STATE OF MINNESOTA
IN COURT OF APPEALS
A06-2356

State of Minnesota,
Respondent,

vs.

James Tim Johnson,
Appellant.

Filed April 1, 2008
Affirmed
Shumaker, Judge

Hennepin County District Court
File No. 06029091

Lori Swanson, Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101; and

Michael O. Freeman, Hennepin County Attorney, David C. Brown, Assistant County Attorney, C-2000 Government Center, Minneapolis, MN 55487 (for respondent)

John M. Stuart, State Public Defender, Michael F. Cromett, Assistant Public Defender, 540 Fairview Avenue North, Suite 300, St. Paul, MN 55104 (for appellant)

Considered and decided by Willis, Presiding Judge; Shumaker, Judge; and Crippen, Judge.*

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

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

SHUMAKER, Judge

Appellant challenges the sufficiency of the evidence to support his conviction of first-degree aggravated robbery. He contends that the victim's testimony was insufficient to identify him as one of the perpetrators of the crime and that the evidence does not establish that a dangerous weapon was used. Because the evidence is sufficient, we affirm the conviction.

FACTS

Walking home one night, P.G. was accosted by two men and a woman on the street. One of the assailants, appellant James Tim Johnson, held a box cutter to P.G.'s throat while the other two robbed him of his money. During the robbery, which lasted approximately three minutes, the assailants threatened P.G., telling him that he could either cooperate or be cut. After emptying P.G.'s pockets of approximately $250 in cash, the assailants ran down the street. During their flight, they tossed P.G.'s emptied wallet onto the street.

P.G. watched them run away and then followed them for a short distance. The assailants entered a nearby house on Oakland Avenue. P.G. walked to his own house and changed clothes. He testified that he felt upset and wanted to confront the robbers on his own. But as he left his house, he changed his mind and walked to the neighborhood fire station to call the police. After police personnel arrived at the fire station nearly 20 minutes later, P.G. accompanied Officers Olson and Conway in their squad car to the house on Oakland Avenue into which he watched the robbers run. Officer Conway

wanted to question the people at the house and have P.G. identify any of them if he was able. There were people in the yard of the house, and, as the squad car drove up, they began to scatter.

Officer Olson testified that, as the officers drove up to the yard, P.G. immediately and spontaneously said, "[T]hat is him" when he caught sight of Johnson. This happened less than 90 minutes after the robbery. Officer Olson ran after the people from the yard and was able to apprehend Johnson. Meanwhile, Officer Conway apprehended another man running down the street. Officer Olson detained Johnson in another squad car, and P.G. positively identified him as the man who held a box cutter to his throat. He told the officer he was "150 percent" certain that he was the same man. P.G. said he was positive none of the others being detained by Officer Conway were a part of the robbery. The officers searched Johnson but did not find the box cutter or any other incriminating evidence.

Johnson was charged with aggravated robbery in the first degree, in violation of Minn. Stat. § 609.245, subd. 1 (2004). At trial, P.G. was able to describe what Johnson was wearing that evening: a black jacket, with a tan lining with red and white stripes, and a red shirt underneath. He also described the robber holding the box cutter as a black man with a "dark complexion, dark" but said that the street was dark that night because there were no streetlights and the man held him from behind. But P.G. told the jurors that he looked the assailants over very carefully as they approached because "that is what you do when you walk in that neighborhood at night," and he was able to observe them as

they ran from the scene of the crime. P.G. again identified Johnson in the courtroom with "150%" certainty.

After a jury trial, Johnson was found guilty. The district court sentenced Johnson to the presumptive sentence of 108 months. This appeal followed.

D E C I S I O N

Johnson argues that the evidence was insufficient to support the jury's verdict that he was guilty of the first-degree-aggravated-robbery offense because P.G.'s testimony was insufficient to identify him as the robber. Johnson also argues that there was insufficient evidence to show use of a dangerous weapon, and thus the conviction should be reduced to simple robbery, in violation of Minn. Stat. § 609.24 (2004).

