

64508-1

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NO. 64508-1-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

STATE OF WASHINGTON,

Respondent,

v.

WILLEM A. VAN HEUVEN,

Appellant.

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STATE OF WASHINGTON
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APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE CATHERINE SHAFFER

BRIEF OF RESPONDENT

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A. ISSUES

1. There is sufficient evidence that a defendant committed the crime of harassment when unchallenged facts from a bench trial support the trial court's legal conclusions that the defendant knowingly threatened a person, and the person threatened reasonably feared this threat. Here, unchallenged trial facts support these essential elements. Is there sufficient evidence to support the defendant's harassment convictions?

2. The Legislature authorizes a trial court to impose up to two years of probation following a misdemeanor conviction. Here, the court imposed two years of probation following the defendant's conviction for misdemeanor Harassment. Was this sentence proper?

B. STATEMENT OF THE CASE

1. PROCEDURAL HISTORY

Defendant Willem Van Heuven was charged by amended information with two counts of Felony Harassment-Domestic Violence for threatening to kill his parents between October 19 and October 23, 2008. CP 7-8. In a bench trial, the Honorable Catherine Shaffer found Van Heuven guilty of one count of Felony

Harassment for threatening his father, and guilty of the lesser included offense of misdemeanor Harassment for threatening his mother. CP 10-15; 3RP¹ 101-02.

The trial court imposed a First Time Offender Waiver for the Felony Harassment conviction with two years of community supervision and mental health treatment. CP 19-29; 4RP 20-25. For the misdemeanor Harassment conviction, the court imposed two years of probation to run concurrently with the felony community supervision. CP 19-29; 4RP 20-25. Van Heuven now appeals his convictions and sentence. CP 17-18.

2. SUBSTANTIVE FACTS

It was difficult for the defendant Willem Van Heuven to make it in the world on his own. 3RP 87; CP 12 (FF 2). He was having trouble paying his bills, he was not eating properly, and his house and life were in general disarray. 3RP 87-88; CP 12 (FF 2). Van Heuven's mother and father grew concerned for their adult son, so the parents invited Van Heuven to live with them at their house in Maple Valley. 3RP 87, 91; CP 12 (FF 3, 4). Not wanting

¹ The Verbatim Report of Proceedings will be referred to as follows: 1RP (09/21/09); 2RP (09/22/09); 3RP (09/23/09); 4RP (11/20/09 sentencing hearing).

to live in the parents' main house, Van Heuven moved into an apartment over the parents' garage. 3RP 88; CP 12 (FF 4).

As time passed, Van Heuven's relationship with his parents deteriorated, as did his ability to manage his own affairs. 3RP 88; CP 12 (FF 5, 10). Van Heuven soon became angry with others, and more suspicious of those around him. 3RP 88; CP 12 (FF 5). As his suspicions grew, Van Heuven believed that people were tampering with his car or watching him. 3RP 88-89; CP 12 (FF 6-7). He started to barricade access and view to the property. 3RP 88-89; CP 12 (FF 6-7).

Van Heuven became increasingly paranoid and angry toward those people in his immediate vicinity. 3RP 89; CP 12 (FF 8-9). For the first few years, this anger was directed exclusively at the neighbors, especially their overweight son, who Van Heuven identified as the "inbreds." 3RP 89; CP 12 (FF 9). As time passed, Van Heuven began to refer to all of his enemies as "inbreds," a term used by Van Heuven to describe anyone that the defendant believed was "against him." 3RP 93, 102; CP 12-13 (FF 8-9, 18, 19).

By 2008, Van Heuven added his parents to the group of people about whom he was concerned. 3RP 89; CP 13 (FF 15).

Van Heuven's relationship with his mother was better than with his father, because she was less critical of him and also made him food and cleaned his laundry. 3RP 89-91; CP 12 (FF 11-12). However, Van Heuven soon became concerned that she, too, was not supporting him. 3RP 89-91; CP 12 (FF 11-12). Van Heuven was upset that his parents did not believe that he was being watched but instead believed that he was suffering a mental illness. 3RP 91; CP 12 (FF 10).

By October 2008, Van Heuven would regularly carry a loaded revolver on his hip and a combat knife around his neck. 3RP 92-93; CP 13 (FF 17). He also turned his hostility toward his parents, especially his father. 3RP 91-92; CP 13 (FF 15). The parents worried about Van Heuven's escalating behavior. 3RP 92-93; CP 13 (FF 18). Van Heuven increased his intimidating behavior toward both parents. 3RP 93; CP 13 (FF 16). He would use abusive language and would slam heavy furniture and doors. 3RP 93; CP 13 (FF 16). Van Heuven started to pick verbal fights with his parents, including his mother. 3RP 93; CP 13 (FF 16).

