STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1126

State of Minnesota,
Respondent,

vs.

David Devon Bryant,
Appellant.

Filed August 5, 2008
Affirmed
Willis, Judge

Steele County District Court
File No. 74-K1-05-1355

Lori Swanson, Attorney General, Kelly O'Neill Moller, Assistant Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101-2134; and

Douglas L. Ruth, Steele County Attorney, 303 South Cedar, Owatonna, MN 55060 (for respondent)

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

Considered and decided by Halbrooks, Presiding Judge; Willis, Judge; and Johnson, Judge.

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

WILLIS, Judge

Appellant challenges his conviction of terroristic threats, arguing that the evidence was insufficient to support the conviction because he did not make the threat with the intent to cause extreme fear. We affirm.

FACTS

On September 26, 2005, Officer Joshua Steinbach of the Owatonna Police Department received information from another officer that there was probable cause to arrest appellant David Devon Bryant for domestic assault and terroristic threats against his girlfriend. Officer Steinbach and another officer found Bryant in a bar in downtown Owatonna and arrested him.

As the officers took Bryant to a squad car, he became irate and claimed that his arrest was racially motivated. After the officers put Bryant in the squad car, Bryant told Officer Steinbach that "you better have enough f--king ammunition to drop my ass, if you don't have enough bullets, your ass is going down, son." Officer Steinbach testified that Bryant also said that he was going to "kick [Steinbach's] butt" and that "when [Bryant] got out, there's going to be a Black Panther Party for all of us white mother f'ers." Bryant also repeatedly told Officer Steinbach that if he wanted a problem "I will give you a problem." Bryant then said, "[I]f you guys want some problems, I'll give you some problems because I'm not from here. I'm from [Chicago] so you guys better get it right." When Officer Steinbach asked what Bryant meant, Bryant replied, "I'm from murder one capitol, don't start no sh-t, you won't get no sh-t."

Bryant was charged with one count of terroristic threats, in violation of Minn. Stat. § 609.713, subd. 1 (2004). Bryant waived his right to a jury trial, and the district court found him guilty. The district court stayed imposition of a sentence and placed Bryant on probation for five years. This appeal follows.

D E C I S I O N

Bryant contends that the evidence was insufficient to support his conviction of terroristic threats. When considering a claim of insufficiency of the evidence, we review the record to determine if the evidence, viewed in the light most favorable to the conviction, permitted the fact-finder to find the defendant guilty. *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989). But this court will not retry the facts. *State v. Sheldon*, 391 N.W.2d 537, 539 (Minn. App. 1986). On review, we assume that the fact-finder credited the testimony of the state's witnesses and discredited any conflicting testimony. *State v. Pieschke*, 295 N.W.2d 580, 584 (Minn. 1980). An appellate court will not overturn a verdict if the fact-finder, acting with due regard for the presumption of innocence and the necessity for proof beyond a reasonable doubt, could reasonably conclude that the defendant was proven guilty of the offenses charged. *Bernhardt v. State*, 684 N.W.2d 465, 476-77 (Minn. 2004).

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). To obtain a terroristic-threats conviction, therefore, the state must prove that a defendant (1) made threats (2) to commit a crime of violence (3) with purpose to terrorize another

or in reckless disregard of the risk of terrorizing another. *See State v. Schweppe*, 306 Minn. 395, 399, 237 N.W.2d 609, 613 (1975). Whether a statement is 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). "Purpose" means "aim, objective, or intention." *Id*. at 400, 237 N.W.2d at 614. And "[t]errorize" means "to cause extreme fear by use of violence or threats." *Id*. The terroristic-threats statute is not designed "to authorize grave sanctions against the kind of verbal threat which expresses *transitory anger* which lacks the intent to terrorize." *State v. Jones*, 451 N.W.2d 55, 63 (Minn. App. 1990) (quotation omitted), *review denied* (Minn. Feb. 21, 1990).

Bryant concedes that his statement that the next time Officer Steinbach encountered Bryant that Officer Steinbach "better have enough f--king ammunition to drop my ass, if you don't have enough bullets, your ass is going down, son" is "unquestionably a threat." But Bryant argues that the evidence showed, at most, that he made the threat out of "transitory anger," not with the intent to terrorize. We disagree.

The record contains abundant evidence to support the district court's finding that Bryant made the statement with the intent to terrorize Officer Steinbach, not as the result of mere transitory anger. Bryant told Officer Steinbach, in effect, that the next time that he encountered Officer Steinbach he intended to shoot him. *Cf. State v. Dick*, 638 N.W.2d 486, 492 (Minn. App. 2002) (holding that officers' testimony that an intoxicated suspect spat on them and threatened to find out where they lived and "skin" them was sufficient to show intent to terrorize), *review denied* (Minn. Apr. 16, 2002); *State v.*

Begbie, 415 N.W.2d 103, 105 (Minn. App. 1987) (concluding that the evidence was sufficient to support finding of intent to terrorize when defendant told victims, among other things, that they would "die"), *review denied* (Minn. Jan. 20, 1988). Additionally, the district court could reasonably have concluded that Bryant's statement, in light of his evocation of the "Black Panther Party," showed his intention to terrorize Officer Steinbach. *See* 3 *Academic Am. Encyclopedia* 318 (1991) (describing the Black Panther Party as a "militant organization" that was involved in "[s]everal armed clashes with the police"). And Officer Steinbach testified that he took Bryant's threat "seriously" and that he was aware that the Black Panthers are "a militant group, kind of the opposite of a white supremacy group." Based on Officer Steinbach's testimony that he took the threat seriously, the district court reasonably concluded that Bryant made the threat with the intent to terrorize. *See Schweppe*, 306 Minn. at 401, 237 N.W.2d at 614 (stating that the victim's reaction to the threat is "circumstantial evidence relevant to the element of intent of the defendant in making the threat").

Bryant argues also that because Officer Steinbach did not take additional precautionary measures when Bryant was transported to jail and during his detention, the record is insufficient to support the district court's finding that Officer Steinbach's reaction was evidence that Bryant intended to terrorize him. Bryant does not suggest why additional precautionary measures in his transport and detention would have shown that Officer Steinbach took the threat seriously, particularly in light of the fact that the threat related to actions that Bryant would take after he was released from jail. And in any event, although Officer Steinbach's reaction to the threat is circumstantial evidence

relevant to Bryant's intent, the effect of the threat on Officer Steinbach is not an essential element of the offense when, as here, there is other evidence in the record to support the district court's finding that Bryant made the threat with the intent to terrorize. *See Schweppe*, 306 Minn. at 401, 237 N.W.2d at 614; *State v. Marchand*, 410 N.W.2d 912, 915 (Minn. App. 1987), *review denied* (Minn. Oct. 21, 1987).

Affirmed.