STATE OF MINNESOTA
IN COURT OF APPEALS
A08-1674

State of Minnesota,
Respondent,

vs.

Joseph Brown,
Appellant.

Filed July 28, 2009
Affirmed
Willis, Judge[*]

Mahnomen County District Court
File No. 44-CR-07-733

Lori Swanson, Attorney General, John B. Galus, Assistant Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101-2134; and

Julie L. Bruggeman, Mahnomen County Attorney, P.O. Box 439, 311 N. Main Street, Mahnomen, MN 56557 (for respondent)

Lawrence Hammerling, Chief Appellate Public Defender, Rochelle R. Winn, Assistant Public Defender, 540 Fairview Avenue North, Suite 300, St. Paul, MN 55104 (for appellant)

Considered and decided by Hudson, Presiding Judge; Kalitowski, Judge; and Willis, Judge.

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[*] 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

WILLIS, Judge

Appellant Joseph Brown challenges the sufficiency of the evidence to support his conviction of being an ineligible person in possession of a firearm under Minn. Stat. § 624.713, subd. 1(b) (2006). He claims that the evidence is insufficient to prove his guilt beyond a reasonable doubt because only one trial witness testified that he possessed a firearm; that witness had only a brief glimpse of the weapon; and the weapon could have been a replica firearm. Because the evidence was sufficient to support Brown's conviction, we affirm.

FACTS

At approximately 8:00 p.m. on the evening of July 15, 2007, three teenage boys were playing basketball and hanging out at the home of T.F. in Naytahwaush in Mahnomen County. According to T.S., then 14 years old, and M.R., then 15 years old, Brown, who was intoxicated, came out of his grandmother's nearby home and threatened to shoot them.[1]

As D.W. drove his vehicle up to T.F.'s home, the three boys rushed over to his vehicle and told him that Brown had threatened to shoot them. When D.W. started to drive away, he saw Brown come out of his grandmother's home, carrying a shotgun and apparently intoxicated. D.W. told the boys to run away, which they did.

[1] Police were unable to locate the third boy, T.B., after the incident, and he did not appear in any proceedings involving Brown.

D.W. testified that he was 25-30 feet from Brown when he first saw him, that he honked his horn to get Brown's attention, that Brown then jacked the shotgun's pump back and forth and turned toward him, and that he lay down on the seat of his vehicle and called police because he "thought [Brown] was going to shoot." D.W. stated that he is familiar with shotguns and there was "no doubt" in his mind that the particular gun was a 12-gauge shotgun. He testified, "I know a 12-gauge shotgun from a 16 gauge or a 20 gauge, or a .410." D.W. and the two boys testified that they had known Brown for years, and D.W. testified that he had never had any problems with Brown.

When White Earth tribal police responded to the call, they found Brown in the basement of his grandmother's house, but they were unable to find a shotgun in the home or in the home of Brown's aunt, who lived nearby. Police arrested Brown, and he was charged with second-degree assault and being an ineligible person in possession of a firearm. Before trial, the state dismissed the second-degree assault count. Following a one-day trial, a jury convicted Brown, and the district court imposed a 60-month executed sentence.

D E C I S I O N

"The Due Process Clause of the Fourteenth Amendment to the United States Constitution requires the state, in a criminal case, to prove beyond a reasonable doubt every fact necessary to constitute the crime with which the defendant is charged." *State v. Otterstad*, 734 N.W.2d 642, 645 (Minn. 2007). Review on a claim of insufficient evidence "is limited to a painstaking analysis of the record to determine whether the evidence, when viewed in a light most favorable to the conviction, was sufficient to

permit the [fact-finder] to reach the verdict which [it] did." *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989); *State v. Moore*, 438 N.W.2d 101, 108 (Minn. 1989) (stating appellate court must assume that fact-finder "believed the state's witnesses and disbelieved any evidence to the contrary"). The verdict should 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 a defendant was proven guilty of the offense charged." *Bernhardt v. State*, 684 N.W.2d 465, 476-77 (Minn. 2004) (quotation omitted).

Under Minn. Stat. § 624.713, subd. 1(b), a person is ineligible to possess a firearm if the person "has been convicted of, or adjudicated delinquent or convicted as an extended jurisdiction juvenile for committing, in this state or elsewhere, a crime of violence." Brown has prior felony convictions for reckless discharge of a firearm, terroristic threats, escape from custody, and fourth-degree criminal sexual conduct. The terroristic threats and criminal sexual conduct offenses are defined as crimes of violence. Minn. Stat. § 624.712, subd. 5 (2006).

Brown's conviction was based, in large part, on the testimony of D.W., the only adult witness to the offense to testify at trial. D.W. stated with certainty that from a distance of 25-30 feet he saw Brown brandishing a weapon, and he was absolutely certain that the weapon was a 12-gauge shotgun. "[A] conviction may rest on the testimony of a single credible witness." *State v. Miles*, 585 N.W.2d 368, 373 (Minn. 1998); *State v. Head*, 561 N.W.2d 182, 188 (Minn. App. 1997), *review denied* (Minn. May 28, 1997). During his testimony, D.W. emphasized that he was clearly able to see the weapon in

Brown's hands, that he heard and saw Brown jack the pump of the shotgun, and that he was certain that the weapon was a 12-gauge shotgun.

The two boys testified on direct examination in a manner consistent with D.W.'s testimony, and T.S.'s statement to the police was also entered into evidence. In that statement, T.S. described a shell that he saw Brown "grab." On cross-examination, however, both boys testified that they were not sure whether Brown was carrying a gun, and T.S. said that he was not a "hundred percent . . . sure" what he saw with regard to a shell. Both boys also stated that they did not want to testify and that they appeared at trial only because they were under subpoena to do so.

"[I]t is the function of the jury to evaluate the credibility of the witnesses." *State v. Pippitt*, 645 N.W.2d 87, 92 (Minn. 2002). Weighing D.W.'s and the boys' differing testimony on whether Brown possessed a weapon was a jury function. *Id.* at 94. D.W.'s testimony was strong and unequivocal, while the boys' testimonies were reluctant, hesitant, and equivocal. Further, while Brown now posits that the gun seen by D.W. could have been a replica, this suggestion, while possible, is inconsistent with other evidence and the verdict reached by the jury. *See Moore*, 438 N.W.2d at 108. Viewing the evidence in the light most favorable to the verdict, we conclude that the evidence was sufficient to convict Brown of the charged offense.

Affirmed.