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Court of Appeals Division I
State of Washington

Opinion Information Sheet

Docket Number: 60595-0

Title of Case: State Of Washington, Respondent V. De Chung, Appellant

File Date: 09/29/2008

SOURCE OF APPEAL

Appeal from King County Superior Court

Docket No: 07-1-04371-0

Judgment or order under review

Date filed: 09/10/2007

Judge signing: Honorable Catherine D Shaffer

JUDGES

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Concurring: Ronald Cox

J. Robert Leach

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spending habits, Chung and Nhung separated and then divorced. At some point, Nhung moved in with her brother, Duc Tran, and his wife. In 2007, Chung asked Duc if he could stay at Duc's house because he was unemployed and homeless. Duc agreed, and in April Chung moved in until he could get back on his feet.

On May 28, Duc was at the hospital, visiting his wife, who had recently given birth. Chung was in the backyard of Duc's house, taking care of M.C. Nhung was inside the house with her friends, Nguyet Nguyen and Tung Pham. A bee stung M.C., and she began to cry. Nhung went outside and asked Chung why he did not do anything when the bee stung M.C. Chung and Nhung argued. According to the witnesses, Chung was "very angry" and was yelling at Nhung during the argument. Nhung said that Chung lunged at her with a raised fist and he "almost hit me. He acted like he was going to hit me, but a friend interfered."

Nhung took M.C. back inside the house to put ointment on the bee sting. Chung followed her, yelling, "I love her too." While Nhung held M.C. in her arms, Chung "keep coming at me and threatened to hit me." Nhung told Chung that if he continued to threaten her, she would call the police. Chung responded by grabbing a knife, pointing it at himself, and saying, "[i]f you call the police, I will kill

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you, I will kill [M.C.], and all three of us will die." Nhung said that Chung was "very angry" and "yelling" when he threatened her life. Nhung called the police, but hung up because Chung was "acting pretty belligerent." Chung continued his violent behavior by punching the wall with his fist and head and threatening to "kill the whole family." Nhung said she was afraid and she and everyone else ran out of the house.

Pham called Duc at the hospital to tell him what was happening. Duc left the hospital, and arrived at his house about 20 minutes later. Duc went inside to talk to Chung. Duc told Chung to calm down but Chung refused to do so. Duc told him that if his behavior continued, Chung could no longer live at his house. In response, Chung said, "[i]f you don't let me stay here, it's up to you, I'll kill everybody." Duc continued with his attempts to calm Chung "but he was very angry. I wanted to calm him down, but I cannot . . ." Duc ran outside and called the police. The police arrived ten minutes later and arrested Chung.

Chung was charged with two counts of felony harassment -- domestic

violence: Count I for his threat to kill Nhung, and Count II for his threat to kill Duc. Nhung, Duc, Pham, and Nguyen testified at trial on behalf of the State. Nhung testified that after Chung threatened to kill her and M.C., she was afraid that Chung would do "something wrong," "like stabbing because [Chung] was ill." When asked if she was concerned on that day that Chung might hurt her, Nhung replied that she was afraid he was going to hurt her. Nhung also testified that she was afraid Chung was going to kill her and her daughter:

Q: Ms. Tran, that moment when he, the defendant, threatened

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to kill you and your child, were you afraid that he would do it?

A: Yes, I truly afraid.

Q: Were you afraid that he might do it based on his behavior that day?

A: Yes.

Nhung also said that she ran out of the house because Chung had a knife in his hand, and she did not reenter the house until the police came because Chung was still inside the house.

Duc testified that he was frightened by Chung's behavior and his statement that he would "kill everybody" if not allowed to stay. Duc told the jury: "I've been knowing him for a while, but with his words, I was a little scared." When asked what he was scared of, Duc replied: "Maybe in his anger, he might act out of what he said . . . Because when people are angry, they cannot control their actions." After Duc called the police, he went outside because "I tried to explain to him, but he didn't listen to me, and I knew that I couldn't do anything, so for my safety I guess I get outside."

Chung did not testify. The court instructed the jury on felony harassment based on the threats to kill and also instructed the jury on the lesser included crime of misdemeanor harassment based on the threats to cause bodily injury. The jury found Chung guilty on two counts of misdemeanor harassment. The court imposed a suspended sentence of 364 days on each count on condition that Chung serve 102 days in jail, obtain mental health evaluations, and follow all treatment recommendations. Chung appeals.

