COURT OF APPEALS
DECISION
DATED AND FILED

August 6, 2008

David R. Schanker
Clerk of Court of Appeals

Appeal No. 2007AP1730-CR **Cir. Ct. No. 2005CF1240**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT II

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

JOSEPH G. RIDLEY,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Waukesha County: RANDY R. KOSCHNICK, Judge. *Affirmed*.

Before Brown, C.J., Anderson, P.J., and Neubauer, J.

¶1 PER CURIAM. Joseph G. Ridley appeals from the judgment of conviction entered against him. He was convicted of one count of threat to a judge. WIS. STAT. § 940.203 (2005-06). He argues on appeal that the threat he

made did not constitute a "true threat" within the meaning of the statute. Because we conclude that the evidence was sufficient to support his conviction, we affirm.

¶2 Ridley was charged with threat to a judge. The complaint alleged that during a random search of jail cells, an officer found graffiti written on Ridley's cell wall that said, among other things, "Joe Ridley will fuck and kill Judge Hassin." Judge Hassin had recently sentenced him to sixty days in jail without Huber release privileges. At trial, the officer who found the graffiti testified that he found the words written on Ridley's cell in the seam line or grout. He said the letters were about one-half inch high and written in pencil. Underneath the threat, Ridley wrote his name and the date. The officer found the writing a week after Ridley wrote it.

¶3 The matter was tried to a jury. The court instructed the jury on the elements of the crime, and explained that the threat must be a "true threat" based on the totality of the circumstances. The jury found Ridley guilty.

¶4 Ridley does not contest that he wrote the words on his jail cell. He argues instead that the words did not constitute a "true threat" within the meaning of the statute because he did not intend to communicate it, and the threat was merely a "hyperbolic emotional outburst." He argues that the question of whether these words constituted a "true threat" is a question of law that this court should review de novo. We disagree.

¶5 "Only a 'true threat' is constitutionally punishable under statutes criminalizing threats. The phrase 'true threat' is a term of art used by courts to refer to threatening language that is not protected by the First Amendment." ***State v. Perkins***, 2001 WI 46, ¶17, 243 Wis. 2d 141, 626 N.W.2d 762. Wisconsin

applies an objective reasonable person standard to determine whether a threat is a true threat. ***Id.***, ¶29.

> A true threat is a statement that a speaker would reasonably foresee that a listener would reasonably interpret as a serious expression of a purpose to inflict harm, as distinguished from hyperbole, jest, innocuous talk, expressions of political views, or other similarly protected speech. It is not necessary that the speaker have the ability to carry out the threat. In determining whether a statement is a true threat, the totality of the circumstances must be considered.

Id. The standard of review for whether an alleged statement is a true threat is an issue of fact unless the court can determine that the evidence is insufficient as a matter of law. ***Id.***, ¶48.

¶6 The issue on appeal, therefore, is whether the evidence was sufficient to support the jury's determination. When considering a challenge to the sufficiency of the evidence, this court must affirm "if it finds that the jury, acting reasonably, could have found guilt beyond a reasonable doubt.... [T]he jury verdict will be overturned only if, viewing the evidence most favorably to the state and the conviction, it is inherently or patently incredible or so lacking in probative value that no jury could have found guilt beyond a reasonable doubt." ***State v. Alles***, 106 Wis. 2d 368, 376-77, 316 N.W.2d 378 (1982) (citation and emphasis omitted).

¶7 Ridley argues that the evidence was insufficient to convict him, specifically arguing that the evidence did not show that he intended to communicate a threat. In support of this argument, Ridley states that the threat was written in one-half inch high letters on the wall. He also argues that he did not communicate the threat to Judge Hassin directly, and that the words were written on the wall for a week before they were found.

¶8 We conclude that there was sufficient evidence to support the jury's determination that this was a true threat. The words were written on the wall in Ridley's jail cell. Ridley knew or should have known that the officers conducted random, but regular, searches of the cell. He signed his name to the threat and dated it. The words were written in pencil and could have been erased. The words were still there a week after he wrote them. A jury could easily believe that, through the officers, Judge Hassin would find out about the threat.

¶9 Ridley also argues that the words he used are comparable to the words used in ***Watts v. United States***, 394 U.S. 705 (1969), which the United States Supreme Court concluded were protected by the First Amendment. ***Id.*** at 708. In ***Watts***, the defendant made a threat to the President of the United States at an anti-war rally during the Vietnam War. ***Id.*** at 705-06, 708. The defendant said: "If they ever make me carry a rifle the first man I want to get in my sights is L.B.J." ***Id.*** at 706. The court held that the language, taken in context "and regarding the expressly conditional nature of the statement and the reaction of the listeners," was a "very crude offensive method of stating a political opposition to the President." ***Id.*** at 708.

¶10 Ridley states that the words he used, "fuck and kill," were merely hyperbole and involved a "clearly implausible combination of acts." We disagree. Taking the words Ridley used, either literally or colloquially, and considering they were written on the wall of a jail cell, a jury could reasonably conclude that they were threatening. The jury did not err when it found that the words were a "true threat" and rejected Ridley's argument that they were merely hyperbole. For the reasons stated, we affirm the judgment of the circuit court.

By the Court.—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.