and fell to the ground, at which point Agnes hit the bouncer in the head with a drinking glass, inflicting serious injury. Agnes and the other man who attacked the bouncer fled in a vehicle, which witnesses described to police. Police stopped the vehicle nearby; during the stop, Agnes threw a plastic baggie out of the passenger-side window of the car. The contents of the baggie later tested positive for cocaine.

Agnes was charged with second-degree assault and with aiding and abetting second-degree assault in violation of Minn. Stat. § 609.222, subd. 1 (2008). On the first day of trial, the district court allowed the state to amend the complaint to include a charge of third-degree assault under Minn. Stat. § 609.223, subd. 1 (2008). The defense then moved to exclude evidence that cocaine was found at the scene of the arrest, to which the state responded by "reserv[ing] the right to amend prior to the beginning of trial to include the charge of fifth degree controlled substance." The parties then proceeded with

voir dire and completed jury selection on the first day. At the beginning of the second day of trial, the state moved to amend the complaint to charge Agnes with fifth-degree possession of a controlled substance in violation of Minn. Stat. § 152.025, subd. 2(a)(1) (2008). Agnes’s trial counsel objected to the motion but did not ask for a continuance or claim prejudice or retaliation. The district court granted the motion. On the last day of the trial, the district court allowed the state to withdraw the charge of aiding and abetting a second-degree assault and add a charge of third-degree assault. After a jury trial, Agnes was convicted of fifth-degree possession of a controlled substance, second-degree assault of the bouncer, and fifth-degree assault of the patron. This appeal follows.

D E C I S I O N

I. Amendment to Complaint

The first issue raised on appeal is whether the district court abused its discretion in granting the state’s motion to amend the complaint to include a charge of fifth-degree possession of a controlled substance. “The district court has broad discretion to grant or deny leave to amend a complaint, and its ruling will not be reversed absent a clear abuse of that discretion.” *State v. Baxter*, 686 N.W.2d 846, 850 (Minn. App. 2004).

Minn. R. Crim. P. 3.04 governs amendments to criminal complaints before jeopardy attaches.¹ *State v. Bluhm*, 460 N.W.2d 22, 24 (Minn. 1990). Rule 3.04, subd. 2, allows amendments to a complaint “if the prosecutor promptly moves for a continuance

¹ In their submissions to this court, the parties agree that rule 3.04 applies to this issue. When the motion was offered and granted, both the state and the district court referenced Minn. R. Crim. P. 17.05. Regardless, we assume that rule 3.04 governs the present circumstances. The parties do not raise, and we do not consider, any double-jeopardy issue incident to this conviction.

on the ground that: . . . (b) the evidence presented establishes probable cause to believe that the defendant has committed a different offense from that charged in the complaint, and the prosecutor intends to charge the defendant with that offense.” Under rule 3.04, “the trial court is relatively free to permit amendments to charge additional offenses before trial is commenced, provided the trial court allows continuances where needed.” *Bluhm*, 460 N.W.2d at 24. Rule 3.04 “recognizes the importance of timeliness” by requiring that amendments be made promptly once the circumstances that warrant an amendment become known. *Baxter*, 686 N.W.2d at 853. Finally, rule 3.04 should not be used as a tool to circumvent the indictment process or for prosecutorial vindictiveness. *State v. Pettee*, 538 N.W.2d 126, 132 (Minn. 1995). These requirements are meant to avoid prejudicing the defendant with surprising or last-minute amendments. *See State v. Smith*, 313 N.W.2d 429, 430 (Minn. 1981).

Agnes objected to the amendment at the time of the motion but did not indicate that his defense would suffer any prejudice by the amendment being allowed or that the charge was added in retaliation for moving to suppress evidence. Agnes could have requested a continuance in order to prepare a defense, and such a request would likely have been granted. The evidence of cocaine in the baggie was known to be part of the case from an early stage and was not a surprise. Because the district court has broad discretion to allow amendments and because Agnes did not request a continuance to mitigate any potential prejudice from the amendment, we conclude that the district court did not abuse its discretion in allowing the amendment to the complaint.

II. Sufficiency of the Evidence

The second issue is whether sufficient evidence was presented at trial to allow a reasonable jury to find Agnes guilty of the assaults on the bar patron and the bouncer. In considering a claim of insufficient evidence, this court's review "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. Webb*, 440 N.W.2d 426, 430 (Minn. 1989). This court must assume "the jury believed the state's witnesses and disbelieved any evidence to the contrary." *State v. Moore*, 438 N.W.2d 101, 108 (Minn. 1989). This is especially true when resolution of the matter depends mainly on conflicting testimony. *State v. Pieschke*, 295 N.W.2d 580, 584 (Minn. 1980). The reviewing court will not disturb the verdict if the jury, 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).

It is well-established that a guilty verdict may be based on the testimony of a single witness. *State v. Foreman*, 680 N.W.2d 536, 539 (Minn. 2004). "Assessing the credibility of a witness and the weight to be given a witness's testimony is exclusively the province of the jury." *State v. Mems*, 708 N.W.2d 526, 531 (Minn. 2006). "Minor inconsistencies and conflicts in evidence do not necessarily render testimony false or provide the basis for reversal." *State v. Johnson*, 679 N.W.2d 378, 387 (Minn. App. 2004), *review denied* (Minn. Aug. 17, 2004).

Agnes challenges the sufficiency of the evidence for his assault convictions, not the controlled-substance conviction. Agnes argues that the evidence was insufficient because “conflicting testimony” was given about who committed the assaults. Agnes is correct; there was conflicting testimony from the witness and victims as to who committed the assaults. This is perhaps not surprising considering the tumultuous series of events, the presence of alcohol, and the head injuries sustained by the victims. However, the resolution of conflicting testimony is the province of the jury, and this court’s review is limited to a review of the record in a light most favorable to the verdict.

In this case, an eyewitness testified at trial that he had actually seen both assaults. This witness was asked whether he “saw the defendant hit somebody in the head with a bottle” and “hit the bouncer in the face with a glass.” This witness stated directly and affirmatively that he had seen the defendant commit both of these acts. Circumstantial evidence also indicated that Agnes was involved in and perpetrated the assaults. The bouncer testified that other patrons of the bar who witnessed the incident indicated that Agnes assaulted the patron. The bouncer also testified that Agnes was involved in assaulting him near the front door of the bar. Both the witness and the bouncer were sure that Agnes fled the bar and got into the passenger side of a vehicle that drove away. The eyewitness was taken to the scene of Agnes’s arrest and positively identified Agnes as the man he saw assault the patron and the bouncer and then flee the scene.

Because we review this testimony in a light most favorable to the verdict reached by the jury and because there was direct testimony offered at trial that indicated Agnes

committed the assaults, we conclude that the evidence was sufficient for a reasonable jury to find Agnes guilty of the assaults.

Affirmed.

Dated: