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**STATE OF MINNESOTA
IN COURT OF APPEALS
A10-677**

State of Minnesota,
Respondent,

vs.

Terry Kim Breaux,
Appellant.

**Filed April 12, 2011
Affirmed
Stauber, Judge**

Ramsey County District Court
File No. 62CR096481

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

John Choi, Ramsey County Attorney, Afsheen D. Foroozan, Special Assistant County Attorney, Thomas R. Ragatz, Assistant County Attorney, St. Paul, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Jessica Benson Merz Godes, Assistant Public Defender, St. Paul, Minnesota; and

Haley N. Schaffer, Maslon, Edelman, Borman & Brandt, L.L.P., Minneapolis, Minnesota (for appellant)

Considered and decided by Schellhas, Presiding Judge; Halbrooks, Judge; and
Stauber, Judge.

UNPUBLISHED OPINION

STAUBER, Judge

On appeal from his conviction of first-degree assault, appellant argues that the evidence was insufficient to convict him because the victim's wounds did not constitute "serious permanent disfigurement" necessary to establish "great bodily harm" within the meaning of the first-degree assault statute. We affirm.

FACTS

On April 3, 2009, appellant Terry Kim Breaux physically assaulted L.P., whom he had been dating for approximately two months. Their short relationship had been rocky, and L.P. testified that they were on the verge of breaking up. The assault occurred inside L.P.'s home after the two had been out drinking at a bar and elsewhere. Appellant drove L.P. home at approximately 2:30 in the morning and walked her to the door of her apartment. Appellant asked if he could have sex with her, and L.P. declined. Appellant then followed L.P. upstairs to her bedroom where they began arguing. The argument soon turned physical. Appellant assaulted L.P. by biting her, beating her with his fists, and scratching her as she tried to escape. At some point during the assault, appellant held L.P. down on a bed and ripped her clothing off and unsuccessfully attempted to have sex with her. L.P. escaped to a bathroom and appellant followed, ripping out L.P.'s hair extensions and leaving a trail of hair on the bedroom and bathroom floor. He continued to punch and kick L.P. as she tried to take cover in a bathtub. L.P. was eventually able to escape by jumping out a second-story window and running to a neighbor's apartment where she was able to call the police.

Police officers took photographs of L.P.'s injuries at the scene. The photographs depict L.P. with a swollen and bloodied eye, scratches on her face and chest, bloodied lips, bruises on her back and arms, and bite wounds on her right cheek, left ear lobe, and the back of her left arm. L.P. was then taken by ambulance to a hospital where she was treated for her injuries.

Appellant was charged with second-degree criminal sexual conduct, attempted criminal sexual conduct in the first and third degrees, and first-degree assault. A jury trial took place seven months after the assault. L.P. testified that the bite wound on her right cheek was still visible. The transcript indicates that the prosecutor had L.P. come down from the witness stand to allow the jury a view of her cheek. She testified that she wears makeup to try to cover up the scar, but that it is still visible. L.P. also testified that she has permanent scarring from the bite mark on her left arm. She obtained a tattoo to cover the scar to avoid embarrassment, but she displayed her arm to the jury and testified that some of the scar is still visible. She also testified that there is a bite mark on her left ear, but she did not know whether a scar is visible. Finally, L.P. testified that she has a scar from a bite mark on her left side that is very visible, but she did not display the scar to the jury. The jury found appellant guilty of first-degree assault and not guilty of the remaining charges, and the district court imposed the presumptive sentence of 94 months in prison. This appeal followed.

DECISION

In considering a claim of insufficient evidence, this 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, was sufficient to permit the jurors to reach the verdict which they did.” *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989). We assume that “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). This court will not disturb the verdict 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 does not contest the sufficiency of the evidence establishing that he assaulted L.P. He argues only that L.P.’s injuries are not sufficiently severe to support a finding that L.P. suffered great bodily harm within the meaning of the first-degree assault statute.

A defendant is guilty of first-degree assault if the defendant assaults another and inflicts “great bodily harm.” Minn. Stat. § 609.221, subd. 1 (2008). “Great bodily harm” is defined as “bodily injury which creates a high probability of death, or which causes serious permanent disfigurement, or which causes a permanent or protracted loss or impairment of the function of any bodily member or organ or other serious bodily harm.” Minn. Stat. § 609.02, subd. 8 (2008).

The state appears to concede that L.P.’s injuries did not create a high probability of death and did not cause a permanent impairment of a bodily member or organ. The issue we must determine is whether L.P.’s injuries constitute serious permanent

disfigurement. Appellant argues that the evidence is insufficient to establish that any of the four bite wounds suffered by L.P. caused serious permanent disfigurement.

This court has concluded that permanent scars that are highly visible constitute serious permanent disfigurement. In *State v. McDaniel*, this court affirmed a first-degree-assault conviction where the victim's injuries included a six-centimeter scar on the front of his neck and a two-thirds-of-an-inch raised scar on his chest. 534 N.W.2d 290, 293 (Minn. App. 1995), *review denied* (Minn. Sept. 20, 1995). In reaching this conclusion, the court noted that the scar on the front of the victim's neck was "highly visible." *Id.* In *State v. Currie*, this court upheld a first-degree-assault conviction where the two child victims had numerous scars on their backs from whippings they received with an extension cord. 400 N.W.2d 361, 365–66 (Minn. App. 1987), *review denied* (Minn. Apr. 17, 1987). And in *State v. Anderson*, this court upheld a first-degree-assault conviction where the victim's injuries included a long scar running the length of her upper body. 370 N.W.2d 703, 706 (Minn. App. 1985), *review denied* (Minn. Sept. 19, 1985). The court considered this scar a permanent disfigurement, notwithstanding the fact that the victim was considering having it removed by plastic surgery. *Id.*

On the other hand, in *State v. Gerald*, this court reversed a first-degree-assault conviction where the victim suffered two small scars, each a half-inch long. 486 N.W.2d 799, 802–03 (Minn. App. 1992). One scar was located on the back of the victim's neck and the other inside the victim's ear. *Id.* at 802. The court noted that the scars were "relatively small and in areas where they are not particularly noticeable." *Id.*

We conclude that the evidence in this case was sufficient to support the jury's finding of great bodily harm. The jury was able to view the photos taken after the assault, they personally observed the bite marks on L.P.'s cheek and arm, and they heard L.P.'s testimony that the marks left scarring. On appeal, we must assume that the jury believed her testimony. *Moore*, 438 N.W.2d at 108. Further, L.P. testified more than seven months after the assault, and the jury could reasonably infer from the passage of time that any scarring still apparent at that time would be permanent.

Further, the nature of the scars and their placement on L.P.'s body also supports the jury's finding. The scar on L.P.'s cheek is in a highly visible and embarrassing place. The nature of the scars—in the shape of human teeth marks—is surely humiliating and stigmatizing. L.P. acknowledged that she obtained the tattoo on her arm and wore makeup on her face so that she would not have to explain the marks to others. Finally, appellant's reliance on *Gerald* is misplaced. There, the victim's two scars were small and not particularly noticeable. 486 N.W.2d at 802. In contrast, this assault left L.P. with visible scars in the shape of human bite marks on both her face and arm. The record was sufficient for the jury to reasonably conclude that L.P. suffered great bodily harm within the meaning of the first-degree assault statute.

Appellant has submitted a pro se supplemental brief in which he challenges the sufficiency of the evidence and also contends that he was denied his choice of counsel. We have reviewed appellant's arguments and find them to be without merit.

Affirmed.