

*This opinion will be unpublished and  
may not be cited except as provided by  
Minn. Stat. § 480A.08, subd. 3 (2010).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A10-360**

State of Minnesota,  
Respondent,

vs.

Abdirasak Ahmed Amare,  
Appellant.

**Filed January 11, 2011  
Affirmed  
Schellhas, Judge**

Hennepin County District Court  
File No. 27-CR-09-27639

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

Michael O. Freeman, Hennepin County Attorney, David C. Brown, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

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

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

**UNPUBLISHED OPINION**

**SCHELLHAS**, Judge

Appellant challenges his conviction of third-degree assault causing substantial bodily harm, arguing that the district court erred by admitting evidence of appellant's

behavior following the incident and that the evidence is insufficient to support the verdict. We affirm.

### **FACTS**

Early in the morning of June 2, 2009, C.B. and four friends left C.B.'s house to walk four to five blocks to downtown Hopkins. As they walked along the Highway 7 frontage road, a man later identified as appellant Abdirasak Ahmed Amare yelled something and approached the group aggressively. He swung at C.B. twice, making contact with C.B. on the left side of his chest and left shoulder. One of C.B.'s friends then knocked Amare out, and C.B. and his friends ran across Highway 7.

C.B. began to feel pain as he crossed the highway. He stopped when he reached the other side and asked his friends to wait because he was having difficulty breathing. C.B. realized that he was "seriously hurt," noticed blood on his shirt, and discovered that he had been stabbed on the left side of his chest and on his upper left bicep.

C.B. went to the hospital in an ambulance and was admitted to the surgical intensive-care unit (ICU). One of C.B.'s treating physicians testified that the doctors "were very concerned" about him and that the hospital "only admit[s] critically ill patients to the ICU." C.B. had wounds on the left side of his anterior chest and his left bicep. Each wound was 1 to 1-1/2 centimeters long and penetrated the muscle. Initially, the doctors were concerned that C.B. had a collapsed lung but later found no evidence that key elements of the lung essential to its functioning were damaged. C.B.'s treating physician testified that C.B.'s wounds "turned out to be a pretty minor injury," but would result in permanent scarring. He also testified that the wound would scar more than a

typical cut because “it was kind of a gaping wound” and the doctors were not able to close the wound due to a risk of infection.

R.S. and J.B. were in R.S.’s car when they witnessed Amare strike C.B. Because the group was blocking the road, R.S. turned on her high-beam headlights to illuminate the scene. R.S. described her observations as follows:

[I]t wasn’t really a hit, it was kind of just like a lurching forward[.] . . . [I]t wasn’t like a push . . . and it wasn’t a punch. It was just kind of a lurch. . . . [T]he hands weren’t open, and I know that it wasn’t like a punch[.] . . . It’s like a forward lurching motion, but it wasn’t a push and it wasn’t a punch.

J.B. similarly described seeing Amare “lunge at” C.B. and make contact with C.B.’s upper chest. Neither R.S. nor J.B. saw Amare with a knife.

After C.B.’s friend knocked Amare out, J.B. got out of R.S.’s car to see if Amare was breathing, while R.S. called 911. J.B. did not see a knife in the area around Amare. At first she could not see Amare’s right hand because it was underneath his body, but even after she “tipped him over” to care for him she did not see a knife.

A woman later identified as Amare’s sister then came outside from a nearby apartment building, laid on top of Amare like she was trying to hug him, got up and ran back inside the apartment building, and returned a few minutes later. J.B. and R.S. did not see if the sister took anything from Amare and did not see her with a knife. No one besides J.B., R.S., and Amare’s sister had contact with Amare before the police arrived.

The police searched Amare’s home and found a knife under a pillow on the sofa. The knife had traces of blood on it that could have been human or animal, and it had

traces of human DNA on it. But the DNA could not be linked to the traces of blood on the knife.

At trial, on cross-examination of one of the responding officers, Amare elicited testimony that Amare was “rather incoherent” when he woke. The state then called another responding officer, and over Amare’s objection, elicited testimony that when Amare woke, he “would not respond to any questions from us to blow in the PBT. At one point he sort of got combative and the paramedics actually had to restrain him in handcuffs onto the stretcher.” The district court overruled the objection.

A jury found Amare guilty of third-degree assault causing substantial bodily harm in violation of Minn. Stat. § 609.223, subd. 1 (2008). This appeal follows.

