

*This opinion is nonprecedential except as provided by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
A24-1585**

State of Minnesota,
Respondent,

vs.

Lee McFadin Miller,
Appellant.

**Filed August 4, 2025
Reversed
Johnson, Judge**

Crow Wing County District Court
File No. 18-CR-24-796

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

Donald F. Ryan, Crow Wing County Attorney, Quinn Hoffman, Assistant County
Attorney, Brainerd, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Sean Michael McGuire, Assistant
Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Smith, Tracy M., Presiding Judge; Worke, Judge; and
Johnson, Judge.

NONPRECEDENTIAL OPINION

JOHNSON, Judge

A Crow Wing County jury found Lee McFadin Miller guilty of disorderly conduct
based on evidence that he made crude, offensive, and disrespectful statements to the

Crosslake police chief. We conclude that Miller's statements are protected by the Free Speech Clause of the First Amendment. Therefore, we reverse the conviction.

FACTS

This prosecution arose from an interaction between Miller and the police chief of the city of Crosslake, Jacob Maier, during the afternoon of March 5, 2024. The interaction occurred at the Crosslake police station and lasted less than three minutes. The entire interaction was recorded by Chief Maier's body-worn camera, and the videorecording was introduced into evidence. Our recitation of the relevant facts is based almost entirely on our review of that videorecording and a transcript of the videorecording that was admitted as a court exhibit.

Miller walked into the lobby of the police station and said that he would like to speak to Chief Maier. Chief Maier activated his body-worn camera and walked from his office to the lobby to meet Miller. Miller began the conversation by saying, "Til the end of this week, if you don't release my truck down there at the towing company, [and] I've got to go to \$12,000, then I'm suing the city here for it." Chief Maier told Miller to remove his hands from his pockets so that his hands were visible. Miller refused to comply. Chief Maier pointed to the door and told Miller to leave. Miller did not immediately do so. Chief Maier grabbed Miller's coat and gestured toward the door.

Miller eventually walked out the doorway and continued walking away on a sidewalk. Miller occasionally stopped, turned around, and made various statements to Chief Maier. While Miller was in gradual, intermittent retreat, Chief Maier slowly followed him and made responsive statements but stayed approximately five to twenty feet

away from Miller. The two men continued to exchange comments. Miller directed numerous insults at Chief Maier, while Chief Maier told Miller to “get” or “leave” or he would be arrested.

During this interaction, Miller made the following statements to Chief Maier:

The best day of my life was when they exterminated two of you f---ers a week ago. . . . Arrest me, arrest me, arrest me. C’mon! Arrest me! Arrest me! . . . Suck my dick. Suck my dick again. . . . I hope they exterminate you. . . .¹ Take that badge off and come out in the woods. . . . I’d whoop your ass so bad you wouldn’t wake up. . . . Let’s do it. . . . You don’t know nothing’ about your f---ing job. . . . Suck my dick again. . . . Touch me. Touch me. . . . You can’t tie your f---in’ shoes, you f---in, moron. . . . You’re the poster child for abortion. . . . Put your hands in your f---in’ pockets you queer mother f---er and play with yourself.

After two minutes and 43 seconds of interaction, Chief Maier told Miller that he was under arrest. Miller immediately placed his hands behind his back, and Chief Maier handcuffed him.

On the same day, the state charged Miller with disorderly conduct, in violation of Minn. Stat. § 609.72, subd. 1(3) (2022). The case was tried to a jury on one day in August 2024. Miller represented himself at trial, having discharged his attorney. The state called Chief Maier as its sole witness. His testimony was brief. To prove what Miller said, the state relied solely on the videorecording created by Chief Maier’s body-worn camera, which captured the entirety of the interaction between Miller and Chief Maier, including

¹The transcript of the videorecording, which was prepared by the prosecutor and admitted as a court exhibit, describes this statement as “I’d like to exterminate you.” In Miller’s principal brief, he asserts that he said, “I hope they exterminate you.” After careful review of the videorecording, we agree with Miller’s interpretation.

the arrest. Miller testified briefly in a narrative fashion. The district court instructed the jury on the definition of “fighting words.” The jury found Miller guilty. At sentencing, the district court ordered Miller to serve 90 days in jail but stayed the sentence for one year. Miller appeals.

DECISION

With the assistance of appellate counsel, Miller makes two arguments for reversal. First, he argues that his conviction must be reversed because it rests solely on speech that is constitutionally protected. Second, he argues that the district court erred by discharging his trial attorney without ensuring that Miller made a valid waiver of his constitutional right to counsel.

We begin with Miller’s first argument. Miller argues that his conviction of disorderly conduct is constitutionally invalid because it rests on evidence of statements that are protected by the Free Speech Clause of the First Amendment to the United States Constitution. In response, the state argues that Miller’s statements are not constitutionally protected because they are “fighting words.” The parties agree that, if Miller’s statements are constitutionally protected, there is no valid evidence to support the conviction.

The relevant clause of the applicable statute provides that a person commits the crime of disorderly conduct if he or she “engages . . . in offensive, obscene, or abusive language tending reasonably to arouse alarm, anger, or resentment in others” and does so “in a public or private place, . . . knowing, or having reasonable grounds to know that it will, or will tend to, alarm, anger or disturb others or provoke an assault or breach of the peace.” Minn. Stat. § 609.72, subd. 1, 1(3) (alterations added).

It is well established that the disorderly conduct statute may not always be enforced as written. In *In re Welfare of S.L.J.*, 263 N.W.2d 412 (Minn. 1978), the supreme court held that section 609.72, subdivision 1(3), as enacted, “clearly contemplates punishment for speech that is protected under the First and Fourteenth Amendments.” *Id.* at 419. To ensure that criminal defendants are not convicted of a crime for engaging in speech that is protected by the First Amendment, the supreme court narrowly construed the statute to criminalize speech only if it consists of “fighting words,” which are not constitutionally protected. *Id.* at 416-19. The supreme court explained that “fighting words” are “those ‘personally abusive epithets which, when addressed to the ordinary citizen, are, as a matter of common knowledge, inherently likely to provoke violent reaction,’” *id.* at 418 (quoting *Cohen v. California*, 403 U.S. 15, 20 (1971)); words that “‘by their very utterance inflict injury or tend to incite an immediate breach of the peace,’” *id.* (quoting *Lewis v. City of New Orleans*, 415 U.S. 130, 132 (1974)); or words that “‘hav[e] an immediate tendency to provoke retaliatory violence or tumultuous conduct by those to whom such words are addressed,’” *id.* at 419 (quoting *State v. Hipp*, 213 N.W.2d 610, 614 (Minn. 1973)). We apply a *de novo* standard of review to the question whether a defendant’s speech constitutes “fighting words.” *In re Welfare of M.A.H.*, 572 N.W.2d 752, 757 (Minn. App. 1997).

Whether a defendant’s speech constitutes fighting words depends on “the nature of the words and the circumstances in which they were spoken.” *City of Little Falls v. Witucki*, 295 N.W.2d 243, 246 (Minn. 1980). Miller contends that, in the particular circumstances of this case, his statements to Chief Maier were not likely to “incite or provoke a violent response or immediate breach of the peace.” He emphasizes the fact that

his statements were made to a police officer. He cites a Supreme Court opinion recognizing that “the First Amendment protects a significant amount of verbal criticism and challenge directed at police officers.” *City of Houston v. Hill*, 482 U.S. 451, 461 (1987). The Supreme Court commented in that opinion that ““a properly trained officer may reasonably be expected to exercise a higher degree of restraint than the average citizen, and thus be less likely to respond belligerently to fighting words.”” *Id.* at 462 (quoting *Lewis*, 415 U.S. at 135 (1974) (Powell, J., concurring)) (other quotation omitted).

The Minnesota Supreme Court and this court have considered several appeals in which a defendant was convicted of disorderly conduct based on statements made to police officers. Some of those convictions were affirmed. For example, in *State v. White*, 292 N.W.2d 16 (Minn. 1980), police officers saw a man engage in reckless driving and then enter a bar. *Id.* at 17. The officers followed the man into the bar and asked him to step outside to talk about his driving. *Id.* The man “us[ed] vulgar language, put up his clenched fists and threatened to knock the officers down if they tried to take him outside.” *Id.* The supreme court affirmed the conviction. *Id.* at 18.

As another example, in *State v. Lynch*, 392 N.W.2d 700 (Minn. App. 1986), undercover police officers conducted a traffic stop of a scooter driver. *Id.* at 701-02. The defendant emerged from her nearby home with ten to fifteen other persons, walked toward the officers, called them “motherf---ing pigs,” and criticized the officers for making the traffic stop. *Id.* at 702. She “continued swearing” as the crowd grew to 50 to 100 persons or more, and her behavior “had the effect of inciting the crowd” and “draw[ing] more people to the scene,” which caused the officers to call for back-up. *Id.* This court affirmed

the conviction, reasoning that the defendant engaged in fighting words because “[s]everal persons in the crowd were brandishing clubs, and . . . appellant’s language had the effect of inciting that crowd.” *Id.* at 704-05.