ANALYSIS

Chung contends insufficient evidence supports his convictions for the lesser

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included offense of misdemeanor harassment by threatening bodily injury. Specifically, Chung contends that although he threatened to kill Nhung and Duc, the State did not prove that Nhung and Duc reasonably feared bodily injury would result from his threats.

The elements of a crime may be established by either direct or circumstantial evidence. *State v. Delmarter*, 94 Wn.2d 634, 638, 618 P.2d 99 (1980). A claim of insufficiency of the evidence admits the truth of the State's evidence and all inferences that reasonably can be drawn therefrom. *State v. Smith*, 155 Wn.2d 496, 120 P.3d 559 (2005); *State v. Salinas*, 119 Wn.2d 192, 829 P.2d 1068 (1992). In reviewing a challenge to the sufficiency of the evidence, the appellate court considers the evidence in the light most favorable to the State, affords all reasonable inferences, and asks whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *Smith*, 155 Wn.2d at 501; *Salinas*, 119 Wn.2d at 201. We defer to the trier of fact for purposes of determining credibility, resolving conflicting testimony, and evaluating the persuasiveness of the evidence. *State v. Jackson*, 129 Wn. App. 95, 109, 117 P.3d 1182 (2005) rev. denied, 156 Wn.2d 1029, 133 P.3d 474 (2006); *State v. Walton*, 64 Wn. App. 410, 415-16, 824 P.2d 533 (1992).

In order to convict a defendant of misdemeanor harassment under RCW 9A.46.020(1)(a)(i), the State had to prove beyond a reasonable doubt that (1) the defendant knowingly threatened to cause bodily injury immediately or in the future to the victim or any other person and (2) the words or conduct of the defendant

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placed the victim in reasonable fear that the threat would be carried out.¹ "The State must prove that the threat made and the threat feared are the same." C.G. 150 Wn.2d at 609.

In C.G. the court reversed the defendant's conviction for felony harassment because the record did not contain sufficient evidence that the school official the defendant threatened was placed in reasonable fear that the threat to kill would be carried out. Here, Chung relies on C.G. to argue that his conviction should be reversed because the State did not prove that his threats to kill Nhung and Duc

placed them in fear of bodily injury. But as the court stated in C.J.:

[T]he State will still be able to charge one who threatens to kill with threatening to inflict bodily injury, in the nature of a lesser included offense, thus enabling a misdemeanor charge even if the person threatened was not placed in reasonable fear that the threat to kill would be carried out, but was placed in fear of bodily injury.

And, nowhere does the court in C.G. state that when a threat to kill is made, the victim must believe only that she will be killed in order to support a conviction for misdemeanor harassment. Nor does the statute require that the victim believe the literal threat will be carried out, as such an interpretation would lead to "absurd

1 RCW 9A.46.020 provides in relevant portions:

(1) A person is guilty of harassment, if:

(a) Without lawful authority, the person knowingly threatens:

(i) To cause bodily injury immediately or in the future to the person threatened or to any other person; . . .

(b) The person by words or conduct places the person threatened in reasonable fear that the threat will be carried out . . .

(2)(a) Except as provided in (b) of this subsection, a person who harasses another is guilty of a gross misdemeanor.

(b) A person who harasses another is guilty of a class C felony if either of the following applies . . . (ii) the person harasses another person under subsection (1)(a)(i) of this section by threatening to kill the person or any other person.

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results." C.G. 150 Wn.2d at 611. Instead, the nature of the threat depends on all the facts and circumstances, and it is not proper to limit the inquiry to a literal translation of the words spoken." C.G. 150 Wn.2d at 611.

Here, there was ample testimony at trial from which a jury could have concluded that Nhung and Duc feared bodily injury as the result of Chung's threatening words and behavior. Chung lunged at Nhung, almost hitting her, he yelled at her, threatened to kill her, and grabbed a knife during their argument. Nhung testified that she was "truly afraid" Chung would hurt her, and she ran outside to get away from Chung. Duc testified that Chung threatened to kill him, punched holes in his wall, and would not calm down despite Duc's attempts to do so. Duc said that he was scared Chung would act on his threats and he was forced to run from his home and call the police in order to take control of the situation.

When considering such evidence, the jury could have concluded that Nhung and Duc reasonably feared that Chung's threats constituted threats to cause bodily injury.

We affirm.

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