STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1058

State of Minnesota,
Respondent,

vs.

Christian Nathanial Franks,
Appellant.

Filed July 1, 2008
Affirmed
Wright, Judge

Olmsted County District Court
File No. 55-CR-06-7883

Lawrence Hammerling, Chief Appellate Public Defender, Susan J. Andrews, Assistant Public Defender, 540 Fairview Avenue North, Suite 300, St. Paul, MN 55104 (for appellant)

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

Mark Ostrem, Olmsted County Attorney, Lisa R. Swenson, Assistant County Attorney, Government Center, 151 Fourth Street Southeast, Rochester, MN 55904 (for respondent)

Considered and decided by Klaphake, Presiding Judge; Wright, Judge; and Muehlberg, Judge.*

* Retired judge of the district court, serving as judge of the Minnesota Court of Appeals 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

WRIGHT, Judge

In this appeal from a conviction of terroristic threats, appellant argues that there is insufficient evidence to support his conviction. In a pro se supplemental brief, appellant also argues that the district court abused its discretion by (1) admitting evidence of his relationship with his former wife, the victim of the threat; and (2) declining to excuse jurors for bias. We affirm.

FACTS

In fall 2005, appellant Christian Franks was found guilty of four counts of violating an order for protection (OFP) and one count of engaging in a pattern of harassing conduct, all with respect to his former wife, J.R. At the sentencing hearing on April 10, 2006, the district court sentenced Franks to 51 months' imprisonment for the four convictions of violating an OFP but declined to sentence Franks for the pattern-of-harassing-conduct conviction.[1] When Franks was being led back to a holding area by two police officers immediately following the sentencing hearing, he said, "They think this is a charge. Next time they're going to have a mother-f-cking murder trial, because when I get out of here, I'm going to kill that f-cking b-tch." After securing Franks in the holding area, Capt. Mark Erickson, one of the police officers escorting Franks, transcribed Franks's statement. Because he feared for J.R.'s safety, Capt. Erickson contacted victim services and requested that Franks's statement be relayed to her.

[1] *State v. Franks*, 742 N.W.2d 7 (Minn. App. 2007), *review granted* (Minn. Feb. 19, 2008) (affirming convictions and sentence).

Franks subsequently was charged with terroristic threats, a violation of Minn. Stat. § 609.713, subd. 1 (2004). The case proceeded to a jury trial during which the state presented testimony from two witnesses: J.R. and Capt. Erickson. J.R. testified about the history of her relationship with Franks. During her testimony, she described the end of their six-month marriage when Franks broke into the home they had shared and sexually assaulted her. She also described Franks's repeated violations of the OFP that she had obtained against him. J.R. also testified that, although she had been present at the sentencing hearing, she was not present when Franks made the threats. Capt. Erickson testified about the sentencing hearing, Franks's statement, and his reason for relaying it to J.R.

Franks was convicted of the charged offense, and this appeal followed.

D E C I S I O N

I.

Franks argues that there is insufficient record evidence to support his conviction. When reviewing a challenge to the sufficiency of the evidence, we conduct a painstaking analysis of the record to determine whether the jury reasonably could find the defendant guilty of the offense based on the facts in the record and the legitimate inferences that can be drawn from those facts. *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 was guilty of the charged offense. *State v. Alton*, 432 N.W.2d 754, 756 (Minn. 1988).

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 (2004). The state must prove that the defendant (1) threatened to commit a crime of violence, and (2) made that threat with either specific intent to cause extreme fear in another or with reckless disregard of the risk that it would have that effect. *Id.*; *State v. Schweppe*, 306 Minn. 395, 399-401, 237 N.W.2d 609, 613-14 (1975) (discussing statutory elements).

Franks challenges the sufficiency of the evidence regarding the intent element, arguing that he made the statement because he was angry about his sentence and did not intend to cause J.R. terror. To meet its burden, the state did not need to prove that Franks actually intended to follow through with his threat to harm J.R. Rather, it needed to prove only that, when taken in context, the threat tends to "create apprehension" that he will do so. *Schweppe*, 306 Minn. at 399-401, 237 N.W.2d at 613-14 (quotation omitted). Similarly, proof that J.R. actually experienced extreme fear was not required. *Id.* at 401, 237 N.W.2d at 614. But the effect that a threat has on the victim is circumstantial evidence of the defendant's intent. *Id.*

There is ample record evidence demonstrating that Franks intended to terrorize J.R. Franks has a history of violent harassing conduct toward J.R., including breaking into her home, sexually assaulting her, and repeatedly violating the OFP that she had obtained against him. *See Lande v. State*, 406 N.W.2d 574, 577 (Minn. App. 1987)

(stating that "evidence of [a defendant's] prior relationship with the victim is relevant to establish [the defendant's] intent and motive for making the threats"), *review denied* (Minn. June 30, 1987). Capt. Erickson testified that, because of Franks's "prior history [and] his pattern of behavior" toward J.R., he was concerned for J.R.'s safety. Capt. Erickson felt obliged to contact victim services so that J.R. could be warned and so that she could take measures to protect herself from Franks. J.R. testified that, because of her history with Franks, she was afraid of him and believed he would follow through with his threat. *See Schweppe*, 306 Minn. at 401, 237 N.W.2d at 614 (permitting consideration of actual effect on victim as circumstantial evidence of defendant's intent). Finally, Capt. Erickson testified that Franks was visibly angry when he made the threat, but he was not out of control.

