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Minn. Stat. § 480A.08, subd. 3 (2010).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-131**

State of Minnesota,
Respondent,

vs.

Michael John Crillo,
Appellant.

**Filed January 3, 2012
Affirmed
Kalitowski, Judge**

Nicollet County District Court
File No. 52-CR-09-142

Lori Swanson, Attorney General, John B. Galus, Assistant Attorney General, St. Paul, Minnesota; and

Michael K. Riley, Sr., Nicollet County Attorney, St. Peter, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Roy G. Spurbeck, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Kalitowski, Presiding Judge; Minge, Judge; and Ross,
Judge.

UNPUBLISHED OPINION

KALITOWSKI, Judge

Appellant Michael Crillo challenges his conviction of first-degree assault arguing that the evidence presented at trial was insufficient as a matter of law to establish that the victim suffered “great bodily harm” under Minn. Stat. § 609.02, subd. 8 (2008). We affirm.

DECISION

On a challenge to the sufficiency of the evidence, our review is limited to an analysis of the record to determine whether the evidence, when viewed in the light most favorable to the conviction, is sufficient to allow the fact-finder to reach the verdict that it did. *State v. Caine*, 746 N.W.2d 339, 356 (Minn. 2008). The same standard of review is applied to bench trials and jury trials. *State v. Cox*, 278 N.W.2d 62, 65 (Minn. 1979). We assume that the fact-finder believed the state’s witnesses and disbelieved evidence to the contrary. *State v. Moore*, 438 N.W.2d 101, 108 (Minn. 1989). We 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 was guilty of the charged offense. *State v. Alton*, 432 N.W.2d 754, 756 (Minn. 1988).

Assault in the first degree requires that a person assault another and inflict “great bodily harm.” Minn. Stat. § 609.221, subd. 1 (2008). The term “great bodily harm” means “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. “Bodily harm” means “physical pain or injury, illness, or any impairment of physical condition.” *Id.*, subd. 7 (2008).

At trial, appellant stipulated to facts that would essentially prove he committed third-degree assault, including that (1) appellant was incarcerated in the Nicollet County jail on July 16, 2009; (2) a dispute arose between appellant and a fellow inmate; (3) appellant intentionally punched the victim one time; and (4) as a result, the victim’s jaw was broken. See Minn. Stat. § 609.223, subd. 1 (2008) (defining assault in the third degree). Thus, the primary dispute at trial was whether the victim’s injuries were serious enough to constitute “great bodily harm” under the first-degree assault statute. After a bench trial, the district court concluded that the assault caused “great bodily harm” because (1) the victim suffers from permanent or protracted nerve damage on the left side of his face, and (2) the victim lost a wisdom tooth.

Appellant cites *State v. Gerald*, 486 N.W.2d 799, 802 (Minn. App. 1992), and argues that a victim’s facial numbness falls short of great bodily harm because it does not *fully* impair any bodily function. The evidence at trial demonstrated that appellant broke the victim’s jaw “through and through” and damaged a nerve along the victim’s jaw. The victim reported numbness immediately after the assault and continues to suffer from numbness on the left side of his face. An oral surgeon testified that because the victim has not yet regained sensation, the nerve damage is likely to be permanent.

In addition, the victim testified that the numbness in his cheek and lip causes actual impairment of bodily functions and routine tasks. Specifically, he has difficulty

drinking liquids and eating large foods and he occasionally drools or bites the inside of his lip when drinking or chewing. Also, the numbness impairs the victim's ability to shave and affects his speech. We conclude that the injuries here are distinguishable from *Gerald*, where the victim suffered two small cuts and experienced a "tightening or sensation" when he yawned or chewed. 486 N.W.2d at 802. In *Gerald*, we concluded that the victim did not suffer great bodily harm because the victim's injuries did not impair "bodily functions such as hear[ing], chew[ing], eat[ing] or breath[ing]." *Id.* Here, the evidence supports the district court's conclusion that the victim's loss of sensation has impaired his ability to eat, drink, and perform routine tasks.

The district court also found that the victim's head injuries caused by the punch required four stitches and numerous staples. And the victim was required to undergo two surgeries to treat the jaw fracture, after which his jaw was wired shut for six weeks, causing the victim pain and preventing him from eating solid food. In addition, the district court found that the assault caused the victim to lose a wisdom tooth because the tooth was located near the victim's fracture site and the fracture caused the tooth to become loose and unstable. The evidence amply supports these findings.

Appellant argues that the loss of a wisdom tooth is insufficient because wisdom teeth are not essential to a person's ability to eat, as evidenced by the fact that wisdom teeth are routinely removed for health reasons. We agree that the loss of a tooth does not necessarily amount to great bodily harm. *See State v. Moore*, 699 N.W.2d 733, 737 (Minn. 2005) (holding that whether the loss of a tooth constitutes great bodily harm is within the province of the fact-finder). But here, the district court carefully reviewed all

of the evidence, made findings, and issued a thorough, well-reasoned order that supported the verdict.

Viewing the evidence in the light most favorable to the verdict, we conclude that the district court did not err because the evidence supports a conclusion that the totality of the victim's injuries, including a shattered jaw, nerve damage, and the lost wisdom tooth, constitute "great bodily harm."

Affirmed.