

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,)
)
 Respondent,) No. 65526-4-I
)
 v.) DIVISION ONE
)
 ANDRE DEVON WELLS,) UNPUBLISHED OPINION
)
 Appellant.) FILED: November 21,
2011

Grosse, J. — A true threat is a statement made under such circumstances that a reasonable person would foresee that the statement would be interpreted as a serious expression of intent to inflict bodily harm upon another. Because the criminalization of words implicates the first amendment, appellate courts conduct an independent review to determine the context of the statement. Here, the defendant violated a no-contact order and left a voice mail message threatening to kick the door in. There was sufficient evidence from which a jury could find that the defendant’s threat to kick the door in was a true threat to support his conviction for felony telephone harassment. We affirm.

FACTS

Lisa Easter knew Andre Wells for approximately five years. During that time, Easter and Wells dated for approximately eight months. In 2008, Wells was convicted for felony harassment and as a result thereof, the court issued a no-contact order prohibiting Wells from contacting Easter for five years. The

order was in place from April 2008 until April 2013.

In 2009, Wells telephoned Easter and left several messages on Easter's voice mail, which Easter saved and reported to the police. Easter ran into Wells more than once during the time she was receiving the telephone calls. She testified that Wells knew a lot of people, knew where she was at all times, and knew where she lived.

The State charged Wells with felony telephone harassment for a voice mail message left on October 3, 2009, and two counts of misdemeanor violation of the no-contact order for messages left on August 30, 2009 and September 7, 2009. The jury heard a recording of the threatening messages. In the October 3 voice mail message, Wells stated: "Bitch, if you ever mother fucking talk to me like that again, I'll come all the way down to that mother fucking God damn and kick that mother fucking door in. Call me." Easter testified that the message was in response to a telephone conversation earlier in which she told him that she wanted nothing more to do with him and told him not to call anymore. A jury found Wells guilty of all three charges. Wells appeals the felony harassment conviction.

ANALYSIS

Wells argues that there was insufficient evidence to find that a true threat was made in the October 3 voice mail message. Wells contends that a reasonable person would not have taken the threatening voice mail messages seriously.

Because the criminalization of true threats proscribes speech, our inquiry warrants an independent review of the context in which the statements were made to determine whether Wells statements constituted a true threat and thus unprotected speech. “A ‘true threat’ is a statement made in a context or under such circumstances wherein a reasonable person would foresee that the statement would be interpreted . . . as a serious expression of intention to inflict bodily harm upon or to take the life of another.”¹ Thus, the analysis focuses on whether a reasonable person in the speaker’s position would foresee that in context, the listener would interpret the statement as a serious threat.² Wells’ statements fall within that category.

After Easter told Wells that she wanted nothing further to do with him and requested that he stop contacting her, Wells continued to call, leaving several voice mail messages for Easter. In one of those voice mails, Wells threatened to come down and “kick that mother fucking door in.” Easter testified that Wells knew where she lived. She also testified that Wells “knows a lot of people” and that Wells “knows where I’m at, at all times.” Earlier, Wells had left a voice mail message evidencing Wells’ threatening tone. The message stated: “[H]ey, bitch, you know what, (inaudible) down nigger. But you know what, I hope you know what the fuck you did because I mother fucking raised some havoc again.” Additionally, Easter had run into Wells on the street. Our independent review of

¹ State v. Kilburn, 151 Wn.2d 36, 43, 84 P.3d 1215 (2004) (internal quotation marks omitted) (citations omitted); State v. Read, ___ Wn. App. ___, 261 P.3d 207, 217 (2011).

² Kilburn, 151 Wn.2d at 46.

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these surrounding circumstances, leads us to conclude that a reasonable person would foresee that Easter would interpret the threat to kick her door in as a true statement of Wells' intention to inflict bodily harm on Easter. Accordingly, we affirm the judgment and conviction.

Grosse, J.

WE CONCUR:

Becker, J.

Schiveller, J.