MISSOURI COURT OF APPEALS
WESTERN DISTRICT

STATE OF MISSOURI

RESPONDENT,

v.

RICHARD McNABB

APPELLANT.

DOCKET NUMBER WD83494

DATE: March 2, 2021

Appeal From:

Vernon County Circuit Court
The Honorable David R. Munton, Judge

Appellate Judges:

Division Three: Edward R. Ardini, Jr., Presiding Judge, Alok Ahuja, Judge and Gary D. Witt, Judge

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Attorneys:

Michel A. Trapasso, Jefferson City, MO, for respondent.

Christian Lehmberg, Columbia, MO, for appellant.

MISSOURI APPELLATE COURT OPINION SUMMARY

MISSOURI COURT OF APPEALS
WESTERN DISTRICT

STATE OF MISSOURI, RESPONDENT,
v.
RICHARD McNABB, APPELLANT.

WD83494 Vernon County

Before Division Three Judges: Edward R. Ardini, Jr., Presiding Judge, Alok Ahuja, Judge, and Gary D. Witt, Judge

Richard McNabb ("McNabb") appeals the judgment of the Circuit Court of Vernon County, Missouri ("trial court"), finding him guilty, after a jury trial, of one count of tampering with a judicial officer pursuant to section 575.095 R.S.Mo. (2016). On appeal, McNabb challenges the sufficiency of the evidence supporting his conviction.

AFFIRMED.

Division Three holds:

Pursuant to section 575.095.1(1), RSMo, a person "commits the offense of tampering with a judicial officer if, with the purpose to harass, intimidate or influence a judicial officer if, with the purpose to harass, intimidate or influence a judicial officer in the performance of such officer's official duties, such person [t]hreatens or causes harm to the judicial officer. . . . The local prosecutor had charged McNabb with a crime involving the death of McNabb's child. McNabb left the house with a rifle and separately called several of his family members and informed them that he was going to kill the local prosecutor and then kill himself. Although McNabb did not harm the prosecutor and did not threaten him directly, it was reasonable for a jury to find that McNabb intended for his family members to relay those threats to the police who would then inform the prosecutor of the threats. The jury could thus have reasonably concluded that threats were intended to harass, intimidate, or influence the prosecutor in the performance of his official duties.

Judge Ahuja's Dissenting Opinion States:

In his view, the evidence was insufficient to prove that McNabb affirmatively wanted any statements he made to his family members to be communicated to the prosecutor. Therefore, there was no basis in the evidence for the jury to find that McNabb acted “with the purpose to harass, intimidate or influence” the prosecutor, as required by § 575.095.1(1), RSMo. Because

of this failure of proof on an essential element, Judge Ahuja would reverse McNabb's conviction for tampering with a judicial officer.

Majority Opinion by: Gary D. Witt, Judge
with Presiding Judge Ardini joining March 2, 2021
Dissenting Opinion by Alok Ahuja, Judge

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