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Minn. Stat. § 480A.08, subd. 3 (2008).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A09-986**

State of Minnesota,
Respondent,

vs.

Jacob Andrew Curry,
Appellant.

**Filed May 4, 2010
Affirmed
Klaphake, Judge**

St. Louis County District Court
File No. 69DU-CR-08-4592

Vernon D. Swanum, St. Louis County Attorney's Office, Duluth, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Bradford W. Colbert, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Shumaker, Presiding Judge; Klaphake, Judge; and Peterson, Judge.

UNPUBLISHED OPINION

KLAPHAKE, Judge

On June 26, 2008, a large fight broke out in Duluth between members of the family of the victim, W.W., and a group of young adults that included appellant Jacob Andrew Curry. During the fight, appellant stabbed W.W. repeatedly with a knife. W.W.

underwent exploratory surgery that was deemed medically necessary¹ to evaluate the seriousness of the stab wounds to his torso and that resulted in a one-foot scar that runs the length of his abdomen, from the juncture of his ribs to his pubic bone. Appellant was charged with, tried, and convicted of first-degree assault under Minn. Stat. § 609.221, subd. 1 (2008). Appellant now argues that the surgical scar does not meet the statutory definition of great bodily harm, for purposes of proving first-degree assault, because it does not constitute serious permanent disfigurement, and because the scar was not inflicted by appellant. We disagree and affirm.

DECISION

For a first-degree assault conviction, the state was required to prove that appellant “inflict[ed] great bodily harm” on W.W. *Id.* “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 issue of whether a surgical scar can constitute permanent disfigurement has been addressed in prior case law. This court has concluded that long, visible, and permanent scars constitute “serious permanent disfigurement” within the meaning of the statute. In *State v. McDaniel*, 534 N.W.2d 290, 293 (Minn. App. 1992), *review denied*

¹ Consistent with the testimony of the trauma care surgeon, the court found that although a stab wound perforated W.W.’s peritoneum, pricked his liver, and leaked about ten ounces of blood into W.W.’s peritoneal cavity, the injury was not life threatening, although it necessitated surgery for proper evaluation of the wound.

(Minn. Sept. 20, 1995), this court upheld a first-degree assault conviction when the injuries to the victim included a highly visible six-centimeter scar on the front of the victim's neck and a two-thirds-of-an-inch scar on the victim's right center chest. In *State v. Currie*, 400 N.W.2d 361, 365-66 (Minn. App. 1987), *review denied* (Minn. Apr. 17, 1987), this court affirmed a first-degree assault conviction where the injuries to the victims involved numerous scars from whippings with an extension cord, even though the injuries were not life-threatening. And in *State v. Anderson*, 370 N.W.2d 703, 705-06 (Minn. App. 1985), *review denied* (Minn. Sept. 19, 1985), this court upheld a first-degree assault conviction based, in part, on injuries to the victim that included a scar that ran the length of the victim's upper body. By contrast, in *State v. Gerald*, 486 N.W.2d 799, 802 (Minn. App. 1995), this court ruled that two half-inch scars in the victim's ear and on the back of the victim's neck behind his ear, although disfiguring, were not permanently disfiguring because they were "relatively small and not particularly noticeable." The surgical scar W.W. suffered is permanently disfiguring for purposes of establishing great bodily harm, because it is visible, permanent, and runs the length of W.W.'s torso.

Appellant further argues that he did not "inflict" the injuries to W.W. because he did not personally cause W.W.'s surgical scar. In his view, the word "inflict" as used in the first-degree assault statute has a more narrow meaning than "cause" and requires appellant to have personally inflicted W.W.'s scar. This argument is not supported in our case law. In *Anderson*, which involved surgical repair of a lacerated liver after the victim was repeatedly kicked and stomped on, this court held the assailant responsible for causing the serious and permanently disfiguring surgical scar. 370 N.W.2d at 706; *see*

also State v. Larkin, 620 N.W.2d 335, 337 (Minn. App. 2001) (treating “inflict” and “cause” as synonymous in third-degree assault case); *State v. Livingston*, 420 N.W.2d 223, 227 (Minn. App. 1988) (upholding first-degree assault conviction when defendant urged his dog to attack and bite others). As the legislature has not acted to clarify the meaning of “inflict” since the word was first used in the assault statutes in 1891,² we will continue to construe the word in a manner that is consistent with existing precedent. Thus, W.W.’s foot-long scar was “inflicted” by appellant.

Affirmed.

² Minn. Gen. Stat. ch. 86, Title 9, § 6140 (1891).