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Minn. Stat. § 480A.08, subd. 3 (2018).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1397**

State of Minnesota,
Respondent,

vs.

Jeremy Lee Krier,
Appellant.

**Filed June 15, 2020
Affirmed
Jesson, Judge**

Ramsey County District Court
File No. 62-CR-19-174

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

John J. Choi, Ramsey County Attorney, Alexandra Meyer, Assistant County Attorney,
St. Paul, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Steven P. Russett, Assistant
Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Hooten, Presiding Judge; Jesson, Judge; and
Klaphake, Judge.*

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

UNPUBLISHED OPINION

JESSON, Judge

A jury convicted appellant Jeremy Lee Krier of second-degree assault after he stabbed his ex-girlfriend in the back. Because we are satisfied that sufficient evidence proves that Krier used a dangerous weapon during the attack, we affirm.

FACTS

Appellant Jeremy Lee Krier developed a friendship with S.K. several years ago. They began dating in mid-2016, and initially, S.K. thought the relationship was “wonderful.” But within a year, the relationship turned abusive. Although S.K. obtained an order for protection (OFP) against Krier, the two later rekindled their relationship and moved in together. After a few months, Krier punched S.K. in the mouth, and she decided to permanently leave the relationship.

A few weeks later, S.K. was removing some of her belongings from a storage unit, with Krier present. Once she was finished, S.K. agreed to drop Krier off at his house. But she reiterated to him that she was done with the relationship. Around the same time, S.K.’s male friend texted her and asked if she would give him a ride home from the grocery store. S.K. believed that Krier knew she agreed to help her male friend, with whom Krier thought she was romantically involved.

After dropping off Krier, S.K. picked up her friend and drove him home. When S.K. parked at her friend’s house, another car containing Krier and two of his friends pulled behind her, preventing her from leaving. Krier jumped out of the car and yelled something like “[y]ou’re caught.” Attempting to ignore him, S.K. finished carrying groceries into her

friend's home. When she came back outside, Krier was sitting in the driver's seat of her car. Krier told her to get in the car, but S.K. refused. S.K. attempted to walk away, but according to her, Krier "raced" around and got in front of her. S.K. testified that Krier ran towards her and "bearhug[ged]" her. Feeling like Krier punched or hit her in the back, S.K. heard Krier say something like "[n]ow you're stabbed" or "[w]hat are you going to do now?"

Initially, S.K. felt shocked. She immediately applied pressure to the area, though still unsure if Krier actually stabbed her. In an effort to get away from Krier, S.K. agreed to get in the car with his friends. Wary of Krier's friends, S.K. declined their offer to take her to the hospital. Instead, she asked to go to her child's father's house. Krier left separately in S.K.'s car.

S.K.'s child's father took her to the hospital, where doctors discovered two wounds on her back. The smaller cut required one stitch, and the larger wound required two or three stitches. Someone at the hospital alerted police, and S.K. reported what happened. Police arrested Krier. And because Krier left the scene of the attack in S.K.'s car, police impounded it. When searching S.K.'s car, police discovered a black folding knife on the floor on the driver's side. The state charged Krier with second-degree assault with a dangerous weapon, and the case proceeded to a jury trial.

At trial, S.K. testified about the incident, as described above. Although S.K. testified that Krier said something like "[now] you're stabbed," she did not provide any testimony about a weapon. The officer who interviewed S.K. at the hospital also testified that there was nothing in his report about S.K. seeing a weapon.

But the police investigator testified that S.K. told him she remembered seeing something black in Krier's hand after the attack, but she could not tell what it was. And the investigator described the black knife police discovered in S.K.'s car after the attack, which S.K. said did not belong to her. The state also submitted photos of the knife. Still, the investigator acknowledged that he did not know if the knife was the weapon used during the attack.¹

At the close of the state's case, Krier moved for a judgment of acquittal on the basis that the state did not prove he used a dangerous weapon. The district court denied his motion. Krier then presented testimony from his two friends that were present for the attack. Both testified that Krier and S.K. were arguing, but they did not hear what was said. Neither friend saw Krier physically touch S.K. Neither saw him with a weapon. And both testified that S.K. said something like she thought she was stabbed when she got in their car, but they each thought it was odd she declined their offer to take her to the hospital.

The jury found Krier guilty of second-degree assault. The district court sentenced him to a guidelines sentence of 57 months in prison. Krier appeals.