Based on this evidence, the jury reasonably could infer that Franks did not accidentally blurt out the statement in anger. The evidence demonstrates that Franks intended to cause J.R. terror by making a threatening statement at the courthouse in the presence of two police officers whom he had reason to believe would relay it to her. *See id.* at 400, 237 N.W.2d at 614 (stating that defendant knew or had reason to know threat would be communicated to victim and, therefore, intended threat to be communicated). Moreover, Franks's history with J.R., the context in which he made the statement, and the nature of the statement demonstrate reckless disregard for the possibility that his statement would terrorize J.R. *See id.* at 400-01, 237 N.W.2d at 614 (stating that defendant's communication of threat to victim's friends meant that "defendant at the very

least recklessly risked the danger that his threats would be communicated and thereby would terrorize [the victim]").

Thus, when viewing the evidence in the light most favorable to the verdict, there is ample evidence from which the jury could conclude that Franks committed the offense of terroristic threats.[2]

II.

In his pro se supplemental brief, Franks argues that the district court abused its discretion by (1) admitting evidence of his prior relationship with his former wife, and (2) declining to excuse jurors for bias after they allegedly saw him handcuffed in the hallway.[3] We address each argument in turn.

A.

"Evidentiary rulings rest within the sound discretion of the [district] court and will not be reversed absent a clear abuse of discretion." *State v. Amos*, 658 N.W.2d 201, 203 (Minn. 2003). When a defendant is charged with terroristic threats, evidence of the defendant's prior relationship with the victim is relevant to establish the defendant's

[2] In his pro se supplemental brief, Franks challenges the accuracy of Capt. Erickson's testimony. Franks maintains that he said, "Next time I'm not leaving it up to no judge, there's gonna be no doubt if I'm guilty or not, because it will be for murder." But Franks's argument is unavailing because we view the evidence in the light most favorable to the verdict and assume that the jury believed the evidence supporting the verdict. *Chambers*, 589 N.W.2d at 477. Thus, Franks's suggestion that we should discredit Capt. Erickson's testimony is without merit.

[3] Franks does not support either argument with citation to the record or legal authority. Ordinarily, we will not consider "[a]n assignment of error based on mere assertion and not supported by any argument or authorities in appellant's brief," *State by Humphrey v. Modern Recycling, Inc.*, 558 N.W.2d 770, 772 (Minn. App. 1997) (quotation omitted), but we do so here in the interests of justice.

intent and motive for making the threats. *Lande*, 406 N.W.2d at 577. Consequently, the state may present evidence of the defendant's similar conduct against the victim unless the probative value is substantially outweighed by the danger of unfair prejudice. *See* Minn. Stat. § 634.20 (2006) (permitting evidence of prior domestic abuse between defendant and victim); *State v. Bell*, 719 N.W.2d 635, 638 n.4, 639-40 (Minn. 2006) (recognizing section 634.20 evidence as subset of generally admissible relationship evidence); *State v. Meyer*, ___ N.W.2d ___, ___ 2008 WL 2245713, at *3-*4 (Minn. App. June 3, 2008) (same). Contrary to Franks's argument, his history of violent and harassing conduct toward J.R. is highly relevant and probative of his intent when making the statements at issue here. The record establishes that the district court carefully evaluated the potential effect of the evidence and the most appropriate manner for admitting it. Therefore, it was well within the district court's sound discretion to admit this relationship evidence.

B.

We will not substitute our judgment for that of the district court in evaluating juror bias. *State v. Anderson*, 603 N.W.2d 354, 356 (Minn. App. 1999), *review denied* (Minn. Mar. 14, 2000). "Generally, in an appeal based on juror bias, an appellant must show that actual prejudice occurred." *State v. Ritter*, 719 N.W.2d 216, 221 (Minn. App. 2006). Prejudice is not apparent from the record before us. Even assuming that jurors saw Franks in handcuffs, a claim that is not supported by the record, this merely would have confirmed what the jurors could readily infer from the evidence properly admitted at trial—that Franks was in custody because of his prior convictions. There is ample

evidence in the record from which the jury could conclude, even without seeing Franks in handcuffs, that Franks committed the instant offense of terroristic threats. *See* Minn. R. Crim. P. 31.01 (requiring this court to disregard "[a]ny error, defect, irregularity or variance which does not affect substantial rights"); *State v. Juarez*, 572 N.W.2d 286, 292 (Minn. 1997) (requiring "a thorough examination of the evidence . . . to discover whether the jury's verdict was surely unattributable to the [claimed error]" (quotation omitted)). Accordingly, the district court's decision not to dismiss jurors for possible bias presents no grounds for relief.

Affirmed.