Affirmed and Opinion filed October 14, 1999.

In The

Fourteenth Court of Appeals

NO. 14-97-01422-CR

DWAYNE TYRONE CHATMON, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the County Criminal Court at Law No. 12
Harris County, Texas
Trial Court Cause No. 97-39803

O P I N I O N

Appellant entered a plea of not guilty to the offense of harassment. TEX. PEN. CODE ANN. § 42.07(a)(2) (Vernon 1994). A jury found him guilty and assessed his punishment at 110 days in the Harris County Jail and a $1,000 fine. In three points of error, appellant asserts that the evidence was legally and factually insufficient to support the conviction. We affirm.

On August 20, 1997, appellant called his great aunt, the complainant, at her house. He said, "you know that house that you are in belongs to me, my brother and my sister. Now you know you are going to have to get out." The complainant felt threatened and made a report to the police. The next day,

appellant called the complainant and said, "you are supposed to move out of my house." Once again, the complainant felt nervous and reported the conversation to the police. On August 22, 1997, appellant made his final call to the complainant. During this conversation, appellant told her he belonged to a mafia gang and that he was going to kill her and her family. The police were dispatched to the complainant's house in Harris County. Houston Police Officer Robert Pali testified that the appellant appeared very upset and nervous. The complainant stated that she was very scared. After talking to the complainant, Officer Pali went to appellant's address and placed him under arrest.

In his first point of error, appellant contends that the evidence is insufficient to support his conviction because the State failed to prove that the offense took place in the State of Texas. Specifically, appellant claims that there is insufficient evidence to show from where he made the telephone call. He argues that the record only shows that the calls were made from a telephone located at 4509 Los Angeles. The record is silent as to the county or city in which 4509 Los Angeles is located.

The State may establish proper venue by proving that an unlawful telephone communication was made or committed in the county in which the communication is received. *Haigood v. State*, 814 S.W.2d 262, 263 (Tex. App.–Austin 1991, pet. ref'd); *Salisbury v State*, 867 S.W.2d 894, 898 (Tex. App.–Houston [14th Dist.] 1993, no pet.). The complainant testified that the calls were received from a telephone in her house in Harris County, Texas. We overrule appellant's first point of error.

In his second and third points of error, appellant argues that the evidence is legally and factually insufficient to show that he used the telephone in a manner reasonably likely to alarm the complainant. We disagree.

In reviewing the legal sufficiency of the evidence, we must view the evidence in the light most favorable to the verdict to determine if any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S.Ct. 2781, 2789, 61 L.Ed.2d 560 (1979); *Patrick v. State*, 906 S.W.2d 481, 486 (Tex.Crim.App.1995). We do not sit as a thirteenth juror and disregard or reweigh the evidence. *Moreno v. State*, 755 S.W.2d 866, 867 (Tex.Crim.App.1988). If there is evidence that establishes guilt beyond a reasonable doubt, and if the trier

of fact rationally believes that evidence, we are not in a position to reverse the judgment on sufficiency of evidence grounds. *Id*.

When reviewing the factual sufficiency of the evidence, we consider all of the evidence without the prism of "in the light most favorable to the prosecution," and set aside the verdict only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. *Clewis v. State*, 922 S.W.2d 126, 129 (Tex.Crim.App.1996). We review the jury's weighing of the evidence and are authorized to disagree with the jury's determination. *Id*. at 133. This review, however, must be appropriately deferential so as to avoid substituting our judgment for that of the jury. A factual insufficiency point should be sustained only if the verdict is so contrary to the great weight and preponderance of the evidence as to be manifestly unjust. *Id*.

The complainant testified that appellant told her that he was going to kill her and her family. Prior to this conversation, appellant talked to the complainant on two separate occasions and demanded that she leave her home. The complainant's children testified that they overheard appellant threatening their mother. They said that their mother was scared and very upset. Officer Pali also found the complainant to be nervous and upset. Appellant did not testify at the guilt/innocence phase and did not present any additional evidence. As to the legal sufficiency of the evidence, we hold that a rational jury could have found, beyond a reasonable doubt, that the appellant used the telephone in a manner reasonably likely to alarm the complainant. As to the factual sufficiency of the evidence, we hold that the verdict was not so contrary to the great weight and preponderance of the evidence as to be clearly wrong and manifestly unjust. We overrule appellant's second and third points of error.

We affirm the conviction.

/s/ Joe L. Draughn
Justice

Judgment rendered and Opinion filed October 14, 1999.

Panel consists of Justices Draughn, Lee, and Hutson-Dunn.[1]

Do Not Publish — TEX. R. APP. P. 47.3(b).

[1] Senior Justices Joe Draughn, Norman Lee, and D. Camille Hutson-Dunn sitting by assignment