

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-1442**

State of Minnesota,
Respondent,

vs.

David Deluna,
Appellant.

**Filed September 20, 2021
Affirmed
Reilly, Judge**

Faribault County District Court
File No. 22-CR-17-745

Keith Ellison, Attorney General, Karen B. McGillic, Assistant Attorney General, St. Paul, Minnesota; and

Cameron Davis, Faribault County Attorney, Blue Earth, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Sara L. Martin, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Ross, Presiding Judge; Segal, Chief Judge; and Reilly, Judge.

NONPRECEDENTIAL OPINION

REILLY, Judge

After a confrontation, appellant told the victims that he would return to their home with a gun and shoot them. The state charged appellant with threats of violence and two counts of burglary. The jury found appellant guilty of threats of violence but acquitted him

of the burglary charges. In this appeal, appellant argues that the evidence was not sufficient for the jury to find that he had the requisite intent to support his threats-of-violence conviction. We affirm.

FACTS

Around 1:00 a.m. on November 7, 2017, officers responded to a 911 call to investigate a reported assault at a home that potentially involved a firearm. Respondent State of Minnesota later charged appellant with threats of violence, Minn. Stat. § 609.713, subd. 1 (2016), and two counts of first-degree burglary, Minn. Stat. § 609.582, subd. 1(a), (c) (2016). At a jury trial, the state called five witnesses: J.C., J.C.’s girlfriend, the daughter of J.C.’s girlfriend (daughter), Deputy Davis, and Deputy Bonin. Appellant testified on his own behalf and called two witnesses: appellant’s brother and his brother’s girlfriend. The witnesses provided conflicting testimony at trial.

In 2016, J.C. bought a car for \$1,000 from his neighbor, appellant’s brother, which broke down while J.C. was driving it home. The car and its mechanical issues spurred an ongoing dispute between J.C. and appellant’s brother. J.C. testified that he sometimes stopped by appellant’s brother’s home to “ask if [appellant’s brother] was around . . . and ask about [his] money.” Once, J.C. wore a skull mask. Another time, while wearing brass knuckles, J.C. approached appellant’s brother at a gas station and threatened him.

In November 2017, appellant’s brother and his brother’s girlfriend were walking their two dogs when they ran into J.C. The couple testified that J.C. approached them, asked appellant’s brother for his money back, and then told appellant’s brother to come to his home and to “[b]ring [his] f-cking money.” J.C., however, testified that appellant’s

brother yelled at him and tried to start a fight, but he just walked away and did not invite appellant's brother to his home. J.C. stated that he could smell alcohol on appellant's brother at the time and believed he was intoxicated. Deputy Davis testified that while he was on patrol, he witnessed a conversation between J.C. and appellant's brother. Deputy Davis noticed nothing out of the ordinary that caused him alarm or suspicion.

Later that evening, appellant's brother asked appellant to walk with him to J.C.'s home so that appellant's brother could "just . . . talk to [J.C.]" and get everything "straighten[ed] out." Appellant was not involved in the car sale and did not know J.C., but walked with his brother to J.C.'s home around 1:00 a.m. As they walked, appellant's brother's dogs followed along.

Appellant and his brother testified that when they arrived at J.C.'s home, appellant's brother knocked on the door, waited, and as soon as the door opened, J.C. hit appellant's brother in the face with a machete. J.C., however, testified that he heard someone pounding and kicking on his door and tried to hold it shut while he yelled "[g]et out of here" and "I've got kids here." As J.C. was holding the door shut, he looked for the baseball bat that he usually kept near the door, but because he could not find it, he grabbed a machete that he had hanging on the coat hanger "to defend [himself], because [he] knew the door was coming in eventually." When the door "came flying open," J.C. saw appellant and appellant's brother and as they started to come towards J.C., he swung at them with the machete "a couple times."

J.C. hit appellant's brother with the machete (1) in his face twice, separating his ear from his head and causing him to lose an eye; and (2) on his arm as he tried to block the

machete. J.C. also hit appellant with the machete in the face and on the side of his head. The machete separated appellant's scalp from his skull and he had to hold onto it to keep it in place. After J.C. hit appellant and his brother with the machete "a couple times," he testified that appellant's brother said something to his dogs in Spanish that caused them to come "charging" at J.C. J.C.'s girlfriend testified that she saw one of the dogs lunge at J.C. One dog bit J.C.'s hand leaving a faint mark. In response, J.C. hit both dogs with his machete, severely wounding them and ultimately leading to their being euthanized.

