STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1553

State of Minnesota,
Respondent,

vs.

Michael Richard Schuelke,
Appellant.

Filed August 27, 2018
Affirmed
Worke, Judge

Big Stone County District Court
File No. 06-CR-15-234

Lori Swanson, Attorney General, Michael Everson, Assistant Attorney General, St. Paul, Minnesota; and

Aaron K. Jordan, Special Assistant Big Stone County Attorney, Morris, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Julie Loftus Nelson, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Worke, Presiding Judge; Jesson, Judge; and Bratvold, Judge.

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

WORKE, Judge

Appellant argues that the evidence was insufficient to sustain his convictions for terroristic threats,[1] harassing phone calls, and aggravated stalking. We affirm.

FACTS

Appellant Michael Richard Schuelke suffers from Tourette syndrome (TS), a neurological disorder whose symptoms manifest as tics, which are rapid, repeated, nonrhythmic motor movements or vocalizations. Schuelke is afflicted with a specific tic called coprolalia that is characterized by involuntary swearing.

Over the years, Schuelke has been prosecuted multiple times by the Big Stone County Attorney's Office, predominantly for disorderly conduct. Schuelke believed that these prosecutions were unjust because they unfairly targeted his TS. In the spring of 2014, Schuelke began voicing his frustrations by calling the county attorney at work and home. At the time, the county attorney was W.W. who also maintained a private practice where his wife, M.W., worked.

In his calls, Schuelke would often raise his voice and threaten violence. In one message, Schuelke stated that he would "cut [W.W.'s] f-cking lying tongue out." In another communication, Schuelke told W.W. that he was "coming at [W.W.] like [he] raped [his] f-cking daughter, . . . to castrate [W.W.'s] f-cking nuts."

During another call, Schuelke told W.W.:

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[1] The legislature has renamed the offense of "terroristic threats" to "threats of violence." 2015 Minn. Laws ch. 21, art. 1, § 109, at 234.

> And now I'm coming at you as a citizen's arrest in the Second Amendment rocked [sic] and loaded, and I will shoot every f-cking method [sic] that I see. And the next step, I'll come after you to cut your lying tongue out and leave you alive and the men too to see it through to a fair trial because I am to that f-cking point, sir. I am to that f-cking point.

In another call, Schuelke said: "I'd use the Second Amendment and shoot you in all four limbs. . . . I'm there to take down and restrain, as an officer would use, or the right to that Second Amendment to bear those arms to use that defense. So therefore, I would put you in your place."

Schuelke called one night when M.W. was home alone. In a loud, angry tone, he repeated the phrase: "I've just been training all my life for this." The call frightened M.W., causing her to lock herself inside her house and call 911. In total, Schuelke called the victims approximately 100 times between the spring of 2014 and November 2015.

On November 11, 2015, the victims contacted Deputy Hills. As Deputy Hills arrived at W.W.'s office, Schuelke coincidentally placed a call. Deputy Hills told Schuelke to stop calling or be arrested. The calls apparently stopped after this.

Schuelke was charged with making terroristic threats, aggravated stalking, and making harassing phone calls. Schuelke underwent a competency evaluation which diagnosed him with TS, post-traumatic stress disorder, unspecified depressive disorder, and personality disorder. The report concluded that Schuelke was competent to stand trial. Schuelke was found guilty on all three counts after a court trial. This appeal followed.

D E C I S I O N

Schuelke argues that the evidence at his court trial was insufficient to convict him of terroristic threats, making harassing phone calls, and aggravated stalking.[2] This court uses the same standard of review in court trials and jury trials in evaluating the sufficiency of the evidence. *State v. Palmer*, 803 N.W.2d 727, 733 (Minn. 2011). In reviewing an insufficient evidence claim, this court examines the record to determine whether the evidence, when viewed in the light most favorable to the conviction, was sufficient to allow the fact-finder to reach the verdict it did. *State v. Ortega*, 813 N.W.2d 86, 100 (Minn. 2012). This court assumes that the fact-finder believed the state's witnesses and disbelieved any evidence to the contrary. *State v. Chambers*, 589 N.W.2d 466, 477 (Minn. 1999). This court will not alter the verdict if the fact-finder could reasonably conclude that the defendant was guilty of the charged offense while taking seriously the presumption of innocence and the need for proof beyond a reasonable doubt. *Bernhardt v. State*, 684 N.W.2d 465, 476-77 (Minn. 2004). "Reversal is proper if facts proving an essential element of the offense are left more to conjecture and speculation than to reasonable inference . . . ." *State v. DeRosier*, 695 N.W.2d 97, 108 (Minn. 2005).

[2] Schuelke does not ask to have his convictions for lesser offenses vacated.

Making terroristic threats and harassing phone calls

Schuelke argues that the state failed to prove that he intended to terrorize the victims. Our determination on this issue for either conviction will follow for the other,[3] so we focus on Schuelke's conviction for making terroristic threats.

