2011 IL App (2d) 100272-U
No. 2-10-0272
Order filed November 4, 2011

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IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of Lake County.
Plaintiff-Appellee,	)	
v.	)	No. 08-CF-5057
MOSES B. TEGUME,	)	Honorable Christopher R. Stride,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE BOWMAN delivered the judgment of the court.
Justices Zenoff and Birkett concurred in the judgment.

ORDER

Held: The State proved defendant guilty beyond a reasonable doubt of harassment of a witness, as the evidence supported an inference that defendant's threats were related to the witness's expected testimony against him in a criminal case.

¶ 1 At issue in this appeal is whether defendant, Moses B. Tegume, was properly found guilty beyond a reasonable doubt of harassing a witness (720 ILCS 5/32-4(a) (West 2008)). For the reasons that follow, we affirm.

¶ 2 The facts relevant to resolving this appeal are as follows. In April 2005, defendant married Rosita Medina, who had two daughters from prior relationships. After defendant married Medina,

the couple had two sons. Medina and defendant lived as a family with all four children until December 2006. At that time, defendant was arrested for sexually assaulting Medina's oldest daughter. As a result of that arrest, defendant eventually pleaded guilty to one count of predatory criminal sexual assault of a child and was sentenced to 11 years' imprisonment.

¶ 3 Soon thereafter, Medina petitioned to dissolve her marriage to defendant. The parties' marriage was dissolved in 2007, and sole custody of the parties' two sons was awarded to Medina in February 2008. Defendant appealed the dissolution judgement, arguing, among other things, that Medina should not have been awarded sole custody of the children. Although this court denied defendant's claim, we advised defendant that "[i]f [defendant] has good cause to believe that the children are currently in danger and should be removed from the home, he may contact the Department of Children and Family Services [(DCFS)]." *In re Marriage of Medina*, No. 2-08-0215, slip op. at 12 (2008) (unpublished order under Supreme Court Rule 23).

¶ 4 During the proceedings had in the dissolution case, defendant filed an appeal in the predatory-criminal-sexual-assault-of-a-child case. Defendant argued that, because the trial court failed to admonish him of his appeal rights in strict compliance with Illinois Supreme Court Rule 605(c) (eff. Oct. 1, 2001), the cause had to be remanded for proper admonishments and, if he chose, the filing of a proper postjudgment motion. We agreed and remanded the cause. *People v. Tegume*, No. 2-07-1128, slip op. at 3 (2008) (unpublished order under Supreme Court Rule 23).

¶ 5 Thereafter, on August 18, 2008, defendant sent a letter to Medina. The letter provided, *in toto*, that:

> "I hope this letter finds you all fine. Am shocked that at 28 years you are still acting a fool Rosita. What's up with the dancing and club going in Alumni? Where do you leave my sons with? [*sic*] I hope not those basterds [*sic*] [, meaning Medina's family]. Am

contacting DCFS and the Children's Advocacy Group of the Lake County court system in Gurne [*sic*] to report these incidents of neglect on my sons. Don[']t get it twisted that just because [I] am vacatio[n]ing [I] am ignorant of your movements. You would be surprised what I know and hear. Your [*sic*] are catching up with missed fun[.] Ah, I wish you good luck. Alumni must have lowered its standards that mother[s] of four are still allowed entry to bogie [*sic*] ha[,] ha[,] ha[.] Rosita you can't catch up on missed opportunities. Learn from the pros.

On a second note, dancing is good because there won[']t be any dancing for you in the Federal Penitary [*sic*] (Prison) and I will see to it believe me. It's not a matter of if it will happen but when.

Seee [*sic*] you at the custody court and DCFS hearing."

¶ 6 Two days later, on August 20, 2008, the trial court in the predatory-criminal-sexual-assault case admonished defendant in compliance with Rule 605(c). Defendant filed a motion to withdraw his guilty plea on September 10, 2008, arguing that DNA tests conducted on samples taken from him and Medina's oldest daughter revealed that he did not commit the crime. The trial court denied the motion, defendant appealed, and this court affirmed. *People v. Tegume*, No. 2-08-1158 (2010) (unpublished order under Supreme Court Rule 23).

