STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1494

State of Minnesota,
Respondent,

vs.

Craig Louis Johnson,
Appellant.

Filed August 5, 2008
Affirmed
Worke, Judge

St. Louis County District Court
File No. 69DU-CR-06-5612

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

Shawn B. Reed, Maki & Overom, Chartered, 31 West Superior Street, Suite 402, Duluth, MN 55802 (for respondent)

Peter B. Wold, Peter B. Wold, P.A., Barristers Trust Building, 247 Third Avenue South, Minneapolis, MN 55415 (for appellant)

Considered and decided by Peterson, Presiding Judge; Kalitowski, Judge; and Worke, Judge.

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

WORKE, Judge

Appellant challenges his convictions of two counts of making harassing phone calls, arguing that the evidence is insufficient to show that he acted with specific intent to harass his former girlfriend. He also argues that he is entitled to a new trial because the

district court failed to make written findings and because the court's oral remarks showed that it required the state to prove only general intent. We affirm.

D E C I S I O N

Appellant Craig Louis Johnson argues that the evidence is insufficient to sustain his misdemeanor conviction of making harassing phone calls in violation of Minn. Stat. § 609.79, subd. 1(b), (c) (Supp. 2005). After appellant waived his right to a jury trial, the district court found him guilty of making harassing phone calls to his former girlfriend, G.B., from February through March 2006. When reviewing a claim of insufficient evidence, this court's role is limited to ascertaining whether the fact-finder could reasonably find the defendant guilty beyond a reasonable doubt, given the facts in evidence and any legitimate inferences which could be drawn from those facts. *State v. Miles*, 585 N.W.2d 368, 372 (Minn. 1998). We carefully review 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 its verdict. *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989).

A person may be convicted of making harassing phone calls if the person "repeatedly makes telephone calls" or "makes or causes the telephone of another repeatedly or continuously to ring, with intent to abuse, disturb, or cause distress." Minn. Stat. § 609.79, subd. 1(b), (c). "The statute requires a specific intent to harass, but does not require the call be made solely to harass." *State v. Badiner*, 412 N.W.2d 810, 811 (Minn. App. 1987) (quotation omitted), *review denied* (Minn. Dec. 18, 1987). "Specific intent means that the defendant acted with the intent to produce a specific result[.]" *State v. Vance*, 734 N.W.2d 650, 656 (Minn. 2007). "'With intent to' . . . means that the actor

either has a purpose to do the thing or cause the result specified *or believes that the act, if successful, will cause that result*." Minn. Stat. § 609.02, subd. 9(4) (2004) (emphasis added). General intent means only that the defendant "intentionally engaged in prohibited conduct." *Vance*, 734 N.W.2d at 656. "Intent must be determined from all objective facts and circumstances." *State v. Whisonant*, 331 N.W.2d 766, 768 (Minn. 1983).

Appellant argues that the evidence was insufficient for the district court to infer that he had specific intent to harass G.B. by telephoning her. He maintains that his only specific intent was "love," that he wished to resume their seven-year relationship, and that he stopped calling immediately in March 2006, after G.B. obtained a restraining order against him. But this court has concluded that a fact-finder may infer an intent to harass based on "[t]he number and nature of the calls." *Badiner*, 412 N.W.2d at 811. G.B. testified that when she ended her relationship with appellant in February 2006, she told him she did not want to see or hear from him again, and if she did, she would obtain a restraining order. The record shows that despite this conversation, appellant placed 119 calls to G.B.'s home, work, and cell-phone numbers within a 38-day period. Most of these calls were very short; G.B did not answer, and appellant left messages. Appellant admitted that he knew the calls were "frustrating" to G.B. and that she had asked him not to call. G.B. testified that appellant's calls "would break [her] down" and that she switched jobs to different buildings several times to try to avoid the calls. The record also shows that during the period that appellant made the calls, he tried to contact G.B. by appearing uninvited at her home, at a training class she was attending, and at her child's birthday party.

Because appellant persisted in making numerous, unwanted phone calls to G.B. after she made it clear that she was upset by the calls and because the calls were accompanied by other assertive behavior in seeking to contact her, objective facts and circumstances support the district court's inference that when appellant made the calls, he believed that the calls would frustrate G.B., and, therefore, he acted with intent to disturb G.B. or cause her distress. Thus, viewing the evidence in the light most favorable to the convictions, the record supports the convictions.

Appellant also argues that the district court erred by failing to make specific written findings of fact supporting its determination of guilt. After a court trial in misdemeanor cases, a district court is directed to make specific written findings of fact within seven days after a notice of appeal is filed. Minn. R. Crim. P. 26.01, subd. 2. Two days after trial, the district court issued general written findings, which stated only that the state had proved beyond a reasonable doubt that appellant was guilty of two counts of making obscene or harassing phone calls. But in order to trigger the requirement of specific written findings, a person who has been convicted of a misdemeanor "must expressly advise the trial judge of the need to provide a full set of written factual findings." *State v. Oanes*, 543 N.W.2d 658, 663 (Minn. App. 1996). The record does not show that appellant made this request. Therefore, because appellant was convicted of a misdemeanor, the district court's failure to provide complete written findings sua sponte was not error. *See id*. ("Because [the defendant] offers no evidence suggesting that she informed the [district] court of the need for a complete statement of factual findings to support the determination of guilt, it was not error for the [district] court to provide an incomplete justification for its decision regarding criminal liability.").

Appellant also requests a new trial, arguing that his substantial rights were impaired because the district court made oral remarks showing that the court erroneously required the state to prove only general, rather than specific, intent. At sentencing, which occurred nearly a month after trial, the district court stated that G.B. had perceived the calls as harassing, which supported its finding of guilt. But the record also shows that during opening remarks at trial, appellant's attorney stated the required legal standard that the state must prove beyond a reasonable doubt appellant intended "to abuse, disturb, or distress" G.B. by making the calls. At the same time, the attorney furnished the court with relevant jury instructions, which stated the same required definition of intent. *See* 10 *Minnesota Practice*, CRIMJIG 13.59, .61 (2006). The court acknowledged this information on the record. Because the court was aware of the correct legal standard during trial and because its inaccurate statement of the law occurred nearly a month later, we may presume that the misstatement was inadvertent and that the court used the correct standard to find appellant guilty. Thus, appellant's fundamental right to a fair trial was not impaired. *See State v. Billington*, 241 Minn. 418, 427, 63 N.W.2d 387, 392-93 (1954) (declining to grant a new trial when district court made inaccurate, but inadvertent, statements in jury instructions, concluding that defendant had "not been prejudiced through the impairment of substantial rights essential to a fair trial").

Affirmed.