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**STATE OF MINNESOTA
IN COURT OF APPEALS
A08-1172**

State of Minnesota,
Respondent,

vs.

Roy Tony Williams,
Appellant.

**Filed September 8, 2009
Affirmed
Shumaker, Judge**

Hennepin County District Court
File No. 27-CR-07-122901

Lori Swanson, Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101-2134; and

Michael O. Freeman, Hennepin County Attorney, Donna J. Wolfson, Assistant County Attorney, C-2000 Government Center, Minneapolis, MN 55487 (for respondent)

Marie L. Wolf, Interim Chief Appellate Public Defender, Suzanne M. Senecal-Hill, Assistant Public Defender, 540 Fairview Avenue North, Suite 300, St. Paul, MN 55104 (for appellant)

Considered and decided by Halbrooks, Presiding Judge; Lansing, Judge; and Shumaker, Judge.

UNPUBLISHED OPINION

SHUMAKER, Judge

In this appeal from convictions of domestic assault, appellant contends that the evidence was insufficient to prove that he committed assault by strangulation. We affirm.

FACTS

On November 8, 2007, Brooklyn Center police officer Mychal Johnson went to appellant Roy Tony Williams's home to investigate a report of domestic assault. There, he spoke with D.M., Williams's wife, and noticed that she had "several bruises and bumps on her face and head." Officer Johnson took photographs of D.M.'s injuries and tape-recorded his interview with her.

D.M. told Officer Johnson that Williams had repeatedly beaten, raped, and "chok[ed]" her, "grab[bed]" her and "pushed [her] head [in]to a wall." She said that Williams had threatened her life and that she was afraid of him.

The state charged Williams with criminal sexual conduct, domestic assault by strangulation, and terroristic threats. Both D.M. and Williams testified at the jury trial that followed. Williams admitted that he hit D.M. with his fist and grabbed her around the neck, but he denied choking her. D.M. testified that she did not recall telling Officer Johnson that Williams raped her, choked her, or threatened her life, and that she was so intoxicated she did not remember "half of the things [she] said" on the tape-recording, which was played for the jury.

In addition to D.M.'s testimony and her recorded statement, the state introduced photographs showing bruising and redness on D.M.'s neck, which Officer Johnson described in his testimony as looking "like marks from being choked."

The jury found Williams guilty of domestic assault by strangulation and a lesser-included offense of misdemeanor domestic assault, and not guilty of the remaining charges.

Williams contends that the evidence was insufficient to support a conviction of domestic assault by strangulation

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, is sufficient to allow the jurors to reach the verdict that they did. *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989). The reviewing court 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 reviewing 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 the defendant was guilty of the charged offense. *Bernhardt v. State*, 684 N.W.2d 465, 476-77 (Minn. 2004).

With credibility as the central, dispositive issue in this case, Williams argues that the evidence was insufficient for the jury to conclude beyond a reasonable doubt that he strangled D.M., as defined by Minn. Stat. § 609.2247, subd. 1(c) (2006). A person

commits domestic assault by strangulation if he “assaults a family or household member by strangulation.” *Id.*, subd. 2 (2006). Minnesota’s jury instructions provide that before Williams could be found guilty of domestic assault by strangulation, the state had to prove that he assaulted D.M. and that he did so by strangulation. 10 *Minnesota Practice*, CRIMJIG 13.132 (2006). “Strangulation” means intentionally impeding normal breathing or circulation of the blood by applying pressure on the throat or neck or by blocking the nose or mouth of another person. Minn. Stat. § 609.2247, subd. 1(c).

Certain key facts compel the conclusion that the evidence proved that Williams strangled D.M. as defined by the applicable statute. First, Williams admitted he grabbed D.M. by the neck, but he claimed that he did not “squeeze” her neck. He argues that this mere act of grabbing the neck did not constitute “strangulation” because it was impossible that D.M.’s normal breathing was restricted.

The record does not support Williams’s contention because the photographs of D.M.’s neck show that he applied sufficient pressure to leave visible marks. Furthermore, in her statement to Officer Johnson, which became part of the substantive evidence, D.M. stated three times that Williams was “choking me.” The ordinary definition of “choke” is “[t]o interfere with the respiration of by compression or obstruction of the larynx or trachea.” *The American Heritage Dictionary of the English Language* 337 (3d ed. 1992). The jury was entitled to draw an inference from the facts that Williams applied enough pressure to D.M.’s neck to impede her normal breathing, an act constituting strangulation under the applicable statute. *See State v. DeRosier*, 695

N.W.2d 97, 108 (Minn. 2005) (noting that jury may make reasonable inferences from facts presented).

Williams argues that D.M.'s testimony that he choked her is not credible because the verdicts of not-guilty demonstrate that the jury did not believe her, and she testified that she did not recall telling Officer Johnson that Williams had choked her. Although D.M.'s allegations of criminal sexual conduct and terroristic threats were supported solely by her statements, her allegation that Williams had choked her was corroborated by photographs showing marks on her neck. Furthermore, D.M. did not unequivocally deny the choking incident but rather testified that she did not recall telling Officer Johnson about it. D.M.'s original statement, coupled with corroborating physical evidence, permitted the jury reasonably to infer that Williams had in fact committed an act of strangulation.

Affirmed.