¶ 7 While defendant's appeal of the denial of his motion to withdraw his guilty plea was pending in this court, the State prosecuted defendant for harassment of a witness. The indictment charging defendant with this offense provided, in relevant part, that:

"[D]efendant, on or about August 2008, *** committed the offense of **HARASSMENT OF A WITNESS**, in that the said defendant, with the intent to harass or annoy Rosita Medina, a person who was expected to serve as a witness but who did not serve as a witness because

> the defendant pleaded guilty to the charges against him, communicated indirectly with the person who may have been expected to serve as a witness in such a manner as to produce emotional distress to Rosita Medina, in that the said defendant conveyed a threat to report to the Department of Children and Family Services a report of neglect of her sons[.]"

¶ 8 At the trial had on the charge of harassment of a witness, Medina testified that she was prepared to testify against defendant in the predatory-criminal-sexual-assault case. However, for her daughter's safety, she preferred not to do so.

¶ 9 Medina also indicated that, ever since defendant was sentenced for predatory criminal sexual assault, he has attempted to contact her. Defendant has tried to phone her, mailed her letters, and had his friends check on things.

¶ 10 Because defendant continued to contact her, Medina moved a number of times after defendant was sentenced, hoping that defendant would be unable to locate her. Despite these attempts, defendant was able to find Medina. The fact that defendant knew where she and the children were living and what Medina was doing disturbed Medina a great deal.

¶ 11 In August 2008, defendant sent a letter to Medina regarding her going out and leaving her sons with her family.[1] Right after Medina received this letter, she called Detective Marc Hergott, who was involved in the predatory-criminal-sexual-assault case. Medina was crying when she told Hergott about the letter. Medina stated that she felt terrified for her children and that her daughter had nightmares.

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[1]The letter was the one we quoted above in its entirety.

¶ 12 In explaining why the letter upset her, Medina testified that defendant had worked for DCFS and was far more educated than she was. Because of this and the fact that defendant's family had more resources than she did, Medina believed that defendant could have her children taken from her.

¶ 13 Hergott confirmed that Medina was prepared to testify against defendant in the predatory criminal-sexual-assault case. Hergott also stated that defendant was in court for the predatory-criminal-sexual-assault case both on August 13, 2008, and sometime in September 2008. Hergott believed that Medina called him on August 28, 2008, to tell him about the August 18, 2008, letter. Medina brought the letter to Hergott the same day that she called him. When Medina gave Hergott the letter, she was crying and visibly upset.

¶ 14 Defendant testified that he sent the August 18, 2008, letter to Medina because he was upset about Medina leaving his sons with Medina's family, whom he despised, while Medina went to a nightclub. He admitted he wrote the letters in anger. Defendant testified that he felt his children were in danger, and that was why he sent the letters to Medina. He pointed to the Rule 23 order issued with respect to the custody case that told him to file a claim with DCFS if he felt his children were in danger. Defendant also testified that he sent the letters because he was "upset about her leaving [his] sons with people [he] didn't understand," and with "people that [he] really despise[d]." Defendant testified that he "despised them [referring to Medina's family] and [he] didn't want at any point to have [his] sons being babysitted (*sic*) by them," and that he was "mad at the time" that he wrote the letter. A friend of defendant's, who was also the godfather of one of his sons, informed defendant that Medina had gone out to the nightclub. Defendant indicated that, in contrast to Medina's statements, he never worked for DCFS. He explained that he worked for another counseling center involved with children. On cross-examination, the following colloquy occurred:

"Q Now, with respect to People's Exhibit No. 1, when you said where do you leave my sons with, I hope not those bastards, what did you mean by bastards:

A It was a derogatory comment directed towards Rosita's family members because they got me in this case. That's why I am in jail today. They falsely accused me of a crime I didn't commit, and after this date, I maintain my innocence."

¶ 15 During closing arguments, the State argued that the above testimony demonstrated that defendant was angry and blamed Medina's family for the criminal sexual assault case against him. Defense counsel argued that Medina was expected to testify only to the age of her daughter in the criminal case, and that it was "ridiculous" to believe that defendant sent the letters to intimidate Medina into not testifying. Defense counsel argued that it was clear that defendant sent the letters because he believed his children were being improperly cared for by Medina.

