

IN THE COURT OF APPEALS OF IOWA

No. 7-940 / 06-1936
Filed February 27, 2008

STATE OF IOWA,
Plaintiff-Appellee,

vs.

KENNETH MICHAEL MURPHY,
Defendant-Appellant.

Appeal from the Iowa District Court for Johnson County, Sylvia A. Lewis,
District Associate Judge.

Defendant appeals his convictions on two counts of harassment.

AFFIRMED.

Mark C. Smith, State Appellate Defender, and Jason B. Shaw, Assistant
Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Mary E. Tabor, Assistant Attorney
General, Janet M. Lyness, County Attorney, and Deborah Farmer Minot,
Assistant County Attorney, for appellee.

Considered by Huitink, P.J., and Eisenhauer, J., and Brown, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2007).

BROWN, S.J.**I. Background Facts & Proceedings**

In 2005, Joanne was involved in planning the fortieth reunion for her high school class, which had graduated in 1966. As part of her duties she had a list of class members to notify of the reunion. Joanne placed her home street address and e-mail address on the notices so class members could respond regarding their interest in attending the reunion planned for the summer of 2006.

One of the notices was sent to class member Kenneth Murphy, then incarcerated at the Clarinda Correctional Facility.¹ Murphy responded by sending Joanne a long handwritten letter, dated August 20, 2005, to her home. The letter contained Murphy's suggestions for the upcoming reunion, and ideas he was incorporating into a historical musical about the electoral college.

Joanne is a high-school teacher. In February 2006, she received, via a student who volunteered at a homeless shelter, a second letter from Murphy. The letter stated Murphy was out of prison. During a long discussion of the musical, he mentioned that one of the characters had been named after "one of his own unrequited love interests," J.O., which was Joanne's maiden name.

Joanne received a third letter from Murphy, postmarked February 25, 2006, at her home. In this twenty-two page letter Murphy stated he had a crush on Joanne in high school. He stated he often had sexual fantasies about her, was presently interested in pursuing a sexual relationship with her, and possibly wanted to marry her. Murphy stated he looked up Joanne's address in a city

¹ Joanne had no contact with Murphy in the thirty-nine years between the time they graduated in 1966 and the notice she sent in 2005. Joanne stated she knew Murphy in high school, but she "never had any relationship with him."

directory and noticed she was the only adult listed living there. He also looked up her address on a map, so he could see where she lived. He mentioned that although he was interested in a sexual relationship, he had not resorted to rape. He stated, "I can only hope you won't get angry at some of the observations I have made, and that you will appreciate my honesty." He also stated he waited until he got out of prison to send Joanne this letter because he did not want the prison guards to be "titillated" by the contents.

Joanne became very concerned about the contents of the third letter. She contacted Lieutenant Sid Jackson of the Iowa City Police Department. Lieutenant Jackson advised Joanne not to return to her home for a week until he had the opportunity to determine the level of threat presented by the letters. Lieutenant Jackson contacted Murphy and told him he was never again to contact Joanne in any way. He told Murphy that if he felt the need to contact Joanne or to inquire about the reunion, he should contact Lieutenant Jackson instead.

Despite this admonition Murphy sent Joanne a fourth letter, postmarked June 22, 2006. Murphy stated he felt no one wanted him to attend the reunion. He stated he would like to attend the reunion in order to refute statements made about him by a psychiatrist that he was an "imminent threat" to another woman. Murphy also sent an e-mail to Joanne, dated June 28, 2006, stating "Would prefer that my communications with you not be a one-way street." Joanne did not respond to any of Murphy's communications.

Murphy was arrested and charged with two counts of first-degree harassment.² The first charge was based on the communications in February 2006, and the second for the communications in June 2006. After a trial a jury found Murphy guilty on both counts. Murphy was sentenced to a term of imprisonment not to exceed two years on each count, to be served consecutively. Murphy has appealed his conviction on count I only, claiming there is insufficient evidence in the record to support his conviction on this count.

