STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0658

State of Minnesota,
Respondent,

vs.

Matthew David Smith,
Appellant.

Filed April 27, 2020
Affirmed
Smith, Tracy M., Judge

Kandiyohi County District Court
File No. 34-CR-18-232

Keith Ellison, Attorney General, Peter Magnuson, Assistant Attorney General, St. Paul, Minnesota; and

Shane Baker, Kandiyohi County Attorney, Willmar, Minnesota (for respondent)

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

Considered and decided by Jesson, Presiding Judge; Rodenberg, Judge; and Smith, Tracy M., Judge.

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

SMITH, TRACY M., Judge

In this direct appeal from a judgment of conviction for threats of violence, appellant Matthew David Smith argues that the evidence was insufficient to prove his guilt because

his conduct did not communicate a threat to commit a crime of violence in the future. We affirm.

FACTS

At approximately 5:30 p.m. on July 23, 2017, Smith's wife called 911, saying that her husband was in the backyard with a gun and threatening to "blow his head off." She also told the operator that Smith had been drinking. Smith did not know that his wife called the police.

Officers Haycraft and Vazquez of the Willmar Police Department arrived on the scene in separate squad cars. They had been warned that a suicidal male was sitting in his back yard, smoking, and that he had a firearm. Both officers parked on the street in front of Smith's house. Officer Haycraft took a direct path to the back yard, walking past the north side of the house. He saw Smith sitting in the backyard with his hands between his legs. Officer Haycraft said, "Excuse me sir." Smith turned and pointed his handgun at the officer. Officer Haycraft told Smith to put down the gun. At this point Officer Vazquez, who had gone around the south side of the house to the backyard, also started shouting at Smith to put the gun down. Smith turned and pointed the gun at Officer Vazquez. Both officers fired their guns after Smith did not lower his weapon. The entire interaction lasted four seconds. The officers fired three shots total, but only one shot struck Smith.

At trial, respondent State of Minnesota submitted the following transcript of a recording of the interaction:

> Q2: Excuse me sir.
> A: Hey.
> Haycraft: Drop the gun.

Man: Drop it.
Haycraft: Drop it or you will be shot.
Man: Drop it.
Haycraft: Drop it.
Q2: 34 (unintelligible).
Haycraft: Hands up get your hands up.
Man: Oh my God.
Q: We have shots fired at 1726.
Man: Drop it.
Haycraft: I got him covered. I got him covered.[1]

Officer Haycraft testified, "I was thinking he was trying to get us to shoot him, and I was thinking he was going to escalate his force towards us if we don't shoot him." He also testified, "I shot because I thought if I didn't shoot, he was going to shoot me." Officer Vazquez testified that he feared for his own life when Smith pointed his gun at him.

After the shots were fired, the officers saw the gun fall out of Smith's hands. Officers rendered first aid, and Smith was taken by ambulance to the hospital. He was ultimately flown to a St. Cloud hospital, where he had multiple surgeries to treat his injuries.

Officer Haycraft examined Smith's gun and found that it was loaded with a round in the chamber. An alcohol test showed that Smith had an alcohol concentration of 0.27.

Smith was charged with two counts of assault in the second degree and one count of threats of violence. Following a three-day trial, the jury found Smith not guilty of the assault charges but guilty of threats of violence. This appeal follows.

[1] Officer Haycraft is the only voice labeled in the exhibit. "Q2" also refers to Officer Haycraft, according to his trial testimony. Further dialogue indicates that Smith's words are marked "A."

D E C I S I O N

Smith argues that the evidence is insufficient to support the threats-of-violence conviction because the evidence does not establish that he communicated a threat of future violence.