Van Heuven started to scream threats to kill the "inbreds" as a group. 3RP 93; CP 13 (FF 18). He had said that the "inbreds" were the group of people who were "against him." 3RP 93, 102;

CP 13 (FF 9, 18, 19). Van Heuven now indicated that his parents were "against him," as well. 3RP 95-96, 100-01; CP 13 (FF 15, 27). The parents thought that Van Heuven included them among the "inbreds," because Van Heuven told the parents that they were "part of the problem." 3RP 95-96; CP 13 (FF 27).

On October 22, Van Heuven's threats to kill the "inbreds" climaxed. 3RP 95-96; CP 13 (FF 21). That night, Van Heuven entered the parents' house screaming. 2RP 62, 63. Van Heuven was yelling that he was going to kill the "inbreds" as a group by pulling their hearts out through their chests. 3RP 93, 100; CP 13 (FF 25).

Frightened that they were among these "inbreds" that Van Heuven wanted to kill, the parents grabbed a firearm for protection and barricaded themselves in their bedroom for most of the evening. 3RP 94-95; CP 13 (FF 20-27). Van Heuven went outside and the screaming continued for hours mostly within earshot of the parents' house. CP 13 (FF 19, 20). The father felt that he was going to be killed by Van Heuven. 3RP 95-96, 101-02; CP 13 (FF 25). The mother thought that if she were mistaken for an "inbred," she might be injured by Van Heuven, but not killed. 3RP 95-96, 101-02; CP 13 (FF 26). The parents did not call police,

however, because they were concerned that a violent confrontation would arise between police and Van Heuven. CP 13 (FF 23-24). Eventually, the threats and screaming subsided for the night. 3RP 96; CP 13 (FF 24).

The next morning, October 23rd, the mother left the house for work and the father attempted to cook Van Heuven breakfast. 3RP 96-97; CP 13 (FF 29). Van Heuven became angry and told his father that he would never accept any food from him. 3RP 97; CP 13 (FF 30). This confrontational response alarmed the father. 3RP 97; CP 14 (FF 31). The father felt that he was in danger, so he fled the house. 3RP 97; CP 14 (FF 32). The father went to a crisis center, which directed him to King County Sheriff's Office. 3RP 97; CP 14 (FF 33-34). After reporting the events to police, Detective Scott Allen came to the house and arrested Van Heuven without incident. 3RP 97; CP 14 (FF 36-37).

After being secured in the patrol car, Van Heuven asked police if he could speak to his father. 3RP 98; CP 14 (FF 39). When his father approached, Van Heuven threatened, "When I'm released in a couple of days and bumped up with methamphetamine, what do you think I'm going to do to you?" 2RP 71. The trial court found this to be a clear reiteration of Van

Heuven's earlier threat to kill. 3RP 98; CP 14 (FF 40). Frightened, the parents fled their house for three weeks. 3RP 98; CP 14 (FF 41).

C. ARGUMENT

1. SUFFICIENT EVIDENCE SUPPORTS VAN HEUVEN'S HARASSMENT CONVICTIONS.

Van Heuven claims that the trial court found him guilty without sufficient evidence. He argues that he did not commit the crimes of harassment, because the trial court had no facts to support its legal conclusion that he knowingly threatened his parents. Because there are sufficient facts to support this legal conclusion, his claim fails.

There is sufficient evidence to sustain a guilty verdict following a bench trial, if: (1) evidence supports the trial court's findings of fact; (2) the findings of fact support the conclusions of law; and (3) the conclusions of law support the finding of guilt. State v. Enlow, 143 Wn. App. 463, 467, 178 P.3d 36 (2008) (citing State v. Macon, 128 Wn.2d 784, 799, 911 P.2d 1004 (1996)). Circumstantial and direct evidence are equally reliable. State v. Fiser, 99 Wn. App. 714, 718, 995 P.2d 107 (2000).

A person is guilty of the crime of harassment if (1) the defendant knowingly threatens to cause bodily injury immediately or in the future to the person threatened or to any other person; and (2) the defendant by words or conduct places the person threatened in reasonable fear that the threat will be carried out. State v. J.M., 144 Wn.2d 472, 476, 28 P.3d 720 (2001) (citing RCW 9A.46.020).

