

Juvenile Law Case Summaries

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Threat to stomp juvenile probation officer's ass was criminal retaliation for official actions [Spears v. State] (02-4-23).

On November 20, 2002, the Tyler Court of Appeals held that a threat made in a meeting by the father of a juvenile respondent to stomp the ass of the juvenile probation officer assigned to his son's case was criminal retaliation. The motive for the threat was official, not exclusively personal.

02-4-23. Spears v. State, UNPUBLISHED, No. 12-02-00005-CR, 2002 WL 31618273, 2002 Tex.App.Lexis ____ (Tex.App.-Tyler 11/20/02) Texas Juvenile Law (5th Ed. 2000).

Facts: Larry Cameron Spears ("Appellant") appeals his conviction for retaliation, for which he was sentenced to confinement for three years, probated for three years, and fined five hundred dollars.

On March 2, 2000, Appellant, his wife and his son, C.S., were scheduled to meet with Milton Wylie ("Wylie"), a juvenile probation officer, at 3:00 p.m. to discuss the possibility of a deferred adjudication for C.S. related to allegations that C.S. had been involved in the sale of marijuana. According to Wylie, the Spears were running late, so he went to a nearby office to visit with a colleague. When Wylie returned, the Spears were waiting outside his office and arguing with one another. When Wylie asked if the Spears were there to see him, Appellant replied in a confrontational tone, "you don't even remember who your god damned appointment is with."

The Spears entered Wylie's office and the meeting proceeded. Appellant remained confrontational, stating approximately six times that he was going to "stomp [Wylie's] ass." Melinda Smith, a fellow juvenile probation officer who overheard the argument between Appellant and Wylie, testified that Appellant was very belligerent about everybody that could possibly be involved in the case and "wanted everything just dropped." At some point, the argument concerned whether either the Spears or Wylie was late to the meeting. Ultimately, Wylie terminated the meeting believing it would not be possible to resolve the situation through deferred adjudication. Wylie testified that in a previous meeting, Appellant had stated that if "this thing is not dropped, then somebody's going to get hurt." However, Wylie also testified that, at some point, the March 2 argument between him and Appellant stopped being about business and became personal. Wylie further testified that Appellant was "wanting to fight me from doing my job." Moreover, when asked if Appellant had preceded the "stomp your ass" threat with "don't call my wife a liar, Wylie stated that "that was involved in this incident."

Appellant was indicted for intentionally and knowingly threatening to harm Milton Wylie by an unlawful act, to wit: "stomp his ass," in retaliation for and on account of Milton Wylie's service as an Upshur County Juvenile Probation Officer. Appellant pleaded not guilty and the matter proceeded to a jury trial. Ultimately the jury found Appellant guilty as charged and the trial court sentenced Appellant to confinement for three years, probated for three years, and fined Appellant five hundred dollars.

Held: Affirmed.

Opinion Text: LEGAL SUFFICIENCY

In his first issue, Appellant contends that the evidence is legally insufficient to support the jury's verdict. Legal sufficiency is the constitutional minimum required by the Due Process Clause of the Fourteenth Amendment to sustain a criminal conviction. See *Jackson v. Virginia*, 443 U.S. 307, 315-16, 99 S.Ct. 2781, 2786-787, 61 L.Ed.2d 560 (1979); see also *Escobedo v. State*, 6 S.W.3d 1, 6 (Tex.App.-San Antonio 1999, no pet.). The standard for reviewing a legal sufficiency challenge is whether any rational trier of fact could have found the essential elements of the offense beyond a reasonable doubt. See *Jackson*, 443 U.S. at 320, 99 S.Ct. at 2789; see also *Johnson v. State*, 871 S.W.2d 183, 186 (Tex.Crim.App.1993). The evidence is examined in the light most favorable to the jury's verdict. See *Jackson*, 443 U.S. at 320, 99 S.Ct. at 2789; *Johnson*, 871 S.W.2d at 186. A successful legal sufficiency challenge will result in rendition of an acquittal by the reviewing court. See *Tibbs v. Florida*, 457 U.S. 31, 41-42, 102 S.Ct. 2211, 2217-218, 72

L.Ed.2d 652 (1982).

In order to successfully prosecute Appellant for retaliation, the State of Texas (the "State") was required to prove that Appellant intentionally or knowingly threatened to harm Wylie in retaliation for or on account of Wylie's service as a public servant. See Tex. Pen.Code. Ann. § 36.06(a)(1)(A) (Vernon Supp.2002). The underlying purpose of section 36.06 is to encourage a certain class of citizens to perform vital public duties without fear of retribution. *Helleson v. State*, 5 S.W.3d 393, 395 (Tex.App.--Fort Worth 1999, pet. ref'd). To support a conviction for the offense of retaliation, the evidence must establish the retributory element found in section 36.06(a)(1), i.e., that the unlawful act was committed in retaliation for or on account of another person's service as a public servant. *Id.* However, the defendant's retaliatory motivation may be shown by circumstantial evidence. *Id.*; *Coward v. State*, 931 S.W.2d 386, 388 (Tex. App Houston [14th Dist.] 1996, no pet.).

