STATE OF MINNESOTA
IN COURT OF APPEALS
A12-0121

State of Minnesota,
Respondent,

vs.

Cassidy Michaels Sam,
Appellant.

Filed November 5, 2012
Affirmed
Stauber, Judge

Hennepin County District Court
File No. 27CR1115507

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

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

David W. Merchant, Chief Appellate Public Defender, Charles F. Clippert, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Hudson, Presiding Judge; Stauber, Judge; and Harten, Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

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

STAUBER, Judge

Appellant challenges his conviction for aiding and abetting third-degree assault, arguing that the evidence is insufficient to sustain his conviction and that the prosecutor committed misconduct by improperly eliciting vouching testimony. Because the evidence is sufficient and the prosecutor's questioning did not amount to misconduct, we affirm.

FACTS

In the early morning hours of March 26, 2011, J.P.M. was admitted to North Memorial Hospital after suffering numerous injuries resulting from an apparent assault. According to medical records, J.P.M. suffered a fractured nose, a three-centimeter laceration on his left ear requiring stiches, a two-centimeter laceration on his lower lip requiring stitches, extensive soft-tissue trauma, and an injury to the base of his penis. When interviewed by police, J.P.M. stated that he had gone to the home of appellant Cassidy Michaels Sam for a party. He stated that the people at the party consumed alcohol and he fell asleep in a hallway of appellant's home sometime between 9 and 10 pm. Later that night, appellant invited J.P.M. into his bedroom. On entering the room, J.P.M. saw appellant and two unidentified males.

Appellant and one of the unidentified males began punching J.P.M. in the face. J.P.M.'s next memory was waking up in the hospital. He later learned that two of his friends had brought him to the hospital from appellant's home. J.P.M. picked appellant

out of a photo lineup and indicated that he was "100%" sure that appellant was one of the assailants.

Officers also spoke to A.T.S. and K.M.S., who also claimed to have been at the party at appellant's house. The two told the police that they had fallen asleep at the home, awoke to noises, and discovered J.P.M. being assaulted by appellant and another individual. The police also spoke to R.P.A., who reported that appellant admitted to assaulting J.P.M. and offered to pay J.P.M.'s medical bills if the assault were not reported to the police.

Appellant was charged by complaint with third-degree assault in violation of Minn. Stat. § 609.223, subd. 1 (2010). The complaint also referenced aiding-and-abetting liability for the assault. *See* Minn. Stat. § 609.05, subd. 1 (2010) ("A person is criminally liable for a crime committed by another if the person intentionally aids, advises, hires, counsels, or conspires with or otherwise procures the other to commit the crime."). The matter proceeded to a jury trial.

At trial, J.P.M. testified that he went to appellant's home the night of March 25 with A.T.S. and K.M.S. According to trial testimony, at one point appellant punched or kicked J.P.M. in the eye and then apologized, saying "it's just tough love." At some point after that, appellant picked up J.P.M., dragged him into appellant's room, and tried to force him to drink alcohol. When J.P.M. refused, appellant and one of his friends began to hit J.P.M. in the face.

Following trial, appellant was convicted and the district court imposed a 60-month sentence. This appeal follows.

D E C I S I O N

I.

When considering a claim of insufficient evidence, an appellate court's review is "limited to a painstaking analysis of the record to determine whether the evidence, when viewed in [the] light most favorable to the conviction, [is] sufficient" to sustain the jury's verdict. *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989). An appellate court "must determine whether, under the facts in the record and any legitimate inferences that can be drawn from them, a jury could reasonably conclude the defendant was guilty of the offense charged." *State v. Bias*, 419 N.W.2d 480, 484 (Minn. 1988). A reviewing 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). A verdict will not be disturbed on appeal 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).

Appellant argues that the record evidence is insufficient to sustain his conviction because "the positive, nonhearsay evidence does not prove that he aided and abetted a third degree assault." In essence, appellant argues that the jury's verdict could only have been attributable to the testimony of Detective Olson, who testified over appellant's hearsay objection that A.T.S. and K.M.S. had said that appellant assaulted J.P.M.

But appellant's assertion that "there was no evidence that [appellant] played a knowing role in the commission of the crime" completely ignores J.P.M.'s testimony that

appellant dragged him into his room, tried to force him to consume alcohol, and then began punching him in the face. This evidence is sufficient to sustain the jury's verdict. *See State v. Hill*, 285 Minn. 518, 518, 172 N.W.2d 406, 407 (Minn. 1969) (stating that "a conviction can rest on the uncorroborated testimony of a single credible witness").

Appellant's conviction is therefore supported by sufficient evidence, and his argument to the contrary is unavailing.

II.

Appellant argues that the district court erred by allowing the prosecutor to ask appellant, over defense counsel's objection, whether two of the state's witnesses are trustworthy. "[T]he credibility of a witness is for the jury to decide. . . ." *State v. Koskela*, 536 N.W.2d 625, 630 (Minn. 1995). Accordingly, it is improper for a witness to "vouch for or against the credibility of another witness." *State v. Ferguson*, 581 N.W.2d 824, 835 (Minn. 1998). Vouching includes expressing a personal opinion about a witness's credibility. *State v. Folkers*, 581 N.W.2d 321, 326 (Minn. 1998).

An appellate court reviews allegations of prosecutorial misconduct using two approaches, depending on whether appellant objected at trial. *State v. Yang*, 774 N.W.2d 539, 559 (Minn. 2009). There are two harmless-error standards under which to review objected-to misconduct. *State v. McDaniel*, 777 N.W.2d 739, 749 (Minn. 2010) (citing *State v. Caron*, 300 Minn. 123, 127-28, 218 N.W.2d 197, 200 (1974)). Claims of less-serious misconduct are reviewed to determine "whether the misconduct likely played a substantial part in influencing the jury to convict." *Id.* (quotations omitted). Claims of "more serious" misconduct are reviewed to determine whether the alleged misconduct

was "harmless beyond a reasonable doubt." *Id.* An error will be found to be harmless beyond a reasonable doubt "only if the verdict rendered was 'surely unattributable to the error.'" *State v. Nissalke*, 801 N.W.2d 82, 105-06 (Minn. 2011) (quoting *State v. McCray*, 753 N.W.2d 746, 751 (Minn. 2008)).

Contrary to appellant's argument, the prosecutor's questioning did not rise to the level of improper vouching. In *State v. Gail*, the supreme court considered whether a prosecutor vouched for a witness by stating during argument that the witness was "a believable person" and was "frank and sincere." 713 N.W.2d 851, 866 (Minn. 2006). The court found such argument is permissible because the state may argue that particular witnesses are or are not credible. *Id.* In *State v. Swanson*, the supreme court held that a prosecutor does not vouch for a witness by saying that he or she is "very believable," but stating that "[t]he state believes [the witness] is very believable" is impermissible vouching. 707 N.W.2d 645, 656 (Minn. 2006).

The supreme court's opinion in *Swanson* is instructive here. The prosecutor asked appellant if A.T.S. and K.M.S. are trustworthy. After the district court overruled appellant's objection, appellant responded that both witnesses are trustworthy. As in *Swanson*, the prosecutor's questioning of appellant was an argument that the witnesses were credible. *See also State v. Googins*, 255 N.W.2d 805, 806 (Minn. 1977) ("[A] prosecutor [has] a right to analyze the evidence and vigorously argue that the state's witnesses were worthy of credibility. . . ."). There is therefore no misconduct, and appellant's argument is without merit.

Affirmed.