STATE OF MINNESOTA
IN COURT OF APPEALS
A22-1212

State of Minnesota,
Respondent,

vs.

Scott William Mooney,
Appellant.

Filed August 7, 2023
Affirmed
Wheelock, Judge

Renville County District Court
File No. 65-CR-21-254

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Kelsie Kingstrom, Renville County Attorney, Olivia, Minnesota; and

Scott A. Hersey, Special Assistant County Attorney, St. Paul, Minnesota (for respondent)

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

Considered and decided by Cochran, Presiding Judge; Wheelock, Judge; and Halbrooks, Judge.[*]

[*] Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

NONPRECEDENTIAL OPINION

WHEELOCK, Judge

Appellant challenges his convictions for conspiracy to commit first-degree murder and arson, arguing that the district court abused its discretion and committed reversible error when it declined to give a voluntary-intoxication jury instruction. We affirm.

FACTS

Respondent State of Minnesota charged appellant Scott William Mooney with conspiracy to commit first-degree murder, conspiracy to commit arson, and threats of violence with reckless disregard of causing terror. The state alleged that Mooney threatened to burn down a woman's apartment building with her locked inside of it and then hired an associate to murder the woman and her boyfriend.

Prior to trial, Mooney filed a motion indicating his intent to raise a voluntary-intoxication defense. At a pretrial hearing, the district court asked Mooney if he was prepared to make an offer of proof in support of the defense, but Mooney declined to do so at that time, indicating that he would present evidence to support the defense at trial. The district court declined to rule on Mooney's request for a voluntary-intoxication instruction prior to trial because it had not heard any evidence or received an offer of proof as to whether Mooney's substance use provided an explanation for his actions. The following relevant facts were elicited at Mooney's jury trial.

On August 11, 2021, police were dispatched to a woman's home after she reported that Mooney had threatened to burn down her apartment building with her inside of it. Mooney's sister, S.M., had been staying with the woman, and Mooney sent the threats to

the woman through S.M. Mooney and the woman were coworkers, and Mooney was upset because he believed the woman's boyfriend had threatened S.M. with a knife. Police learned the next day that Mooney had continued to threaten the woman through electronic messages, and police obtained screenshots of the threats. Police contacted Mooney, and Mooney allowed his phone to be examined.

On Mooney's phone, police discovered messages sent between Mooney and an associate. The messages contained plans for the associate to murder the woman and her boyfriend. Mooney sent the associate $500 as payment for the planned killings, but the associate did not take any steps to murder the woman or her boyfriend.

Several witnesses testified as to Mooney's use of methamphetamine. The woman testified that Mooney was often high at work, but he could still complete his job, albeit slowly. Mooney's former girlfriend, A.B., testified that Mooney was a habitual user of methamphetamine and would sometimes hallucinate while he was high. Mooney told A.B. during the dates of the offense that he wanted to murder the woman and her boyfriend, and A.B. believed that Mooney was high on methamphetamine during the period when he made these statements. Mooney tested positive for methamphetamine, as well as other substances, a week after he first threatened the victim.

At the close of trial, the district court returned to the issue of whether it should give a voluntary-intoxication jury instruction. The state argued that Mooney had not presented evidence to meet his burden of production or otherwise made an offer of proof that his methamphetamine use caused him to lack the requisite intent to commit the charged crimes. Mooney argued that he had met his burden and that it was a question for the jury to answer.

The district court concluded that the instruction was not warranted because Mooney had not made an offer of proof that his actions were caused by his methamphetamine use. The jury convicted Mooney of all three counts, and the district court sentenced Mooney to 153 months' imprisonment. Mooney appeals.[1]

DECISION

Mooney argues that the district court abused its discretion by refusing to give a voluntary-intoxication instruction because he presented "evidence from which the jury could have found that [he] was high on meth at the time of the offenses which affected his ability to form the specific intent to commit" those offenses. "A defendant is entitled to an instruction on his theory of the case if there is evidence to support it." *State v. Lilienthal*, 889 N.W.2d 780, 787 (Minn. 2017) (quotation omitted). We review the denial of a requested jury instruction for an abuse of discretion and evaluate whether the district court's denial resulted in error. *State v. Kuhnau*, 622 N.W.2d 552, 555 (Minn. 2001). If a district court fails to instruct the jury on voluntary intoxication when such an instruction is warranted, we will reverse and remand for a new trial unless the evidence establishing that the defendant "formed the requisite intent is so overwhelming that the instructional error