In considering a claim of insufficient evidence, we carefully examine the record to ascertain "whether the jury could reasonably find the defendant guilty given the facts in evidence and the legitimate inferences which could be drawn from those facts." *State v. Miles*, 585 N.W.2d 368, 372 (Minn. 1998). We view the evidence in the light most favorable to the conviction. *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989). The reviewing court "assum[es] 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). Assessing a witness's credibility and weighing witness testimony is the exclusive province of the jury. *State v. Bliss*, 457 N.W.2d 385, 390 (Minn. 1990). We will not disturb the verdict if the jury, acting with due regard for the presumption of innocence and the requirement of proof beyond a reasonable doubt, could reasonably conclude that

the defendant was guilty of the charged offense. *Bernhardt v. State*, 684 N.W.2d 465, 476-77 (Minn. 2004).

Johnson was convicted of first-degree aggravated robbery. First-degree aggravated robbery is defined as a robbery committed by a person who is armed with a dangerous weapon or who uses any article as a dangerous weapon. Minn. Stat. § 609.245, subd. 1. Johnson argues that the state did not present enough evidence to show beyond a reasonable doubt that he was one of P.G.'s assailants, nor was there enough proof that a dangerous weapon was used in the robbery.

Eyewitness Identification

Johnson argues first that because the state presented only one uncorroborated eyewitness account that was based on a fleeting or limited observation, the evidence is insufficient to be the basis of his conviction. A conviction, however, "may rest on the testimony of a single credible witness." *Miles*, 585 N.W.2d at 373. Additionally, "identification testimony need not be absolutely certain; it is sufficient if the witness expresses a belief that she or he saw the defendant commit the crime." *Id.* If the evidence was sufficient to reasonably support the jury's verdict, the credibility of the witness lies with the jury alone. *State v. Foreman*, 680 N.W.2d 536, 539 (Minn. 2004). In determining the trustworthiness of an eyewitness identification, the opportunity the witness had for accurate and deliberate observation while in the presence of the accused must be considered. *State v. Gluff*, 285 Minn. 148, 151, 172 N.W.2d 63, 65 (1969). But our supreme court has "recognized that not all single eyewitness cases are the same and [has] emphasized that when the single witness' identification of a defendant is made after

only fleeting or limited observation, corroboration is required if the conviction is to be sustained." *State v. Walker*, 310 N.W.2d 89, 90 (Minn. 1981) (citing *State v. Spann*, 287 N.W.2d 406, 407-08 (Minn. 1979)).

Johnson contends that because P.G.'s observation of him was limited, corroboration is required. But the evidence shows that P.G.'s observation was neither fleeting nor limited. P.G. scrutinized the three assailants as they approached him on the sidewalk; further, the attack lasted three minutes, during which P.G. continued to observe the robbers. When asked on the witness stand whether he got a good look at the three assailants, even though the attack occurred at night, P.G. testified, "Oh, yes." He also testified that he got a good look at Johnson in particular and was utterly certain that he was the man who held the box cutter to his neck. Additionally, P.G. observed the assailants run down the street and into a house. He then was able to describe with particularity the other two assailants accompanying Johnson, describing the other man as about 6'2" tall, young, with a slim build and extremely short hair, wearing dark clothing; and the woman as short with black shoulder-length hair that "had to have been a wig" and wearing black jeans. Furthermore, at the house on Oakland Avenue, P.G. was able to positively exclude other people shown to him by police, which implies that P.G. had a very firm impression of who robbed him and was confident in what he witnessed. While darkness could create some doubt as to whether P.G. did in fact get a good look at Johnson, that was a credibility factor for the jury to consider.

