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**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A13-0713**

State of Minnesota,  
Respondent,

vs.

Terrell Darnell Moffett,  
Appellant.

**Filed June 30, 2014  
Affirmed  
Chutich, Judge**

Ramsey County District Court  
File No. 62-CR-12-7460

Lori Swanson, Attorney General, St. Paul, Minnesota; and

John J. Choi, Ramsey County Attorney, Peter R. Marker, Assistant County Attorney, St. Paul, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Mark D. Nyvold, Special Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Rodenberg, Presiding Judge; Johnson, Judge; and Chutich, Judge.

**UNPUBLISHED OPINION**

**CHUTICH**, Judge

Appellant Terrell Moffett challenges his conviction of making terroristic threats, contending that, as a matter of law, the evidence presented at trial was insufficient to

convict him because his threats were vague and directed at a victim not listed in the complaint. Because sufficient evidence supports Moffett's conviction, we affirm.

## FACTS

T.L. lived in an apartment in St. Paul in August 2012 when she met appellant Terrell Moffett. She lived in her apartment with her three-year-old son, and A.D., the child's father, until A.D. moved to Illinois in July 2012. T.L. invited Moffett to stay at her apartment one night in early August. Although T.L. did not ask him to move in with her, Moffett continued to stay at T.L.'s apartment because he had nowhere else to go.

Soon after Moffett started staying at T.L.'s apartment, Moffett's girlfriend, D.H., and D.H.'s child began living at T.L.'s apartment, without T.L.'s permission. In mid-August, A.D. told T.L. that he wanted to move back in with her, and Moffett was upset that A.D. wanted to return. Moffett threatened A.D. by "saying he wanted to beat [A.D.] up" and that "he wanted to kill [A.D]."

A.D. returned to Minnesota on August 14, 2012. T.L. and A.D. asked Moffett to leave the apartment, but Moffett refused. On August 15, T.L. moved out of her own apartment with her child and stayed with a friend because she was afraid of Moffett and his threatening behavior.

After T.L. left her apartment, Moffett left T.L. voicemails and sent her text messages saying that he was going to "kill [A.D.]" and "mess [T.L.] up for even dealing with [A.D.]" Moffett texted T.L., "And now ain't the time! Tell that hoe ass n---a . . . it's been time! . . . so he can bring his bitch ass! Om god. Its ova for dude." T.L. interpreted this text to mean "[t]hat [her] son's father wasn't going to live." Moffett also

texted T.L., “I can’t wait to catch yo lil hoe ass. Betta know how to fight . . . real good! Hal way kill yo bitch ass! And [T.L.] betta stop lyin on me . . . before u be r.” Moffett also sent T.L. a picture message of a loaded revolver, which “terrified” T.L. T.L. testified that the picture showed that Moffett was “not playing.” T.L. recognized the gun because she previously saw Moffett holding it.

In addition to the text and picture messages, Moffett left T.L. threatening voicemails. Moffett stated in one voicemail, “I’ll f--k both of y’all up. Him for runnin’ his mouth and you for sittin’ there bein’ under him when he runnin’ his mouth and going back and forth. Bitch, quit playing with me. Real talk—I’m through talkin’. I’m here. F--k, y’all goin’ . . . Tricks on both of you clowns, n---a. F--k you mean.” In another voicemail, Moffett said, “Yeah, [T.L.], . . . I’m going to f--k that n---a up, real talk man. Y’all got the key, come knock on the door. You call this phone again I’m goin’ to f--k you up and that bitch n---a.” In another voicemail, Moffett exclaimed, “I’m gonna hafta kill this bitch man. I’m gonna kill that bitch man.” T.L. testified that these voicemails made her “afraid” and “scared.”

On August 29, 2012, T.L. obtained an order for protection against Moffett to have him removed from her apartment and to prohibit him from contacting her. Moffett was served with the order for protection and removed from T.L.’s apartment by Ramsey County Sheriff’s deputies that day.

The very next day, T.L.’s landlord called T.L. and said that her apartment was “destroyed.” T.L. found her apartment in complete disarray, including damage to a wall and furniture. T.L. reported the property damage and threats made by Moffett to the

St. Paul Police Department. Police took Moffett into custody in early September to question him about the threats. Moffett told police officers that the phone number used to send the messages belonged to D.P. and that neither he nor D.P. sent the messages.

On September 11, 2012, Moffett and D.P. saw T.L. and A.D. walking in St. Paul. Moffett yelled at and came toward T.L. and A.D. on the street. Moffett yelled that “he was fitting to find [their] bitch asses one day.” Moffett tried to get A.D. to fight him, and T.L. was scared that Moffett was going to hurt them. T.L. reported the violation of the order for protection, and police officers arrested Moffett.

The state charged Moffett with pattern-of-stalking conduct, making terroristic threats, fourth-degree criminal damage to property, and violating an order for protection. *See* Minn. Stat. §§ 609.749, subd. 5(a), .713, subd. 1, .595, subd. 3, .03, subd. 3, 518B.01, subd. 14(a), (c) (2012). At trial, the district court admitted exhibits of the text messages, including the picture of the gun, and voicemails sent by Moffett. T.L. and the police officers involved testified, and Moffett testified in his own defense. Moffett denied damaging T.L.’s apartment, sending and leaving T.L. threatening messages, sending the picture of the loaded gun, and violating the order for protection. The jury convicted Moffett of making terroristic threats and violating an order for protection, but acquitted him of criminal damage to property and pattern-of-stalking conduct. The district court sentenced Moffett concurrently to 30 months’ imprisonment for making terroristic threats and to 365 days in jail for violating the order for protection.