About half-way through this incident daughter awoke, came downstairs, picked up her five-year-old brother from the couch near the front door where he was sleeping, and took him upstairs. After daughter brought her brother upstairs, she came back down and saw "blood all over the floor," heard her mom "in the living room screaming," and saw appellant and appellant's brother outside. J.C. testified that after repeatedly telling appellant and appellant's brother to get out of his home, they "turned around and left."

J.C. testified that throughout this entire incident neither appellant nor appellant's brother hit him. J.C.'s girlfriend testified that at one point, appellant punched her in the face twice with a closed fist, but that the punches did not leave any marks on her face. Daughter reported to Deputy Bonin that one of the men in her home kicked her at some point.

J.C.'s girlfriend testified that as appellant and his brother were outside the home walking away, appellant yelled "that he was going to come back with a gun and shoot us and [that] he was going to come back with his family and shoot us." J.C. testified that as appellant was leaving, he said, "I'll be back with my gun." Both J.C. and J.C.'s girlfriend

testified that they believed appellant would come back with a gun, and J.C. testified that he was scared. Appellant, however, testified that he does not own a gun and said nothing threatening to J.C. or his family as he left their home.

After appellant and his brother left the home, J.C.'s girlfriend called 911 and stated that someone had threatened to come back to her home with a gun. Meanwhile, appellant and appellant's brother walked home and arrived "covered in blood." Appellant's brother's girlfriend put them in a car and their mother drove them to the hospital. About 15 minutes after J.C.'s girlfriend called 911, officers arrived at J.C.'s home.

Upon arriving, the officers observed "tons of blood" on the exterior and interior steps, the door, in the entry way, and in the living room. Deputy Davis testified that the door to J.C.'s home "appeared beat up," to "have damage on it," and was dented near the dead bolt and below the handle. He also testified that J.C. reported appellant and appellant's brother tried to break into his home, J.C. "wanted to protect himself, [and] his family," and that he used a machete against appellant, appellant's brother, and the two dogs. After interviewing J.C.'s girlfriend and daughter, Deputy Bonin followed a trail of blood to appellant's brother's home and located the two fatally injured dogs. Deputy Davis photographed the home, took J.C.'s statement, and then went to the emergency room and collected the clothing from both appellant and appellant's brother.

After concluding its investigation, the state charged appellant with threats of violence and two counts of burglary. The jury later found appellant guilty of threats of violence, but acquitted him of the burglary charges after a two-day jury trial in January 2020. The district court sentenced appellant to 21 months in prison.

This appeal followed.

DECISION

Appellant argues that we must reverse his conviction for threats of violence because the evidence was insufficient. A defendant is guilty of threats of violence if he (1) threatened, directly or indirectly, to commit a crime of violence, and (2) acted either (a) with a purpose to terrorize another, or (b) in reckless disregard of the risk of causing such terror. Minn. Stat. § 609.713, subd. 1. A “threat” is a declaration of an intention to injure another by some unlawful act. *State v. Schweppe*, 237 N.W.2d 609, 613 (Minn. 1975). The test for whether a communication is harmless or threatening is whether, in context, the communication would reasonably create apprehension that its originator will act accordingly. *Id.* Under the second element of the threats-of-violence statute, “purpose” means “aim, objective, or intention” and “terrorize” means “to cause extreme fear by use of violence or threats.” *State v. Smith*, 825 N.W.2d 131, 136 (Minn. App. 2012) (quotation omitted), *rev. denied* (Minn. Mar. 19, 2013). A defendant acts in reckless disregard of the risk of causing such terror when he takes “deliberate action in disregard of a known, substantial risk” of threatening another. *State v. Bjergum*, 771 N.W.2d 53, 57 (Minn. App. 2009), *rev. denied* (Minn. Nov. 17, 2009).

