

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A21-1280**

State of Minnesota,
Respondent,

vs.

Breonn Levell Jones,
Appellant.

**Filed September 6, 2022
Affirmed
Gaïtas, Judge**

Ramsey County District Court
File No. 62-CR-20-5914

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

John J. Choi, Ramsey County Attorney, Jeffrey A. Wald, Assistant County Attorney,
St. Paul, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Andrea Barts, Assistant Public
Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Worke, Presiding Judge; Gaïtas, Judge; and Smith, John,
Judge.*

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

NONPRECEDENTIAL OPINION

GAÏTAS, Judge

Appellant Breonn Jones appeals his conviction, following a jury trial, for second-degree assault with a dangerous weapon. Jones argues that respondent State of Minnesota failed to prove beyond a reasonable doubt that he used a dangerous weapon and therefore his conviction must be reversed. He also contends for the first time on appeal that the district court violated his constitutional right to a public trial when, in the interest of pandemic safety, it required public observers to view the trial in a separate room via livestreamed video. Because the trial evidence established that Jones used his car as a dangerous weapon to assault the victim, and the district court's pandemic restrictions on public observers did not seriously affect the fairness, integrity, or public reputation of judicial proceedings, we affirm.

FACTS

The state charged Jones with multiple offenses after an incident involving his wife, D.J. A jury found Jones guilty of misdemeanor domestic assault, Minn. Stat. § 609.2242, subd. 1(2) (2020); second-degree assault with a dangerous weapon, Minn. Stat. § 609.222, subd. 1 (2020); and third-degree assault, Minn. Stat. § 609.223, subd. 1 (2020). The district court entered a conviction and sentenced Jones to 21 months in prison for the most serious offense, second-degree assault with a dangerous weapon.

Jones now appeals from the judgment of conviction. He challenges the sufficiency of the state's proof that he used his car as a dangerous weapon to assault D.J. and the district court's restrictions on public observers in the courtroom during his trial.

The Incident with D.J.

At Jones's trial, the state called D.J. and other eyewitnesses to the incident, and Jones testified on his own behalf. The trial evidence was as follows.

Two days before the incident, D.J. reported to police that Jones had entered her home without permission. Police escorted Jones out of the home. But Jones left his cell phone and wallet there.

On the morning of the incident, D.J. discovered Jones on the front porch as she left the home to meet a rideshare car that she had summoned. D.J. asked her oldest child to lock the door, and then she approached the street, cell phone in hand. She told Jones that she intended to call the police.

Both D.J. and the rideshare driver testified that Jones tackled D.J., causing her to fall to the ground and hit her head. While D.J. was on the ground, Jones climbed on top of her and grabbed for the phone. D.J., the rideshare driver, and a neighbor testified that Jones punched D.J. during this struggle.

Jones ultimately took D.J.'s phone and ran toward his car. D.J. chased him. Jones threw the phone into his car through the front passenger-side window, entered the car through the passenger-side door, and then climbed into the driver's seat. D.J. opened the driver's-side door, and she also attempted to climb into the driver's seat. Another struggle ensued as D.J. reached for the phone on the passenger side. During this struggle, Jones started the car and began to drive while part of D.J.'s body was outside of the car door.

The neighbor observed D.J. clinging to the accelerating car for approximately 30 feet and then falling to the street. After D.J. fell from the moving car, Jones drove away.

D.J. lay in the road bleeding and unable to move or speak while a crowd gathered around her. She later told the police that Jones had assaulted her.

Jones acknowledged during his testimony that he struggled with D.J. for the phone. He denied punching D.J., however, and he testified that the phone was his. Jones testified that he accidentally accelerated while D.J. was hanging out of the car. But he admitted that he may have pushed D.J. from the car.

Pandemic Precautions During Trial

Jones's trial occurred in May 2021 during the COVID-19 pandemic. Before jury selection, the district court informed the parties that it would take several public-health precautions in the courtroom. Jurors would be seated at a distance from each other. Video monitors would be used to enable jurors to better view witnesses and exhibits. And in-person courtroom attendance would be limited to counsel, Jones, the jury, and court personnel. To "comply with the constitutional right to have an open courtroom," the district court stated that it would "broadcast [the proceedings] into a separate room where people [would be] allowed to watch what's happening in [the] [court]room." Individuals in the courtroom would occasionally be able to view public observers on a video monitor located in the courtroom. Jones did not object to these measures, including the district court's decision to restrict in-person courtroom access.

During the trial, Jones's counsel advised the district court that the courtroom monitor did not always display the separate room for observers. Jones's counsel asked the district court to use a split-screen display so that those located in the courtroom could always see the separate room. The district court denied Jones's request for split-screen

viewing, citing technical limitations. But the district court repeatedly reminded those in the courtroom that the trial was public and was being publicly observed in real time.