¶ 16 The trial court found defendant guilty of harassment of a witness. In doing so, the court noted that it had to consider the context in which the August 18, 2008, letter was sent to Medina. Specifically, the court observed that defendant sent the letter to Medina after he pleaded guilty to sexually assaulting Medina's daughter but before the court had resolved whether defendant could withdraw his guilty plea. In the letter, defendant indicated that he had people watching Medina. Moreover, the court noted that Medina was a compelling and credible witness. While Medina was testifying, she was extraordinarily uncomfortable and emotional. Medina's hands were trembling while she testified, and the court was particularly aware of this fact when she was handed the letter. The court noted that defendant explained that he wrote the letters because he wanted to protect his children. The court rejected defendant's explanation. The court noted that the mere fact that Medina went out was not neglect and that there was no basis for defendant's conclusion that his children were in any danger. Rather, the court believed the context of the case was defendant had

people watching Medina while his sexual assault case was pending. The court rejected defendant's explanation that he was told by the appellate court to report Medina to DCFS. The court stated that defendant was *not* told to contact Medina, the complaining witness in the sexual assault case, and he was not told to report abuse on a whim but based on good cause. The State charged defendant with harassing a witness to produce emotional distress, and Medina clearly was emotionally distressed by defendant's letters. Given all of that, the court found that defendant intended to harass Medina when he sent her the letter.

¶ 17 Defendant timely moved the trial court to reconsider, arguing, among other things, that defendant's statement concerning contacting DCFS was not harassment of a witness, as "[t]here was no evidence presented [b]y the State to show a nexus between the statement and an attempt to influence testimony in [the predatory-criminal-sexual-assault case]." At the hearing on the motion, defendant presented no argument in support of the motion. The court denied the motion without elaborating on defendant's claim that he did not harass Medina because of her potential testimony. Defendant was sentenced to six years' imprisonment, and this timely appeal followed.

¶ 18 On appeal, defendant claims that he was not proven guilty beyond a reasonable doubt of harassment of a witness because: (1) the content of the letter on which he was charged and the surrounding circumstances failed to show that he intended to harass or annoy Medina; and (2) the State failed to prove that the letter was sent because of testimony that Medina was expected to give in the criminal sexual assault case. We reject both of defendant's contentions.

¶ 19 The United States Constitution requires that a defendant may not be convicted of a crime unless the State establishes beyond a reasonable doubt *every* fact necessary to constitute the crime with which the defendant was charged. *People v. Cunningham*, 212 Ill. 2d 274, 278 (2004). When a defendant asserts that the evidence is insufficient to sustain a conviction, the task of the reviewing

court is to decide " 'whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.' " (Emphasis in original.) *People v. Collins*, 106 Ill. 2d 237, 261 (1985) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). "We will not reverse a conviction unless the evidence is so improbable, unsatisfactory, or inconclusive that it creates a reasonable doubt of defendant's guilt." *People v. Collins*, 214 Ill. 2d 206, 217 (2005). This threshold is met when the State fails to prove an element of the crime charged. See *People v. Chirchirillo*, 393 Ill. App. 3d 916, 925 (2009).

¶ 20 In order to prove a defendant guilty beyond a reasonable doubt of harassment of a witness, the State must establish that the defendant "with intent to harass or annoy one who has served or is serving *** as a witness, *** because of the testimony or potential testimony[,] *** communicates directly or indirectly with the *** witness *** in such a manner as to produce mental anguish or emotional distress[.]" 720 ILCS 5/32-4a (West 2008). Stated otherwise, the statute requires that the defendant intend to harass or annoy the witness. *People v. Berg*, 224 Ill. App. 3d 859, 862 (1992). Intent may be inferred from the surrounding circumstances. *Id.* A person is guilty of the offense, if, having the requisite intent to harass or annoy the witness, the defendant either: (1) communicates with the witness, potential witness, or family member in such a manner as to produce mental anguish or emotional distress; or (2) conveys a threat of injury or damage to the person or property of the witness, potential witness, or family member. *People v. Cardamone*, 379 Ill. App. 3d 656, 663 (2008). The first alternative appears to be a subjective one, based on whether the communication in fact produced mental anguish or emotional distress in the mind of the victim. *Id.*