II. Standard of Review

We review challenges to the sufficiency of the evidence for the correction of errors at law. *State v. Schmidt*, 480 N.W.2d 886, 887 (Iowa 1992). A guilty verdict is binding on appeal, unless the record lacks substantial evidence to support it, or the verdict is clearly against the weight of the evidence. *State v. Shortridge*, 589 N.W.2d 76, 80 (Iowa Ct. App. 1998). Substantial evidence means evidence that could convince a rational fact finder that the defendant is guilty beyond a reasonable doubt. *Id.*

III. Merits

The crime of harassment is found in Iowa Code section 708.7(1) (2005), which provides:

a. A person commits harassment when, with intent to intimidate, annoy, or alarm another person, the person does any of the following:

(1) Communicates with another by telephone, telegraph, writing or via electronic communication without legitimate purpose and in a manner likely to cause the other person annoyance or harm.

² Murphy was charged with first-degree harassment under Iowa Code section 708.7(2) (2005), because he had three previous convictions for harassment within the preceding ten years.

The parties agree that Count I is based on the third letter from Murphy to Joanne. Murphy argues there is no indication from the content of the letter that he had a specific intent to intimidate, annoy, or alarm Joanne. Murphy asserts the third letter “is the misguided attempt by which he attempts to woo her.” He states that while the letter contains sexual overtures, he was trying to indicate an interest in a romantic relationship with Joanne.

Harassment is a specific intent crime. *State v. Button*, 622 N.W.2d 480, 483 (Iowa 2001). The State must show a person has the specific intent to intimidate, annoy, or alarm another. *State v. Mulvaney*, 600 N.W.2d 291, 294 (Iowa 1999). “[B]ecause a defendant’s intent is seldom capable of direct and positive proof, it may be inferred from the defendant’s acts and surrounding circumstances.” *State v. Fratzke*, 446 N.W.2d 781, 783 (Iowa 1989). An intent to annoy may be inferred from the use of profane or otherwise objectionable language. *Id.* at 784. The term “alarm” used in section 708.7(1) means “to ‘cause (someone) to feel frightened, disturbed, or in danger.’” *State v. Evans*, 671 N.W.2d 720, 724 (Iowa 2003) (citation omitted).

We find there is substantial evidence to support the jury’s conclusion the third letter was specifically intended to intimidate, annoy, or alarm Joanne. The letter contains several personal references of a sexual nature. He stated he had sexual fantasies about her in high school and imagined her without her clothes on. He noted she was “not the girl with the biggest tits in our class,” but he was still attracted to her. Murphy wondered if Joanne had been working as a prostitute in Chicago. He stated he imagined Joanne wearing a heart-shaped g-

string, and then taking it off. He stated he wanted to show Joanne “a proper appreciation for what you have inside your bra and panty.” These statements are profane and objectionable because they show an attempt to debase or defile Joanne through specific crude statements about her sexuality, and the jury could easily infer Murphy intended to annoy Joanne by these statements.

The letter also shows an intent to intimidate and alarm Joanne. Murphy specifically notes that he looked up Joanne’s address in a city directory and found that she was the only adult living at her address.³ After noting that he knew she was not living with any other adults, he states that he also looked up her address on a map, so he knew where she lived. Murphy makes the statement that although he would like to have sex with a woman, “the good news is I haven’t resorted to rape.” These statements could reasonably cause someone to feel frightened, disturbed, or in danger.

Murphy’s third letter shows he was aware the letter might intimidate, annoy, and alarm Joanne. At the beginning of the letter he states he waited until he got out of prison to send the letter to Joanne because he did not want to give “some correctional officer juicy tidbits to gossip about with other correctional officers.” He also states, “I realize what I’ve just written may cause you to blush, but I would hope that you are blushing with pleasure.” He states he would not share the letter with “uncouth guys in prison who might not appreciate its nuances.” “Nor is it the kind that you would particularly want some corrections officer assigned to review outgoing mail for security reasons to be able to get titillated about.” Murphy concludes by stating, “I can only hope you won’t get

³ Joanne is a widow.

angry at some of the observations I have made, and that you will appreciate my honesty.”

Although Murphy suggests innocent interpretations for these statements, the jury rejected his views, which is its prerogative. The jury could, and did, reasonably conclude Murphy’s intent was to intimidate, annoy, or alarm Joanne. Her testimony discloses it actually caused all three.

We conclude there is substantial evidence in the record to support Murphy’s conviction for first-degree harassment based on the third letter he sent to Joanne. The contents of the letter show it was sent with the specific intent to intimidate, annoy, or alarm another. Furthermore, the letter was sent without a legitimate purpose because it did not concern the high school reunion, which was the reason Joanne initially contacted Murphy. We affirm Murphy’s conviction.

AFFIRMED.