Appellant argues that there is legally insufficient evidence that the threat he made against Wylie was made on account of Wylie's service as a public servant. We disagree. The record reflects that the only contact Wylie ever had with Appellant or his family was in the context of his service as a juvenile probation officer. Wylie testified that in a previous meeting, Appellant had stated that if "this thing is not dropped, then somebody's going to get hurt." Wylie also testified that Appellant was wanting to fight Wylie from doing his job. Juvenile Probation Officer Melinda Smith testified that Appellant was very belligerent about everybody that could possibly be involved in the case and "wanted everything just dropped." During the meeting with Wylie, Appellant threatened to stomp Wylie's "ass" approximately six times. From our review of the evidence, it is apparent that there was not an instant during the March 2, 2000 meeting where the exchange between Appellant and Wylie was pleasant. We conclude that there was some evidence that Appellant's animosity against Wylie was not limited to Wylie alone, but rather was directed against Wylie and others who were involved with Appellant's son's case. It follows that Appellant's threats to "stomp [Wylie's] ass" were on account of Wylie's service as Appellant's son's juvenile probation officer. Therefore, the evidence was legally sufficient to support the jury's verdict. Appellant's first issue is overruled.

FACTUAL SUFFICIENCY

In his second issue, Appellant contends that the evidence is factually insufficient to support the jury's verdict. In considering factual sufficiency, we first assume that the evidence is legally sufficient under the Jackson standard. See *Clewis v. State*, 922 S.W.2d 126, 134 (Tex.Crim.App.1996). We then consider all of the evidence in the record related to Appellant's sufficiency challenge, not just the evidence which supports the verdict. *Id.* We review the evidence weighed by the jury which tends to prove the existence of the fact in dispute, and compare it to the evidence which tends to disprove that fact. See *Santellan v. State*, 939 S.W.2d 155, 164 (Tex.Crim.App.1997). We may disagree with the jury's determination, even if probative evidence exists which supports the verdict. See *Clewis*, 922 S.W.2d at 133. However, our evaluation should not substantially intrude upon the jury's role as the sole judge of the weight and credibility of witness testimony. See *Santellan*, 939 S.W.2d at 164. Where there is conflicting evidence, the jury's verdict on such matters is generally regarded as conclusive. See *VanZandt v. State*, 932 S.W.2d 88, 96 (Tex.App.-El Paso 1996, pet. ref'd). Ultimately, we must ask whether a neutral review of all the evidence, both for and against the finding, demonstrates that the proof of guilt is so obviously weak as to undermine our confidence in the jury's determination, or the proof of guilt, although adequate if taken alone, is greatly outweighed by contrary proof. *Johnson v. State*, 23 S.W.3d 1, 11 (Tex.Crim.App.2000). A verdict will be set aside "only if the evidence supporting guilt is so obviously weak, or the contrary evidence so overwhelmingly outweighs the supporting evidence, as to render the conviction clearly wrong and manifestly unjust." *Ortiz v. State*, No. 73692, 2002 WL 31116634, at *5 (Tex.Crim.App. Sept.25, 2002).

Here, Appellant directs us to Wylie's testimony that at some point, the March 2 argument between Wylie and Appellant stopped being about business and became personal. Appellant further notes that Wylie, when asked if Appellant's "stomp your ass" threat was predicated on the statement "don't call my wife a liar," testified that "that was involved in this incident." Considering such evidence, Appellant argues that the only reasonable conclusion is that Appellant's threats were made because Appellant felt that Wylie had called his wife a liar or were made as a result of a disagreement the two were having about the time and place of the appointment.

Appellant's interpretation of these specific excerpts from Wylie's testimony is not unreasonable. However, in conducting a factual sufficiency review, we do not consider isolated excerpts of testimony in a vacuum, but rather consider all of the evidence in the record related to Appellant's sufficiency challenge. See *Clewis*, 922 S.W.2d at 134. As we have noted above, there is a significant amount of evidence to suggest that Appellant's threats to "stomp [Wylie's] ass" were on account of Wylie's service as Appellant's son's juvenile probation officer. We iterate that our evaluation should not substantially intrude upon the jury's role as the sole judge of the weight and credibility of witness testimony, see *Santellan*, 939 S.W.2d at 164, and that where there is conflicting evidence, the jury's verdict on such matters is generally regarded as conclusive. See *VanZandt v. State*, 932 S.W.2d at 96. Based on our review of the record, we conclude that the evidence supporting the jury's verdict is not weak, nor do the excerpts of Wylie's testimony cited by Appellant overwhelmingly outweigh the evidence supporting the jury's verdict so as to cause us to conclude that Appellant's conviction is clearly wrong and manifestly unjust. See *Ortiz*, No. 73692, 2002 WL 31116634, at *5 (Tex.Crim.App. Sept.25, 2002). Therefore, we hold that the evidence is factually sufficient to support the jury's verdict. Appellant's second issue is overruled.

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