When analyzing the sufficiency of the evidence, appellate courts painstakingly analyze "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 do so under the assumption that the jury believed the state's witnesses and disbelieved contrary evidence. *State v. Brazil*, 906 N.W.2d 274, 279 (Minn. App. 2017), *review denied* (Minn. Mar. 20, 2018). "We will not disturb the verdict if the jury, acting with due regard for the presumption of innocence and for the necessity of overcoming it by proof beyond a reasonable doubt, could reasonably conclude that a defendant was proven guilty of the offense charged." *Bernhardt v. State*, 684 N.W.2d 465, 476-77 (Minn. 2004) (quotation omitted).

The threats-of-violence statute provides that "[w]hoever threatens, directly or indirectly, to commit any crime of violence with purpose to terrorize another . . . or in a reckless disregard of the risk of causing such terror" is guilty of threats of violence. Minn. Stat. § 609.713, subd. 1 (2016). A threat is a communication of an intention to injure another by some unlawful act. *State v. Smith*, 825 N.W.2d 131, 135 (Minn. App. 2012). A communication is a threat if it "would have a reasonable tendency to create apprehension that its originator will act according to its tenor." *Id.* (quotation omitted). Importantly for this case, the Minnesota Supreme Court has explained that "[i]t is the future act threatened,

as well as the underlying act constituting the threat, that the statute is designed to deter and punish." *State v. Murphy*, 545 N.W.2d 909, 916 (Minn. 1996).

But Minnesota courts have "never defined a specific amount of time that must pass before a threat of immediate violence becomes a threat of future violence." *Smith*, 825 N.W.2d at 136. In *Smith*, we affirmed the appellant's conviction for terroristic threats[2] after he waved two different knives in his cousin's face while demanding money. *Id.* at 134-35. There, the appellant argued that that threat did not extend past the immediate conflict and that "an appreciable break in time is required before conduct becomes a threat of future violence." *Id.* at 135-36. We disagreed, stating that the appellant's "conduct constituted a threat to assault [his cousin] with the knife in the future if [the cousin] did not comply with his demand for money." *Id.* at 136. We explained that that threat was not limited to the moment appellant made it even though they were currently engaged in conflict. *Id.* The appellant's communication was a prohibited threat even though it threatened violence "in the near future." *Id.*

Here, the facts show that Smith's wife called 911 about her suicidal husband sitting in their backyard with a gun. Two officers arrived on the scene. The first officer addressed him by saying, "Excuse me, sir." Smith pointed his gun at him, and then pointed his gun at the second officer. The officers responded by aiming their guns at Smith and shouting instructions at him to drop his gun. Smith did not drop it until the officers shot him in the leg. A jury could reasonably find that Smith, by pointing his gun at the officers and refusing

[2] "Terroristic threats" is the old name for the current threats-of-violence statute, Minn. Stat. § 609.713, subd. 1. *See* Minn. Stat. § 609.713, subd. 1 (2012).

to drop it after being directed to so, communicated a threat to injure the officers by the unlawful act of shooting them—albeit in the near future—and that he created the reasonable apprehension that he would actually shoot them. *See Smith*, 825 N.W.2d at 135. His conduct, like waving a knife at another while demanding money, could reasonably be found to be a threat of future violence.

Smith acknowledges that "perhaps an argument could be made that his conduct manifested a message of his intent to commit" the crime of assault-*harm* against the police officers. But, he observes, the jury was instructed to consider whether he threatened the crime of assault-*fear*. He contends that the sufficiency of the evidence must therefore be analyzed in the framework of assault-fear and that the evidence "did not communicate an intention to place the officers in fear of immediate harm *in the future*." But the sufficiency of the evidence to support a conviction is not reviewed in the context of the instructions that the jury receives about the elements of the offense. *Cf. Musacchio v. United States*, 136 S. Ct. 709, 715 (2016) (holding that sufficiency challenge is assessed against actual elements of charged crime, not against elements as erroneously described in jury instructions). And because the evidence was sufficient to prove that Smith, by his conduct, threatened to commit assault-harm against the police officers, his sufficiency challenge fails.

Affirmed.