STATE OF MINNESOTA
IN COURT OF APPEALS
A09-1724

State of Minnesota,
Respondent,

vs.

Danya Mandrell McKinnie,
Appellant.

Filed August 17, 2010
Affirmed
Collins, Judge[*]

Anoka County District Court
File No. 02-CR-08-3593

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

Robert M.A. Johnson, Anoka County Attorney, Kathryn M. Timm, Assistant County Attorney, Anoka, Minnesota (for respondent)

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

Considered and decided by Stoneburner, Presiding Judge; Hudson, Judge; and Collins, Judge.

[*] Retired judge of the district court, serving as judge of the Minnesota Court of Appeals by appointment pursuant to Minn. Const. art. VI, § 10.

U N P U B L I S H E D O P I N I O N

COLLINS, Judge

Appellant challenges his convictions of second-degree unintentional murder and third-degree assault, arguing that the evidence presented at the bench trial was insufficient to support findings of guilt beyond a reasonable doubt. Because we conclude that the district court's findings and verdict were supported by sufficient evidence, we affirm.

FACTS

On the morning of March 12, 2008, the victim was with friends, including V.N. and D.S. The three were homeless alcoholics. They gathered at a coffee shop where they stayed until about 8:00 a.m. They then went to a bar in northeast Minneapolis where they drank until shortly after the morning happy hour ended at 10:00 a.m. From there, the victim, V.N. and D.S. went to a hotel in Fridley. According to V.N. and D.S., by early afternoon they were not yet drunk, but were "on [the] way" to being drunk. When there was nothing left to drink, at approximately 8:30 p.m. V.N. and D.S. purchased two half-gallon bottles of vodka at a nearby liquor store and returned to the hotel, room 214, where the three continued drinking.

A few minutes before 11:00 p.m. a man was video recorded going to room 214 after leaving room 204. Room 204 was registered to appellant Danya McKinnie's fiancée. Both V.N. and D.S. testified that after they and the victim declined to purchase crack cocaine offered by the man, he hit V.N. over her left eye, knocking her out, and punched D.S. in his jaw and chest. According to D.S., the man also stole his wallet. D.S.

saw the man hit V.N. but did not see the man strike the victim. Because she was knocked unconscious, V.N. did not see the man strike either of the others. The man was video-recorded leaving room 214 at 11:08 p.m. and returning to room 204. V.N. later identified the man as McKinnie.

The three remained in room 214 after the incident. Although he did not notice if the victim had been injured, D.S. testified that when the victim got up to go to the bathroom he was "pretty drunk at that point." After the victim had been in the bathroom for a lengthy time, D.S. went there and discovered the victim face up on the floor with his feet pointed into the bathroom; he was pale and had blood coming out of the corner of his mouth and ears. D.S. called for an ambulance.

Initially, V.N. and D.S. did not tell the responding police officers and paramedics about the incident with the man from room 204. V.N. told officers that the injury to her eye was a result of a fall, and D.S. and V.N. both said they thought the victim had simply fallen. Officers observed what appeared to be blood in several places throughout the room, and one officer did not believe that the victim's injuries were consistent with a mere fall. The officer checked both V.N.'s and D.S.'s hands for injuries, and then sent D.S. to a detox center and arrested V.N. on an outstanding warrant. The victim was taken to the hospital.

At the hospital the victim's alcohol concentration was determined to be .296. The treating physician noted the traumatic injury to the victim's face and diagnosed him with a fractured nose and a massive subdural hematoma. The victim died at 4:32 p.m. on March 13, 2008.

Dr. Janis Amatuzio, a forensic pathologist and chief medical examiner for the county, performed an autopsy on the victim. The autopsy revealed a nasal fracture, black eye, pinpoint bruising in the lower lip, bruising of the mouth, bleeding in the muscles of the right shoulder, and bleeding in the skull. Although the black eye could have been caused by blood pooling in the tissue, and not an impact, Dr. Amatuzio concluded that the other bruising and injuries were caused by blunt-force trauma. On removing the victim's skull cap, Dr. Amatuzio observed an abnormal amount of blood pouring from the skull. The bleeding in the brain was determined to be the cause of death. Dr. Amatuzio opined that the fatal injury occurred when the brain "slosh[ed] back within the skull" after an accelerated fall, and not a simple fall.

