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**STATE OF MINNESOTA
IN COURT OF APPEALS
A09-554**

State of Minnesota,
Respondent,

vs.

Paul Gene McKay,
Appellant.

**Filed February 9, 2010
Affirmed
Toussaint, Chief Judge**

Stearns County District Court
File No. 73-CR-08-3583

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Janelle P. Kendall, Stearns County Attorney, Joshua J. Kannegieter, Assistant County Attorney, St. Cloud, Minnesota (for respondent)

Marie L. Wolf, Interim Chief Appellate Public Defender, Theodora Gaïtas, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Toussaint, Chief Judge; Klaphake, Judge; and Bjorkman, Judge.

UNPUBLISHED OPINION

TOUSSAINT, Chief Judge

Following a jury trial, appellant Paul Gene McKay was convicted of possession of a dangerous weapon in a courthouse complex for entering a county courthouse with a

knife concealed in the toe of his shoe. On appeal, he argues that the evidence was insufficient to prove that the knife was a “dangerous weapon” as that term is defined by Minn. Stat. § 609.02, subd. 6 (2006). Because the evidence was sufficient to support appellant’s conviction, we affirm.

D E C I S I O N

When considering a challenge to the sufficiency of the evidence, a reviewing court must “make a painstaking review of the record to determine whether the evidence and reasonable inferences drawn therefrom, viewed in a light most favorable to the verdict, were sufficient to allow the jury to reach its verdict.” *State v. Brown*, 732 N.W.2d 625, 628 (Minn. 2007). The verdict must stand “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. McCullum*, 289 N.W.2d 89, 91 (Minn. 1979).

Appellant was convicted of possession of a dangerous weapon in a courthouse complex in violation of Minn. Stat. § 609.66, subd. 1g(a)(1) (2006). 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. Thus, the statute sets out three categories of dangerous weapons: (1) firearms; (2) devices designed as weapons and capable of producing great bodily harm or death; and (3) devices that, in the manner they are used or intended to be

used, are calculated or likely to produce great bodily harm or death. *State v. Moss*, 269 N.W.2d 732, 735 (Minn. 1978).

At trial, respondent State of Minnesota was unable to produce the knife as an exhibit because it had been returned to appellant several weeks before trial. But the jury heard testimony from the two deputies who were positioned at the courthouse entrance operating the metal detector on the afternoon of March 4, 2008. The deputies described the knife as a sharp, silver-colored folding knife, approximately three and one-half to four inches long, which appellant had concealed in the toe of his shoe. Each deputy also drew a picture of the knife from memory. While neither deputy was asked to opine whether the knife was designed to be used as a weapon, the jury could make such a factual inference based on the description of the knife and on the circumstances surrounding appellant's possession of the knife. We believe that the issue of whether the knife met the definition of a dangerous weapon, at least in this case, was within the common knowledge and experience of the jury.¹

The parties also address whether the third category of "dangerous weapon" could apply here, i.e., whether the knife was a device that, in the manner appellant intended to use it, was calculated or likely to produce great bodily harm. Appellant asserts in his reply brief that the state did not argue that the knife fit this category. But the jury was

¹ In *In re Welfare of P.W.F.*, 625 N.W.2d 152, 154 (Minn. App. 2001), this court reversed a juvenile's adjudication of possession of a dangerous weapon on school property because the state failed to establish that the knife was designed as a weapon. This court emphasized that the district court made no findings concerning the purpose for which the knife was designed and that the court could not take judicial notice of that fact. Here, however, the jury was instructed on the definition of dangerous weapon and impliedly made that finding as part of its verdict.

instructed on all three categories of “dangerous weapon,” and the prosecutor argued that appellant made “calculated and deliberate decisions” to conceal and smuggle the knife into the courthouse.

Possession of a dangerous weapon in a courthouse complex is considered a public safety or regulatory offense. *See* Minn. Stat. §§ 609.66-.686 (2006) (“Crimes Against Public Safety and Health”). “Certain items of property, for example unlicensed hand grenades, by their very nature suggest that possession is not innocent because possession itself is demonstrative of intent.” *In re Welfare of C.R.M.*, 611 N.W.2d 802, 809 (Minn. 2000). But other objects, including many types of knives, are also common items not inherently dangerous because they can be used for a myriad of completely benign purposes. *Id.* Thus, in order to establish guilt for possession of these types of items, some showing of intent may be required. *See id.* (requiring state to prove that defendant knew he possessed knife on school property in order to convict him of possession of dangerous weapon on school property).

In this case, the circumstances surrounding appellant’s possession of the knife are relevant to appellant’s guilt. The evidence showed that, when appellant first approached the entrance to the courthouse, one deputy asked him to place any metal items in the available bins before proceeding through the entrance. After appellant activated the alarm, he removed a can of mace from his pocket; the deputy told him to remove the mace from the courthouse. Appellant disposed of the mace, returned a short time later, and again activated the alarm as he walked through, this time in the area around his feet. When the deputy asked appellant to lift up his pant legs, appellant did so, volunteered

that he was wearing steel-toed shoes, and was allowed to enter the courthouse. Approximately five minutes later, appellant returned to the metal detector and told the deputies that they should check people better because he had a knife in his shoe. The knife was confiscated, and appellant was subsequently charged with possession of a dangerous weapon in a courthouse complex.

From appellant's actions, the jury could infer that appellant's use or possession of the knife was not entirely benign or innocent: he intended to enter the courthouse complex with contraband that was prohibited because it was a dangerous weapon. *Cf. Moss*, 269 N.W.2d at 735-36 (affirming conviction of aggravated robbery where it could be inferred from evidence that defendant intended to use scissors in his pocket if use became necessary). We therefore conclude that the evidence was sufficient to support appellant's conviction.

Finally, appellant has filed a pro se supplemental brief in which he asserts (1) the criminal complaint contains "false information" regarding the size of the knife, which was never measured; (2) he has never used his knife as a weapon, but he uses it as a tool, at work and at home, and has used it to eat with on many occasions; (3) he walked to the courthouse and had nowhere to store the knife; (4) the knife was not spring-loaded or double-sided, did not have a "blood groove," and was not a switchblade; (5) he knows for fact that the knife is smaller than claimed by both deputies; (6) he had no harmful intentions or malicious intent on March 4, 2008; and (7) although the plain language of the statute prohibits dangerous weapons in a "courthouse complex," he was allowed to walk through the middle of the complex after the knife had been returned to him.

Appellant's assertions either reiterate the claims of insufficient evidence made by counsel in appellant's brief, which are rejected above, or allege facts that are not in the record.

Affirmed.