

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON,

Respondent,

v.

ROBERT L. MCDONALD,

Appellant.

No. 42564-5-II

UNPUBLISHED OPINION

Penoyar, J. — A jury found Robert McDonald guilty of felony harassment.¹ He argues that insufficient evidence supports his conviction. He also raises several arguments in his statement of additional grounds (SAG).² Because sufficient evidence supports the verdict and his SAG claims have no merit, we affirm.

FACTS

On May 6, 2011, McDonald went into the Mason County District Court Clerk's Office to inquire about an anti-harassment order he had received. He approached Wendy Hoff, the clerk working at the counter, and asked for a copy of the order and some paper to write a letter to the judge because he was upset with the ruling. After writing a letter, which Hoff promptly filed for him, McDonald left for a period of time.

McDonald then returned with the anti-harassment order on which he had written another letter to the judge. McDonald asked Hoff to explain what the order meant and when she indicated that she was legally prohibited from interpreting legal documents, he became angry. She

¹ In violation of former RCW 9A.46.020 (2003).

² RAP 10.10

asked if he had anything more to file because the office was closing, but he continued to demand an explanation of his order. Another clerk informed McDonald that he needed to leave. McDonald then became “very mad” and threw the order on the counter, said “whatever,” and stormed out of the office. Report of Proceedings (RP) at 21. In total, McDonald confronted Hoff on and off for a period of two hours.

As McDonald exited, he crossed the lawn in front of the courthouse and approached the outside window of the Clerk’s Office. McDonald made eye-contact with Hoff through the window, held his hand up in the shape of a gun, and pointed it at her. McDonald’s expression appeared “angry.” RP at 32. Hoff then said something to Judge Pro Tem Stephen Greer, who was standing nearby. Judge Greer turned, looked out the window, and saw McDonald angrily making the gun-shaped gesture toward Hoff. Judge Greer testified that Hoff looked terrified at the time. Hoff testified that she believed that he was threatening to kill her and that he would carry out the threat.

McDonald testified that he had waved to Hoff, as if to say goodbye, and that he did not intend to imitate shooting her. When asked whether he gestured with the shape of a gun, he testified that it may have “inadvertently” appeared that way but “that was probably the interpretation of someone else.” RP at 52.

The State charged McDonald with felony harassment and the jury found him guilty. He appeals.

ANALYSIS

McDonald argues that the evidence was insufficient to prove beyond a reasonable doubt (1) that he knowingly threatened to kill Hoff and (2) that Hoff reasonably feared that he would

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carry out his threat. We hold that the evidence was sufficient to support McDonald's conviction.

I. Standard of Review

When reviewing a challenge to the sufficiency of the evidence, we view the evidence in the light most favorable to the State to determine whether any rational trier of fact could have found the essential elements of the crime charged beyond a reasonable doubt. *State v. Drum*, 168 Wn.2d 23, 34-35, 225 P.3d 237 (2010). In challenging the sufficiency of evidence, an appellant necessarily admits the truth of the State's evidence and all reasonable inferences that can be drawn from it. *Drum*, 168 Wn.2d at 35. Circumstantial and direct evidence may be equally relied upon. *State v. Delmarter*, 94 Wn.2d 634, 638, 618 P.2d 99 (1980). We defer to the jury's decisions on conflicting testimony, credibility of witnesses, and persuasiveness of the evidence. *State v. Thomas*, 150 Wn.2d 821, 874-75, 83 P.3d 970 (2004).

II. Felony Harassment

Under former RCW 9A.46.020 (2003):

(1) A person is guilty of harassment if:

(a) Without lawful authority, the person knowingly threatens:

(i) To cause bodily injury immediately or in the future to the person threatened[;
and]

....

(b) The person by words or conduct places the person threatened in reasonable fear that the threat will be carried out.

To convict a defendant of felony level harassment, the State must prove beyond a reasonable doubt that the defendant knowingly threatened to kill, and that the victim reasonably feared that the threat to kill would be carried out. *State v. C.G.*, 150 Wn.2d 604, 610, 80 P.3d 594 (2003).