¹ Additionally, an employee from the Bureau of Criminal Apprehension described DNA testing she performed on samples from the knife handle and blade. The knife blade had a DNA profile that was insufficient for comparison. The handle had five or more profiles, meaning that the scientist could not make comparisons. The BCA employee also performed testing on Krier's jeans because they had blood on them. The major source of the blood was from Krier.

DECISION

Krier challenges his conviction, arguing that the state did not prove beyond a reasonable doubt that he used a dangerous weapon to assault S.K. To evaluate the sufficiency of the evidence, we “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 omitted). In doing so, we view the evidence “in the light most favorable to the verdict” and assume that the jury did not believe any evidence inconsistent with the verdict. *Id.*

Appellate courts apply the circumstantial-evidence standard of review in cases where, like here, “the direct evidence of guilt on a particular element is not alone sufficient to sustain the verdict.”² *Loving v. State*, 891 N.W.2d 638, 643 (Minn. 2017). Convictions based on circumstantial evidence are subject to “heightened scrutiny.” *State v. Porte*, 832 N.W.2d 303, 309 (Minn. App. 2013) (quotation omitted). Therefore, when reviewing the sufficiency of circumstantial evidence, we undertake a two-step analysis. *State v. Silvernail*, 831 N.W.2d 594, 598 (Minn. 2013). First, we identify the circumstances proved by the state. *State v. Bahtuoh*, 840 N.W.2d 804, 810 (Minn. 2013). At this stage, we defer “to the jury’s acceptance of the [s]tate’s evidence and its rejection

² Circumstantial evidence is “evidence from which the factfinder can infer whether the facts in dispute existed or did not exist.” *State v. Harris*, 895 N.W.2d 592, 599 (Minn. 2017) (quotation omitted). And “circumstantial evidence always requires an inferential step to prove a fact that is not required with direct evidence.” *Id.* Here, the question of whether Krier used a dangerous weapon to assault S.K. largely rests on circumstantial evidence, including the discovery of a black folding knife in S.K.’s car.

of any evidence in the record that is inconsistent with the circumstances proved by the [s]tate.” *Loving*, 891 N.W.2d at 643.

In the second step, we consider “whether the circumstances proved are consistent with guilt and inconsistent with any rational hypothesis except that of guilt.” *Silvernail*, 831 N.W.2d at 599 (quotations omitted). In doing so, we independently examine all reasonable inferences that may be reached from the circumstances proved, including those “consistent with a hypothesis other than guilt.” *Id.* (quotation omitted). “If a reasonable inference other than guilt exists, then [appellate courts] will reverse the conviction.” *Loving*, 891 N.W.2d at 643.

In order to obtain a conviction for second-degree assault, the state must prove beyond a reasonable doubt that Krier used a dangerous weapon to assault S.K. *See* Minn. Stat. § 609.222, subd. 1 (2018). Here, Krier acknowledges that the evidence “arguably” proved that he stabbed S.K. and that he used “an object” to do so. But he contends that the state did not prove he used a dangerous weapon.

With the statutory requirements for second-degree assault with a dangerous weapon and Krier’s argument in mind, we now review the sufficiency of the evidence supporting Krier’s conviction. We turn first to the circumstances proved at trial. *Bahtuoh*, 840 N.W.2d at 810. After reviewing the record, the state proved the following circumstances at trial:

S.K. is Krier’s ex-girlfriend; When S.K. dropped off a male friend at his home, Krier arrived and yelled something like “[y]ou’re caught”; S.K. took groceries inside her friend’s home; Krier was sitting in S.K.’s car when she returned outside; S.K. tried to walk away;

Krier raced in front of her; Krier approached S.K. like he was going to “bearhug” her; Krier did so; S.K. felt like he punched or hit her in the back; Krier said something like “[n]ow you’re stabbed”; S.K. had two significant cuts on her upper back near her left shoulder requiring stitches; Krier left the attack in S.K.’s car; police found a black folding knife in that car; S.K. told police the knife did not belong to her; S.K. also told police she remembered seeing something black in Krier’s hand after the attack; and forensic testing did not connect the knife to the attack.