To evaluate the sufficiency of the evidence, “appellate courts carefully examine the record to determine whether the facts and the legitimate inferences drawn from them would permit the jury to reasonably conclude that the defendant was guilty beyond a reasonable doubt of the offense of which he was convicted.” *State v. Griffin*, 887 N.W.2d 257, 263 (Minn. 2016). We review the evidence “in the light most favorable to the conviction” and

“assume the jury believed the State’s witnesses and disbelieved any evidence to the contrary.” *State v. Ortega*, 813 N.W.2d 86, 100 (Minn. 2012) (quotation omitted). And we “will not disturb the verdict if the jury, acting with due regard for the presumption of innocence and the requirement of proof beyond a reasonable doubt, could reasonably conclude that the defendant was guilty of the charged offense.” *Id.*

Because intent involves a state of mind, it is generally established circumstantially. *State v. Davis*, 656 N.W.2d 900, 905 (Minn. App. 2003), *rev. denied* (Minn. May 20, 2003). If the state’s evidence on one or more elements of a charged offense consists solely of circumstantial evidence, as it does here, we apply a heightened standard of review. *State v. Porte*, 832 N.W.2d 303, 309 (Minn. App. 2013). Circumstantial evidence is “evidence from which the [jury] can infer whether the facts in dispute existed or did not exist.” *State v. Harris*, 895 N.W.2d 592, 599 (Minn. 2017) (quotation omitted). Direct evidence, by contrast, “is evidence that is based on personal knowledge or observation and that, if true, proves a fact without inference or presumption.” *Id.* (quotation omitted).

In a circumstantial-evidence case, we apply a two-step test to determine whether the evidence was sufficient. *State v. Silvernail*, 831 N.W.2d 594, 598 (Minn. 2013). First, we identify the circumstances proved. *State v. Andersen*, 784 N.W.2d 320, 329 (Minn. 2010). In identifying the circumstances proved, we assume “that the jury resolved any factual disputes in a manner that is consistent with the jury’s verdict.” *Id.* “This is especially true where resolution of the case depends on conflicting testimony, because weighing the credibility of witnesses is the exclusive function of the jury.” *State v. Pieschke*, 295 N.W.2d 580, 584 (Minn. 1980). Second, we independently examine “the reasonableness

of all inferences that might be drawn from the circumstances proved,” including “inferences consistent with a hypothesis other than guilt.” *Andersen*, 784 N.W.2d at 329 (citation omitted). In so doing, we consider the evidence as a whole and do not examine any piece of evidence in isolation. *Id.* at 332.

Appellant argues that the state did not prove beyond a reasonable doubt that he intended to threaten J.C., and thus the second element of the threats-of-violence statute is not satisfied. We begin by identifying the circumstances proved. *Id.* at 329. The circumstances proved that support the verdict show that after an ongoing dispute over a car, and without invitation, appellant accompanied his brother to J.C.’s home at 1:00 a.m. Upon arriving at J.C.’s home, appellant and appellant’s brother kicked and pounded on J.C.’s door and eventually broke down the door. As appellant and appellant’s brother began to come towards J.C., J.C. swung a machete at them in defense, severely injuring both brothers and their dogs. During the altercation, appellant punched J.C.’s girlfriend in the face, someone kicked daughter, and a dog of appellant’s brother lunged at and bit J.C. Once appellant and appellant’s brother left J.C.’s home, appellant yelled that he would come back, with his gun, and would shoot up J.C.’s family. J.C.’s girlfriend called 911 and reported that appellant had threatened to come back to her home with a gun. Both J.C. and J.C.’s girlfriend believed that appellant would return to their home with a gun and J.C. was scared.

The next step requires us to evaluate the “reasonableness of all inferences that might be drawn from the circumstances proved” including those that are inconsistent with guilt. *Id.* (citation omitted). Appellant argues that the circumstances proved show one reasonable

inference inconsistent with guilt: that he “was expressing his anger in colorful terms and did not intend for his words to be taken seriously.” We disagree. The evidence presented at trial supports the jury’s determination that appellant intended to terrorize J.C. and his family.

The state can prove a defendant’s intent to terrorize another through circumstantial evidence “by drawing inferences from the defendant’s words and actions in light of the totality of the circumstances.” *Smith*, 825 N.W.2d at 136 (quotation omitted). And the “victim’s reaction to a threat is circumstantial evidence of intent.” *Id.* Appellant yelled to J.C. and his family that he would return with a gun and “shoot [them] up” after he kicked in J.C.’s door in the middle of the night and assaulted his family over an ongoing dispute about a car. J.C.’s girlfriend responded by calling 911 and telling the dispatcher that someone had threatened to come back to her home with a gun. Both J.C. and J.C.’s girlfriend testified that they thought appellant would return with a gun. J.C. testified that he was scared. Under these circumstances, it would not be reasonable to infer that by yelling that he would return with a gun and shoot up J.C.’s family, after he broke down their door in the middle of the night, appellant merely intended to “express[] his anger in colorful terms.”

