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**STATE OF MINNESOTA
IN COURT OF APPEALS
A08-1038**

State of Minnesota,
Respondent,

vs.

Jacob Erick Kenneth Nelson,
Appellant.

**Filed June 2, 2009
Affirmed
Larkin, Judge**

Isanti County District Court
File No. 30-CR-07-1195

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

UNPUBLISHED OPINION

LARKIN, Judge

Appellant challenges his conviction of first-degree assault, arguing that the evidence was insufficient to support a finding that the victim, whom appellant shot in the face, suffered great bodily harm. We affirm.

FACTS

Appellant Jacob Erick Kenneth Nelson was charged with attempted second-degree murder, first-degree assault, and second-degree assault in connection with a shooting that took place on August 27, 2007. Appellant and the victim were childhood friends. Appellant was upset with the victim because he believed the victim was responsible for the disappearance of a ring that had belonged to appellant's father. On the night of the shooting, appellant took the victim to appellant's father's former home, planning to emphasize the importance of the missing ring and to scare the victim into returning it. After the trip, appellant stopped his car along a road to confront the victim. Appellant got out of the car, armed with a gun. The victim saw the gun and also exited the car. A confrontation ensued, and appellant shot the victim in the face. Appellant entered his car and drove away, leaving the victim in the ditch.

The victim attempted to call for emergency assistance, but did not know his location. He then made his way to a farm house and asked for help. At trial, the victim testified, "I just remember hearing all the sirens get there, they put me in the ambulance, hooked me up to all this stuff, the helicopter came and they took me to [Hennepin County Medical Center.]"

Deputy John McCarty of the Isanti County Sheriff's Department, a certified emergency medical technician, responded to the scene. He found the victim lying on the ground with his face and shirt covered in blood. Deputy McCarty testified at trial that the victim was having a hard time breathing and talking, and he appeared to be "in very dire need of medical attention." The deputy testified that the victim's breathing became even more labored over time and that he appeared to be losing consciousness. The deputy decided to call for a trauma helicopter to transport the victim to the hospital because it appeared that the victim had lost a "massive amount of blood" and because of the deterioration of the victim's condition.

The victim was transported to Hennepin County Medical Center and was admitted into the intensive-care unit. Upon arrival at the hospital, the victim was intubated and given two blood transfusions. Examinations established that, although the bullet entered his left cheek and exited out the right side of his neck, the resulting facial fractures did not require surgery. On his third day of hospitalization, the victim was transferred from the intensive-care unit, and he was discharged a day later. The victim testified that it took approximately two months to recover.

Following a jury trial, appellant was acquitted of the charge of attempted second-degree murder but convicted of the charges of first- and second-degree assault. The district court sentenced appellant to serve 86 months in prison for first-degree assault. This appeal follows.

DECISION

Appellant argues that the state presented insufficient evidence to support a finding that the victim suffered great bodily harm, a necessary element of first-degree assault, and that his conviction of first-degree assault should be reversed.

When assessing the sufficiency of evidence, an appellate court's 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 jury to reach the verdict that it did. *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989). This court reviews a claim of insufficient evidence to determine whether a factfinder could reasonably conclude that the defendant was guilty beyond a reasonable doubt of the offenses of which he was convicted in light of the facts in the record and all the legitimate inferences that can be drawn in favor of conviction from those facts. *Davis v. State*, 595 N.W.2d 520, 525 (Minn. 1999). We must assume "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). The verdict should stand "if the jury, acting with due regard for the presumption of innocence and for the necessity of overcoming it by proof beyond a reasonable doubt, could reasonably conclude that a defendant was proven guilty of the offense charged." *Bernhardt v. State*, 684 N.W.2d 465, 476-77 (Minn. 2004) (quotation omitted).

A defendant is guilty of first-degree assault if the defendant assaults another and inflicts "great bodily harm." Minn. Stat. § 609.221, subd. 1 (2006). 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 (2006). The statute does not define “other serious bodily harm.”