The first prong of the harassment statute requires that the defendant knowingly threaten to injure a person. Id. A defendant does this when he knowingly communicates a threat, either directly or indirectly, to the victim or to any other person. Id. at 481; RCW 9A.46.020(1)(a)(i). Thus, a defendant who yells out a threat when he thinks no one is around does not knowingly communicate a threat. Id. at 481. But if the defendant knows that any person is likely to hear him make the threat, the threat is knowingly made. Id. at 481-82.

For First Amendment purposes, this threat must also be a "true threat." Kilburn., 151 Wn.2d 36, 48-54, 84 P.3d 1215 (2004). In other words, it cannot be an accident or a joke. Id. It is a true threat when what is said and what is known about the person saying it indicates to an objectively reasonable person that the

threat is serious. Kilburn, 151 Wn.2d at 53-54. Whether a defendant intends to carry out the threat is not relevant; it only matters that a defendant made what appeared to be a serious threat. J.M., 144 Wn.2d at 481-82; Kilburn, 151 Wn.2d at 48. Thus, if the defendant knowingly communicates a true threat to any person, and the person threatened learns of this threat, the first prong of the harassment statute is satisfied. Id.; RCW 9A.46.020(1)(a)(i).

The second prong of the harassment statute examines the victim's subjective fear from the threat. See J.M., 144 Wn.2d at 481-82; Kilburn, 151 Wn.2d at 52-54; RCW 9A.46.020(1)(b). If the person threatened fears that he or she will be injured by the person making the threat, the second prong of the harassment statute is satisfied. J.M., 144 Wn.2d at 482; RCW 9A.46.020(1)(b). If the threat was to kill, and the person threatened reasonably believes that his or her life is endangered due to the threat, then the crime of harassment is elevated from misdemeanor Harassment to Felony Harassment. State v. Mills, 154 Wn.2d 1, 12, 109 P.3d 415 (2005); RCW 9A.46.020.

The trial court here concluded that Van Heuven "knowingly threatened to kill both his father and mother."² 3RP 99-100. This legal conclusion satisfies the first prong of the harassment statute. See RCW 9A.46.020(1)(a)(i), *supra*. In reaching this conclusion, the trial court relied on the testimony and exhibits as evidence to establish factual findings. CP 11. Van Heuven does not challenge these factual findings, and thus they are verities on appeal. State v. Carlson, 143 Wn. App. 507, 519, 178 P.3d 371 (2008) (factual findings in a bench trial are verities on appeal if not challenged).

The facts show that over time Van Heuven knowingly communicated threats to various people as he became increasingly suspicious of the outside world. This anger was first directed exclusively at the neighbors. 3RP 89. As Van Heuven's relationship with his parents deteriorated, he turned his hostility to his parents. 3RP 91, 93.

Van Heuven would go outside and scream threats. 3RP 93; CP 13 (FF 9, 18, 19). Van Heuven wanted to spread fear and his

² The trial court has issued written findings that have incorporated its oral factual findings and legal conclusions. CP 15; see Kilburn, 151 Wn.2d at 39, n.1 (a trial court may incorporate its oral decision into its findings and conclusions).

anger with his threats. 3RP 101. Instead of yelling generally at the world, he directed the threats toward people who he believed were "against him." 3RP 93, 102; CP 13 (FF 9, 18, 19). Van Heuven indicated that his parents were "against him." 3RP 95-96; CP 13 (FF 15, 27). On October 22, 2008, huddled together within the bedroom of their house as Van Heuven hurled threats for hours within earshot of the their house. CP 13 (FF 19, 20). Because Van Heuven intentionally communicated threats to his parents and others who were "against him," the facts establish that he knowingly made the threats. See J.M., 144 Wn.2d at 481-82.

These were the most serious of threats. The parents became so frightened when they heard Van Heuven's threats to kill that they barricaded themselves in their bedroom the entire evening and armed themselves with a gun for protection. 3RP 95; CP 13 (FF 20-27). The trial court found Van Heuven's tirade was a "true threat" because:

[Van Heuven's] unambiguous statements, that he was going to take people out, that he was going to pull their hearts out through their chest, that he was going to kill people, would in fact be interpreted as a serious expression of intention to take the life of others.

3RP 100.

The court put the nature of the threat in the context of Van Heuven's deteriorating relationship with his parents that included:

[A] lot of time intimidating others by slamming their property and slamming doors and telling [the parents] that they are against [him] and carrying guns in plain view and carrying a knife around one's neck and making regular statements of verbal abuse and threats . . ."

3RP 100-01. These facts about Van Heuven coupled with the nature of the words he used would allow any reasonable person in Van Heuven's place to view these threats to be serious, and thus a true threat.