Dr. Amatuzio noted that the alcohol concentration of the blood that poured from the skull was .101, which she correlated to the victim's alcohol concentration at the time of the injury. According to her, the difference between the victim's alcohol concentration at the time of the injury and the time of his hospital admission could have been due to the victim either continuing to drink after the injury or his body continuing to digest a large amount of alcohol consumed prior to the injury. Based on the nature and extent of the injuries and the type of head injury, Dr. Amatuzio recorded the death as a homicide.

In the course of investigation the police identified A.R. as a woman who had been present in room 204. When A.R. arrived at the hotel at approximately 10:00 p.m. with a man she was dating at the time, McKinnie and his fiancée were there. A.R. testified that McKinnie left the room for about ten to twenty minutes and returned with blood on his shirt and his hands. McKinnie then asked A.R. to drive him to a different hotel and she

did so. A.R. did not ask McKinnie why he had blood on him or why he needed to move to another hotel, but A.R. testified that McKinnie said he had been in a fight.

McKinnie was eventually arrested and charged. While in custody, McKinnie made several telephone calls that were recorded, and excerpts from four of those calls were played at trial. In a call made in May 2008, the following was recorded:

> [Voice 1]: They tryin', they're trying to put, they're trying to, you know what I'm saying? Like I said, they're trying to hit me with Second Degree Unintentional Murder. I didn't kill nobody, man. You know what I'm saying?
>
> [Voice 2]: But you did hit him, though, right?
>
> [Voice 1]: They said I hit . . . I hit, I hit the man twice.
>
> [Voice 2]: Okay.
>
> [Voice 1]: You know what I'm saying? I hit two other individuals.
>
> [Voice 2]: And two people?
>
> [Voice 1]: Yeah, you know what I'm saying? It was three individuals, and it was me.
>
> [Voice 2]: So it was you against them two.
>
> [Voice 1]: Them three.
>
> (Inaudible)
>
> . . . .
>
> [Voice 1]: No, it was just, you know what I'm saying, all in the same scenario.
>
> [Voice 2]: Oh, okay.
>
> [Voice 1]: And you know what I'm saying, I walked out of the scenario.
>
> [Voice 2]: So you were going against them two.

(Inaudible)

[Voice 1]: Yeah. It was three individuals against me, daddy.

[Voice 2]: It was three?

[Voice 1]: Three.

[Voice 2]: Damn.

. . .

[Voice 1]: I'm waiting on my lawyer. I'm waiting to hear from my lawyer, whatnot.

[Voice 2]: He didn't say nothin' about it?

[Voice 1]: He's waiting on the prosecutors, cause he trying to see what kind of plea they come in with or whatnot because, like I told them, you know what I'm saying, I'll take full responsibility for anything that I did, okay? I fought those individuals. You know what I'm saying? But so far you alls trying to say I killed this man. I didn't do that.

In a July 2008 call McKinnie stated, "Like the evidence shows, you know what I'm saying, well, I told them, where I hit the dude, that's where they found most of the blood or whatnot from me busting his nose." In another call McKinnie admitted to knocking out three people, and in subsequent calls McKinnie repeatedly referred to three people that were present in a "drug deal gone wrong."

Following a bench trial, supported by written findings of fact and memorandum of law, the district court convicted McKinnie of second-degree unintentional murder based on felony assault, Minn. Stat. § 609.19, subd. 2(1) (2006), and third-degree assault, Minn. Stat. § 609.223, subd. 1 (2006). McKinnie was acquitted of charges of robbery and second-degree unintentional murder based on robbery. This appeal followed.

D E C I S I O N

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 a light most favorable to the conviction, was sufficient to permit the [fact-finder] to reach the verdict which [it] did." *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989). The reviewing court must assume that the fact-finder "believed the state's witness 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 fact-finder, acting with due regard for the presumption of innocence and the requirement of proof beyond a reasonable doubt, could reasonably conclude that the defendant is guilty of the charged offense. *Bernhardt v. State*, 684 N.W.2d 465, 476-77 (Minn. 2004). The principle that this court does not reweigh evidence applies whether the trier of fact is a jury or the court. *State v. Franks*, 765 N.W.2d 68, 73 (Minn. 2009).