DECISION

I. The trial evidence was sufficient to prove that Jones used his car as a dangerous weapon to assault D.J.

The state's trial theory was that Jones used his car as a dangerous weapon to commit an assault by accelerating while D.J. was partially protruding from the open car door, causing her to fall from the moving car. But Jones contends that the state's evidence was insufficient to prove beyond a reasonable doubt that he assaulted D.J. with a dangerous weapon. He argues that to be a dangerous weapon, a car must directly cause an injury by striking a victim or another vehicle. According to Jones, his act of acceleration alone did not transform his car into a dangerous weapon. We conclude that the evidence, viewed in the light most favorable to the verdict, supports the jury's determination that Jones used his car as a dangerous weapon to assault D.J.

The first step of our analysis is identifying our standard of review. To convict a defendant, the state must prove each element of a charged crime beyond a reasonable doubt. U.S. Const. amends. V, XIV; Minn. Const., art. I, § 7; *State v. Merrill*, 428 N.W.2d 361, 366 (Minn. 1988). When an appellant challenges the sufficiency of the evidence to sustain a conviction, the appellate court analyzes the record "to determine whether the evidence, when viewed in a light most favorable to the conviction, was sufficient to permit the jurors to reach the verdict which they did." *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989). The appellate court must assume that the jury believed the state's witnesses and disbelieved any contrary evidence. *State v. Moore*, 438 N.W.2d 101, 108 (Minn. 1989). An appellate

court should not “disturb a verdict if the jury, acting with due regard for the presumption of innocence and for the necessity of overcoming it by proof beyond a reasonable doubt, could reasonably conclude that the defendant was proven guilty of the offense charged.” *State v. Flowers*, 788 N.W.2d 120, 133 (Minn. 2010) (quotation omitted).

Under Minnesota law, a person who “assaults another with a dangerous weapon” commits a second-degree assault. Minn. Stat. § 609.222, subd. 1. A “dangerous weapon” is defined, in relevant part as any “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 (2020). “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.” Minn. Stat. § 609.02, subd. 8 (2020). Whether an object is a “dangerous weapon” depends on its traits and the way it is used. *State v. Basting*, 572 N.W.2d 281, 284 (Minn. 1997).

Applying the law to the facts in Jones’s case, we now consider whether Jones used his car in a manner calculated or likely to produce death or great bodily harm.

Jones argues that he did not use his car as a dangerous weapon because the car did not have direct contact with D.J. To support this argument, Jones cites cases affirming second-degree-assault convictions where there was direct contact between a defendant’s car and the victim’s body or vehicle. *See State v. Rinkel*, No. A16-1601, 2017 WL 3977522, at *1 (Minn. App. Sept. 11, 2017) (affirming second-degree-assault conviction where the defendant hit the victim’s car head-on), *rev. denied* (Minn. Nov. 28, 2017); *State*

v. Closmore, No. A13-0806, 2014 WL 4175792, at *6 (Minn. App. Aug. 25, 2014) (affirming second-degree-assault conviction where the defendant rammed his car into another vehicle), *rev. denied* (Minn. Nov. 18, 2014); *State v. Holen*, No. A12-2299, 2013 WL 6389857, at *4 (Minn. App. Dec. 9, 2013) (affirming second-degree-assault conviction where the defendant rammed his car into the bumper of the victim's car several times), *rev. denied* (Minn. Feb. 18, 2014); *State v. Olson*, No. A08-0476, 2009 WL 749537, at *1 (Minn. App. Mar. 24, 2009) (affirming second-degree-assault conviction where the defendant hit a squad car); *State v. Zak*, No. C2-87-2436, 1988 WL 75549, at *3 (Minn. App. July 26, 1988) (affirming second-degree-assault conviction where the defendant rammed his vehicle into a truck); *see also Mell v. Comm'r of Pub. Safety*, 757 N.W.2d 702, 706-08 (Minn. App. 2008) (determining that police had probable cause to arrest the defendant for second-degree assault where the defendant's vehicle repeatedly struck another occupied car).

But none of the cases cited by Jones hold that direct contact between a car and a victim is necessary for a vehicle to be a dangerous weapon.¹ And we are aware of no such authority.

Moreover, under the circumstances of this case, it was reasonable for the jury to conclude that Jones used his car in a manner that was calculated or likely to cause death or great bodily harm. During a struggle, and while part of D.J.'s body was outside of an open

¹ We also note that most of the cases that Jones cites are unpublished or nonprecedential and therefore are not binding authority. *See* Minn. R. Civ. App. P. 136.01, subd. 1(c) (stating that nonprecedential opinions are not binding authority but may be cited as persuasive authority).

car door, Jones started his car and then stepped on the gas pedal. While Jones accelerated, D.J. “clung” to the car and was “dragged” for approximately 30 feet. Eventually, D.J. fell from the car into the roadway, sustaining injuries from the impact of a fall from a moving car. This evidence, viewed in the light most favorable to the verdict, was sufficient for the jury to conclude that Jones used his car as a dangerous weapon. We therefore reject Jones’s challenge to the sufficiency of the evidence.

