STATE OF MINNESOTA
IN COURT OF APPEALS
A09-828

Carl Lamont Donnell, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

Filed March 9, 2010
Affirmed
Wright, Judge

Martin County District Court
File No. 46-K0-03-000663

Marie L. Wolf, Interim Chief Appellate Public Defender, Suzanne M. Senecal-Hill, Assistant State Public Defender, St. Paul, Minnesota (for appellant)

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

Terry Viesselman, Martin County Attorney, Fairmont, Minnesota (for respondent)

Considered and decided by Ross, Presiding Judge; Peterson, Judge; and Wright, Judge.

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

WRIGHT, Judge

Appellant challenges the district court's denial of his petition for postconviction relief, arguing that the evidence is insufficient to support the jury's guilty verdicts because the testimony proving the elements of the offenses was not credible. We affirm.

FACTS

On the evening of September 19, 2003, K.S. was working as a manager of the Family Dollar Store at the Fairmont mall when a former coworker, C.B., informed her that a man at the back of the store needed assistance with vacuum-cleaner bags. K.S. assisted the man, who left without making a purchase. The man returned approximately 30 minutes later and again looked at vacuum-cleaner bags. Once again, he left without making a purchase. Approximately 30 minutes later, the same man returned. This time he explained to K.S. the type of vacuum-cleaner bags that he needed. When K.S. went to get the vacuum-cleaner bags that he requested, the man reached around her chest and said, "this [is] a hold up." Although K.S. did not observe a weapon, the man told her that he had a knife, implied that he had a knife by concealing his hand, and threatened to stab K.S. if necessary. The man ordered K.S. to open the safe in the store's office, but K.S. convinced him that she could not open it. He then ordered K.S. to open the cash register at the front of the store. K.S. complied, and he took the money from the cash register and fled.

At approximately 8:00 p.m., K.S. called 911 and reported an armed robbery. Fairmont police officers responded, and K.S. told Officer Thomas Gray that the

perpetrator was an African American man. She described the perpetrator's height, weight, and hair length. And she reported that the perpetrator was wearing a hat with orange lettering on it and a black hooded sweatshirt. Officer Gray relayed this description to the other investigating officers.

Shortly thereafter, two officers detained J.H., who matched the perpetrator's description, in another area of the mall. Officer Gray escorted K.S. to the location, and K.S. identified J.H. as the perpetrator. As a result, J.H. was arrested and transported to the Fairmont law-enforcement center.

During the investigation at the mall, officers interviewed J.H.'s supervisor and a coworker who worked with J.H. at a store near the Family Dollar Store. J.H.'s supervisor advised the officers that J.H. was at work when the robbery occurred. J.H.'s coworker reported that he observed C.B. and appellant Carl Donnell sitting in a vehicle outside the mall at approximately 7:45 p.m., ten minutes before police were dispatched to the scene. According to the coworker, Donnell left the vehicle and entered the Family Dollar Store wearing a black hooded sweatshirt and a dark-colored baseball cap.

Based on this information, police determined that they had probable cause to arrest C.B. and Donnell for armed robbery. Following her arrest and transport to the law enforcement center for questioning, C.B. initially denied any involvement with the robbery. But she later admitted going to the Family Dollar Store with Donnell two times that evening so that he could look at vacuum-cleaner bags. C.B. recounted that, on the second occasion, she did not enter the store and, when Donnell left the store and returned to the vehicle, he was shaking. Donnell then admitted to C.B. that he had stolen money

from the store. Officers recovered an eight-inch steak knife and a black hat with orange lettering from C.B.'s impounded vehicle.

Officers later prepared a six-person photo lineup that included J.H. and Donnell. When shown this lineup, K.S. again identified J.H. as the perpetrator.

Donnell was charged with making terroristic threats, a violation of Minn. Stat. § 609.713, subd. 1 (2002); simple robbery, a violation of Minn. Stat. § 609.24 (2002); and second-degree aggravated robbery, a violation of Minn. Stat. § 609.245, subd. 2 (2002). An additional charge of theft, a violation of Minn. Stat. § 609.52, subd. 2(1) (2002), subsequently was added.