¶ 21 With these principles in mind, we turn to the facts presented in this case and address defendant's arguments in turn. Defendant first argues that the State failed to prove that he sent the

letter to Medina with the intent to harass or annoy her. Instead, defendant argues that the letter was sent to show concern for his sons and to induce Medina to change her behavior. We reject this argument. The trial court did not find defendant's explanation credible given the overall circumstances of this case, including the ongoing criminal sexual assault case and the divorce and custody proceedings that were the result of the criminal sexual assault on Medina's eldest daughter. Further, the court found that there was no credible basis for defendant's alleged concern regarding his children's safety and that defendant merely had people following and watching Medina in order to find reasons to threaten to and/or report her to DCFS. Defendant also testified that he blamed Medina's family and was angry with them because of his incarceration.[2] The trial court instead found Medina to be more credible, finding that she was extremely distressed by defendant's letters and contacts with her to the point that she was afraid to testify in the sexual assault case. Given these circumstances, we cannot say that no rational trier of fact could conclude that defendant's letter was sent to Medina with the intent to harass or annoy her. Further, it is not this court's function to retry defendant or reweigh the evidence. *People v. Collins*, 106 Ill. 2d 237, 261 (1985). The credibility of witnesses is within the province of the trier of fact to determine. *Id.*

¶ 22 Defendant's second contention on appeal is that the State failed to prove that Medina was expected to be a witness in the trial, had his case gone to trial, and that his letter was sent because of Medina's expected testimony. Defendant argues that the State never established the nature of the testimony she would have given other than to provide her daughter's date of birth. More

[2] We take notice of facts contained in the Rule 23 order remanding defendant's criminal case for further proceedings upon withdrawal of his guilty plea, which include that members of Medina's family had given statements to police and were on 911 tapes reporting the sexual assault incident.

importantly, defendant argues, the State failed to even allege that the letter was sent because of Medina's status as a witness in the sexual assault proceedings. We disagree that the State failed to establish that Medina was a potential witness in the criminal case as Medina testified that she was expected to testify but did not. Additionally, defendant's guilty plea withdrawal was not resolved at the time of the trial on this matter, and it was unclear whether the case would eventually go to trial. Regarding defendant's argument that the State failed to prove his letter was sent because of Medina's expected testimony, we disagree that the State was required to establish a connection between the content of the letter and Medina's expected testimony. Defendant cites to *People v. Butler*, 375 Ill. App. 3d 269, 272 (2007), for support for his proposition. We find *Butler* distinguishable in that the defendant in that case argued on appeal that the State submitted no evidence that his threatening words actually created a threat sufficient to harass the witness. Instead, we find *Cardamone* more instructive to the facts of this case.

¶ 23 In *Cardamone*, the defendant called 911 to report that the witness in his sexual abuse case was driving under the influence. *Cardamone*, 379 Ill. App. 3d at 629-30. The witness testified that she and her daughter were expected to testify against the defendant, that she was nervous and scared because the defendant was following her, and that she knew the defendant called police on her to further scare her. *Cardamone*, 379 Ill. App. 3d at 660. The defendant testified that he believed he was making a legitimate call to report a dangerous driver. *Id.* at 662. The trial court determined that the victim was expected to be a witness or was a family member of a witness in a pending case or proceeding; that the defendant communicated indirectly with the witness; that the defendant specifically intended to harass or annoy the witness, knowing that she was a family member of a witness; and the communication caused the witness to suffer mental anguish or emotional distress. *Id.* at 633. The defendant appealed, arguing that the State failed to prove mental anguish or distress

or that he communicated with the witness, but both arguments were rejected by this court. *Id.* at 637-38.

¶ 24 The communication in *Cardamone* did not make any mention of the victim's status as a witness, nor did it contain any statements criticizing her for her potential status. Such a nexus, which defendant argues is required, would change the requisite intent set forth by the plain language of the statute, which is the intent to harass a witness or potential witness because of his or her testimony in another proceeding. Like in *Cardamone*, the trial court here found that Medina was a potential witness and the mother of the victim in defendant's criminal case, that defendant communicated directly with Medina, that his letter was intended to harass or annoy Medina by threatening to report her to DCFS on groundless claims, and that the communication caused Medina significant emotional distress. Defendant admitted he was angry with Medina and her family for their connection with his incarceration and pending criminal case. The letter itself indicates that defendant was angry that Medina's family were caring for his children; nothing in the letter indicates that Medina or her family were putting the children in any danger. Like in *Cardamone*, where the trial court obviously rejected the defendant's explanation that he was making a legitimate call to report an unsafe driver, the trial court here was not required to accept defendant's explanation that he sent the letter because he believed Medina was neglecting the children. Accordingly, we cannot say that no rational trier of fact could conclude that defendant was harassing Medina because of her involvement in the pending criminal case.

¶ 25 For these reasons, the judgment of the circuit court of Lake County is affirmed.

¶ 26 Affirmed.