Because the facts show that Van Heuven knowingly communicated a true threat, the trial court properly made the legal conclusion that "the defendant knowingly threatened to kill in this case." 3RP 99-100. Accordingly, sufficient facts satisfy the first prong of the harassment statute. See supra; RCW 9A.46.020(1)(a)(i).

Sufficient facts also support the trial court's legal conclusion as to the second prong of the harassment statute that the parents were placed in reasonable fear the threats would be carried out. RP 101-03; CP 14. Indeed, after the threats, the parents were so

frightened that they moved from their house for weeks. CP 14 (FF 41). Both parents feared that the threats would be carried out by Van Heuven.³ Because the facts support the legal conclusions that Van Heuven knowingly communicated threats, which each parent reasonably feared, there is sufficient evidence for the harassment convictions.

On appeal, Van Heuven does not claim that his parents did not reasonably fear his threats. Instead, he challenges the first prong of the harassment statute. He argues that there are not sufficient facts to support the trial court's legal conclusion that Van Heuven "knowingly threatened to kill his father and his mother." 3RP 100.

Van Heuven argues that because Van Heuven's threats were directed to the "inbreds" -- and since the trial court never expressly found that Van Heuven referred to his parents as "inbreds" -- he never knowingly threatened his parents. But the court found that while Van Heuven did not initially include his

³ The trial court found that the father believed that he would be killed by Van Heuven, which established the Felony Harassment conviction. 3RP 101-03. The trial court found that the mother feared for her safety, and not her life, which establishes the misdemeanor Harassment conviction. 3RP 101-03.

parents in the group of "inbreds," Van Heuven eventually identified his parents as being among this group. 3RP 89.

Van Heuven felt that those who were "against him" were "inbreds" and eventually viewed his parents as being among those who were "against him." 3RP 90; CP 12 (FF 8, 9); CP13 (FF 15). This deteriorating relationship with his parents turned to open hostility. 3RP 91-92; CP 13 (FF 15). This hostility escalated to Van Heuven's intimidation of his parents, through force and abusive language. 3RP 90; CP 13 (FF 16).

The night of Van Heuven's threats on October 22nd, where he threatened to kill and rip the hearts out of the "inbreds," Van Heuven was screaming just outside his parents' house. 3RP 93; CP 13 (FF 19, 20). In light of all the intimidation and hostility toward the parents, a court could reasonably conclude that Van Heuven, in threatening to kill the "inbreds," was communicating a threat to kill his parents. 3RP 94-96, 100-02; CP 13 (FF 25, 27). Van Heuven saw his parents as "part of the problem." 3RP 95-96; CP 13 (FF 27). These facts are sufficient to support the court's legal conclusion that Van Heuven "knowingly threatened to kill his father and his mother." 3RP 100, 102.

While these uncontested facts are enough to support the court's legal conclusion, an additional factual finding by the trial court, which is challenged by Van Heuven, left no doubt to the trial court that Van Heuven was threatening his parents that night. The next morning, on October 23rd:

When [the father] approached the defendant [,] the defendant expressed a clear reiteration of his earlier threats to kill when he stated "what do you think I'm going to do to you when I'm out in a couple days and pumped up on meth."

3RP 98; CP 14 (FF 40). The Court found Van Heuven's statement was another direct threat to his father. 3RP 98.

Where there is substantial evidence in the record supporting a challenged fact, the fact will be binding on appeal. State v. Hill, 123 Wn.2d 641, 647, 870 P.2d 313 (1994). "Substantial evidence exists where there is a sufficient quantity of evidence in the record to persuade a fair-minded, rational person of the truth of the finding." Hill, 123 Wn.2d at 644 (citing State v. Halstien, 122 Wn.2d 109, 129, 857 P.2d 270 (1993)).

Van Heuven argues that there is not sufficient evidence to support this factual finding because the father testified that Van Heuven said, "When I'm released in a couple of days and bumped up with methamphetamine, what do you think I'm going to do to

you?" 2RP 71. Van Heuven argues that because the transcript inserts a question mark, there was no basis for the trial court to find that this statement was an affirmative threat. But this claim ignores the trial court's role as the trier of fact.

The trial court obviously viewed the testimony as a rhetorical question, which articulated a direct threat. Any grammatical punctuation has no bearing on whether Van Heuven intended to threaten his father with those words. Subtle differences between the trial court's finding and the transcript are best left to the trial judge, who heard and was eyewitness to the actual testimony.

