STATE OF MINNESOTA
IN COURT OF APPEALS
A08-0847

State of Minnesota,
Respondent,

vs.

Johnathan BPierre Morris,
Appellant.

Filed June 23, 2009
Affirmed
Shumaker, Judge

Hennepin County District Court
File No. 27-CR-07-015608

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

Michael O. Freeman, Hennepin County Attorney, David C. Brown, Assistant County Attorney, C-2000 Government Center, Minneapolis, MN 55487 (for respondent)

Lawrence Hammerling, Chief Appellate Public Defender, Steven P. Russett, Assistant Public Defender, Suite 300, 540 Fairview Avenue North, St. Paul, MN 55104 (for appellant)

Considered and decided by Shumaker, Presiding Judge; Halbrooks, Judge; and Crippen, Judge.[*]

[*] 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

SHUMAKER, Judge

On appeal from his conviction of unlawful possession of a firearm, appellant argues that he is entitled to a new trial in the interests of justice. We affirm.

FACTS

At approximately 10 p.m. on the evening of March 9, 2007, Officers Shawn Brandt and Peter Stanton responded to a call of "shots fired" near 17th and Irving Avenues North. As the officers turned southbound on James Avenue, they spotted a group of eight to ten males who fit the description they were given, and they drove towards the group. When they were approximately two car-lengths away, Officer Stanton saw "one of the males toss what [he] thought was a gun and take off running." Officer Stanton caught that male, later identified as appellant Johnathan BPierre Morris, and recovered a firearm from the snowbank where he had seen Morris throw what appeared to be a gun.

Morris, who had been adjudicated delinquent for a first-degree robbery in 2004, was charged with possession of a firearm by a prohibited person. He denied ownership or possession of the firearm. After a trial, the jury found Morris guilty. Not alleging any particular factual or legal error, he appeals and requests that his conviction be reversed and vacated "in the interests of justice."

D E C I S I O N

The only issue on appeal is whether Morris's conviction of unlawful possession of a firearm should be overturned in the interests of justice.

A defendant may be granted a new trial in the interests of justice if the court entertains "grave doubt as to a defendant's guilt." *State v. Johnson*, 277 Minn. 368, 375, 152 N.W.2d 529, 533 (1967) (citations omitted). This is so even when "the record leads to the conclusion that no errors were committed in the trial, and the instructions to the jury are not open to criticism." *Id.* At the same time, we will not disturb a jury's verdict if the jury, acting with due regard for the presumption of innocence and the need for proof beyond a reasonable doubt, could reasonably conclude that the defendant was guilty. *Bernardt v. State*, 684 N.W.2d 465, 476 (Minn. 2004).

Morris expressly concedes that the evidence presented at his trial "technically" supports the jury's verdict, but argues that he deserves a new trial despite the sufficiency of the evidence. There is no distinction between "technically" sufficient evidence and sufficient evidence; the jury's verdict is to be upheld if the evidence is sufficient despite any colloquial characterization of that sufficiency. *See State v. Budreau*, 641 N.W.2d 919, 929 (Minn. 2002) (detailing the requirements for a challenge to the sufficiency of evidence). Furthermore, Morris's case is not factually a close one. He was the only person in his group to flee when the police approached, and an officer saw him throw something he believed to be a firearm into a snowbank. Then, the officer apprehended him near the scene and recovered a firearm from that location. The jury's verdict of guilty was supported by sufficient evidence, and we are not persuaded that the interests of justice require us to reverse.

Morris argues that, at one point, the jury was deadlocked 11-1 in favor of finding him guilty. When the jury requested instruction from the court as to how to proceed, the

court responded that "[a]ll the law permits me to do is to give you a repeat of an instruction I gave you earlier." The court then read its previous instruction about deliberations.

While conceding that the court's decision to re-read its previous instructions to the jury "may not have been an abuse of discretion," Morris claims that the phrase "all the law permits [me to do]," may have caused the jury to believe that a hung jury was not an option. The district court is prohibited from instructing a jury that it must render a unanimous verdict. *State v. Martin*, 297 Minn. 359, 368-69, 211 N.W.2d 765, 770 (1973). But here, the district court did not instruct the jury that it was required to deliberate until they reached a unanimous verdict. In context, the court was simply informing the jury that it could not prescribe a method for resolving its deadlock, but could only repeat its previous instructions. The court may require a deadlocked jury to continue deliberation for a reasonable amount of time. *State v. Kelley*, 517 N.W.2d 905, 909 (Minn. 1994). Furthermore, the court unequivocally informed the jury that "you should not change your opinion merely because other jurors disagree with you." We find no error in the court's instruction, which was found to be proper in *Martin*, 297 Minn. at 371, 211 N.W.2d at 772.

Affirmed.