

13-03: Written Threats to Do Bodily Harm

Case: O'Leary v. State, 2013 WL 1091690 (Fla. 1st DCA 2013).

Date: March 18, 2013

Subject: Written Threats to Do Bodily Harm

FACTS: The defendant, Timothy O'Leary, posted a comment or status update on his personal Facebook page. In the comment, the defendant threatened one of his female relatives with death or serious injury. The comment was seen by a male relative named Michael O'Leary. Michael was able to see the comment because he was friends with the defendant on Facebook. Michael showed the threatening comment to the victim's uncle, who then showed the comment to the victim. The defendant was charged with making a written threat to kill or do bodily harm.

The defendant filed a motion to dismiss, arguing that he never "sent" the message; therefore, the comment failed to meet the elements of Fla. Stat. 836.10. However, the trial court found that the defendant's Facebook comment properly qualified as a "sending," and refused to dismiss the case. The defendant eventually pled no contest to the charge, and then appealed the trial court's ruling that he had "sent" the threatening message. The appellate court agreed with the trial judge and affirmed the conviction.

RULING: If a suspect posts a message on Facebook threatening to kill or seriously harm another, the message has been "sent" to anyone who is allowed or authorized to view the message.

DISCUSSION: A violation of Fla. Stat. 836.10 occurs when (1) a person writes or composes a threat to kill or do bodily injury, (2) the person sends or procures the sending of that communication to another person, and (3) the threat is to the recipient of the communication or a member of his family. In this case, the defendant did not dispute that his message threatened death or serious bodily injury. He also acknowledged that the message was received by Michael O'Leary, who was a member of the victim's family.

Instead, the defendant's sole argument was that he merely "published" the message on his personal Facebook profile. According to the defendant, he never "sent" the message to the victim or to Michael. However, the Court ruled that the defendant's posting was directly communicated to anyone who was authorized to view the comment. In this case, the defendant had previously added Michael as a Facebook "friend," and the defendant's comment was expressly shown to all of the defendant's friends. Therefore, the trial court correctly concluded that the threatening message was "sent" to Michael, even if Michael was not the sole or intended recipient.

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Officers should consult with their agency legal advisors to confirm the interpretation provided in this Update and to determine to what extent the case discussed will affect their activities.