STATE OF MINNESOTA
IN COURT OF APPEALS
A10-549

State of Minnesota,
Respondent,

vs.

James Garnett, Jr.,
a/k/a James Garnett Briggs,
Appellant.

Filed January 4, 2011
Affirmed
Hudson, Judge

Winona County District Court
File No. 85-CR-08-809

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

Charles Maclean, Winona County Attorney, Thomas E. Gort, Assistant County Attorney, Winona, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Roy Spurbeck, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Hudson, Presiding Judge; Ross, Judge; and Schellhas, Judge.

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

HUDSON, Judge

Appellant challenges the sufficiency of the evidence to support his conviction of two felony-level violations of an order for protection (OFP), arguing that the state's

evidence of recorded jail calls was insufficient to prove beyond a reasonable doubt that he contacted the person protected by the OFP. Because the record contains sufficient evidence to support the jury's determination that appellant committed the charged offenses, we affirm.

FACTS

The state charged appellant James Garnett, Jr., with two counts of felony-level violation of an order for protection (OFP) within ten years of the first of two or more previous qualified domestic violence-related convictions under Minn. Stat. § 518B.01, subd. 14(d)(1) (2006). The complaint alleged that appellant had twice violated the no-contact provision of the OFP by making telephone contact with the person protected by the order.

At appellant's jury trial, the state introduced an ex parte OFP prohibiting appellant from contacting a woman, L.E., or her children by any means, including telephone. The state introduced a certificate of service reflecting service of the OFP on appellant, and a Winona County deputy sheriff confirmed that she personally handed the OFP to appellant. At the time of service, appellant was incarcerated in the Winona County jail.

Another Winona County sheriff's deputy testified that he was assigned to reviewing phone calls placed by inmates at the Winona County jail. The deputy testified that phone calls were recorded on a hard drive stored at the facility and that the system indicated the number that was called, the cellblock from which the call originated, whether the call was completed, and the time of the call.

The state introduced portions of a recorded call from this system, which were played for the jury. In that call, which began about 4:00 p.m., a person self-identified as "Tom Sawyer" placed a call that lasted about 15 minutes. In the portion of the call played for the jury, one of the persons speaking stated, "Oh, I got a (inaudible) restraining order on me for?" The deputy testified that when reviewing this call, he could hear the conversation clearly, and, based on his prior experience, he recognized the voices speaking as those of appellant and L.E. The deputy testified that he had spoken with L.E. three to four times, twice for up to an hour, and that he had spoken with appellant fifty to one hundred times. The deputy testified that appellant had the nickname of "junior" and that, when listening to the call, he heard L.E. refer to the other person speaking as "junior."

The deputy also testified that a second call was placed to the same number at about 9:00 p.m. the same day and originated from the cellblock where appellant was being held.[1] The deputy testified that the quality of the second call "was a little staticky," but he "could still hear the voices." He testified that he also recognized the voices as belonging to appellant and L.E. When asked how certain he was of the identity of the voices recorded on the calls, he answered, "One hundred percent."

The deputy testified that the jail calling system did not require the use of a PIN number to authenticate the person making the call and that he did not visually observe

[1] The deputy testified that both calls were placed from the jail, but he did not testify specifically that the first call originated from the cellblock where appellant was being held.

appellant making calls on that date. He also testified that, at the time the calls were made, other inmates in appellant's cellblock had access to the phone.

Appellant exercised his right not to testify on his own behalf, and the defense presented no witnesses. The jury found appellant guilty of both counts, and appellant was sentenced to a year and a day in the custody of the commissioner of corrections, to be served consecutively to a prior felony offense. This appeal follows.

D E C I S I O N

Appellant argues that the evidence is insufficient to support his conviction. When considering a claim of insufficient evidence, this court's review "is limited to a painstaking analysis of the record to determine whether the evidence, when viewed in a light most favorable to the conviction, was sufficient to permit the jurors to reach the verdict which they did." *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989). We must assume that "the jury believed the state's witnesses and disbelieved any evidence to the contrary." *State v. Moore*, 438 N.W.2d 101, 108 (Minn. 1989). A reviewing court will not disturb the verdict if the jury, acting with due regard for the presumption of innocence and the requirement of proof beyond a reasonable doubt, could reasonably conclude that the defendant was guilty of the charged offenses. *Bernhardt v. State*, 684 N.W.2d 465, 476–77 (Minn. 2004). "[A] conviction can rest upon the testimony of a single credible witness." *State v. Bliss*, 457 N.W.2d 385, 390 (Minn. 1990).

Appellant argues that the deputy's identification testimony, by itself, is insufficient to support a jury determination that appellant placed the calls. "Identification testimony need not be positive and certain" but may be based on a witness's "opinion, belief,

impression, or judgment that the defendant is the person he saw commit the crime." *State v. Otten*, 292 Minn. 493, 494, 195 N.W.2d 590, 591 (1972) (quotations omitted). Evidence of the identity of a person speaking on the telephone has been held sufficient to establish identity. *State ex rel. Trimble v. Hedman*, 291 Minn. 442, 448, 192 N.W.2d 432, 436 (1971) (citation omitted).

The credibility of identification evidence presents a question for the jury. *State v. Ellingson*, 283 Minn. 208, 210, 167 N.W.2d 55, 56 (1969). Appellant argues that the deputy's identification testimony is not credible because the state did not call L.E. as a witness or provide evidence that the calls were made to her number; the state offered no videotapes showing that appellant made the calls; the deputy did not see appellant make the calls; and any inmate could have had access to the phone system. Appellant argues that the state's failure to introduce additional evidence raises a reasonable doubt as to whether appellant, in fact, placed the calls.

But a single witness's identification of a voice can be sufficient to prove identity. And the deputy who listened to the calls testified that he was "[o]ne hundred percent" certain of his identification of appellant's and L.E.'s voices, based on substantial prior contact. *State v. Spence*, 742 N.W.2d 203, 206 (Minn. App. 2007), *rev'd in part on other grounds*, 768 N.W.2d 104 (Minn. 2009). Moreover, the deputy also testified that, in the first call, one person identified the other person as "junior," which is a nickname for appellant. Further, a person in the first call refers to a restraining order imposed against the person speaking. Taken in the light most favorable to the conviction, the record

contains sufficient evidence by which the jury could have reasonably concluded that appellant was guilty of the charged offenses.

Affirmed.