

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

---

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RASHIDA MORGAN,

Defendant-Appellant.

---

UNPUBLISHED

November 23, 2010

No. 294591

Eaton Circuit Court

LC No. 09-020087-FC

Before: M.J. KELLY, P.J., and K.F. KELLY and BORRELLO, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of armed robbery, MCL 750.529, and was sentenced as a fourth habitual offender, MCL 769.12, to serve 126 to 300 months' imprisonment. Defendant appeals as a matter of right. For the reasons set forth in this opinion, we affirm the conviction and sentence of defendant. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Defendant's conviction arises from her theft of a television from a Walmart store on March 10, 2009. Because defendant was unable to produce a receipt showing she paid for the television as she exited the store, a Walmart security employee followed her into the parking lot and repeatedly asked her to show a receipt for the purchase. Defendant refused and then turned around and sprayed the employee directly in the face with a substance later determined to be pepper spray. The employee dropped to his knees in pain and was blinded for several hours. The injury required medical attention, and he was transported to the hospital to have his eyes flushed. He also reported extreme pain, trouble breathing and did not have vision for approximately three hours. He also testified that as a result of being hit by the pepper spray, he had suffered a small burn pinhole in his right eye. Defendant was arrested a short time later at a store across the street where she fled with two other women who had accompanied her to the Walmart and were involved in the scheme to steal the television.

At trial, the jury heard a recording of defendant's interview with police in which she admitted stealing the television but denied spraying the employee with pepper spray.

On appeal, defendant argues there was insufficient evidence to convict her because pepper spray does not constitute a dangerous weapon within the meaning of the armed robbery statute.

In reviewing a sufficiency of the evidence claim, an appellate court must apply a de novo standard. *People v Hawkins*, 245 Mich App 439, 457; 628 NW2d 105 (2001). Further, “when determining whether sufficient evidence has been presented to sustain a conviction, a court must view the evidence in a light most favorable to the prosecution and determine whether any rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt.” *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992).

Due process prohibits a criminal conviction unless the prosecution establishes guilt of the essential elements of a criminal charge beyond a reasonable doubt. *People v Johnson*, 460 Mich 720, 723; 597 NW2d 73 (1999). To convict a defendant of armed robbery, the prosecution is required to prove that: (1) defendant assaulted another person; (2) during a felonious taking of property from the victim’s person or presence; and (3) while the defendant is armed with a dangerous weapon as described in the statute. MCL 750.529; *People v Norris*, 236 Mich App 411, 414; 600 NW2d 658 (1999). Defendant’s sole challenge on appeal is that there was insufficient evidence to prove the third element.

The term “dangerous weapon” is not defined in the armed robbery statute. MCL 750.529; *Norris*, 236 Mich App at 414. Whether an object is a dangerous weapon depending on its characteristics and how it is used. *People v Barkley*, 151 Mich App 234, 238; 390 NW2d 725 (1986). Further, a dangerous weapon is any object that the defendant uses as a weapon and is capable of causing death or serious injury. *Norris*, 236 Mich App at 415. The determination of whether the object is a dangerous weapon under the circumstances is a question for the jury. *Id.*

Defendant argues that the pepper spray used in this case does not constitute a dangerous weapon because it was not capable of causing a serious physical injury. We find this Court’s analysis in *Norris* to be instructive in the instant case. In *Norris*, the defendant robbed a jewelry store using tear gas. *Norris*, 236 Mich App at 412-413. On appeal, the defendant argued there was insufficient evidence to prove that the tear gas sprayed on store employees constituted a dangerous weapon within the meaning of the armed robbery statute. *Id.* at 413. This Court disagreed. *Id.* The victims testified that they experienced temporary physical injuries that required immediate medical treatment; the injuries included severe eye pain, burning sensations, and loss of breath. *Id.* at 418. This Court concluded that the evidence was sufficient for a reasonable jury to conclude that the tear gas was a dangerous weapon within the meaning of the armed robbery statute. *Id.* at 419. In *Norris* we stated:

The armed robbery statute does not define the term “dangerous weapon.” MCL 750.529; MSA 28.797; *People v Velasquez*, 189 Mich App 14, 17; 472 NW2d 289 (1991). However, “whether an object is a dangerous weapon depends upon the object itself and how it is used.” *People v Barkley*, 151 Mich App 234, 238; 390 NW2d 705 (1986). Further, a dangerous weapon has been described as either (1) a weapon designed to be dangerous and capable of causing death or serious injury<sup>3</sup> (e.g., a loaded gun) or (2) any other object capable of causing death or serious injury that the defendant used as a weapon (e.g., a screwdriver used as a knife). See CJI2d 18.1; *Barkley*, *supra*, see, also, *People v Goolsby*, 284 Mich 375, 378; 279 N.W. 867 (1938) (a dangerous weapon within the meaning of the felonious assault statute, MCL 750.82; MSA 28.277, is one that is deadly or capable of inflicting serious injury). Whether an object is a dangerous weapon under the circumstances of the case is a question for the factfinder. *Barkley*,

*supra* at 238, n 1; *People v McCadney*, 111 Mich App 545, 550; 315 NW2d 175 (1981); see, also, *People v Jolly*, 442 Mich. 458, 470; 502 NW2d 177 (1993) (“the factfinder must be permitted to determine the existence of a dangerous weapon . . .”). *Norris*, 236 Mich App at 414-415.

In this case, the jury, being properly instructed on what constitutes a dangerous weapon, could reasonably have concluded that the pepper spray used by defendant constituted a dangerous weapon. Further, we are not persuaded by defendant’s attempt to distinguish *Norris* from the instant case. Defendant used the pepper spray on the security employee as she was attempting to flee the store location with the stolen television. She sprayed him directly in the eyes, nose, and mouth, resulting in the afore-described injuries. Regardless of the potency of the chemical concoction, these injuries are identical to those described in *Norris*, 236 Mich App at 418.

We further reject defendant’s argument that the prosecution failed to present sufficient evidence to sustain a conviction where a permanent injury was not proven beyond a reasonable doubt. There is no requirement that the injuries suffered by the victim be permanent. *Norris*, 236 Mich App at 418, 419 n 6.

Defendant also summarily asserts that there was insufficient evidence to prove that she attempted to communicate the existence of a dangerous weapon. However, defendant fails to cite any authority for this assertion. Accordingly, this issue was not properly presented for appellate review and, therefore, is considered waived. See *People v Kelly*, 231 Mich App 627, 640-641; 588 NW 2d 480 (1998) (“An appellant may not merely announce [her] position and leave it to this Court to discover and rationalize the basis for [her] claims, nor may [she] give only cursory treatment with little or no citation of supporting authority”). In any event, defendant communicated the existence of the dangerous weapon by actually using the pepper spray on the employee.

In sum, viewed in a light most favorable to the prosecution, the evidence was sufficient to support defendant’s conviction. *Wolfe*, 440 Mich at 515. The testimony and video evidence presented at trial offered a sufficient basis for a rational fact finder to conclude beyond a reasonable doubt that the pepper spray was a dangerous weapon.

Affirmed.

/s/ Michael J. Kelly  
/s/ Kirsten Frank Kelly  
/s/ Stephen L. Borrello