

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2008).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A08-1798**

State of Minnesota,
Respondent,

vs.

Todd Allan Boman,
Appellant.

**Filed November 10, 2009
Affirmed
Shumaker, Judge**

Marshall County District Court
File No. 45-CR-07-596

Lori Swanson, Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101-2134; and

Michael D. Williams, Marshall County Attorney, 423 North Main Street, P.O. Box 159, Warren, MN 56762 (for respondent)

Marie L. Wolf, Interim Chief Appellate Public Defender, Bradford S. Delapena, Special Assistant Public Defender, 540 Fairview Avenue North, Suite 300, St. Paul, MN 55104 (for appellant).

Considered and decided by Hudson, Presiding Judge; Lansing, Judge; and Shumaker, Judge.

UNPUBLISHED OPINION

SHUMAKER, Judge

On appeal from his conviction of third-degree assault, appellant argues that the evidence produced at trial was insufficient to identify him as the offender. We affirm.

FACTS

In the early morning hours of November 9, 2007, B.K. was punched in the face outside of a bar in Stephen, Minnesota. As a result, his jaw was broken in two places. B.K. identified his assailant to the police as the “taller Boman.” Police arrested appellant Todd Boman, who was charged with first- and third-degree assault. Boman went to trial before the district court without a jury.

The testimony presented at trial revealed that on the evening of November 8, 2009, Todd Boman, his cousin William Boman, and friends, Chris Johnson and Jacob Kasprowicz were drinking together in one group at the Northern Lights Bar, while B.K. and his friend N.M. drank together in the same bar. The two groups, who were not personally acquainted, did not interact.

After last call, Boman’s group left the bar and B.K. and N.M. went outside to smoke a cigarette. Although it was nighttime, the area in which B.K. and N.M. were smoking was “quite bright.” Boman’s group was still in the parking lot, and eventually someone from the group called out at B.K. and N.M., “Let’s go get those pussies.” Todd Boman and Kasprowicz came directly towards B.K., while William Boman moved more towards the middle of B.K. and N.M.

B.K. testified that Todd Boman reached him before Kasprowicz did and threw a punch at him, but that he ducked so that the punch landed on the back of his shoulder. B.K. ran towards the main entryway of the bar, which was also well-lit, but as he grasped the front door handle someone grabbed his shoulder from behind, turned him around, and punched him in the jaw. B.K. testified that he was “absolutely” certain that Todd Boman was the one who hit him the second time.

N.M. testified that he saw Boman take his first swing at B.K., and then observed Boman “going back after [B.K.]” but that he did not witness the second punch that caused B.K.’s injuries. Johnson testified that he did not see anyone get hit, and Kasprowicz stated that he did not hit B.K. or see anyone hit B.K., but rather he took a swing at N.M. William Boman, who was convicted of fifth-degree assault for hitting N.M. that night, stated that he did not see anyone get hit.

The district court found Todd Boman guilty of third-degree assault. In its findings, the court explained that

having heard the testimony of the witnesses and having had an opportunity to view their demeanor and manner on the witness stand, [the court] gives credence to the testimony of [N.M. and B.K.] and specifically finds that it was defendant, Todd Allan Boman, who struck [B.K.] in the right facial area while he was attempting entry into the Northern Lights Bar.

Todd Boman appealed, arguing that the evidence was insufficient to identify him as the person who punched B.K.

DECISION

Boman's only contention on appeal is that the evidence was insufficient to identify him as B.K.'s assailant, and therefore the district court could not properly convict him of third-degree assault. In considering a claim of insufficient evidence, our 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 [fact-finder] to reach the verdict which they did." *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989). We 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). We will not disturb the 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 defendant is guilty of the charged offense. *Bernhardt v. State*, 684 N.W.2d 465, 476-77 (Minn. 2004). The review of criminal bench trials regarding sufficiency of the evidence claims is the same as for jury trials. *State v. Hough*, 585 N.W.2d 393, 396 (Minn. 1998).

Boman was convicted of third-degree assault under Minn. Stat. § 609.223, subd. 1 (2008), which provides that "[w]hoever assaults another and inflicts substantial bodily harm may be sentenced to imprisonment for not more than five years or to payment of a fine of not more than \$10,000, or both." To sustain a conviction for this crime, or indeed any crime, the state must introduce sufficient evidence to prove that the defendant was the individual who committed the offense. *See State v. Gluff*, 285 Minn. 148, 150-51, 172 N.W.2d 63, 64-65 (1969) (requiring sufficient proof of identity to support

conviction). Identification presents a question of fact for the fact-finder to determine. *State v. Yang*, 627 N.W.2d 666, 672 (Minn. App. 2001), *review denied* (Minn. July 24, 2001).

At trial, B.K. testified unequivocally that Boman was the one who punched him in the face and caused his injuries. The prosecutor asked B.K. whether he could identify his assailant:

- Q. Were you able to—were you turned enough to see who was hitting at you?
A. Yes.
Q. And who was that person who struck you?
A. Todd Boman.
Q. You recognized that person?
A. Absolutely.

B.K. admitted that he could not see Boman’s face as he was getting hit, but maintained that he had “no doubt” it was Boman because he recognized him by his height.

Boman argues that B.K.’s testimony is not sufficient because “[t]he record makes plain that 4 of the 5 eyewitnesses to the fight testified that they did *not* see the blow that caused [B.K.’s] injuries.” Yet, Boman thereafter “acknowledges that [B.K.’s] testimony . . . supports the district court’s finding.” A conviction “can rest on the uncorroborated testimony of a single credible witness.” *State v. Foreman*, 680 N.W.2d 536, 539 (Minn. 2004) (quotation omitted). Thus, there is no merit to Boman’s complaint that four out of five witnesses did not see the event. After hearing B.K.’s testimony unequivocally identifying Boman as his assailant, the district court could have appropriately found that the state had proved beyond a reasonable doubt that Boman committed the assault.

Boman also protests that B.K. admittedly did not see the face of the person who broke his jaw. However, evidence of identification “need not be positive and certain to support a conviction,” *Gluff*, 285 Minn. at 150-51, 172 N.W.2d at 64, and the record supports B.K.’s recognition of Boman because of his height. B.K. who is between 5’10” and 5’11”, testified that he recognized Boman because he knew he was the “much taller of the two” Bomans, and as he was spun around he recognized Boman because of his height. Elsewhere in the testimony presented at trial, Boman was described as between 5’11” and 6’2”, and as “quite a bit taller” than William Boman. William Boman described himself as 5’9”, and Kasprowicz was described as short and stocky.

B.K. had ample opportunity to see Boman while inside the bar and when Boman attempted to punch him the first time. Witnesses who have the opportunity to observe an offender before the offense gain additional measures of reliability. *Yang*, 627 N.W.2d at 673. None of the other potential attackers was as tall as Boman; none of them admitted to hitting B.K.; and B.K. was a reliable witness who was sure of his identification. It is the province of the fact-finder to weigh credibility of witnesses, and the district court expressly found B.K.’s testimony credible. Sufficient evidence supports the district court’s conclusion that Boman was B.K.’s assailant.

Affirmed.