Circuit Court for Prince George's County
Case No. JA-16-0177

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0999

September Term, 2016

IN RE: M.J.

Kehoe,
Leahy,
Krauser, Peter, B.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Krauser, J.

Filed: February 14, 2018

After M.J., appellant, was found, by the Circuit Court for Prince George's County, sitting as the juvenile court, involved in the crime of electronic harassment, he noted this appeal, claiming that the evidence adduced was insufficient to support the circuit court's finding. We affirm.

BACKGROUND

In April 2014, appellant began dating fifteen-year-old C.L. Their relationship ended in November 2015, when C.L. broke up with appellant. But, before that occurred, C.L. sent appellant "explicit" photographs that she had taken of herself with her cell phone, one of which was later admitted at appellant's trial as "State's Exhibit 1." Those photographs were, according to C.L., sent only to appellant.

In December 2015, appellant posted several of those "explicit" photographs, depicting her scantily clad, to his Twitter account with the following text: "Nasty ass thot cnt believe I dated her." Following that text were three surgical mask emoji faces. A screenshot of her smartphone screen depicting the "tweet" was later admitted as "State's Exhibit 2."

In February 2016, C.L. received two text messages from "BigDawgg Mal," whom C.L. identified as appellant, that read: "u and yo father and yo manz a cold bitch" and "yo mova and yo aunt and yo dead aunt fym." A screenshot of those text messages was admitted as "State's Exhibit 4."

At that time, appellant also added C.L., without her permission, to a "group chat" titled "BigDAWGSONLY." Three unidentified members of that group subsequently posted the following messages:

[Sender 1]: ***BlockedMessage***

[Sender 2]: That fake android ass flower With her UGLYY Ass Needa stop wearing red cuz RL look like a tomato I thought that was a Pic from SpongeBob Of Patrick dressed up as a girl like shit.

[Sender 3]: bitch u ugly

[Sender 2]: Nose Smushed like shit

[Sender 3]: Thott as hoe

[Sender 2]: Look like a Ran over Smushed Tomato

[Sender 3]: dick sucking n[*]gga

A screenshot of the group chat was later admitted into evidence as "State's Exhibit 5." Although C.L. had repeatedly told appellant to "take down" the photographs he had posted of her and to "leave [her] alone," he did not.

DISCUSSION

To be found involved in the offense of electronic harassment, the State must show, *inter alia*, that the accused engaged in a "course of conduct" that alarms or seriously annoys another. *See* Md. Code Ann., Crim. Law § 3-805(b)(1) (2012 Repl. Vol.). Appellant contends that the State failed to do so. In fact, according to appellant, the State only proved that appellant was responsible for one instance of harassing conduct, specifically, the December 2015 Twitter post.

It did not prove, he maintains, that State's Exhibits 1, 4, and 5, that is, the "explicit" photograph of C.L., the text messages from "BigDawgg Mal," and the "group chat" thread, respectively, were part of a "course of conduct." According to appellant, State's Exhibit 1 (the explicit photograph of C.L.) was never linked to him, as he was not shown to have

been one of the people making comments in the group chat in State's Exhibit 5, and that State's Exhibit 4 (the text messages from "BigDawgg Mal") cannot be used to show a "course of conduct" because the charging document alleged that the electronic communication harassment occurred in December 2015, but the text messages comprising that exhibit were sent in February 2016.

The State responds that the evidence was sufficient to find that appellant was engaged in a course of conduct because, rather than take down the photographs of C.L. and/or "leave [her] alone," as she requested, he "upped the ante" by sending the text messages in State's Exhibit 4, and added her to the group chat in State's Exhibit 5. And, as for appellant's argument that the text messages in State's Exhibit 4 could not establish a "course of conduct" as a result of the fact that the charging document alleged a different date for that conduct than what it alleged and proved at trial, the State asserts that any such argument is a "red-herring" because the date of the offense was not an element of the offense charged, and, therefore, the court could consider the harassing conduct that extended into February 2016 as evidence of a pattern of conduct. Moreover, the State points out that even though Exhibit 4 was admitted into evidence over appellant's objection, he does not now complain on appeal that the trial court erred in so doing.