P.G.'s eyewitness testimony was also corroborated. When P.G. and the officers arrived at the house on Oakland Avenue, the group of people gathered outside the house

fled. Johnson, whom P.G. immediately identified as his assailant, was present at the house and was among those who fled. And after the people ran from the house, an officer spotted Johnson running between some yards, presumably running directly from the house at Oakland Avenue. A reasonable jury could infer that Johnson's presence at the house into which the assailants escaped, coupled with his immediate flight upon the sight of a police car, was circumstantial evidence of guilt. *See State v. Bias*, 419 N.W.2d 480, 485 (Minn. 1988) (explaining that evidence of defendant's flight after a crime suggests a guilty conscience); *State v. French*, 400 N.W.2d 111, 116 (Minn. App. 1987), *review denied* (Minn. Mar. 25, 1987).

The evidence included P.G.'s in-court identification of Johnson; his ability to accurately describe Johnson to the police officer on the evening of the attack; his observation of Johnson for the three minutes leading up to and including the time during the robbery; and the extra details he was able to provide about the two other assailants. We assume that the jury believed P.G.'s testimony at trial and the corroborating evidence. *See State v. Thompson*, 414 N.W.2d 580, 583 (Minn. App. 1987) (upholding a conviction when the witness observed the defendant for 10 to 13 seconds, the victim's description fit the defendant, and there was additional third-party testimony), *review denied* (Minn. Jan. 15, 1988); *State v. Mesich*, 396 N.W.2d 46, 51-52 (Minn. App. 1986) (finding eyewitness-identification testimony reliable when victim had ample opportunity to see her assailant and her testimony was sufficiently detailed to indicate that fear did not prevent her from observing details), *review denied* (Minn. Jan. 2, 1987); *cf. Gluff*, 285 Minn. at 151, 172 N.W.2d at 65 (reversing a conviction based on testimony from a victim

who was fixated on assailant's gun, who gave a substantially different description from the physical features of the defendant, whose observation time was between 30 seconds and two minutes, and whose identification was not supported by corroborating evidence).

Based on the evidence presented at trial, the jury could have reasonably concluded that Johnson was the robber who held the box cutter to P.G.'s throat while his cohorts took P.G.'s money.

Sufficiency of the Evidence of a Dangerous Weapon

Johnson also argues that the evidence is insufficient to show that a dangerous weapon was used in the robbery of P.G.; thus, he contends his charge should be reduced to simple robbery.

A dangerous weapon is defined by statute as "any firearm" or "any device designed as a weapon and capable of producing death or great bodily harm"; the definition also includes 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 (2004). "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, e.g.*, *State v. Moyer*, 298 N.W.2d 768, 770 (Minn. 1980) (finding gasoline to be a dangerous weapon); *State v. Mings*, 289 N.W.2d 497, 498 (Minn. 1980) (finding cowboy boots to be a dangerous weapon); *State v. Moss*, 269 N.W.2d 732, 735 (Minn. 1978) (finding scissors to be a dangerous weapon); *In re Welfare of C.R.S.*, No. C4-00-653, 2000 WL 1780298, at *2 (Minn. App. Dec. 5, 2000) (finding a box cutter to be a dangerous weapon). A box cutter, essentially a utility knife

with a retractable razor blade, held up to P.G.'s throat and used to threaten him during a robbery, is a dangerous weapon within the contemplation of the statute. *See* Minn. Stat. § 609.02, subd 6.

Johnson also contends that at various times at trial P.G. used different terms to describe the weapon such as "orange box cutter," "razor blade," and "carpet cutter," making his testimony less credible. But Johnson's argument is misleading; the transcript reveals that when P.G. called the weapon a "carpet cutter," he was explaining to the jury what a box cutter was, saying, "It is like a carpet cutter." And simply because P.G., while being examined on the witness stand during a jury trial, used slightly different terms to describe the same weapon does not undermine the jury's presumed determination that his testimony was credible. The evidence was sufficient for a jury to reasonably determine that a dangerous weapon was used in the robbery.

Affirmed.