STATE OF MINNESOTA
IN COURT OF APPEALS
A06-2256

State of Minnesota,
Respondent,

vs.

Eugene D. Sandberg,
Appellant.

Filed April 29, 2008
Affirmed in part and reversed in part
Toussaint, Chief Judge

St. Louis County District Court
File No. CR-06-1042

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

Melanie S. Ford, St. Louis County Attorney, James T. Nephew, Assistant County Attorney, 100 North Fifth Avenue West, Suite 501, Duluth, MN 55802-1298 (for respondent)

John M. Stuart, State Public Defender, Lydia Villalva Lijo, Assistant Public Defender, 540 Fairview Avenue North, Suite 300, St. Paul, MN 55104 (for appellant)

Considered and decided by Shumaker, Presiding Judge; Toussaint, Chief Judge; and Willis, Judge.

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

TOUSSAINT, Chief Judge

Appellant Eugene D. Sandberg challenges his conviction for interfering with an emergency call and two concurrent sentences imposed for that conviction and a fifth-degree assault conviction. Because appellant's conviction for interfering with an emergency call is supported by proof beyond a reasonable doubt, we affirm that conviction, but because the trial court erred in imposing two sentences for conduct arising from a single behavioral incident, we reverse appellant's sentence for fifth-degree assault.

D E C I S I O N

Appellant contends that his conviction for interfering with an emergency call is unsupported by proof beyond a reasonable doubt because the state failed to prove that he knew that his son's girlfriend, A.D., was attempting to make an emergency call when he took the telephone from her.

When assessing sufficiency of the 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 support the verdict. *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989). We will not reverse the trial court's verdict if "acting with due regard for the presumption of innocence and for the necessity of overcoming it by proof beyond a reasonable doubt, [the trial court] could reasonably conclude that a defendant was proven guilty of the offense charged." *State v. Alton*, 432 N.W.2d 754, 756 (Minn. 1998). We defer to the trial court's credibility determinations. *See State v. Kramer*, 668 N.W.2d 32, 37 (Minn. App. 2003), *review denied* (Minn. Nov.

18, 2003).

Minn. Stat. § 609.78, subd. 2 (2004) provides:

> A person who intentionally interrupts, disrupts, impedes, or interferes with an emergency call or who intentionally prevents or hinders another from placing an emergency call, and whose conduct does not result in a violation of section 609.498, is guilty of a gross misdemeanor and may be sentenced to imprisonment for not more than one year or to payment of a fine of not more than $3,000, or both.

Section 609.78 defines an "emergency call" as "a 911 call," "any call for emergency medical or ambulance service," or "any call for assistance from a police or fire department or for other assistance needed in an emergency to avoid serious harm to person or property" when an actual emergency exists. Minn. Stat. § 609.78, subd. 3 (2004).

Appellant initially argues that the trial court required the state to prove a lesser degree of mens rea than is required by statute when it stated that:

> Whether [A.D.] did or did not announce that her intent in using the cell phone was to call 911, or someone else to provide her with aid and assistance, is not paramount. Even discounting her testimony in this regard (she testified she said "I'm calling the cops"), circumstantial evidence supports a finding that a reasonable person in [appellant's] position, engaged in a brutal assault, would understand the intent and purpose behind [A.D.] attempting to use her cell phone.

We disagree with appellant's argument. We read the trial court's conclusion as an evaluation of the strength of the circumstantial evidence in this case. It is not evident from this statement that the trial court held the state to a lesser burden of proof or that it actually discounted A.D.'s testimony that she told appellant she was calling the police.

Viewing the evidence in the light most favorable to the conviction, we conclude that there is proof beyond a reasonable doubt supporting the verdict. A.D. testified that appellant severely beat her by punching her numerous times in the face with his fist during a period of 10 to 15 minutes, pushing her over the couch while she was holding her infant twin daughters, and dragging her around her living room by her hair. A.D. testified that during the assault, "My cell phone was sitting on the couch and I reached to go grab it and he tore it out of my hand when I told him I was going to call the cops and he took it with him."

The trial court found A.D.'s testimony credible and supported by other evidence and found appellant's testimony not credible. Contrary to appellant's argument, there is no evidence that the trial court discredited or disregarded A.D.'s testimony that she intended to call for help. A.D.'s testimony establishes that appellant knew that A.D. was attempting to make an emergency call when he interfered with her telephone call and is sufficient to support the court's verdict.

Appellant makes various arguments challenging the credibility and consistency of A.D.'s testimony. But the trial court found that the "records from [A.D.'s] visit to the St. Mary's Hospital Emergency Room . . . are nearly identical to [her] under-oath trial testimony of the events at issue." Because we defer to the fact-finder's credibility determinations, we conclude that appellant's arguments questioning appellant's credibility and consistency are without merit.

Appellant also argues that his convictions and sentences for fifth-degree assault and interfering with an emergency call arose from a single behavioral incident and that

we must therefore reverse the fifth-degree assault conviction and sentence.

"[I]f a person's conduct constitutes more than one offense under the laws of this state, the person may be punished for only one of the offenses and a conviction or acquittal of any one of them is a bar to prosecution for any other of them . . . ." Minn. Stat. § 609.035, subd. 1 (2004). But the prohibition against multiple punishments only applies if the offenses "arose out of a single behavioral incident." *State v. Bookwalter*, 541 N.W.2d 290, 294 (Minn. 1995). Whether multiple offenses arose out of a single behavioral incident depends on the facts and circumstances, including the time and place the conduct occurred and "whether the segment of conduct involved was motivated by an effort to obtain a single criminal objective." *State v. Johnson*, 273 Minn. 394, 404, 141 N.W.2d 517, 525 (1966) (emphasis omitted).

We agree that appellant's conduct involves a single behavioral incident. But because section 609.035 "refers not to multiple convictions but to multiple sentences," we affirm appellant's conviction of fifth-degree assault and reverse his sentence for fifth-degree assault. *Bookwalter*, 541 N.W.2d at 293; *see State v. Gibson*, 478 N.W.2d 496, 497 (Minn. 1991) (reversing "lesser of the two sentences" arising from single behavioral incident).

Affirmed in part and reversed in part.