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**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-0231**

State of Minnesota,
Respondent,

vs.

Jesse Wallace Schecker,
Appellant.

**Filed February 4, 2013
Affirmed
Schellhas, Judge**

Douglas County District Court
File No. 21-CR-11-379

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

Chad Larson, Douglas County Attorney, Alexandria, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Rochelle R. Winn, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Kirk, Presiding Judge; Ross, Judge; and Schellhas, Judge.

UNPUBLISHED OPINION

SCHELLHAS, Judge

Appellant argues that the evidence was insufficient to support his conviction of felony fifth-degree assault. We affirm.

FACTS

Respondent State of Minnesota charged appellant Jesse Schecker with felony fifth-degree assault in violation of Minn. Stat. § 609.2242, subd. 4 (2010), for intentionally inflicting or attempting to inflict bodily harm upon another, and gross misdemeanor driving after cancellation in violation of Minn. Stat. § 171.24, subd. 5(1)–(3) (2010).

At trial, witness Gerald Johnson testified that, in the early evening of January 22, 2011, while he was feeding cattle on his farm, a car pulled over to the side of the road about 100 to 150 yards from him with the passenger side of the car facing him. The driver exited the car, walked to the passenger side, and dragged the passenger from the car. Both individuals went to the ground and Johnson heard a man angrily “hollering.” The driver made movements like “strikes” by “swinging, punching” at the passenger at least twice with a closed fist. Johnson could not tell whether the strikes landed on the passenger but believed they would have made contact in the area of the passenger’s head. The driver then got into the car and drove away, leaving the passenger on the ground. The passenger stood up and approached Johnson’s driveway, and Johnson saw that the passenger was a woman. The passenger identified herself as B.Z., and Johnson walked toward her, noticed that her face was beginning to swell, and invited her into his home, where B.Z. called 911. The district court received the recorded 911 call into evidence.

B.Z. testified and denied that Schecker assaulted her. Deputy Brandon Kruse testified about his visit with B.Z. at the hospital on January 22, and the court admitted photographs that he took of B.Z. at the hospital. Deputy Kruse recorded B.Z.’s statement

at the hospital, but B.Z. said that she did not remember giving a statement to him. The district court admitted the statement solely as impeachment evidence.

The jury found Schecker guilty of both charges. For his conviction of felony fifth-degree assault, the district court sentenced Schecker to 15 months' imprisonment, stayed for five years, and placed him on probation. For his conviction of gross misdemeanor driving after cancellation, the court sentenced Schecker to one year incarceration. On appeal, Schecker challenges only his conviction of felony fifth-degree assault.

D E C I S I O N

Schecker argues that the evidence was insufficient for a jury to find beyond a reasonable doubt that he committed fifth-degree assault because “there is no direct evidence that [he] hit [B.Z.] on the side of the road, as opposed to an earlier altercation that may have involved mutual combat.” We disagree.

When reviewing a claim of insufficient evidence, our review of the evidence is to determine whether the facts in the record and the legitimate inferences drawn from them would permit the jury to reasonably conclude that the defendant was guilty beyond a reasonable doubt of the offense of which he was convicted.

State v. Gatson, 801 N.W.2d 134, 143 (Minn. 2011) (quotation omitted). We will uphold a verdict “if, giving due regard to the presumption of innocence and to the state’s burden of proof beyond a reasonable doubt, the jury could reasonably have found the defendant guilty.” *Id.* (quotation omitted). “We consider the evidence in the light most favorable to the verdict and assume that the jury disbelieved any evidence conflicting with the result reached.” *Id.*

To prove the felony assault charge against Schecker, the state had to prove that Schecker had two prior qualifying convictions and “intentionally inflict[ed] or attempt[ed] to inflict bodily harm upon another.” Minn. Stat. §§ 609.224, subd. 1 (defining crime of assault), .2242, subd. 4 (providing that a defendant convicted of assault within ten years of two prior qualifying convictions may be convicted of felony assault) (2010). Before trial commenced, Schecker stipulated that he had the predicate convictions necessary to enhance the assault charge to a felony.

The direct evidence consisted of Johnson’s testimony about the incident that he observed, including B.Z.’s statements to him immediately after the incident, Johnson’s observations about B.Z.’s facial swelling, and that B.Z. made a 911 call from Johnson’s home; the recording of B.Z.’s 911 call; and B.Z.’s testimony. The district court also admitted circumstantial evidence in the form of the photographs of B.Z. that Deputy Kruse took on January 22 at the hospital.

We have described Johnson’s testimony in greater detail in the facts section and will not repeat it here. The recorded 911 call reveals that B.Z. identified herself to the 911 dispatcher and said, “Jesse Schecker just threw me out of his car and beat me up and stuff.” When the 911 dispatcher asked whether B.Z. was hurt, she said, “Yes, my face is big and swollen.” B.Z. told the dispatcher that Schecker had “a scratch on his back and [he is] [t]ryin’ to say that I, whatever, stabbed him in the back. You can look at it, it’s a fingernail scratch. . . . And he’s tryin’ to make me look like I’m, I’m doing somethin’” B.Z. testified that she and Schecker had known each other for about ten

years, she loved him, and he was a “really good friend.” She denied that he assaulted her on the side of the road on January 22, testifying that she did not believe that the incident occurred, and she accused the prosecutor of trying “to put[] things in [her] head that didn’t happen.” Deputy Kruse testified that he met B.Z. at the hospital on the evening of January 22 and observed that she was very swollen under her left eye and in her nose area and that the area under her eye was black and blue. Deputy Kruse also identified the photographs that he took of B.Z. on January 22. He testified that B.Z. gave him a statement at the hospital, which he recorded.

Because B.Z. said that she did not remember giving a statement to Deputy Kruse, the district court admitted the recorded statement solely for impeachment purposes and the jury’s weighing of B.Z.’s credibility. *See State v. Hurd*, 819 N.W.2d 591, 598 (Minn. 2012) (“As the fact finder, the jury is in the best position to weigh credibility and thus determines which witnesses to believe and how much weight to give their testimony.” (quotation omitted)). During the statement, B.Z. told Deputy Kruse that she and Schecker had been in a romantic relationship the previous summer and described the January 22 incident as follows: “[Schecker] stopped the vehicle and then drug me out. And then I was laying on the ground for a bit, and then I got up. He pulled away” After parts of the recorded statement were played for the jury, B.Z. testified that she did not recall giving the recorded statement and could not confirm whether the voice on the recording was hers.

Considering the evidence in the light most favorable to the verdict, we conclude that the evidence was sufficient to permit the jury to reasonably conclude that Schecker was guilty beyond a reasonable doubt of felony fifth-degree assault.

Affirmed.