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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0568**

State of Minnesota,
Respondent,

vs.

Troy Brown,
Appellant.

**Filed January 28, 2019
Affirmed
Rodenberg, Judge**

Hennepin County District Court
File No. 27-CR-17-23598

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

Michael O. Freeman, Hennepin County Attorney, Michael Richardson, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Jodi Lynn Proulx, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Hooten, Presiding Judge; Rodenberg, Judge; and Cochran, Judge.

UNPUBLISHED OPINION

RODENBERG, Judge

In this direct appeal from his convictions for two counts of second-degree assault, appellant Troy Brown argues that his convictions must be reversed because the state failed

to prove beyond a reasonable doubt that appellant used a box cutter as a dangerous weapon. We affirm.

FACTS

Appellant¹ was convicted of two counts of second-degree assault with a dangerous weapon in violation of Minn. Stat. § 609.222, subd. 1 (2016). The charges arose from an incident at the U.S. Bank Stadium light-rail station in which appellant, using a box cutter, threatened his ex-girlfriend (F.M.) and a male whom F.M. refers to as her cousin (S.L.).

F.M. testified that she and appellant broke off their relationship about a month before the incident. F.M. said that she and S.L. were waiting for a train when appellant approached them on the platform. F.M. testified that she was scared and did not want to talk with appellant. She therefore became loud and tried to cause a scene. Appellant punched F.M. in the face. A bystander, N.F., testified at trial that he saw appellant hit F.M. in the face with a closed fist. S.L. then began defending F.M. until the two were separated by N.F.

F.M. and S.L. then walked away, but appellant followed them to the other side of the platform. F.M. testified that appellant was threatening her and S.L. with a yellow box cutter and that “[appellant] said that he would kill me.” N.F., the bystander, testified that he did not see a box cutter in appellant’s hands, but his line of sight was obstructed “because they had walked past the pillars.” F.M. and S.L. were able to distance themselves from appellant, but appellant ran after them again. Video footage from the light-rail station

¹ Appellant uses several aliases, and the record suggests that “Troy Brown” may have been an alias. No issue is raised on appeal concerning appellant’s identity or name.

shows appellant first chasing after S.L., and then F.M. Appellant can be seen holding a yellow object. F.M. testified at trial that she ran away from appellant because she was scared that he would kill her. Police arrived moments later to find a group of people trying to keep appellant away from F.M. and S.L. Police arrested appellant. Officers found a yellow box cutter in appellant's pocket. A jury found appellant guilty of two counts of second-degree assault.

This appeal followed.

D E C I S I O N

Appellant argues that the state failed to prove beyond a reasonable doubt that appellant committed second-degree assault. In a criminal proceeding, the prosecution must prove every element of the crime charged beyond a reasonable doubt. *State v. Jones*, 347 N.W.2d 796, 800 (Minn. 1984). When considering a claim of insufficient evidence, an appellate court conducts a thorough review of the record to determine whether the evidence, when viewed in the light most favorable to the conviction, was sufficient to permit the jurors to reach the verdict which they did. *State v. Ortega*, 813 N.W.2d 86, 100 (Minn. 2012). This court must assume that “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 the 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 [a] defendant was proven guilty of the offense charged.” *Bernhardt v. State*, 684 N.W.2d 465, 476-77 (Minn. 2004) (quotation omitted).

Second-degree assault is defined, in relevant part, as “an act done with intent to cause fear in another of immediate bodily harm or death” and during which a dangerous weapon was used. Minn. Stat. §§ 609.02, subd. 10(1), .222, subd. 1 (2016). A dangerous weapon is “any device designed as a weapon and capable of producing death or great bodily harm.” Minn. Stat. § 609.02, subd. 6 (2016). In addition to this definition, a dangerous weapon can be any “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; see *State v. Moss*, 269 N.W.2d 732, 735-36 (Minn. 1978). Accordingly, even ordinary objects can become dangerous weapons based on the manner in which they are used. See *State v. Basting*, 572 N.W.2d 281, 285 (Minn. 1997); *State v. Cepeda*, 588 N.W.2d 747, 748-49 (Minn. App. 1999).

Appellant asserts that the state failed to prove beyond a reasonable doubt that appellant used, or intended to use, the box cutter in a manner capable of producing great bodily harm or death to F.M. or S.L. Supporting this assertion, appellant claims that F.M.’s testimony was not credible or corroborated, because F.M.’s testimony that appellant was “flailing” the box cutter at her and at S.L. does not correspond with the video footage or N.F.’s testimony.

Credibility

Appellant challenges F.M.’s credibility because F.M. was unable to articulate a specific threat made by appellant, and it was only after the state questioned her about appellant’s specific threat to kill her that she answered in the affirmative. Appellant’s challenge is directly contrary to the record evidence.

F.M. testified that she was scared, and when the state asked her what she was scared of, F.M. testified that “[appellant] said he would kill me.” F.M. articulated a fear that appellant would kill her, and the jury’s verdict evidences that it believed F.M.’s testimony. The credibility of the witness is for the jury to determine, not a reviewing court. See *Staunton v. State*, 784 N.W.2d 289, 298 (Minn. 2010); *State v. Cao*, 788 N.W.2d 710, 716-17 (Minn. 2010).

Corroboration

Appellant correctly argues that the video evidence in the record does not reveal, and N.F. was not able to verify at trial, that appellant was “swinging” the box cutter, as F.M. testified. First, F.M.’s testimony requires no corroboration. See *State v. Foreman*, 680 N.W.2d 536, 539 (Minn. 2004) (“[A] conviction can rest on the uncorroborated testimony of a single credible witness.” (quotation omitted)). Second, large pillars obstructed both the camera and N.F.’s view of appellant’s actions to which F.M. testified. Finally, immediately after the moment at which F.M. testified that appellant was swinging a box cutter, the video footage shows appellant, with a yellow object in his hand, running after both F.M. and S.L. Police found a yellow box cutter in appellant’s pocket when they arrested him. F.M.’s testimony is consistent with the other evidence in the case.

While the evidence of appellant “swinging” the box cutter at F.M. and S.L. is limited, there is no reason to interfere on appeal with the jury’s record-supported verdict. To the contrary, the act of appellant chasing after F.M. and S.L., with a box cutter in hand, coupled with F.M.’s testimony that appellant said he was going to kill her, amply supports

the jury's conclusion that appellant committed assault with a dangerous weapon. The record evidence is sufficient to sustain the jury's verdict.

Affirmed.