In other cases of disorderly conduct convictions based on statements made to police officers, the convictions were reversed. For example, in *S.L.J.*, two police officers apprehended some teenage boys and questioned two teenage girls. 263 N.W.2d at 415. As the girls were walking away, 14-year-old S.L.J. said to the officers, “f--- you pigs.” *Id.* When she made this statement, the girls were between 15 and 30 feet from the officers, who were sitting in a squad car. *Id.* The supreme court reversed the disorderly conduct delinquency adjudication because the juvenile’s words were “spoken in retreat from more than 15 feet away rather than eye-to-eye” and “there was no reasonable likelihood that they would tend to incite an immediate breach of the peace or to provoke violent reaction by an ordinary, reasonable person.” *Id.* at 420.

Similarly, in *M.A.H.*, police officers were attempting to clear the scene of a fight between juveniles when a 17-year-old boy shouted at an officer, “We can f---ing be out here if we want to be! . . . What the f--- are you gonna do about it? We can be here if we f---in’ want to!” 572 N.W.2d at 754-55. Another juvenile, a 15-year-old boy, who was 10 to 15 feet from squad cars, yelled, “This is bulls---! This whole thing is f---ed up! We can do anything we f---in’ want to do!” *Id.* at 755. Both juveniles were adjudicated delinquent for disorderly conduct, and this court reversed both adjudications. *Id.* at 755-56, 760. With respect to the first juvenile, this court reasoned that neither the police officers nor other juveniles “reacted violently” and that, given the circumstances, the juvenile’s words were

not likely to provoke a violent reaction. *Id.* at 758-59. In addition, this court reasoned that “the officers testified that [the first juvenile’s] comments did not place them in fear of imminent harm” and found “it unlikely that a reasonable officer, armed and with backup, would feel such fear under the circumstances.” *Id.* at 759. With respect to the second juvenile, this court reasoned that, given the circumstances, his words were unlikely to provoke the other children to violence. *Id.*

With this caselaw in mind, we consider the facts and circumstances of this case. Miller made a series of statements to Chief Maier that were filled with profanity, vulgarity, and hostility. But the evidence does not show that the statements were “likely to provoke violent reaction” or “incite an immediate breach of the peace.” *See S.L.J.*, 263 N.W.2d at 418 (quotations omitted). Miller made most of the offensive comments after he had exited the police station and was walking away. Nothing about Miller’s physical posture or gestures indicates a likelihood that he would escalate the verbal barrage into a physical conflict. Similarly, nothing indicates a need for Chief Maier to have initiated a physical response. Even Miller’s statement about going “into the woods” was not provocative or threatening, as demonstrated by the fact that Chief Maier instinctively responded with mild laughter or chuckles. To be sure, Miller sought to offend, insult, and annoy Chief Maier. But, to reiterate, “the First Amendment protects a significant amount of verbal criticism and challenge directed at police officers.” *Hill*, 482 U.S. at 461. When viewed in context, it is apparent that Miller’s words did not go beyond constitutional limits.

We acknowledge that, when given their literal meaning, Miller’s words appear to be provocative and threatening. But, to reiterate, we must consider both “the nature of the

words *and* the circumstances in which they were spoken.” *Witucki*, 295 N.W.2d at 246 (emphasis added). Miller’s statements were admitted into evidence in only one form: the videorecording created by Chief Maier’s body-worn camera. Notably, the state did not elicit any testimony from Chief Maier that might have been relevant to the question whether Miller’s statements were fighting words, even though the district court instructed the jury on the definition of that term. Thus, our review of the evidence necessarily is visual and auditory. We can ascertain Chief Maier’s perceptions of Miller’s statements only by assessing his visible and audible responses, which are relevant, though not determinative. *See M.A.H.*, 572 N.W.2d at 757-58. To his credit, he did not give any indication that he was provoked to violence, as one would expect from “a properly trained officer” with “a higher degree of restraint than the average citizen.” *See Hill*, 482 U.S. at 462.

Thus, based on the nature of Miller’s words and the surrounding circumstances, as reflected in the videorecording of the incident, we conclude that the statements for which Miller was convicted are not “fighting words” and, thus, are protected by the First Amendment. Therefore, we reverse Miller’s conviction. In light of that conclusion with respect to Miller’s first argument, we need not consider his second argument.

Reversed.