[1] Because making threats of violence with reckless disregard of causing terror is not a specific-intent crime, Mooney concedes that a voluntary-intoxication defense would not apply to that charge and does not challenge his conviction for that offense on appeal. *See State v. Bjergum*, 771 N.W.2d 53, 57 (Minn. App. 2009) ("Because the reckless-disregard portion of the terroristic-threats statute does not include specific intent as an element, the voluntary-intoxication instruction was not warranted."), *rev. denied* (Minn. Nov. 17, 2009).

was harmless beyond a reasonable doubt." *State v. Wilson*, 830 N.W.2d 849, 857 (Minn. 2013).

Minnesota law sets forth the parameters of a voluntary-intoxication defense:

> An act committed while in a state of voluntary intoxication is not less criminal by reason thereof, but when a particular intent or other state of mind is a necessary element to constitute a particular crime, the fact of intoxication may be taken into consideration in determining such intent or state of mind.

Minn. Stat. § 609.075 (2020). A defendant must satisfy their burden of production by providing sufficient evidence of intoxication before a voluntary-intoxication instruction will be given to the jury. *Wilson*, 830 N.W.2d at 854. To receive the requested instruction, "(1) the defendant must be charged with a specific-intent crime; (2) there must be evidence sufficient to support a jury finding, by a preponderance of the evidence, that the defendant was intoxicated; and (3) the defendant must offer intoxication as an explanation for his actions." *State v. Torres*, 632 N.W.2d 609, 616 (Minn. 2001).

The district court concluded, and the state concedes, that Mooney met his burden of production on the first two requirements. Mooney contends, however, that he offered intoxication as an explanation for his actions, thereby meeting the third requirement, and that the jury should have been allowed to consider his intoxication and its effect on his state of mind when he committed the offenses. We disagree.

The supreme court has held that a defendant satisfies the third requirement and is entitled to present a voluntary-intoxication defense to the jury when they request the voluntary-intoxication instruction and then make an offer of proof that they would have testified that their substance use affected their cognitive functions and ability to form intent.

Wilson, 830 N.W.2d at 856-57. Although Mooney requested the instruction, he seems to concede, and the record indicates, that he did not make an offer of proof in this case. Rather, Mooney argues that *Torres* allows a district court to give a voluntary-intoxication instruction in the absence of an explicit offer of proof if the evidence of intoxication is "so overwhelming as to constitute the effective offer of intoxication as an explanation for the defendant's actions." 632 N.W.2d at 617.

Mooney argues that he presented overwhelming evidence establishing his impairment due to "heavy meth use" during the time surrounding the offense that affected his ability to form the specific intent required to commit the offense, citing A.B.'s testimony that Mooney "hallucinates" when he uses methamphetamine, that she believed Mooney was high on methamphetamine during the dates of the offense, and that she thought he was "delusional." Mooney characterizes this testimony as establishing that A.B. believed Mooney was "hallucinating and delusional" at the time of the offense, but this misstates her testimony; A.B. testified that Mooney generally tends to hallucinate when using methamphetamine, but she did not testify that she believed Mooney was hallucinating when she spoke and exchanged messages with him over the relevant time period. While A.B. and other witnesses provided evidence that establishes Mooney was a habitual methamphetamine user at the time when the offense occurred, "[a] defendant's consumption of intoxicants does not create a presumption of intoxication and the possibility of intoxication does not create the presumption that a defendant is thereby rendered incapable of intending to do a certain act." *Id.* And the record contains no other evidence establishing Mooney's substance use over the dates of the offense or his state of

mind during that time. Therefore, we cannot say that Mooney provided overwhelming evidence of his intoxication that absolves him from making an explicit offer of proof to the district court offering intoxication as an explanation for his actions.

Mooney did not present overwhelming evidence of his intoxication that would constitute an offer of proof in the absence of an explicit offer as to his state of mind and requisite intent during the period of the offense. We conclude the district court did not abuse its discretion when it declined to give a voluntary-intoxication instruction because Mooney failed to fulfill the requirements entitling him to that instruction.

Affirmed.