STATE OF MINNESOTA
IN COURT OF APPEALS
A12-1352

State of Minnesota,
Respondent,

vs.

Duane Gary Nyquist,
Appellant.

Filed May 28, 2013
Affirmed
Bjorkman, Judge

Itasca County District Court
File No. 31-CR-11-2850

Lori Swanson, Attorney General, James B. Early, Assistant Attorney General, St. Paul, Minnesota; and

John J. Muhar, Itasca County Attorney, Grand Rapids, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Bridget Kearns Sabo, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Smith, Presiding Judge; Schellhas, Judge; and Bjorkman, Judge.

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

BJORKMAN, Judge

Appellant challenges the sufficiency of the evidence supporting his conviction of second-degree assault, arguing that the bar stool he used to commit the assault is not a dangerous weapon. We affirm.

FACTS

On October 2, 2011, appellant Duane Nyquist and a female friend went to a bar in Bovey. K.L. and the bartender were the only other people in the bar that evening. Approximately an hour later, K.L. and Nyquist's friend got into a verbal altercation during which K.L. called her a "b-tch" and told her to "shut up." Nyquist confronted K.L. about this exchange, threw him to the ground, and hit him in the head and upper body with a bar stool several times. K.L. testified that he did not know how he ended up on the floor but recalled Nyquist jabbing the bar stool up and down toward his face four or five times. The bartender testified that Nyquist hit K.L. with the bar stool "[t]hree or four times or more" before throwing the bar stool at K.L. and running out of the bar.

K.L. suffered injuries as a result of the assault, including a chin laceration that required seven or eight stitches; a swollen, blackened eye; a bloody nose; bruising and scrapes on his arm; and a mark on his back. Investigating police chief William Hollom testified that K.L.'s shirt was bloody and that the marks on K.L.'s body were consistent with the legs of a bar stool.

Respondent State of Minnesota charged Nyquist with both second-degree assault (dangerous weapon) and fifth-degree assault. The jury found Nyquist guilty as charged. This appeal follows.

D E C I S I O N

In considering a challenge to the sufficiency of the evidence, we carefully analyze 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). We 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). We will not disturb a 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).

A person commits second-degree assault if he "assaults another with a dangerous weapon." Minn. Stat. § 609.222, subd. 1 (2010). A "dangerous weapon" is defined, in relevant part, as a "device or instrumentality that, in the manner it is used or intended to be used, is calculated or likely to produce death or great bodily harm." Minn. Stat. § 609.02, subd. 6 (2010). Great bodily harm is "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." *Id.*, subd. 8 (2010).

Ordinary objects can be transformed into dangerous weapons if they are used in a manner calculated or likely to cause great bodily harm. *State v. Coauette*, 601 N.W.2d 443, 447 (Minn. App. 1999), *review denied* (Minn. Dec. 14, 1999); *see, e.g.*, *State v. Trott*, 338 N.W.2d 248, 252 (Minn. 1983) (holding that a three-foot-long board used to beat a young child is a dangerous weapon); *State v. Upton*, 306 N.W.2d 117, 117-18 (Minn. 1981) (holding that a pool cue swung like a baseball bat at a victim's head constitutes a dangerous weapon); *State v. Cepeda*, 588 N.W.2d 747, 749 (Minn. App. 1999) (holding that a beer bottle thrown at a victim's head is a dangerous weapon). Even hands and feet may constitute dangerous weapons if their use is calculated or likely to cause great bodily harm. *State v. Davis*, 540 N.W.2d 88, 90-91 (Minn. App. 1995) (citing *State v. Born*, 280 Minn. 306, 308, 159 N.W.2d 283, 284-85 (1968)), *review denied* (Minn. Jan. 31, 1996).

Nyquist argues that the evidence is insufficient to prove that he used the bar stool as a dangerous weapon. We disagree. K.L. and the bartender testified that Nyquist hit K.L. with the bar stool three to five times while K.L. was lying on his back on the ground. The majority of K.L.'s injuries were to his face and the arm he was using to protect himself, which indicates that Nyquist aimed for K.L.'s head. K.L. testified that Nyquist was pushing the bar stool up and down toward his face and that "it could have been worse" if he had not been able to protect himself with his hands and feet. On this record, the jury could reasonably conclude that Nyquist's repeated use of the bar stool to strike K.L. in the head was calculated or likely to cause great bodily harm.

Nyquist also contends that K.L.'s injuries were not serious enough to prove that he used the bar stool in a manner that was calculated or likely to cause great bodily harm. But whether an object constitutes a dangerous weapon does not turn on the severity of the victim's injuries. *State v. Basting*, 572 N.W.2d 281, 285 (Minn. 1997). Rather, the question is whether Nyquist's use of the bar stool was calculated or likely to cause "great bodily harm," which includes not only life-threatening injury and serious permanent disfigurement but also "other serious bodily harm." Nyquist's repeated blows to K.L.'s face caused lacerations, bruising, and a bloody nose. And these direct blows could easily have produced more substantial injuries like scarring and loss of consciousness, both of which have been found to constitute great bodily harm. *See State v. Jones*, 266 N.W.2d 706, 710 (Minn. 1978) (unconsciousness in combination with numbness, dizziness, and headaches); *State v. McDaniel*, 534 N.W.2d 290, 293 (Minn. App. 1995) (scarring), *review denied* (Minn. Sept. 20, 1995). Based on our careful review of the record, we conclude that ample evidence supports the jury's finding that the bar stool Nyquist used to commit the assault is a dangerous weapon.

Affirmed.