The elements of making terroristic threats are: "(1) the accused 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." *State v. Schweppe*, 306 Minn. 395, 399, 237 N.W.2d 609, 613 (1975); *see* Minn. Stat. § 609.713, subd. 1 (2014).[4] "A threat is a declaration of an intention to injure another or his property by some unlawful act." *Schweppe*, 306 Min. at 399, 237 N.W.2d at 613. A communication rises to the level of a threat if, in context, it reasonably tends to create apprehension that the person making the threat will act accordingly. *Id.*

Schuelke claims that his extreme language was an uncontrollable tic associated with his TS and was not threatening when viewed in context—which negates the intent element of these crimes. The district court rejected this explanation for several reasons, including the fact that Schuelke made approximately 100 phone calls to the victims, Schuelke told his psychiatric evaluator that his statements in these calls were "his own thoughts," that he made the calls voluntarily, and that he "sometimes would think about what he might say"

[3] This is because Schuelke attacks both convictions by claiming that the tics associated with his TS negate the intent element of each offense.

[4] Schuelke was also convicted of making harassing phone calls, which requires proof that he used a telephone to repeatedly make "telephone calls, whether or not conversation ensues, with intent to abuse, disturb, or cause distress." Minn. Stat. § 609.79, subd. 1(1)(ii) (2014).

before making the calls. The district court also noted that the evaluator testified that Schuelke could have stopped himself if he wanted to. This is supported by the fact that Schuelke actually did stop the phone calls after a deputy told him to stop calling or face arrest.

The district court found that Schuelke's TS and other medical issues may have played some role, but concluded that Schuelke's calls and threats were not "irresistible" in the same way a tic is. "They were intentionally made," the district court wrote, "and [Schuelke] had the ability to choose not to utter them." And while Schuelke also claims that his statements were not threatening when viewed in the context of his generalized grievances with the justice system, this does not negate that the specific statements against the victims were threatening. The district court acknowledged this fact when it found that Schuelke did not just use metaphors to express his frustration, but made actual, genuine threats against the victims. In support, the district court referenced the time Schuelke called M.W. when she was home alone and repeatedly stated that he had "been training for this [his] whole life." The call "frightened, agitated and concerned" M.W. to the point she locked her doors and windows and called 911.

Schuelke made actual threats, which included threats to commit a crime of violence, and Schuelke made the threats to either terrorize the victims or in reckless disregard of the risk that they would cause terror. Because the facts in the record provide more than mere conjecture and speculation in support of these elements, we conclude that the evidence against Schuelke was sufficient to sustain both his convictions for making terroristic threats and making harassing phone calls.

Aggravated stalking

Schuelke next argues that the evidence was insufficient to convict him of aggravated stalking. A person is guilty of aggravated stalking if: (1) he "engage[s] in conduct which [he] knows or has reason to know would cause the victim . . . to feel frightened, threatened, oppressed, persecuted, or intimidated"; (2) his conduct causes this reaction in the victim; and (3) he intends to retaliate against a prosecutor "because of that person's performance of official duties in connection with a judicial proceeding." Minn. Stat. § 609.749 subds. 1, 3(a)(4) (2014). Schuelke's argument focuses on the third factor—whether he intended to retaliate against W.W. for past prosecutions.

Schuelke's psychiatric evaluator testified that Schuelke's intent in making the calls was "to right the wrongs" done to him by the county attorney's office. Schuelke said as much when he testified that he made the calls "to explain [him]self and what [he] went through, and how would [W.W.] like it if this happened to [W.W.] because obviously it's wrong and obviously you shouldn't just let this go and let a crook walk[.]" As to the underlying intent, Schuelke claims that he made these calls only "to talk civilly" with W.W. The district court agreed that Schuelke contacted W.W. "to get him to listen to [Schuelke's] story and 'right the wrongs.'" But the district court concluded that it could not "distinguish between an intent to make W.W. so uncomfortable and feel so persecuted that he will do [Schuelke]'s bidding, and an intent to retaliate. It amounts to the same thing."

Schuelke argues that the district court's conclusion confuses "coercion" with "retaliation" and, therefore, the district court failed to actually find that he retaliated against W.W. Although the stalking statute does not define the term "retaliate," appellate courts

interpret the words in a statute according to their plain and ordinary meaning. *State v. Struzyk*, 869 N.W.2d 280, 284 (Minn. 2015). And the plain meaning of retaliate is to "return like for like" or "to pay back (an injury) in kind." *The American Heritage College Dictionary* 1186 (4th ed. 2007). Applying this plain meaning leads us to the conclusion that Schuelke intended to retaliate, or return like for like, against W.W. when he made these calls. Schuelke was aggrieved with what he perceived was an injustice against him by W.W. He wanted to "right the wrongs" from this perceived injustice because, in Schuelke's own words, "obviously it's wrong and obviously you shouldn't just let this go and let a crook walk[.]" The intent was to react against the prosecutions, and considering that Schuelke placed approximately 100 phone calls to the victims, it seems unlikely these were merely calls "to talk civilly," as Schuelke claims.

The frequency of the calls, the abusive language, the references to W.W.'s past prosecutions, and Schuelke's own testimony that he wanted to right perceived wrongs in these calls all fall under the plain meaning of retaliatory behavior against W.W.'s role as a prosecutor. We conclude that the evidence was sufficient to sustain Schuelke's conviction.

Affirmed.