## **DECISION**

### ***Admission of Testimony about Amare’s Behavior after Incident***

Amare argues that he is entitled to a new trial because the district court erred by admitting the responding officer’s testimony about Amare’s behavior following the incident. Amare argues that the court should have excluded the testimony because it was irrelevant, unduly prejudicial, and inadmissible *Spreigl* evidence.

This court reviews a district court’s evidentiary rulings for an abuse of discretion. *State v. Prtine*, 784 N.W.2d 303, 312 (Minn. 2010). “The defendant has the burden of proving both that the district court abused its discretion and that prejudice resulted.” *Id.* (citing *State v. Nunn*, 561 N.W.2d 902, 907 (Minn. 1997)).

Here, the trial transcript reveals that a potential issue for the jury’s consideration was Amare’s motive or lack thereof to attack C.B., with whom he had no prior

relationship. Evidence of Amare's combative and belligerent behavior around the time of the incident is relevant because it tends to make it more probable that Amare assaulted C.B. *See* Minn. R. Evid. 401 (“‘Relevant evidence’ means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.”). And Amare has not established that the probative value of this relevant evidence was substantially outweighed by any danger of unfair prejudice. *See* Minn. R. Evid. 403; *State v. Taylor*, 650 N.W.2d 190, 205 (Minn. 2002) (permitting evidence of defendant's intoxicated, belligerent, and violent attitude around the time of the murder because it was “evidence of appellant's state of mind near the time of the murder and undermined the defense theory that [defendant] was calm”); *State v. Norlander*, 277 Minn. 463, 465, 152 N.W.2d 774, 776 (1967) (allowing evidence of defendant's intoxication and belligerence around the time of the offense to counter defendant's argument that unprovoked attack on stranger was not believable). We therefore conclude that the district court did not abuse its discretion by admitting this evidence.

We also reject Amare's argument that the responding officer's testimony was inadmissible *Spreigl* evidence under Minn. R. Evid. 404(b), which excludes “[e]vidence of another crime, wrong, or act” when used “to prove the character of a person in order to show action in conformity therewith.” *See State v. Spreigl*, 272 Minn. 488, 139 N.W.2d 167 (1965) (setting forth a five-step procedure for the admission of rule 404(b) evidence). Rule 404(b) “does not necessarily deprive the state of the right to make out its whole case against the accused on any evidence which is otherwise relevant upon the issue of the

defendant's guilt of the crime with which he was charged." *State v. Riddley*, 776 N.W.2d 419, 425 (Minn. 2009) (quotation omitted). In other words, evidence that goes to the substantive proof of the charged offense is not inadmissible as *Spreigl* evidence just because it relates to another of the defendant's bad acts. *State v. Mosby*, 450 N.W.2d 629, 632–33 (Minn. App. 1990), *review denied* (Minn. Mar. 16, 1990). Rather, evidence of another bad act may be admissible if it constitutes part of the immediate episode in which the crime charged occurred. *Riddley*, 776 N.W.2d at 425. This evidence, often referred to as "immediate-episode evidence," is admissible "when there is a close causal and temporal connection between the prior bad act and the charged crime." *Id.* Evidence of events *after* the charged crime may also constitute immediate-episode evidence. *See Mosby*, 450 N.W.2d at 632–33 (ruling evidence that defendant stole car immediately following crime was admissible).

Here, the state elicited the officer's testimony about Amare's behavior only after Amare opened the door to the testimony. "Opening the door occurs when one party by introducing certain material creates in the opponent a right to respond with material that would otherwise have been inadmissible." *State v. Bailey*, 732 N.W.2d 612, 622 (Minn. 2007) (quotation omitted). "The doctrine is essentially one of fairness and common sense, based on the proposition that one party should not have an unfair advantage and that the factfinder should not be presented with a misleading or distorted representation of reality." *Id.* (quotation omitted). On cross-examination of one of the responding officers, Amare elicited testimony that Amare was "rather incoherent" when he woke. This testimony arguably was intended to leave the jury with an impression of Amare's

demeanor at the time of the incident. On direct examination of the next witness, another responding officer, the state asked the officer a single question to clarify Amare's behavior and the officer responded with a description of Amare's combativeness and belligerent attitude. This examination and testimony were permissible to prevent the jury from being misled about appellant's behavior upon regaining consciousness and to undercut any suggestion left by Amare's cross-examination of the first officer that Amare was not in a belligerent mental state, and therefore had no reason to have assaulted C.B. The district court therefore did not err by admitting this evidence without requiring the state to adhere to the *Spreigl* requirements.

