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**STATE OF MINNESOTA
IN COURT OF APPEALS
A10-1535**

In the Matter of the Welfare of:
W.O.

**Filed April 5, 2011
Affirmed
Randall, Judge***

Hennepin County District Court
File No. 27-JV-09-12755

David W. Merchant, Chief Appellate Public Defender, Susan Andrews, Assistant Public Defender, St. Paul, Minnesota (for appellant W.O.)

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

Michael O. Freeman, Hennepin County Attorney, Lee W. Barry, Assistant County Attorney, Minneapolis, Minnesota (for respondent state)

Considered and decided by Ross, Presiding Judge; Connolly, Judge; and Randall, Judge.

UNPUBLISHED OPINION

RANDALL, Judge

W.O. appeals from his delinquency adjudication for third-degree assault, challenging the sufficiency of the evidence. The record contains support for the district

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

court's finding that the injuries the victim sustained amounted to substantial bodily harm. We affirm.

FACTS

On the morning of October 27, 2009, Troy Wellington, an associate educator at Edison High School, was working in the cafeteria. A fight erupted and Wellington responded by attempting to separate two students he saw fighting. Wellington identified one of the students as W.O. When the other student fell down, W.O. picked up a chair and swung it down, striking Wellington in the back of the head. Wellington restrained W.O. and escorted him to the dean's office.

While at the dean's office, Wellington noticed that the back of his head was wet with blood. He went to the nurse's office where a photograph was taken of his injury and his head was bandaged. Wellington then went to the hospital and was treated for his injury. He reported mild discomfort around the site of the head wound. An examination indicated that he suffered from a deep laceration to the posterior scalp that was five and a half centimeters in length and a smaller, parallel laceration two centimeters in length. The lacerations were closed with a total of eleven staples, and a second photograph was taken after the staples were in place.

The state charged W.O. with fifth- and third-degree assault. After a bench trial, W.O. was adjudicated delinquent of third-degree assault in violation of Minn. Stat. § 609.223 (2008). W.O. appeals, challenging the sufficiency of the evidence on the district court's finding on substantial bodily harm.

DECISION

When considering a challenge to the sufficiency of the evidence, our 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). “On appeal from a determination that each of the elements of a delinquency petition have been proved beyond a reasonable doubt, an appellate court is limited to ascertaining whether, given the facts and legitimate inferences, a fact-finder could reasonably make that determination. *In re Welfare of T.N.Y.*, 632 N.W.2d 765, 768 (Minn. App. 2001) (quotation omitted). The juvenile bears the burden of showing that the fact-finder could not reasonably find that he committed the alleged acts. *In re Welfare of T.M.V.*, 368 N.W.2d 421, 423 (Minn. App. 1985).

The district court found beyond a reasonable doubt that Wellington’s injuries amounted to substantial bodily harm. W.O. challenges the sufficiency of the evidence, asserting that based on the evidence, no rational fact-finder could conclude that Wellington’s injury constituted substantial bodily harm.

Third-degree assault is committed by “[w]hoever assaults another and inflicts substantial bodily harm.” Minn. Stat. § 609.223, subd. 1. “Substantial bodily harm” is an “injury which involves a temporary but substantial disfigurement, or which causes a temporary but substantial loss or impairment of the function of any bodily member or organ, or which causes a fracture of any bodily member.” Minn. Stat. § 609.02, subd. 7a (2008).

The record indicates that Wellington suffered a substantial injury to his head. Head wounds carry the extra risks of concussion, minute skull fracture, or brain damage that are not always immediately apparent. Wellington sustained a deep laceration to the scalp five and a half centimeters in length and a second, parallel laceration two centimeters in length; the injury caused large amounts of bleeding; and the lacerations required a total of eleven staples. On this record, the district court could reasonably find that Wellington suffered substantial bodily harm.

Injuries of similar severity, as well as those less severe, have amounted to substantial bodily harm. *See In re Welfare of T.C.J.*, 689 N.W.2d 787, 793 (Minn. App. 2004) (holding fractured jaw constituted substantial bodily harm); *State v. Waino*, 611 N.W.2d 575, 579 (Minn. App. 2000) (stating fractured ribs amounts to substantial bodily harm); *State v. Witucki*, 420 N.W.2d 217, 221 (Minn. App. 1998) (holding one broken finger is substantial bodily injury), *review denied* (Minn. Apr. 15, 1998); *State v. Carlson*, 369 N.W.2d 326, 327-28 (Minn. App. 1985) (holding two black eyes, a bloody nose, bruises, and scratches, constitutes substantial bodily harm), *review denied* (Minn. July 26, 1985).

W.O. also claims that the evidence is insufficient because no evidence was presented that the injury would result in a scar, yet the district court referenced *State v. Harlin*, 771 N.W.2d 46, 51 (Minn. App. 2009), in which the victim sustained a scar on the head, and stated that the likelihood of a scar “is almost certain.” W.O. correctly asserts that the state did not present evidence on whether this injury would cause scarring. But the district court’s statement about likely scarring was not controlling on its finding

on substantial bodily harm. An “injury which involves a temporary but substantial disfigurement” is a substantial bodily injury. Minn. Stat. § 609.02, subd. 7a. The evidence the state presented on Wellington’s injury was sufficient for the district court to reasonably conclude that he suffered substantial bodily harm in the form of a temporary but substantial disfigurement.

Affirmed.