STATE OF MINNESOTA
IN COURT OF APPEALS
A19-2022

State of Minnesota,
Respondent,

vs.

Richmel Van Richards,
Appellant.

Filed November 9, 2020
Affirmed
Connolly, Judge

Hennepin County District Court
File No. 27-CR-19-8120

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Michael O. Freeman, Hennepin County Attorney, Linda M. Freyer, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Jessica Merz Godes, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Smith, Tracy M., Presiding Judge; Segal, Chief Judge; and Connolly, Judge.

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

CONNOLLY, Judge

Appellant challenges his conviction for second-degree assault with a dangerous weapon under Minn. Stat. § 609.222, subd. 1 (2019) arguing that the state failed to prove beyond a reasonable doubt that the knife appellant used in the assault was used in a manner calculated to produce death or great bodily harm. Because the record supports the jury's verdict, we affirm.

FACTS

At approximately 11:00 p.m. on April 2, 2019, A.J. (victim) left his apartment to pick up food from his cousin's (M.K.) girlfriend (H.A.) who was parked outside of the building. M.K. was inside A.J.'s apartment taking a shower. Surveillance footage from a nearby gas station shows that M.K. and appellant Richmel Van Richards had been in a physical altercation earlier that night.

H.A. stayed in her vehicle with another witness, A.F., while A.J. picked up the food. As A.J. turned to go back inside, holding a tray of food, A.J. saw appellant drive up and park behind H.A.'s car. Appellant then approached A.J. with a knife. Appellant began asking A.J. "where [M.K.]" was. When A.J. said he did not know, appellant swung the knife towards him and "slashed" the container of food. After the food fell onto the ground, appellant swung the knife at A.J. again. This time, appellant made contact with A.J.'s left knee. Appellant left the scene in his vehicle.

A.J. "felt pain and thought a vein had been cut." H.A. saw the wound immediately after the incident and someone called 911. A.J. was eventually taken to the hospital in an

ambulance, where he received three stitches. He also received crutches that he used for one month. The paramedic who treated A.J. testified at trial that "[t]here was a cut…about three to four inches above the knee that was long and wide, consistent with a puncture wound." The paramedic testified that based on seven years of knowledge and training, A.J.'s wound was "absolutely" consistent with how A.J. said he was injured. He also stated that "it was through the first layer of skin and into the muscle."

The police were able to identify appellant's vehicle using the surveillance footage from the gas station. Four days after the assault, police stopped appellant's vehicle and conducted a search of it. In the vehicle, officers found an 8.5 inch silver KitchenAid knife, Windex, napkins that smelled like Windex, and a T-shirt that was covered in a substance that appeared to be blood. The evidence was taken to a lab, but the DNA that was recovered did not match anyone in the system. At trial, in response to a question about whether Windex could remove DNA, the forensic analyst said "that's possible."

Appellant was charged with second-degree assault with a dangerous weapon under Minn. Stat. § 609.222, subd. 1. At trial, A.J. "still had pain in his leg and had a scar above his knee." A jury found appellant guilty of the charged offense. Appellant challenges his conviction, arguing that the state failed to prove beyond a reasonable doubt that the knife appellant used in the assault was a dangerous weapon.

D E C I S I O N

"When evaluating the sufficiency of the evidence, appellate courts carefully examine the record to determine whether the facts and the legitimate inferences drawn from them would permit the jury to reasonably conclude that the defendant was guilty beyond a

reasonable doubt of the offense of which he was convicted." *State v. Griffin*, 887 N.W.2d 257, 263 (Minn. 2016) (quotation and citations omitted). "The evidence must be viewed in the light most favorable to the verdict, and it must be assumed that the fact-finder disbelieved any evidence that conflicted with the verdict." *Id*. "The verdict will not be overturned if the fact-finder . . . could reasonably have found the defendant guilty of the charged offense." *Id.*

Evidence must be sufficient to prove each element of the offense beyond a reasonable doubt. *State v. Caldwell*, 803 N.W.2d 373, 384 (Minn. 2011). The jury found appellant guilty of second-degree assault. Minn. Stat. § 609.222, subd. 1 provides that a person who "assaults another with a dangerous weapon" is guilty of second-degree assault. The state was required to prove that appellant (1) committed an assault (2) with a dangerous weapon.

Appellant concedes that he committed an "assault," stating in his brief that "A.J.'s testimony combined with the state's other evidence . . . is arguably sufficient to prove that [appellant] 'stabbed' A.J., that is, that he used a knife to inflict bodily harm upon A.J. This constitutes an assault." We conclude that the assault element of the charge was supported by sufficient evidence.