When faced with a challenge to the sufficiency of the evidence "the appropriate inquiry is not whether the reviewing court believes that the evidence establishes guilt beyond a reasonable doubt, but rather, whether after reviewing 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." *In re Kevin T.*,

222 Md. App. 671, 676-77 (2015) (citation omitted). "This same standard of review applies in juvenile delinquency cases. In such cases, the delinquent act, like the criminal act, must be proven beyond a reasonable doubt." *In re James R.*, 220 Md. App. 132, 137 (2014) (quotation marks and citation omitted). We will not disturb the juvenile court's findings of fact unless they are "clearly erroneous." *In re Kevin T.*, 222 Md. at 677.

The crime for which appellant was found involved is set forth in Maryland Code (2002, 2012 Repl. Vol. 2016 Supp.), §3-805 of the Criminal Law Article ("CL"), entitled *Misuse of Electronic Mail*, which provides, *inter alia*:

> *Prohibited*
>
> (b) (1) A person may not maliciously engage in a course of conduct, through the use of electronic communication, that alarms or seriously annoys another:
>
> (i) with the intent to harass, alarm, or annoy the other;
>
> (ii) after receiving a reasonable warning or request to stop by or on behalf of the other; and
>
> (iii) without a legal purpose.

The phrase "course of conduct," as contemplated in CL § 3-805(b)(1), is defined in CL § 3-801 as "a persistent pattern of conduct, composed of a series of acts over time, that shows a continuity of purpose."

The evidence was sufficient to show that appellant engaged in a "course of conduct" of electronic harassment because, when viewing the evidence in the light most favorable to the State, any rational trier of fact could have found, beyond a reasonable doubt, that appellant engaged in "a persistent pattern of conduct, composed of a series of acts over time, that show[ed] a continuity of purpose." CL § 3-801. That pattern of conduct

began with his tweet, State's Exhibit 2, in which he posted the "explicit" photographs she had privately sent him along with the statement "[n]asty ass thot cnt believe I dated her." Appellant was then asked by C.L. to remove the post and "leave her alone."

Appellant did not remove the Twitter post, and he did not "leave [C.L.] alone." Rather, appellant sent C.L. the text messages, State's Exhibit 4, in which he called C.L.'s boyfriend, father, mother, aunt, and deceased aunt, a "bitch."

Moreover, we reject appellant's argument that this text message, State's Exhibit 4, sent by appellant to C.L., cannot be considered as evidence of a "course of conduct" because the date on the charging document was not the same as the date the text messages were sent. In *Reece v. State*, 220 Md. App. 309, 333 (2014), this Court observed that the Court of Appeals has "made clear" that "'[w]ith respect to a variance from the time period alleged and that adduced at trial, we have stated that the time period proven need not coincide with the dates alleged in the charging document, so long as the evidence demonstrates that the offense was committed prior to the return of the indictment and within the period of limitations.'" *Id*. at 333 (quoting *Crispino v. State*, 417 Md. 31, 51-52 (2010)).

Furthermore, appellant, instead of leaving C.L. "alone," as he was repeatedly asked to do by C.L., added her to a group chat containing nothing but disparaging remarks such as "bitch u ugly," "looks like a Ran over Smushed Tomato," and "dick sucking n*gga." Moreover, the first comment stated "[t]hat fake android ass flower With *her* UGLYY Ass Needa stop wearing red cuz RL look like a tomato I thought that was a *Pic* from SpongeBob Of Patrick dressed up as a girl like shit." (Emphasis added). Given that

appellant had earlier shared the explicit photographs of C.L. and had added her to the group chat, it could be reasonably inferred that the group was familiar with the "explicit" photographs of C.L. and that C.L. was the target of their remarks. But, even if that were not so, the mere act of adding C.L. to such a salacious group message, under the circumstances of this case, amounted to an act intended to "harass, alarm, or annoy" C.L as contemplated by CL § 3-805(b)(1)(i)

Under the facts presented in this case, the evidence was more than sufficient to prove that appellant was involved in electronic harassment under CL § 3-805.

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.