See State v. Karpenski, 94 Wn. App. 80, 104, 971 P.2d 553 (1999) (noting that the reviewing court gives considerable discretion to the trial court's rulings when the trial court has better information than the reviewing court).

Moreover, the trial court reached this fact "in light of all the other evidence," which would include Van Heuven's prior threatening conduct. 3RP 98; see Fiser, 99 Wn. App. at 719 (the reviewing court defers to the trier of fact on issues of conflicting testimony, credibility of witnesses, and the persuasiveness of the evidence). Because the father's testimony was consistent with the trial court's factual finding and followed Van Heuven's earlier threats

to his parents, there is substantial evidence to support the finding, and the finding is binding on appeal.

The fact that Van Heuven made a "clear reiteration of the threats" to his father on October 23rd further establishes the fact that his parents were among those who Van Heuven threatened on October 22nd. 3RP 98; see supra. Accordingly, the trial court's factual findings support its conclusion of law that Van Heuven "knowingly threatened to kill his father and his mother," and Van Heuven's claim fails. 3RP 100.

2. VAN HEUVEN'S SENTENCE WAS PROPER.

Van Heuven claims that the trial court sentenced him to 24 months of probation without statutory authority. But the legislature expressly authorizes up to 24 months of probation on all misdemeanor cases. Because Van Heuven ignores this clear statutory language, his claim has no merit.

RCW 9.95.210(1) states, "In granting probation, the superior court may suspend the imposition or the execution of the sentence and may direct that the suspension may continue upon such conditions and for such time as it shall designate, *not exceeding the maximum term of sentence or two years*, whichever is longer."

RCW 9.95.210(1) (emphasis added). Thus, under RCW 9.95.210, a trial court has the authority to impose a probationary term for up to two years. RCW 9.95.210(1). Because the trial court imposed a probationary term of 24 months, Van Heuven's misdemeanor sentence is lawful. CP 19.

Van Heuven argues that RCW 9.92.064 limits the probation on a suspended sentence to only one year, because RCW 9.92.064 limits the maximum term of a suspended sentence to one year. But Van Heuven ignores RCW 9.95.210, which expressly allows probation to be imposed for the "maximum term of sentence or two years, whichever is longer." RCW 9.95.210(1) (emphasis added). Van Heuven instead relies on State v. Monday, 85 Wn.2d 906, 540 P.2d 416 (1975). However, the Monday Court interpreted an outdated, pre-1984 version of RCW 9.95.210, which did not include the current "or two years, whichever is longer" language.⁴

⁴ Monday, 85 Wn.2d at 907, quoted RCW 9.95.210 and stated:

"[T]he sole question for our determination is whether a sentence may be suspended and a defendant placed on probation under RCW 9.95.210 for a period of time longer than the length of sentence *actually* imposed? RCW 9.95.210 provides in pertinent part:

The court in granting probation, may suspend the imposing or the execution of the sentence and may direct that such suspension may continue for such period of time, *not exceeding the maximum term of sentence*, except as hereinafter set forth and upon such terms and conditions as it shall determine.

(Italics ours.)"

Thus, the analysis of the pre-1984 RCW 9.95.210 in Monday is no longer good law. Because the express language of RCW 9.95.210 now allows for a defendant to be placed on probation for up to two years, the trial court properly sentenced Van Heuven to 24 months of probation for his conviction of misdemeanor Harassment.

D. CONCLUSION

For all of the foregoing reasons, the State respectfully asks this Court to affirm Van Heuven's conviction and sentence.

DATED this 10th day of September, 2010.

Respectfully submitted,

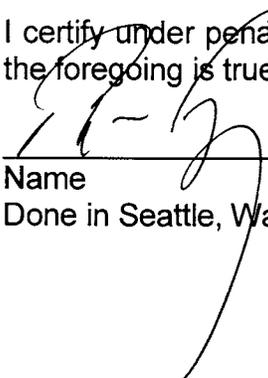
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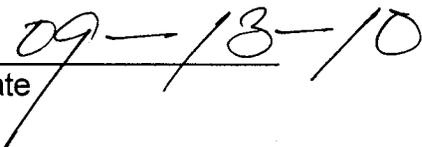
Certificate of Service by Mail

Today I deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to Casey Grannis, the attorney for the appellant, at Nielsen, Broman, & Koch, 1908 E. Madison St., Seattle, WA 98122, containing a copy of the Brief of Respondent, in STATE V. WILLEM VAN HEUVEN, Cause No. 64508-1-I, in the Court of Appeals, Division I, for the State of Washington.

I certify under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.



Name
Done in Seattle, Washington



Date