What is at issue is the second element. A dangerous weapon is defined as "any firearm, whether loaded or unloaded, or any device designed as a weapon and capable of producing death or great bodily harm, any combustible or flammable liquid or other 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 (2019)

(emphasis added). To establish that a dangerous weapon was used to assault the victim, the state was required to prove that appellant (1) had a device or instrumentality (2) that was used in a manner that was calculated or likely to produce death or great bodily harm. We conclude that the state met its burden.

As to "device or instrumentality," appellant concedes that he "used a knife to inflict bodily harm upon A.J." There was conflicting testimony as to the length of the knife. The victim told police that he was "stabbed with a three-inch knife." The victim also told paramedics that it was a "small knife." However, at trial, the victim described the knife as being anywhere between six inches and a foot; he also said it was "like a saw" and "big." A.F., who also saw the knife, testified that the knife was "big." This court assumes the jury believed the state's witnesses. *See Griffin*, 887 N.W.2d at 263 ([i]t must be assumed that the fact-finder disbelieved any evidence that conflicted with the verdict).

Appellant also argues that the state failed to establish that the knife found in the trunk was the knife used in the assault. This argument fails. While DNA evidence would have been helpful to the state's case, it was not required to find the appellant guilty of second-degree assault. There was sufficient circumstantial evidence to support the inference that the knife obtained from the appellant was the knife used to stab the victim. The "instrumentality or device" element is supported by sufficient evidence.

We turn to whether the knife was used in a manner that was calculated or likely to produce "great bodily harm." Great bodily harm is defined as "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 (2019). The evidence at trial established that the appellant used the knife in a manner calculated to or likely to cause the victim great bodily harm under this definition.

The victim testified at trial that appellant approached him with a knife; "he was pointing it straight at my face." Appellant then "slash[ed] the food out of my hand . . . [a]nd then when I jumped back, that's how he just snatched me with the knife." "Rich stabbed me with a knife." The victim made several gestures during trial which are indicated on the transcript as "slashing" motions.

Appellant argues that this evidence is insufficient because the knife used was not designed to be a weapon. An instrument, however, does not need to be designed as a weapon; it need only be "used in a manner" that is likely to cause bodily harm. "Some things that are not ordinarily thought of as dangerous weapons become dangerous weapons if so used." *State v. Trott*, 338 N.W.2d 248, 252 (Minn. 1983). *See State v. Weyaus*, 836 N.W.2d 579, 585-86 (Minn. App. 2013), *review denied* (a folding chair was used as a dangerous weapon).

Here, the fact that the knife was not designed as a weapon does not negate the fact that it was "used in a manner" that was calculated or likely to—and in fact did—produce great bodily harm. *See* Minn. Stat. § 609.02, subd. 6. It is true that not all knives are dangerous weapons. But here, appellant approached the victim holding a knife and proceeded to slash the knife in the direction of the victim two times. Furthermore, the knife actually caused great bodily harm. The victim suffered an injury that caused him great pain; he received treatment from the hospital; three stitches were required; and the victim

had to use crutches for a month. The wound left a visible scar, which was viewed by the jury. This evidence is sufficient to conclude that the knife, as used by appellant, was a dangerous weapon.

Appellant argues that the state needed expert medical testimony to make this inference: "without more – e.g., medical testimony regarding the depth of the wounds, the proximity of the wounds to vital organs, and the long-term effects of the wounds – there is no basis for concluding that [appellant] 'used' the object in a manner that was 'calculated or likely' to produce great bodily harm." Even if medical testimony was required, the paramedic who treated the victim did testify. The paramedic testified as to the nature of the wound and the treatment that was provided.

Appellant cites *State v. Galle*, an unpublished opinion from this court, to support his argument that he did not use the knife "in a manner that was 'calculated or likely' to produce great bodily harm." 2020 WL 1845966, at *1 (Minn. App. Apr. 13, 2020). First, unpublished opinions are not precedential. *Gen. Cas. Co. of Wis. v. Wozniak Travel, Inc.*, 762 N.W.2d 572, 582 n.2 (Minn. 2009). And, *Galle* is distinguishable from the present case. In *Galle*, the appellant was charged with first-degree assault, and this court held that the victim's injuries were not serious enough to constitute "great bodily harm" with a "dangerous weapon." *Id*. But here, appellant challenges his conviction for second-degree assault; he does not argue that the victim was not seriously injured, rather, he insists the knife he used was not a dangerous weapon.

Because the jury "could reasonably have found the defendant guilty of the charged offense" while viewing the evidence in a "light most favorable to the verdict" the "verdict will not be overturned." *Griffin*, 887 N.W.2d at 263.

Affirmed.