In order to be convicted of second-degree murder, McKinnie must have been found, beyond a reasonable doubt, to have "cause[d] the death of a human being, without intent to effect the death of any person, while committing or attempting to commit a felony offense." Minn. Stat. § 609.19, subd. 2(1). The district court found McKinnie guilty of unintentionally causing the death of another human being while committing third-degree felony assault. In order to be guilty of third-degree felony assault, McKinnie must have intentionally inflicted substantial bodily harm on the victim. Minn. Stat. § 609.223, subd. 1. Substantial bodily harm is defined in the pattern jury instructions as "bodily harm that involves a temporary but substantial disfigurement, causes a temporary

but substantial loss or impairment of the function of any bodily member or organ, or causes a fracture of any bodily member." 10 *Minnesota Practice* CRIMJIG, 13.16 (2008) (citing Minn. Stat. § 609.02, subd. 7a (2006)). In order to prove substantial bodily harm, the state need not prove that the "defendant intended to inflict substantial bodily harm, but only that the defendant intended to commit the assault." *Id.*

Felony Assault

McKinnie first argues that the district court erred in finding that he ever "hit, or even touched" the victim. According to McKinnie, the district court's finding of fact that he hit the victim in the face was clear error because it is without record support. McKinnie bases this argument on the fact that neither V.N. nor D.S. saw him hit the victim. The evidence presented at trial supporting the district court's determination that McKinnie hit the victim in the face causing injury includes (1) the testimony by V.N. and D.S. that the proposed drug sale turned violent, (2) the injuries documented by Dr. Amatuzio that were determined to be caused by blunt-force trauma, (3) Dr. Amatuzio's testimony that the victim's injuries were not consistent with a simple fall, (4) the testimony by V.N. and D.S. that they did not observe any injuries to the victim before finding him unconscious on the floor, (5) A.R.'s testimony that McKinnie told her he had been in a fight, (6) the blood observed on McKinnie's hands and clothing, and (7) the taped telephone conversations in which McKinnie admitted that he hit all three occupants of room 214 and "bust[ed]" one's nose. The fact that neither V.N. nor D.S. could testify to seeing McKinnie strike the victim does not preclude a finding beyond a reasonable doubt that he did so.

McKinnie argues that the evidence is insufficient to support a determination that he assaulted the victim because a conviction based on circumstantial evidence will be upheld only if the reasonable inferences drawn from the evidence are "consistent with the hypothesis that the accused is guilty and inconsistent with any rational hypothesis other than guilt." *State v. Leake*, 699 N.W.2d 312, 319 (Minn. 2005). But admissions by a defendant, "direct or implied, of facts tending to establish guilt" constitute direct and not circumstantial evidence. *See State v. Weber*, 272 Minn. 243, 254, 137 N.W.2d 527, 535 (1965). Here, McKinnie's recorded telephone conversations contain his admissions that he hit all three people in room 214, and that he hit one person in the face breaking his nose. It is reasonably apparent that the admission to breaking someone's nose refers to the victim, but even were we to read the transcript of the statement in isolation to be ambiguous as to who McKinnie was referring to, the circumstantial evidence supports the district court's conclusion that this admission was in reference to the victim. The victim was the only person in room 214 whose nose was broken.

Based on McKinnie's recorded admissions, the video evidence of McKinnie leaving room 204 and going to room 214, the physical evidence that someone assaulted the victim, the blood observed on McKinnie's person when he returned to room 204, his statement to A.R. that he had been in a fight, and the testimony of D.S. that McKinnie was the man who assaulted him and V.N. after proposing the drug sale, we conclude that the district court's determination that McKinnie committed third-degree assault against the victim is supported by sufficient evidence.

Second-Degree Murder

McKinnie argues that, even if this court concludes there was sufficient evidence to support his assault conviction, the evidence was nonetheless insufficient to support the district court's determination that the assault was the cause of the victim's death. McKinnie argues that it is possible that the victim's fatal brain injury was caused by a later fall and cites the fact that the victim was allegedly prone to seizures. In the alternative, McKinnie argues that it is likely that the victim's brain injury occurred hours before their encounter because the victim's alcohol concentration at the time of the injury was .101 and it was .296 at the time of his hospital admission.

McKinnie argues that our review of the verdict requires stricter scrutiny because, where a case is based primarily on circumstantial evidence, the state has an obligation to exclude all reasonable inferences other than guilt. *State v. Hughes*, 749 N.W.2d 307, 312-13 (Minn. 2008). In a circumstantial-evidence appeal, in order for appellant to establish that there are reasonable inferences drawn from the evidence other than appellant's guilt, appellant must "point to evidence in the record that is consistent with a rational theory other than guilt." *State v. Tscheu*, 758 N.W.2d 849, 858 (Minn. 2008). But even when appellant can point to inconsistencies or conflicting evidence, inconsistencies in the state's case or possibilities of innocence do not require reversal so long as the evidence taken as a whole makes such theories seem unreasonable. *Id*. The supreme court has held that verdicts based on circumstantial evidence may warrant stricter scrutiny, but that appellate courts still "construe conflicting evidence in the light most favorable to the verdict and assume that the [fact-finder] believed the State's

witnesses and disbelieved the defense witnesses." *Id.* (citing *State v. Asfeld*, 662 N.W.2d 534, 546 (Minn. 2003)). While this case involves both direct and circumstantial evidence, we address in turn McKinnie's arguments that there are alternative and more rational explanations for the victim's death.

