

Review of Recent Juvenile Cases (2009)

by
The Honorable Pat Garza
Associate Judge
386th District Court
San Antonio, Texas

Evidence was legally and factually sufficient to support the finding that respondent committed the offense of terroristic threat. [In the Matter of I.A.G.](09-4-7C)

On October 1, 2009, the Beaumont Court of Appeals held that circumstances described in the record were sufficient to support the jury's conclusion that respondent, who stood beside a vehicle with a tire iron while others simultaneously threatened the homeowner, intended to place the homeowner in fear of serious bodily injury.

¶ 09-4-7C. **In the Matter of I.A.G.**, No. 09-08-00430-CV, ___ S.W.3d ___, 2009 WL 3126241 (Tex.App.-Beaumont, 10/01/09).

Facts: On the afternoon of May 7, 2008, I.A.G., and others, were involved in an altercation that occurred in the front yard of the complaining witness's home (hereinafter referred to as "the homeowner"). While attempting to stop the altercation, the homeowner, who had not initially been involved in the fight, and I.A.G., who had been a party in the fight, exchanged blows. During the altercation, the homeowner heard I.A.G. say "North Side" several times, which the homeowner explained he understood to be gang-related. According to the homeowner, "North Side" [\[FN2\]](#) is a gang in Port Arthur, and the homeowner had seen that name written on walls throughout the city. Ultimately, the homeowner told the group to leave, and they left. The homeowner called the police, who then sent an officer.

Later that day, the homeowner, while away from his home, was notified that some individuals had thrown rocks and tire irons in his yard. The homeowner returned to his house and called the police. Before the police arrived, an Explorer stopped in front of the home. I.A.G., along with three others got out. I.A.G. and one of the others held tire irons while standing near the Explorer. The homeowner explained that under the circumstances, including the earlier altercation, he felt threatened and he feared serious bodily injury. The homeowner also stated that despite the fact that I.A.G. and the other person only displayed the tire irons, he felt threatened.

Shortly after exiting the Explorer, the driver asked the homeowner, "'Why you hitting little kids?'" While standing behind the Explorer, the driver then pointed a pistol at the homeowner. At that point, the homeowner instructed his father to go inside, after which the gunman said, "'I'm going to kill you. I'm going to kill you.'" The homeowner testified that this also caused him to fear imminent danger of serious bodily injury and to believe that the gunman was going to kill him. After he was threatened with being killed, the homeowner turned around, entered his house, and heard I.A.G. say, "'Go, go, go, go, he's going to get his gun.'" I.A.G. and the others then left. The homeowner, once again, called the police.

The homeowner testified that he felt the two youths holding the tire irons acted in concert with the gunman. With respect to whether any gang was specifically mentioned during the confrontation involving the gun, the homeowner acknowledged that the gunman never mentioned any gang.

A Port Arthur police officer with the "street crimes unit with a specialty in gangs, street gangs" also testified at trial. The officer indicated that I.A.G. and the other minor that participated in the gunman's confrontation with the homeowner had previously been wounded in a drive-by shooting while at a known Norte 14 gang hangout. Additionally, the officer testified that I.A.G. told him that he was a member of the North Side 14 gang. The officer stated that the gunman, who owned the Explorer, was also a member of the Norte 14 gang. The officer added that the other minor who participated in the confrontation that involved the gunman also held membership in the Norte 14 gang, which he based on the minor's admission as well as tattoos on that minor's wrists that together read "North Side 14." The officer expressed his opinion that on May 7, 2008, the gunman and two minors had acted in concert as members of their gang in threatening the homeowner.

A second Port Arthur police officer that also investigated the confrontation testified at trial. According to the second officer, the homeowner told him that he felt threatened and feared being shot. The second officer confirmed that he was familiar with the participants in the confrontation, and he knew them all to be members of the Norte 14 gang.

A person commits the offense of "terroristic threat" 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. Pen.Code Ann. § 22.07\(a\)\(2\)](#) (Vernon Supp.2008). The petition alleges that I.A.G. intentionally and knowingly placed the homeowner "in fear of imminent serious bodily injury" by threatening "to commit an offense involving violence" when I.A.G. threatened the homeowner with a "tire iron."

Held: Affirmed

Opinion: I.A.G. asserts that the evidence is legally and factually insufficient to show that he threatened the homeowner "with an offense involving violence." We disagree and believe the evidence is legally and factually sufficient to support the judgment.

Although the homeowner testified to his fear, we first note that [section 22.07](#) contains no requirement that the victim or anyone else be actually placed in fear of imminent serious bodily injury. *See id.* § 22.07(a)(2); [Cook v. State, 940 S.W.2d 344, 347 \(Tex.App.-Amarillo 1997, pet. ref'd\)](#). Rather, if the defendant sought or desired that his threat placed the victim in fear of imminent serious bodily injury, the offense is complete. [Dues v. State, 634 S.W.2d 304, 306 \(Tex.Crim.App.1982\)](#); [Poteet v. State, 957 S.W.2d 165, 167 \(Tex.App.-Fort Worth 1997, no pet.\)](#). It is immaterial to the offense of terroristic threat that the defendant "had the capability or the intention to carry out his threat." [Dues, 634 S.W.2d at 305](#). Nevertheless, and regardless of whether the threat was carried out, the reaction of the homeowner to the threat is some evidence of the defendant's intent. *See* [Hadnot v. State, 884 S.W.2d 922, 925-26 \(Tex.App.-Beaumont 1994, no pet.\)](#).

In this case, the homeowner testified that he was placed in fear of serious injury even though I.A.G. stood silently holding the tire iron. Moreover, the circumstances described in the record are sufficient to support the jury's conclusion that I.A.G., who stood beside the Explorer with a tire iron while others simultaneously threatened the homeowner, intended to place the homeowner in fear of serious bodily injury.

We find the evidence legally and factually sufficient to support the finding that I.A.G. committed the offense of terroristic threat. The evidence is not so weak that the verdict seems clearly wrong and manifestly unjust, nor is the evidence supporting the jury's finding outweighed by the great weight and preponderance of the

contrary evidence. See [Roberts, 220 S.W.3d at 524](#); [Johnson, 23 S.W.3d at 11](#). We overrule I.A.G.'s second issue.