Having identified the circumstances proved, we turn to the second step of the analysis, which requires us “to determine whether the circumstances proved are consistent with guilt and inconsistent with any rational hypothesis except that of guilt.” *Silvernail*, 831 N.W.2d at 599 (quotations omitted). The only rational hypothesis based on the circumstances proved is that Krier used the black knife found in S.K.’s car to stab her. Krier left the scene of the assault in S.K.’s car. Police recovered a black knife from that car. The knife did not belong to S.K., and the police investigator testified that S.K. told him she remembered seeing something black in Krier’s hand after he stabbed her. And S.K.’s injuries are consistent with wounds resulting from a very sharp object, like a knife.

It is not rational to conclude that, despite the presence of a black knife in S.K.’s car shortly after the assault, Krier did not use it. *See State v. Seefeldt*, 292 N.W.2d 558, 562 (Minn. 1980) (concluding that the jury could infer the nature of the weapon from the evidence presented). Accordingly, we conclude that the only rational hypothesis from the circumstances proved is that Krier used the black knife to stab S.K. *See State v. Al-Naseer*,

788 N.W.2d 469, 473 (Minn. 2010) (noting that the state is not required to remove *all* doubt, but only all reasonable doubt).

Still, Krier argues that, assuming he used the black folding knife, the knife does not fall within the statutory definition of a dangerous weapon. A “dangerous weapon” is defined by statute 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 (2018) (emphasis added). Under the final prong of the dangerous weapon definition, an object may be a dangerous weapon if it “is calculated or likely to produce death or great bodily harm” in the manner in which it is used. *Id.* “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.” *Id.*, subd. 8 (2018). To determine if an object is a dangerous weapon, we “examine not only the nature of the object itself, but also the manner in which it was used.” *State v. Basting*, 572 N.W.2d 281, 285 (Minn. 1997).

Here, circumstantial evidence provided a basis to conclude that Krier used the knife to stab S.K. twice in the back, near her upper left shoulder.³ Despite his argument that all

³ Krier points to the fact that, at trial, the state acknowledged that it could not prove “for sure” that Krier used the knife during the assault. But caselaw does not require the state to prove the exact weapon used during an assault. See *Scott v. State*, 390 N.W.2d 889, 892

knives are not inherently dangerous weapons, the manner in which Krier used the knife is dispositive here: he used the knife to stab his ex-girlfriend. Using a knife to stab another person constitutes using it in a manner that “is calculated or likely to produce death or great bodily harm.” See Minn. Stat. § 609.02, subd. 6.

In addressing the manner in which he used the knife, Krier maintains that using a knife to stab a person in the back could result in bodily harm, but not *great* bodily harm. And he points out that, at trial, there was no testimony about the long-term medical effects of the wounds or their proximity to S.K.’s vital organs. But this argument is contrary to Minnesota law. The statutory definition of “dangerous weapon” does not require a victim to actually *suffer* great bodily harm before an object can be classified as a dangerous weapon. Instead, an object meets the definition of “dangerous weapon” if it is used in a way that is “calculated or *likely to produce* great bodily harm.” *Id.* (emphasis added). Indeed, the Minnesota Supreme Court has stated that whether an object is a dangerous weapon does not depend “on the nature or severity of the victim’s injuries.” *Basting*, 572 N.W.2d at 285. The supreme court concluded that doing so “would lead to a backward analysis which would begin and end with assessing the ensuing injury, a result inconsistent with both the legislature’s definition of a dangerous weapon and with the structure of the criminal second-degree assault statute, which establishes infliction of bodily harm and use of a dangerous weapon as two separate elements.” *Id.*

(Minn. App. 1986) (noting that “[t]he facts that the weapon was not recovered and the victim did not see a weapon are not conclusive” and concluding that sufficient circumstantial evidence supported the conviction).

Here, circumstantial evidence supported the inference that Krier used a knife to stab S.K. twice in the back, near her left shoulder. Regardless of the injuries S.K. actually suffered, indiscriminately stabbing another person in the back is using a knife in a manner that is calculated or likely to produce great bodily harm. *See generally State v. Patton*, 414 N.W.2d 572, 572 (Minn. App. 1987) (concluding that the way defendant brandished a knife was sufficient to classify it as a dangerous weapon). Therefore, we conclude that the state proved beyond a reasonable doubt that Krier used a dangerous weapon to assault S.K. As a result, sufficient evidence supports his conviction.⁴

Affirmed.

⁴ Krier also argues that the knife is not “designed as a weapon and capable of producing death or great bodily harm.” Minn. Stat. § 609.02, subd. 6. But because we conclude that the knife is a dangerous weapon under a different prong of the definition, we do not address this argument.