In The
Court of Appeals
Seventh District of Texas at Amarillo

No. 07-16-00455-CR

KALISCIA ELONDA MILLSAP, APPELLANT

V.

THE STATE OF TEXAS, APPELLEE

On Appeal from the County Court at Law No 1
Potter County, Texas
Trial Court No. 144118-1, Honorable W. F. (Corky) Roberts, Presiding

December 22, 2017

MEMORANDUM OPINION

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

Kaliscia Elonda Millsap (appellant) appeals her conviction for terroristic threat. Through two issues, she contends that the trial court erred in finding her guilty of the crime because the threat made was 1) conditional, 2) not immediate, and 3) simply evinced her interest in engaging in self-defense. We affirm the judgment as modified.

The factual circumstances underlying appellant's conviction involve her termination from a job with a department of the City of Amarillo (department) and her belief that the termination was improper. That led to a phone call being placed to a

previous co-worker (A.D.) during which conversation appellant said other co-workers "were talking bad about the job that [appellant] had performed." One of the other co-workers, according to appellant, was A.M.[1] Appellant grew angry during the phone conversation and eventually said: you bitches need to realize I'm not from Texas. I'm from California, and I carry a gun at all times."

About a week later, another department employee (M.M.) encountered appellant at a convenience store across the street from the department. The two also engaged in conversation about appellant's termination. At that time, appellant described how A.M. "was bad-mouthing her," along with two other department employees. She followed that statement by 1) first uttering "'what these uh – mouther [sic] fuckers don't realize is that I carry a gun'" and, if she "felt threatened or anything like that that she would fucking shoot them," and 2) then displaying a handgun to M.M. The latter employee "felt shocked because [she] was scared for" A.M. and the others mentioned by appellant. She also returned to her office across the street and reported the conversation.

We are unsure if appellant is expressly questioning the legal sufficiency of the evidence underlying her conviction or simply saying that a conditional, non-immediate threat cannot form the basis of a conviction. Her argument could be read either way. We first address the latter proposition.

The State charged appellant with violating § 22.07(a)(2) of the Texas Penal Code. According to that statute, a "person commits an offense if he threatens to commit any offense involving violence to any person or property with intent to . . . place any person in fear of imminent serious bodily injury." TEX. PENAL CODE ANN. § 22.07(a)(2) (West

[1] A.M. happened to be the victim named in the count for which appellant was convicted.

Supp. 2017). The "offense is complete if the accused, by his threat, sought as a desired reaction to place a person in fear of imminent serious bodily injury." *Heinert v. Wichita Falls Hous. Auth.*, 441 S.W.3d 810, 818 (Tex. App.—Amarillo 2014, no pet.). As expressed in the statute, the fear of serious bodily injury need only be imminent, not immediate. This is of import since the words have different meanings. As said in *Heinert*, "'[i]mminent'" means 'near at hand; *mediate rather than immediate.*'" *Id.* (emphasis added). So, contrary to appellant's suggestion, the threat need not denote "immediate" harm, only imminent harm. *See Jones v. State*, No. 07-16-00345-CR, 2017 Tex. App. LEXIS 4158, at *7 (Tex. App.—Amarillo May 8, 2017, no pet.) (mem. op., not designated for publication) (stating that "[u]nder this definition, threatening to commit an act could cause fear of imminent serious bodily injury if, in the mind of the victim, the commission of the act was 'near at hand' or 'hanging threateningly over one's head.'").

Additionally, "conditioning a threat of harm on the occurrence or non-occurrence of a future event does not necessarily mean that the harmful consequences threatened are not imminent." *Cook v. State*, 940 S.W.2d 344, 348 (Tex. App.—Amarillo 1997, pet. ref'd); *accord Williams v. State*, 432 S.W.3d 450, 454 (Tex. App.—San Antonio 2014, pet. ref'd) (stating the same). Given that, a threat may be conditioned on the occurrence or non-occurrence of a future event and still denote imminent injury in particular circumstances. So, appellant is also mistaken in suggesting that the threat must be unconditional.

As for the chance that appellant is simply questioning the legal sufficiency of the evidence, we note that the record illustrates she twice conversed with department employees about her termination. During both those conversations she either grew angry

or uttered invectives which could be reasonably interpreted as indicating anger about her termination and those "bad-mouthing" her. So too did she specifically mention her handgun and A.M. in both conversations. More importantly, when the last exchange took place, appellant was across the street from the department office when she openly displayed to a co-worker of A.M. not only the handgun but also her willingness to "fucking shoot them."

Communicating an intent to inflict punishment, loss, pain, harm or injury on another falls within the scope of a threat. *See Heinert*, 441 S.W.3d at 818, *quoting Cook v. State, supra* (stating that a "threat is defined as 'a declaration of intention or determination to inflict punishment, loss or pain on another, or to injure another by the commission of an unlawful act' and "[p]ut another way, a 'threat' is a 'communicated intent to inflict harm or loss on another or on another's property.'"). Moreover, that communication need not be verbal; it may also be depicted through action or conduct. *Castaneda v. State,* No. 07-15-00151-CR, 2016 Tex. App. LEXIS 1796, at *6 (Tex. App.—Amarillo Feb. 19, 2016, no pet.) (mem. op., not designated for publication) (noting that a threat may be shown through the action and conduct of the accused as well as through his words). Appellant's complaining of A.M., drawing a handgun and displaying it to A.M.'s co-worker while complaining, uttering words about "shooting them," and being a mere street's width from the office in which A.M. worked when doing these things is some evidence that would enable a rational fact-finder to conclude, beyond reasonable doubt, that appellant both threatened A.M. with violence and did so with the specific intent to place A.M. in fear of imminent serious bodily injury. So, if appellant is complaining about the legal sufficiency of the evidence underlying her conviction, we find the evidence enough to uphold that

conviction under the standard of review reiterated in *Villa v. State*, 514 S.W.3d 227, 232 (Tex. Crim. App. 2017).

Whether appellant was simply voicing an intent to engage in self-defense if she were threatened, as she now suggests, was just a matter for the fact-finder to determine. Given the utter absence of evidence from the record indicating that anyone threatened her with physical harm, we cannot say that a reasonable fact-finder would or could have accepted her proposition.

In reviewing the record, we discovered that the trial court's written judgment contains clerical errors. Contrary to the statements appearing in the judgment, appellant did not plead "true" to an enhancement allegation; nor did the trial court find an enhancement allegation "true." Since an appellate court generally has the authority to *sua sponte* modify a judgment to make the record speak the truth, TEX. R. APP. P. 43.2(b); *Bigley v. State*, 865 S.W.2d 26, 27-28 (Tex. Crim. App. 1993), and the record before us illustrates the inaccuracies in the judgment, we modify the judgment to delete the word "True" from both the plea and the "enhancement" finding.

Accordingly, we affirm the judgment of the trial court as modified.

Brian Quinn
Chief Justice

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