Appellant argues that the only issue before this court is whether appellant inflicted other serious bodily harm on the victim and that other serious bodily harm must be of the same kind or in the same class as the other types of harm described in the statute. *See State v. Anderson*, 370 N.W.2d 703, 706 (Minn. App. 1985) (explaining the doctrine of *ejusdem generis*, which provides that general words are construed to be restricted in their meaning by preceding words), *review denied* (Minn. Sept. 19, 1985). The state argues that the jury could have reasonably concluded that the victim’s injuries constituted great bodily harm because they created either a high probability of death or constituted other serious bodily harm. The state’s argument is persuasive.

There is no dispute that appellant assaulted the victim. By appellant’s own account of the facts, appellant pointed a gun at the victim, and the gun discharged a bullet into the victim’s face. According to the victim’s medical records, which were admitted into evidence at trial, the bullet entered the victim’s left cheek and exited out the right side of his neck. The evidence indicates that the victim lost a “massive amount of blood” at the scene and had difficulty breathing. The victim aspirated blood into his lungs and required intubation and ventilation. The victim also suffered multiple facial fractures and was hospitalized for four days. It took him “a couple months” to recover from his injuries.

Based on the deputy's reported observation and assessment of the victim's condition at the scene, the length of the victim's hospital stay and recovery, and the victim's medical records, the jury could reasonably conclude that appellant caused great bodily harm. That the victim promptly received first aid and was airlifted to a hospital, thereby minimizing the effects of his injuries, does not mitigate their severity.

Appellant argues that the deputy's observations of the victim's condition at the scene are important for "determining the type of aid to be requested," but not for determining whether the injuries suffered by the victim constituted great bodily harm. Appellant provides no authority to support such a limited application of Deputy McCarty's testimony, and no such limitation was requested at trial.

Finally, appellant cites *State v. Gerald*, 486 N.W.2d 799 (Minn. App. 1992), arguing that a defendant who commits a serious assault can avoid a conviction of first-degree assault if the victim is fortunate enough to escape serious injury. In *Gerald*, the victim, a cab driver, was assaulted by passengers in his cab when the passengers held a knife to the victim's neck and robbed him. *Id.* at 801. As a result of the assault, the victim had small cuts to the back of his neck and his ear. *Id.* The victim was admitted to the hospital, and an examination revealed no serious nerve damage, blood vessel injuries, or fractures. *Id.* One of the knife wounds was closed with two stitches and the other was allowed to heal naturally. *Id.* The victim was discharged from the hospital after one day. *Id.* In reversing Gerald's conviction of first-degree assault, this court held that, "[u]nder the plain language of [Minn. Stat. § 609.02, subd. 8 (1990)], the injury itself must be life-threatening." *Id.* at 802. It was not sufficient that an expert testified that the victim could

have sustained serious injuries had the knife cut a major vein near the cut on the victim's ear. *Id.* "The fact that a lesser injury is located near a major organ or vessel and therefore could have been more serious is not sufficient to satisfy the statute." *Id.*

But in this case, the victim's injuries were much more severe than a small cut to the back of the neck and ear. The victim required four days of hospitalization, including three days in intensive care. The testimony also established that the victim lost a considerable amount of blood and was in such a dire medical condition that Deputy McCarty believed that he required an airlift by a trauma helicopter.

We hold that the jury, viewing the evidence in the light most favorable to the conviction, acting with due regard for the presumption of innocence, could reasonably conclude that appellant inflicted great bodily harm upon the victim based on the victim's condition at the scene, the nature and extent of his injuries, the hospitalization and treatment required, and the lengthy recovery period. Because the evidence was sufficient to establish other serious bodily harm, we do not address the state's claim that the victim's injuries created a high probability of death.

Affirmed.

Dated: _____

The Honorable Michelle A. Larkin