

IN THE COURT OF APPEALS OF IOWA

No. 9-796 / 08-2031
Filed January 22, 2010

STATE OF IOWA,
Plaintiff-Appellee,

vs.

JEFFREY ALAN SOBOROFF,
Defendant-Appellant.

Appeal from the Iowa District Court for Clinton County, Bobbi M. Alpers,
Judge.

A defendant appeals his judgment and sentence for extortion, claiming the evidence was insufficient to support the district court's finding of guilt and the court erred in failing to state reasons for imposing consecutive sentences.

AFFIRMED.

Mark C. Smith, State Appellate Defender, and Martha J. Lucey, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Kevin Cmelik, Assistant Attorney General, and Michael L. Wolf, County Attorney, for appellee.

Considered Vaitheswaran, P.J., Danilson, J., and Huitink, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2009).

VAITHESWARAN, P.J.

Jeffrey Soboroff appeals his judgment and sentence for extortion in violation of Iowa Code section 711.4 (2007). He contends (1) there is insufficient evidence to support the district court's findings of guilt, and (2) the district court failed to state reasons for imposing consecutive sentences.

I. Sufficiency of the Evidence

A person commits the crime of extortion if

the person does any of the following with the purpose of obtaining for oneself or another anything of value, tangible or intangible, including labor or services:

1. Threatens to inflict physical injury on some person, or to commit any public offense.

....

3. Threatens to expose any person to hatred, contempt, or ridicule.

Iowa Code § 711.4(1), (3).

The district court set forth the elements of extortion as applied to this case as follows:

1. On or about the 10th day of March, 2008, the defendant threatened Christi Miller that he would place photographs of her home and/or her fourteen-year-old-daughter on websites, providing identity information about both the minor child and the Millers' address.

2. The defendant intended to communicate this threat towards Christi Miller.

3. The threat was made for the purpose of obtaining something of value for the defendant, specifically \$400.

4. The defendant did not reasonably believe that he had a right to make threats in order to be paid for damage to his camera allegedly made by the victim.

The court then made the following findings:

Soboroff did willfully and unlawfully telephone Christi Miller's residence with the purpose of obtaining for himself cash in an amount of at least \$400, and did threaten to *inflict injury by public*

exposure on the Internet of Ms. Miller's home, phone number, and photographs of her fourteen-year-old daughter to induce her to make this payment to him. . . . Mr. Soboroff intended to communicate these threats toward Ms. Miller and . . . he did not reasonably believe that he had the right to make such threats in order to recover some debt from Ms. Miller based upon any good faith claim of his own.

(Emphasis added.) Soboroff argues there was insufficient evidence to find him guilty under section 711.4(1) because, in his view, he "did not threaten to inflict a physical injury on Christi Miller or any member of her family," nor did the court find he threatened to inflict a physical injury. If the district court's findings are supported by substantial evidence, those findings will not be disturbed on appeal. *State v. Johnson*, 770 N.W.2d 814, 819 (Iowa 2009).

"Threats of physical harm need not be directly expressed, but may be contained in 'veiled statements' nonetheless implying injury to the recipient when viewed in all the surrounding circumstances." *State v. McGinnis*, 243 N.W.2d 583, 589 (Iowa 1976). "What is controlling is whether a recipient of the communication would interpret it as a threat of injury." *Id.*; see also *State v. Crone*, 545 N.W.2d 267, 271 (Iowa 1996) ("It is only necessary that the threat be definite and understandable by a reasonable person of ordinary intelligence.").

Soboroff and Christi Miller, both residents of the small town of Calamus, were acquainted with each other. After Soboroff's video camera was damaged, Soboroff left three messages on Christi Miller's home answering machine. In the first of those messages, he stated:

I am going to make an example out of every fucking one of you. So please, Christi, I don't want you to look twice at me. Okay? Don't look twice at me. Don't do a goddamn thing to me because I swear to God, Christi, if you ever approach me again, well, I won't say

what'll happen. But if you ever approach me again, you won't like it. And I am serious, Christi. I am not going to take shit.

In his next two messages, he threatened to place Miller's daughter's pictures, "along with the numbers they can be reached at, along with the addresses they can be found at, along with your home photograph," "on a number of [web]sites that you don't want 'em on." He concluded his messages by demanding "four hundred fucking dollars . . . right the hell now. Otherwise, I really don't give a rat's ass . . . you assholes."