II. Jones fails to establish that he is entitled to a new trial based on the district court’s pandemic safety precaution requiring public observers to view the trial from a separate room via livestreaming video.

For the first time on appeal, Jones argues that the district court violated his constitutional right to a public trial by restricting courtroom access to trial participants and requiring the public to observe a livestream of the trial from a separate room. Although Jones complained during the trial that the technology did not allow him to consistently view the public observers from the courtroom, he did not object to the district court’s restriction on public observers in the courtroom or make any public-trial argument during the proceedings below. Relying on the Minnesota Supreme Court’s recent decision in *Pulczynski v. State*, 972 N.W.2d 347 (Minn. 2022), which addressed similar circumstances, we conclude that Jones fails to show that he is entitled to a new trial.

The federal and state constitutions provide criminal defendants with a right to a public trial. U.S. Const. amend. VI; Minn. Const. art. I, § 6. When a district court closes a courtroom in violation of the public-trial right, and a defendant objects to the closure, there is structural error requiring automatic reversal of any resulting conviction. *Weaver v. Massachusetts*, 137 S. Ct. 1899, 1910 (2017). But if a defendant fails to object to an

alleged courtroom closure in the district court, the plain-error standard applies on appeal. *Pulczynski*, 972 N.W.2d at 357-59. Under the plain-error standard, reversal is only required if the defendant establishes that the district court plainly erred² and the error seriously affected the fairness, integrity, or public reputation of judicial proceedings. *Id.* at 357-59.

As an initial matter, we determine that Jones’s request to continually view public observers on a “split screen” did not preserve the public-trial issue that he now raises on appeal. “The forfeiture doctrine plays a vital role in the criminal justice system because it encourages defendants to object while before the district court so that ‘any errors can be corrected before their full impact is realized.’” *Id.* at 355 (quoting *State v. Beaulieu*, 859 N.W.2d 275, 279 (Minn. 2015)). By simply requesting a “split screen” display of the public-viewing area, Jones did not provide the district court with an opportunity to address or correct concerns about a courtroom closure occasioned by the physical exclusion of the observers.³ Thus, Jones forfeited his public-trial issue, requiring application of the plain-error standard.

In *Pulczynski*, the Minnesota Supreme Court applied the plain-error standard in considering whether a district court’s unobjected-to restrictions on public observers in the courtroom, instituted in response to the COVID-19 pandemic, required reversal of the

² To establish plain error, the defendant must show that (1) there was an error, (2) the error was plain, and (3) the error affected the defendant’s substantial rights. *Pulczynski*, 972 N.W.2d at 356 (citing *State v. Griller*, 583 N.W.2d 736, 740 (Minn. 1998)).

³ In fact, in responding to Jones’s request for a “split screen” display, the district court noted that its restriction on the number of individuals present in the courtroom probably did not constitute a courtroom closure. Jones’s counsel did not suggest otherwise or object to the district court’s comments.

defendant's convictions. *Id.* at 355-60. There, the district court prohibited public observers from entering the courtroom but made the proceedings available via livestream in two observation areas within the courthouse. *Id.* at 351. Unlike Jones's trial, individuals in the courtroom could not see the observers in the public-viewing rooms. *Id.* at 350-53.

Pulczynski argued on appeal that the district court's restrictions violated his constitutional right to a public trial and therefore required a new trial. *Id.* at 355. But the supreme court disagreed, concluding that failing to correct the alleged error would not "cause the public to seriously question the fairness and integrity of our judicial system." *Id.* at 360. The supreme court observed that "[n]o one contests that the serious health concerns presented by the COVID-19 pandemic generally justified adjustments to trial procedures," including "limiting the number of persons allowed in courtrooms." *Id.* at 359. It also noted that Pulczynski did not explain how failing to correct the error would impact "the fairness, integrity, or public reputation of judicial proceedings generally." *Id.* at 360. Accordingly, the supreme court declined to grant relief. *Id.*

Here, as in *Pulczynski*, the district court implemented its courtroom restrictions in response to the serious health concerns presented by the pandemic. And here, Jones does not explain how failing to correct the alleged error would seriously affect the fairness, integrity, or public reputation of judicial proceedings. Because we see no reason for the public to "seriously question the fairness and integrity of our judicial system" if the alleged error here is not corrected, we do not exercise our "limited discretion" under the plain-error standard to reverse Jones's conviction and remand for a new trial. *Id.*

Affirmed.