Appellant, however, argues that Minnesota caselaw supports the determination that the requisite intent to cause another extreme fear is absent here because his words and later acts did not suggest: (1) planning, or (2) intent to follow through on his threat. To support his argument that he did not plan any threat before making the statement, and thus did not have the requisite intent to cause another extreme fear, appellant cites *State v. Jones*, 451

N.W.2d 55 (Minn. App. 1990), *rev. denied* (Minn. Feb. 21, 1990); *State v. Begbie*, 415 N.W.2d 103 (Minn. App. 1987), *rev. denied* (Minn. Jan. 20, 1988); and *State v. Fischer*, 354 N.W.2d 29 (Minn. App. 1984), *rev. denied* (Minn. Dec. 20, 1984).

In *Jones*, the defendant was convicted of threats of violence after he threatened a correctional counselor five times, detailing when and how he planned to assault and murder her. 451 N.W.2d at 57. In *Begbie*, the defendant was convicted of threats of violence after he told the victim multiple times that she and her family would be murdered unless she assumed his debt. 415 N.W.2d at 104. And in *Fischer*, the defendant was convicted of threats of violence after he made many calls to the victim and her family threatening to kill them. 354 N.W.2d at 31-32. Appellant argues that this case is distinguishable from *Jones*, *Begbie*, and *Fischer* because any threat did not have “the aura of a coldly calculated plan” and appellant did not make multiple statements. But threats of violence neither requires premeditation nor even a specific intent; instead, “[b]y acting without regard to a known, substantial risk, a person’s threats, however intended, may violate the statute.” *Bjergum*, 771 N.W.2d at 57. And a defendant need not make multiple statements to be convicted of threats of violence. *See State v. Knaeble*, 652 N.W.2d 551, 556 (Minn. App. 2002) (affirming a conviction for terroristic threats when appellant threatened to chop his brother’s head off), *rev. denied* (Minn. Jan. 21, 2003).

To support his argument that he did not intend to follow through on his threat and thus lacked the requisite intent, appellant cites *State v. Jorgenson*, 758 N.W.2d 316 (Minn. App. 2008), *rev. denied* (Minn. Feb. 17, 2009), and *State v. Dick*, 638 N.W.2d 486 (Minn. App. 2002), *rev. denied* (Minn. Apr. 16, 2002). In *Jorgenson*, after the defendant stated

that he would assault the victim and throw her down the stairs, he assaulted the victim and threw her down the stairs. 758 N.W.2d at 319-20. And in *Dick*, after being arrested, the defendant threatened to find out where the officers lived and kill them, and throughout the duration of his transport the defendant continued to yell obscenities and threats. 638 N.W.2d at 489. Appellant argues that this case is distinguishable from *Jorgenson* and *Dick* because he did not “act in a way that suggested he would follow through with his threats.” We disagree. It is not reasonable to conclude that the totality of the circumstances do not suggest that appellant would follow through when he yelled his threat shortly after breaking down J.C.’s door, sustaining injuries from J.C., and after an ongoing dispute between J.C. and his brother. The subjective intent of the actor to actually follow through on the threat is irrelevant; it is enough if the actor merely intends for the victim to think he might follow through.

Appellant also argues that any threat resulted from transitory anger and thus was not sufficient to sustain a conviction for threats of violence.¹ Transitory anger “is short-lived anger with no intent to terrorize.” *State v. Taylor*, 264 N.W.2d 157, 160 (Minn. 1978). Appellant claims that his words resulted from surprise, fear, and anger, and that there is no evidence that he intended for his words to be taken seriously. We disagree. Appellant’s threat was not a product of short-lived anger; instead, he yelled that he would return and shoot up J.C.’s family as he was walking away from the scene of the incident. Under the

¹ Respondent argues that because appellant “never asserted at trial that his threats were the product of transitory anger” his argument is forfeited on appeal. On appeal, however, an appellant does not forfeit the issue of sufficiency of the evidence by failing to raise the specific ground at trial. *State v. Pakhnyuk*, 926 N.W.2d 914, 918-19 (Minn. 2019).

circumstances here, it is not reasonable to conclude that appellant did not intend to terrorize or, at a minimum, did not act in reckless disregard of the risk of causing terror when he threatened to return to J.C.'s home with a gun and shoot up his family.

Based on the evidence presented and viewed in the light most favorable to the jury's verdict, we conclude that the state proved beyond a reasonable doubt that appellant intended to terrorize J.C. and his family.

Affirmed.