We first address McKinnie's argument that V.N.'s initial statement to the police that the victim was prone to seizures while drinking supports a conclusion that the fall was related to a seizure. At trial, however, when asked about her statement to police, V.N. stated that she did not remember telling police that the victim had seizures. V.N. testified that she had known the victim for four to five years, that they got together several times a week to drink, and that she never witnessed the victim have a seizure. According to V.N., it was she who was prone to seizures while drinking and not the victim. D.S. also testified that he never witnessed the victim have a seizure, even when the victim had been extremely intoxicated. The evidence viewed in the light most favorable to the verdict, including the medical testimony that the injury was caused by an accelerated fall, permitted the district court to credit V.N.'s sober testimony at trial and discredit what the police may have understood her to have said in her intoxicated state. *See Dale v. State*, 535 N.W.2d 619, 623 (Minn. 1995) (holding credibility determinations are made by the fact finder).

McKinnie argues that the evidence also supports an equally rational conclusion that the victim sustained the brain injury prior to their encounter. McKinnie relies on the statement by D.S., given while at a detox center, that D.S. and the victim were involved in an altercation at a liquor store the night of the incident. At trial, however, D.S.

testified that he went to the liquor store with V.N., not the victim. This testimony was corroborated by V.N., who testified that she and D.S. went to the liquor store together, and was further corroborated by the security camera footage showing a person wearing V.N.'s coat leaving there with D.S. V.N. testified that the victim had fallen asleep and she and D.S. had to wake him when they returned from the store with the vodka. In light of this testimony and video surveillance, McKinnie's argument that evidence supports a conclusion that the victim engaged in an altercation at the liquor store is untenable.

In the alternative, McKinnie argues that, even if the victim was not at the liquor store, the evidence nonetheless supports a conclusion that the victim's brain injury must have occurred hours prior to their encounter. To reach such conclusion, McKinnie extrapolates from the difference between the victim's alcohol concentration at the time of the injury, .101, and his alcohol concentration when he was received at the hospital, .296. But Dr. Amatuzio testified that the difference could have been due to the victim consuming a lot of alcohol shortly before receiving the injury and his body continuing to absorb the alcohol while he was alive after the injury occurred. This explanation fits with the evidence that V.N. and D.S. had returned from the liquor store with a gallon of vodka and woke the victim more than an hour before McKinnie's arrival at room 214. The inference is reasonable that V.N., D.S., and the victim resumed their consumption of copious amounts of alcohol until just prior to the assault. And the facts are consistent with Dr. Amatuzio's testimony that "[i]n all likelihood, [the victim] had a fair amount to drink just before this injury occurred."

Finally, the evidence provides ample support for the district court's determination that the fatal brain injury resulted from an accelerated fall sustained during the assault. Dr. Amatuzio testified that, taking all of the victim's injuries into account, in her opinion "this can only be caused by an assault; by a series of injuries which resulted in a fall which resulted in the bleeding into his brain." While Dr. Amatuzio testified that it was "possible" that the brain injury could have come from a mere fall, she testified that the injury was "more consistent with an accelerated fall" and it was her opinion that the victim's death resulted from an accelerated fall that caused an impact to the left side of his head which, in turn, caused his brain to rebound and severely injure the right side of the brain. Dr. Amatuzio testified that the injury to the right anterior chest wall could have been "a marker . . . for placing [the victim]'s body in motion and causing it to impact on the left side of his ear." In the alternative, the blunt-force trauma to the right side of the head could have "accelerated the head into a fall causing it to impact, leaving the bruise on the left ear, causing the brain to move within the skull and cause the bleeding." Although Dr. Amatuzio could not determine exactly which of the external injuries related to the accelerated fall, or if the victim was merely pushed, she testified to her opinion "to a reasonable degree of medical certainty" that the victim's brain injury was caused by an assault and an accelerated fall, resulting in his death.

Affirmed.