At trial, K.S. identified Donnell as the perpetrator, and C.B.'s testimony was consistent with her statements to the police. Contradicting his original statement to the police that he had not been in the Family Dollar Store on the day of the robbery, Donnell testified that he went to the store twice that day to look for vacuum-cleaner bags. According to Donnell, when he arrived at the store the second time, K.S. was at the front of the store counting the money in the cash register. When K.S. left the cash register to get the vacuum-cleaner bags that Donnell requested, she did not shut the cash-register drawer completely. Donnell opened the cash-register drawer, stole the money, and fled the store. Donnell denied threatening K.S., using a weapon, or stating that he possessed a knife.

The jury returned a guilty verdict on each of the charged offenses. Donnell petitioned for postconviction relief, claiming that the evidence is insufficient to support his convictions of terroristic threats, simple robbery, and second-degree aggravated

robbery.[1] The district court denied Donnell's petition, concluding that there is sufficient evidence to sustain the jury's verdicts. This appeal followed.

D E C I S I O N

We review the district court's decision in a postconviction proceeding to determine whether there is sufficient evidence to support the district court's findings, and we will not disturb the district court's decision absent an abuse of discretion. *Jihad v. State*, 594 N.W.2d 522, 524 (Minn. 1999).

When reviewing the sufficiency of the evidence, we conduct a careful analysis of the record to determine whether, based on the evidence in the record and the legitimate inferences that can be drawn from that evidence, the jury reasonably could find the defendant guilty of the offense. *State v. Chambers*, 589 N.W.2d 466, 477 (Minn. 1999). In doing so, we view the evidence in the light most favorable to the verdict and assume that the jury believed the evidence supporting the guilty verdict and disbelieved any contrary evidence. *Id*. We will not disturb a guilty verdict if the jury, acting with due regard for the presumption of innocence and the requirement of proof beyond a reasonable doubt, reasonably could conclude that the defendant is guilty of the charged offense. *State v. Alton*, 432 N.W.2d 754, 756 (Minn. 1988).

Donnell argues that there is insufficient evidence to support the jury's verdicts because K.S.'s testimony, which he maintains is not credible, is the only evidence

[1] Donnell filed for postconviction relief in August 2007. His petition was inadvertently filed in the wrong county, so the postconviction court denied the petition as untimely. We reversed the postconviction court's decision, holding that Donnell's petition should be heard on the merits in the interests of justice. *Donnell v. State*, No. A07-2036 (Minn. App. Sept. 25, 2008) (order op.). Donnell does not challenge his theft conviction.

establishing the elements of the offenses. Assessing witness credibility and the weight of testimonial evidence is exclusively the province of the jury. *State v. Bliss*, 457 N.W.2d 385, 390 (Minn. 1990). This is especially true when resolution of the case depends on conflicting testimony. *State v. Pieschke*, 295 N.W.2d 580, 584 (Minn. 1980). When fulfilling its fact-finding responsibility, the jury is free to accept some aspects of a witness's testimony and reject others. *State v. Poganski*, 257 N.W.2d 578, 581 (Minn. 1977).

K.S. twice identified J.H. as the perpetrator. This evidence of K.S.'s conflicting identifications was placed before the jury by both the prosecuting attorney and defense counsel. This evidence afforded the jury the opportunity to weigh K.S.'s initial identifications of J.H. against K.S.'s testimony that the perpetrator came into the Family Dollar Store three times on the evening of the robbery looking for vacuum-cleaner bags and that Donnell was the perpetrator. *See State v. Reichenberger*, 289 Minn. 75, 79-80, 182 N.W.2d 692, 695 (1970) (holding that evidence was sufficient to support conviction despite inconsistencies in victim's statements when inconsistencies were brought to the jury's attention). The jury also could consider that C.B. and Donnell corroborated K.S.'s testimony that Donnell went into the store multiple times and stole money from the cash register. Such corroboration lends credibility to K.S.'s testimony. *See State v. Adams*, 295 N.W.2d 527, 533 (Minn. 1980) (stating that "inadequacies and admissions" in the accused's testimony may be corroborative of other testimony). When weighing the evidence, the jury also was free to consider the officers' testimony, which established that K.S.'s initial statements to police were consistent with K.S.'s trial testimony. *See State v.*

Blair, 402 N.W.2d 154, 158 (Minn. App. 1987) (stating that victim's prior statements may be used by fact-finder in weighing victim's credibility). Based on this record, K.S.'s initial identification of J.H. as the perpetrator is not sufficient to overcome our deference to the jury's role of weighing the evidence and assessing witness credibility.

