In The
Court of Appeals
Seventh District of Texas at Amarillo

No. 07-16-00259-CR

JOHN LESLIE MORRIS, APPELLANT

V.

THE STATE OF TEXAS, APPELLEE

On Appeal from the 52nd District Court
Coryell County, Texas
Trial Court No. FO-14-22345, Honorable Trent D. Farrell, Presiding

February 16, 2017

MEMORANDUM OPINION

Before QUINN, C.J., and CAMPBELL and PIRTLE, JJ.

Through one issue, John Leslie Morris (appellant) questions the legal sufficiency of the evidence underlying his conviction for stalking. Though engaging in a rather extended discourse on constitutional law, he ultimately concludes that "[t]his Court must find that a reasonable person would not find any type of *actual threat* from the letters.

Therefore, there is insufficient evidence to convict [him] of this offense."[1] (Emphasis added). We overrule the issue and affirm.[2]

The standard of review is well-settled. Rather than reiterate it, we cite the parties to *Cary v. State*, No. PD-0445-15, 2016 Tex. Crim. App. LEXIS 1510, at *7–8 (Tex. Crim. App. Dec. 14, 2016), for its explanation.

Regarding appellant's contention about whether the evidence would permit a reasonable person to believe an "actual threat" was made, we first address the words of the statute and of the indictment. The former states as follows:

(a) A person commits an offense if the person, on more than one occasion and pursuant to the same scheme or course of conduct that is directed specifically at another person, knowingly engages in conduct that:

> (1) that the actor knows or reasonably should know the other person will regard as threatening:
>
> (A) bodily injury or death for the other person;
>
> (B) bodily injury or death for a member of the other person's family or household or for an individual with whom the other person has a dating relationship; or
>
> (C) that an offense will be committed against the other person's property;
>
> (2) causes the other person . . . to be placed in fear of bodily injury or death or in fear that an offense will be committed against the other person's property, or to feel harassed, annoyed, alarmed, abused, tormented, embarrassed, or offended; and
>
> (3) would cause a reasonable person to:
>
> (A) fear bodily injury or death for himself or herself;
>
> (B) fear bodily injury or death for a member of the person's family or household or for an individual with whom the person has a dating relationship;

[1] Throughout his brief, appellant repeatedly alludes to the need for an "actual threat."

[2] Because this appeal was transferred from the Tenth Court of Appeals, we are obligated to apply its precedent when available in the event of a conflict between the precedents of that court and this court. *See* TEX. R. APP. P. 41.3.

(C) fear that an offense will be committed against the person's property; or

(D) feel harassed, annoyed, alarmed, abused, tormented, embarrassed, or offended.

TEX. PENAL CODE ANN. § 42.072 (West 2016). In turn, the indictment stated as follows:

> [Appellant] . . . on more than one occasion, on or about the dates of April 20, 2014, April 21, 2014, April 22, 2014, April 23, 2014, and/or April 24, 2014 . . . did then and there, on more than one occasion, and pursuant to the same scheme or course of conduct directed specifically at [C.B.], knowingly engage in conduct that he knew or reasonably should have known [C.B.] would regard as threatening bodily injury or death to [C.B.] and that his conduct would cause a reasonable person to, and did cause [C.B.] to, feel harassed, annoyed, alarmed, abused, tormented, embarrassed, or offended, or to fear bodily injury or death, to wit: leaving hand-written notes in [C.B.]'s mailbox.

In reading both the indictment and statute, we find no mention of an "actual threat." Rather, the statute alludes to conduct that the victim "will regard as threatening" and conduct which would cause a reasonable person to fear injury or death or feel harassed, annoyed, alarmed or the like. In other words, the focus lies on the victim's perception of the conduct and whether a reasonable person would perceive it similarly. It does not lie on the existence of an "actual threat." *See, e.g., Maxie v. State*, No. 06-12-00140-CR, 2013 Tex. App. LEXIS 2194, at *3–6 (Tex. App.—Texarkana Mar. 1, 2013, no pet.) (mem. op., not designated for publication) (affirming conviction where the evidence illustrated that appellant made no actual threat but rather appeared several times at the victim's house late at night asking for money and refused to leave until given money). Nor did appellant cite us any authority interpreting the stalking statute as requiring proof of an "actual threat." Consequently, we opt not to rewrite the statute to incorporate into it language omitted by the legislature.

As for whether appellant's conduct would cause a reasonable person to fear injury or death or feel harassed, annoyed, alarmed, etc., we turn to the appellate record. In it we find evidence of appellant sending C.B. five letters of various lengths. The

letters were left in her mailbox on five successive days. Though signed, the name appearing on them was not that of appellant or any other person but rather the "God of Love / The Dragon Master." While the missives alluded to love at times, the writer also mentioned, among other things: (1) a friend who enjoyed killing women, (2) dancing on the grave of a woman who worked at "the Doll House," (3) having the "patience" to wait for the woman with whom the writer was "meant to share [his] being," (4) having "strong feelings" for the object of his attention, (5) prisoners being "entrapped" in "tombs," and (6) everyone having a "price" and his "price" was C.B. Furthermore, a game camera was utilized to discover the identity of the person delivering them. This indicated that the manner in which the writings were delivered was somewhat surreptitious, and unordinary means had to be implemented to discover who delivered the writings. Had one letter been delivered, then a reasonable person may well have reacted as C.B. did initially; she deemed it a youthful hoax or prank. Multiple letters of uniform theme sent over multiple days and referring to tombs, murder, dancing on graves, and the like become something more, however. And, this continuing conduct could well cause a reasonable person to feel harassment, annoyance, and alarm, if not fear of bodily injury or death, as it did to C.B.

Simply put, the evidence of record is sufficient to support each element of the crime for which appellant was convicted. We affirm the judgment.

Brian Quinn
Chief Justice

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