

Affirmed and Memorandum Opinion filed March 21, 2017.



In The

Fourteenth Court of Appeals

NO. 14-16-00624-CR

EX PARTE THOMAS CHRISTOPHER LEBLANC, Appellant

V.

THE STATE OF TEXAS, Appellee

**On Appeal from the 185th District Court
Harris County, Texas
Trial Court Cause No. 1508554**

M E M O R A N D U M O P I N I O N

Thomas Christopher LeBlanc is charged with the offense of online impersonation. The indictment alleged that, with the intent to harm, defraud, intimidate, and threaten any person, appellant unlawfully and without complainant M.C.'s consent used M.C.'s name and persona to create a web page on a commercial social networking site or to create an internet website or to send messages on and through a commercial social-networking site. *See* TEX. PENAL

CODE ANN. § 33.07(a) (West 2016). Appellant filed a pretrial application for writ of habeas corpus on the ground that section 33.07(a) is unconstitutional. The trial court denied the application.

Section 33.07(a) provides as follows:

- (a) A person commits an offense if the person, without obtaining the other person's consent and with the intent to harm, defraud, intimidate, or threaten any person, uses the name or persona of another person to:
 - (1) create a web page on a commercial social networking site or other Internet website; or
 - (2) post or send one or more messages on or through a commercial social networking site or other Internet website, other than on or through an electronic mail program or message board program.

Id.

In three issues, appellant argues that the trial court's ruling was erroneous because section 33.07(a) is facially unconstitutional. In his first issue, appellant argues that this provision is overbroad, restricts a real and substantial amount of protected speech based on its content, and fails the strict-scrutiny test. In his second issue, appellant contends the statute's "incorporation of an all-encompassing 'harm' standard" renders it void for vagueness in violation of the constitutional right to due process. In his third issue, he asserts that section 33.07(a) unduly burdens interstate commerce in violation of the Dormant Commerce Clause because the provision's effects are not restricted to conduct occurring within Texas.

We considered and rejected the identical arguments in *State v. Stubbs*, 502 S.W.3d 218 (Tex. App.—Houston [14th Dist.] 2016, pet. denied).¹ Regarding the

¹ The Fifth Court of Appeals also has considered these same arguments and reached the

arguments presented in appellant’s first issue, we conclude that, for the reasons stated in *Stubbs*, section 33.07(a) does not restrict speech based on its content and is not subject to strict scrutiny. *See id.* at 232. As we did in *Stubbs*, we reject appellant’s argument that “Section 33.07(a)’s illegitimate sweep is real and substantial.” *See id.* at 234–35. And here, as in *Stubbs*, we hold that section 33.07(a) is not facially overbroad. *See id.* at 235. As for appellant’s second and third issues, we hold that, as we explained in *Stubbs*, section 33.07(a) is not void for vagueness and does not violate the Dormant Commerce Clause. *See id.* at 236–38.

We accordingly overrule each of the issues presented on appeal and affirm the trial court’s denial of appellant’s pretrial application for writ of habeas corpus.

/s/ Tracy Christopher
Justice

Panel consists of Justices Christopher, Jamison, and Donovan.
Do Not Publish — TEX. R. APP. P. 47.2(b).

same result. *See Ex parte Bradshaw*, 501 S.W.3d 665 (Tex. App.—Dallas 2016, pet. ref’d).