### ***Sufficiency of Evidence***

To convict a defendant of third-degree assault causing substantial bodily harm, the state must prove that the defendant (1) assaulted another and (2) inflicted "substantial bodily harm." Minn. Stat. § 609.223, subd. 1. Amare argues that the evidence against him was insufficient to support his conviction on both elements.

#### ***Assault***

Amare first argues that there is insufficient evidence that he assaulted C.B. "Assault" is defined, in relevant part, as the intentional infliction of bodily harm upon another. Minn. Stat. § 609.02, subd. 10(2) (2008). "'Bodily harm' means physical pain or injury, illness, or any impairment of physical condition." *Id.*, subd. 7 (2008). In this case, C.B. suffered two stab wounds on his chest and bicep. But the record lacks direct evidence that Amare possessed a knife or stabbed C.B. Proof that Amare assaulted C.B. depends on circumstantial evidence.

We engage in a two-step process to review the sufficiency of circumstantial evidence. *State v. Anderson*, 789 N.W.2d 227, 241 (Minn. 2010). “First, we must identify the circumstances proved, giving deference to the jury’s acceptance of the proof of these circumstances and rejection of evidence in the record that conflicted with the circumstances proved by the State.” *Id.* at 241–42 (quotation omitted). “Second, we independently examine the reasonableness of all inferences that might be drawn from the circumstances proved, including inferences consistent with a hypothesis other than guilt.” *Id.* at 242 (quotation omitted). But “[w]e will not overturn a conviction based on circumstantial evidence on the basis of mere conjecture.” *Id.* (quotation omitted).

Here, the state offered circumstantial evidence that: Amare hit C.B. on the left part of his chest and his left shoulder; C.B. noticed stab wounds in those locations within moments; Amare’s sister laid on top of him in the street, briefly went back into the house, and then came back outside; and the police found a knife under a couch cushion in Amare’s home, which he shared with his sister. The only reasonable inference that can be drawn from these circumstances is that Amare stabbed C.B., and that no one found or noticed the knife because Amare’s sister retrieved it from or near Amare at the scene and took it to their home. Amare argues that an alternative hypothesis that does not lead to his guilt is consistent with the circumstances: one of C.B.’s friends accidentally stabbed C.B. during the scuffle. But Amare’s hypothesis is not an *inference*; it is not a logical consequence that can be drawn from any of the circumstances proved. *See Black’s Law Dictionary* 847 (9th ed. 2009) (defining “inference”). No evidence in the record supports Amare’s theory about what actually happened. Amare’s theory is mere conjecture and is

insufficient to overturn the jury's verdict. We therefore conclude that the circumstantial evidence in this case was sufficient to support a finding that Amare assaulted C.B.

*Substantial Bodily Harm*

Amare also argues that the evidence was insufficient to support a jury finding of substantial bodily harm, the second necessary element of his third-degree assault conviction. Proof of this element did not depend on circumstantial evidence. We therefore independently review the record to determine whether, based on the facts in the record and legitimate inferences therefrom, a jury could reasonably conclude that the state proved this element beyond a reasonable doubt. *State v. Flowers*, 788 N.W.2d 120, 133 (Minn. 2010). We view the evidence in the light most favorable to the state and “assume that the jury believed the state's witnesses and disbelieved any contradictory evidence.” *Id.* (quotation omitted).

“‘Substantial bodily harm’ means bodily injury which involves a temporary but substantial disfigurement, or which causes a temporary but substantial loss or impairment of the function of any bodily member or organ, or which causes a fracture of any bodily member.” Minn. Stat. § 609.02, subd. 7a (2008). Whether an injury constitutes substantial disfigurement is a question of fact for the jury. *See State v. Harlin*, 771 N.W.2d 46, 51 (Minn. App. 2009) (holding evidence sufficient for a jury to reasonably conclude that victim suffered substantial disfigurement), *review denied* (Minn. Nov. 17, 2009).

In *Harlin*, this court held that injuries including a “cut on [the] head that required four staples to close, leaving . . . a permanent scar” and bruising on 15% of the victim's

back were sufficient to support a finding of substantial disfigurement. 771 N.W.2d at 51. Amare attempts to distinguish this case from *Harlin*, arguing that because the doctors in this case did not close C.B.'s wounds, the wounds were necessarily less serious. But the doctors were unable to close the wounds because they were so deep and severe. And the statute requires only a finding of *temporary* substantial disfigurement. A jury could reasonably conclude that an unclosed wound results in greater temporary disfigurement than a closed wound.

We conclude that the evidence that C.B. had unclosed wounds that left greater-than-typical scarring was sufficient to prove that he suffered temporary but substantial disfigurement.

**Affirmed.**