We believe a reasonable person would have surmised from these statements that Soboroff was threatening to have physical injury inflicted on Miller and her family through the placement of personal information on the internet, if Miller did not give him the money he requested. See *State v. Coffin*, 504 N.W.2d 893, 896 (Iowa 1993) ("Physical injury in extortion is not limited in any degree. It can be nonpermanent and nonlife threatening or it can be just the opposite."). Miller, in fact, took the messages to mean just that. She testified she was "very upset." She expressed concern that Soboroff's threats placed her fourteen-year-old daughter in danger of being abducted from their home. She noted that her house was located "right on Highway 30" and if Soboroff carried through with his threats, there would be "[e]asy access for anybody to stop, pick up my daughter." This evidence amounts to substantial evidence in support of a finding that Soboroff threatened to inflict physical injury as required by section 711.4(1).¹

¹ Soboroff also challenges the sufficiency of the evidence supporting a finding of guilt under Iowa Code section 711.4(3), assuming we were to read the district court's ruling

We turn to Soboroff's assertion that he reasonably believed he had the right to make a threat to recoup his funds. See Iowa Code section 711.4.² Because we have found the evidence sufficient to support the district court's finding of guilt under Iowa Code section 711.4(1), that defense is not available to Soboroff. See Iowa Code §§ 701.2 (defining a "public offense" as that which is prohibited by statute and is punishable by fine or imprisonment), 708.1(1) (prohibiting the crime of assault, which includes any act "intended to cause pain or injury to, or which is intended to result in physical contact which will be insulting or offensive to another"); *Coffin*, 504 N.W.2d at 896 (defining "physical injury" in the extortion statute as "an injury to the body").

II. Consecutive Sentences

Soboroff next claims the district court "failed to state reasons for the imposition of consecutive sentences." See Iowa R. Crim. P. 2.23(3)(d) ("The court shall state on the record its reason for selecting the particular sentence."); *State v. Jacobs*, 607 N.W.2d 679, 690 (Iowa 2000) (finding court provided sufficient reasons to support its decision to impose a term of incarceration but did not provide sufficient reasons for its decision to impose consecutive sentences).

We disagree.

as making a finding under that alternative. As the court did not make an explicit finding under this alternative, we find it unnecessary to address this issue.

² That section provides:

It is a defense to a charge of extortion that the person making a threat *other than a threat to commit a public offense*, reasonably believed that the person had a right to make such threats in order to recover property, or to receive compensation for property or services, or to recover a debt to which the person has a good faith claim.

(Emphasis added.)

The reasons for imposing consecutive sentences need not “be specifically tied to the imposition of consecutive sentences, but may be found from the particular reasons expressed for the overall sentencing plan.” *State v. Delaney*, 526 N.W.2d 170, 178 (Iowa Ct. App. 1994).

At the beginning of the sentencing hearing, the State asked the district court to “run[] this sentence to this case consecutive to FECR56742,” a case in which Soboroff was charged with making threats to his town’s water tower. After determining Soboroff should be sentenced to a term of incarceration, the district court noted that Soboroff received a suspended sentence in the water tower case, which had since been revoked. The court then concluded that the sentence in this case should run consecutively with the sentence in the water tower case. Immediately after imposing consecutive sentences, the court set forth its “reasons for sentencing,” which included a consideration of the presentence investigation report and attached mental health records, Soboroff’s lengthy criminal and mental health history, his failed attempts at rehabilitation, and Miller’s concern for her safety and the safety of her daughter. See *id.* (stating we may “look to all parts of the record to find the supporting reasons” for the trial court’s imposition of consecutive sentences). While the court’s reasons for Soboroff’s sentence were not “specifically tied to the imposition of consecutive sentences,” *id.*, it is apparent from the fact that the court imposed consecutive sentences before stating its reasons that the consecutive sentences were imposed “as part of an overall sentencing plan, the particular reasons for which appear in the sentencing colloquy, sentencing order, and presentence investigation report” referred to by the court. *State v. Johnson*, 445 N.W.2d 337,

343 (Iowa 1989). For that reason, we affirm the imposition of consecutive sentences.

AFFIRMED.