A. Knowing Threat to Kill

McDonald first argues that insufficient evidence proves that he knowingly threatened to kill Hoff when he made a hand gesture that was “open to various interpretations.” Appellant’s Br. at 5. He posits that he was merely frustrated by the events that had occurred earlier in the clerk’s office and that the gesture cannot be construed as a serious threat. Clearly there was evidence to support a rational jury’s conclusion that McDonald gestured with a gun-shape pointed directly at Hoff. The remaining issue is whether sufficient evidence supports the jury’s conclusion that this was a knowingly made threat to kill that Hoff reasonably feared.

The First Amendment to the United States Constitution requires that there be a “true threat” made in order for a communication to be actionable under the criminal harassment statute. *State v. Williams*, 144 Wn.2d 197, 207, 26 P.3d 890 (2001). A “true threat” is one that a reasonable person would understand to be “a serious expression of an intention to . . . take the life” of the victim. *State v. Johnston*, 156 Wn.2d 355, 360–61, 127 P.3d 707 (2006) (quoting *United States v. Khorrami*, 895 F.2d 1186, 1192 (7th Cir. 1990)). The First Amendment does not, however, require that the speaker actually intend to carry out the threat in order for a communication to constitute a true threat; thus the State need only prove that the defendant knowingly made the threat. *State v. Kilburn*, 151 Wn.2d 36, 48, 84 P.3d 1215 (2004).

McDonald grew increasingly hostile toward Hoff over the course of two hours. He was unhappy about the anti-harassment order he had received and became angry when Hoff explained that she could not interpret the order for him. His anger escalated when she and another clerk requested that he leave at closing time and he slammed the court order on the counter and stormed out of the office. He deliberately went across the front lawn toward the clerk’s office,

approached the window, made eye-contact with Hoff, made a gesture of a deadly weapon, and pointed it directly at her while making an angry expression. In light of these circumstances, a reasonable jury could easily find that McDonald, whether actually intending to carry out the threat or not, knowingly made a gesture which appeared to be a serious expression of intent to take Hoff's life. Accordingly, we hold that McDonald knowingly made a true threat to kill Hoff.

B. Reasonable Fear of Threat to Kill

Next, McDonald asserts that there was insufficient evidence to show that he placed Hoff in reasonable fear that McDonald would carry out his threat. He argues that because McDonald left the court house when instructed to do so and because Hoff was aware that McDonald was frustrated with the judge and not her, a reasonable person would not interpret McDonald's gun gesture as a serious threat to kill. Viewed in a light most favorable to the State, the evidence does not support his argument.

Substantial evidence shows that Hoff could reasonably believe that McDonald's gesture was a serious threat to kill. McDonald did not leave when first instructed and instead became more agitated while continuing to demand answers regarding his order. When instructed to leave a second time, McDonald responded by angrily slamming the order on the counter and storming out of the office. He then deliberately approached the window of the clerk's office after Hoff instructed him to leave the premises. Hoff was the sole recipient of McDonald's visibly escalating frustration during the two hour ordeal, which culminated in his returning to make the gesture of a gun pointed directly at her. Given McDonald's clear and growing anger, Hoff could reasonably infer that he intended to carry out the threat. Thus sufficient evidence supports the jury's finding that Hoff reasonably feared McDonald's threat.

C. Statement of Additional Grounds

In his SAG, McDonald argues: (1) that he left the court house quietly, not angrily; (2) that Judge Greer testified to seeing only a gesture, but did not specify that it was a gun-shaped gesture; and (3) that McDonald was only at the court house for two hours because of the multiple letters that he had to write to the judge. We reject these arguments because they are all factual disputes that the jury resolved. We will not second guess those decisions.

Sufficient evidence supports the jury's conclusion that McDonald committed felony harassment and McDonald's SAG claims are without merit. We affirm.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

Penoyar, J.

We concur:

Armstrong, J.

Johanson, A.C.J.