When we assume, as we must, that the jury believed the evidence that supports the verdicts and did not find credible contrary evidence, *Chambers*, 589 N.W.2d at 477, there is ample record evidence to establish the elements of each offense before us, namely, terroristic threats, simple robbery, and second-degree aggravated robbery. We address each offense in turn.

A person who "threatens, directly or indirectly, to commit any crime of violence with purpose to terrorize another . . . or in a reckless disregard of the risk of causing such terror" is guilty of making terroristic threats. Minn. Stat. § 609.713, subd. 1. The state must prove that the defendant (1) threatened to commit a crime of violence; and (2) made the threat with either (a) specific intent to cause extreme fear in another, or (b) reckless disregard of the risk that it would have that effect. *Id*.; *State v. Schweppe*, 306 Minn. 395, 399-400, 237 N.W.2d 609, 613-14 (1975) (discussing statutory elements).

"A threat is a declaration of an intention to injure another or his or her property by some unlawful act." *Schweppe*, 306 Minn. at 399, 237 N.W.2d at 613. Whether a statement constitutes a threat depends on "whether the communication in its context would have a reasonable tendency to create apprehension that its originator will act according to its tenor." *Id.* (quotation omitted). The evidence establishes that Donnell threatened to commit a crime of violence when he stated, "this [is] a hold up," warned

K.S. that he had a knife, and threatened to stab her if she did not cooperate. There is more than sufficient evidence that Donnell threatened K.S.

As to the second element of terroristic threats, "[i]ntent . . . is a subjective state of mind usually established only by reasonable inference from surrounding circumstances." *Id*. at 401, 237 N.W.2d at 614. The effect of the threat on the victim may be circumstantial evidence of the defendant's intent. *Id*. K.S. testified that after Donnell grabbed her, he stated, "this is serious, I'm not joking." Donnell's threat to stab K.S. caused her to be fearful because he said he had a knife. The jury could reasonably infer from this testimony that Donnell intended to cause K.S. fear when he threatened to stab her. Thus, when viewed in the light most favorable to the verdict, the evidence is more than sufficient to establish that Donnell committed the offense of terroristic threats.

A person is guilty of simple robbery when that person knowingly takes the property of another and uses or threatens to use force to "overcome the person's resistance . . . or to compel acquiescence in [ ] the taking or carrying away of the property." Minn. Stat. § 609.24. Donnell does not dispute that he stole money from the store's cash register, the first element of the offense. That he used force to overcome K.S.'s resistance, the second element, is established by K.S.'s testimony that Donnell put his arm around her chest and threatened to stab K.S. This combination of threats and action is a sufficient basis for the jury's conclusion that Donnell used or threatened to use force to take the money. *See Schweppe*, 306 Minn. at 399, 237 N.W.2d at 613 (stating that whether words or phrases are harmless or threatening is determined by the context in which they are used). The district court did not err by concluding that Donnell's

challenge to the sufficiency of the evidence supporting the guilty verdict for simple robbery was without merit.

A person is guilty of second-degree aggravated robbery when that person implies possession of a dangerous weapon while committing a robbery. Minn. Stat. § 609.245, subd. 2. As discussed above, there is ample evidence to establish that Donnell committed robbery. The additional element required to establish aggravated robbery—the use of a dangerous weapon—also is satisfied. A knife is a dangerous weapon. *See State v. Slaughter*, 691 N.W.2d 70, 75-76 (Minn. 2005) (holding that knife-like object qualifies as a dangerous weapon). Although K.S. did not see a knife, Donnell told her that he had one and threatened to stab K.S. while concealing his hand. *See State v. Moss*, 269 N.W.2d 732, 733, 735-36 (Minn. 1978) (holding that although victim did not see a weapon and defendant did not remove weapon from his pocket, evidence in the record was sufficient to sustain conviction of aggravated robbery). Thus, when the trial testimony is considered in the light most favorable to the verdict, there is more than sufficient record evidence to support the jury's determination that Donnell committed second-degree aggravated robbery.

A thorough review of the record demonstrates that there is ample evidence to establish that Donnell committed each of the challenged offenses of conviction. Accordingly, the district court did not abuse its discretion by denying Donnell's petition for postconviction relief.

Affirmed.