## DECISION

Moffett asserts that the state did not present sufficient evidence to prove that he threatened T.L. with second-degree murder, the crime of violence alleged by the state to support the terroristic-threats charge. Because direct evidence exists in the record to support Moffett's conviction for making terroristic threats, we disagree.

When reviewing the sufficiency of the evidence supporting a conviction, our review is limited to a thorough analysis of the record to determine whether the evidence, when viewed in the light most favorable to the conviction, is sufficient to allow the jurors to reach the verdict that they did. *State v. Ortega*, 813 N.W.2d 86, 100 (Minn. 2012). We determine whether legitimate inferences drawn from the record evidence would allow a factfinder to conclude that the defendant was guilty beyond a reasonable doubt. *State v. Pratt*, 813 N.W.2d 868, 874 (Minn. 2012). We assume “that the jury believed all of the state's witnesses and disbelieved any evidence to the contrary.” *State v. Chambers*, 589 N.W.2d 466, 477 (Minn. 1999). This court 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 offenses. *Bernhardt v. State*, 684 N.W.2d 465, 476–77 (Minn. 2004). “Reversal is proper if facts proving an essential element of the offense are left more to conjecture and speculation than to reasonable inference . . . .” *State v. DeRosier*, 695 N.W.2d 97, 108 (Minn. 2005).

A person is guilty of making terroristic threats if he “threatens, directly or indirectly, to commit any crime of violence with purpose to terrorize another” or makes

threats “in a reckless disregard of the risk of causing such terror.” Minn. Stat. § 609.713, subd. 1. The state argued that Moffett threatened T.L. with second-degree intentional murder, that is, threatening to “caus[e] the death of a human being with intent to effect the death of that person or another, but without premeditation.” See Minn. Stat. § 609.19, subd. 1 (2012); Minn. Stat. §§ 609.713, subd. 1, .1095, subd. 1(d) (2012) (defining second-degree murder as crime of violence).

“A threat is a declaration of an intention to injure another . . . by some unlawful act.” *State v. Smith*, 825 N.W.2d 131, 135 (Minn. App. 2012) (quoting *State v. Schweppe*, 306 Minn. 395, 399, 237 N.W.2d 609, 613 (1975)), *review denied* (Mar. 19, 2013). “A communication constitutes a threat if, in context, it ‘would have a reasonable tendency to create apprehension that its originator will act according to its tenor.’” *Id.* (quoting *Schweppe*, 306 Minn. at 399, 237 N.W.2d at 613).

Under the terroristic-threats statute, “purpose ‘means aim, objective, or intention,’ and ‘[t]errorize means to cause extreme fear by use of violence or threats.’” *Id.* at 136 (quoting *Schweppe*, 306 Minn. at 400, 237 N.W.2d at 614). When considering whether Moffett made threats in reckless disregard of the effect on T.L., we evaluate whether Moffett made a “deliberate action in disregard of a known, substantial risk” that would reasonably make T.L. feel terrorized. See *State v. Bjergum*, 771 N.W.2d 53, 57 (Minn. App. 2009).

Moffett contends in his brief that the evidence presented at trial was insufficient to show that he threatened T.L. with second-degree murder because the threats were vague and directed at A.D. At trial, Moffett denied threatening T.L. or A.D. But we review the

evidence in the light most favorable to the verdict, and the jury discredited Moffett's testimony and believed the state's witnesses by convicting him of making terroristic threats. *See Chambers*, 589 N.W.2d at 477.

Based on the considerable amount of record evidence demonstrating Moffett's threats to kill T.L., we affirm Moffett's conviction. Moffett left T.L. voicemails that conveyed Moffett's threat to kill T.L. and A.D. In addition, Moffett sent T.L. text messages that threatened to kill A.D. ("Its ova for dude") and then threatened T.L. in the last part of the message. Any ambiguity in the text messages is clarified when Moffett sent T.L. a picture of a bullet chamber of a loaded revolver. That picture communicated, with no ambiguity whatsoever, that he was threatening to shoot T.L. with the gun.

The substance, number, and frequency of Moffett's voicemails, text messages, and statements to T.L., combined with the picture of the loaded revolver, undeniably demonstrate that Moffett purposefully threatened to kill T.L. *See Smith*, 825 N.W.2d at 136. Moffett's communications to T.L. reasonably caused her to believe that Moffett was going to try to murder her.<sup>1</sup> *See id.* at 135. Even if Moffett did not deliberately threaten to commit second-degree murder of T.L., he recklessly disregarded a substantial risk that T.L. would understand his communications to mean that he intended to kill her. *See Bjergum*, 771 N.W.2d at 57. Taken as a whole, the only rational interpretation of Moffett's communications to T.L. is that he threatened to kill her. We hold that the direct

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<sup>1</sup> Although proving the effect of the threats on the victim is not required, T.L.'s reaction to the threats is circumstantial evidence of Moffett's intent. *See Schweppe*, 306 Minn. at 401, 237 N.W.2d at 614.

evidence presented by the state at trial is more than sufficient as a matter of law to support Moffett's conviction for making terroristic threats.

**Affirmed.**