

STATE V. FERNANDEZ

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STATE OF NEW MEXICO,
Plaintiff-Appellee,
v.
BARBARO FERNANDEZ,
Defendant-Appellant.

No. 33,252

COURT OF APPEALS OF NEW MEXICO

March 6, 2014

APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY, Kenneth H.
Martinez, District Judge

COUNSEL

Gary K. King, Attorney General, Albuquerque, NM, for Appellee

Jorge A. Alvarado, Chief Public Defender, Steven J. Forsberg, Assistant Appellate
Defender, Albuquerque, NM, for Appellant

JUDGES

RODERICK T. KENNEDY, Chief Judge. WE CONCUR: TIMOTHY L. GARCIA, Judge,
J. MILES HANISEE, Judge

AUTHOR: RODERICK T. KENNEDY

MEMORANDUM OPINION

KENNEDY, Chief Judge.

{1} Barbaro Fernandez (Defendant) appeals a district court judgment affirming his metropolitan court conviction for telephone harassment. In our notice of proposed summary disposition, we proposed to affirm. Defendant has filed a memorandum in

opposition, which we have duly considered. As we do not find his argument to be persuasive, we affirm.

{2} On appeal to this Court, Defendant's only argument is that the evidence was insufficient to support his conviction. [DS 15] In this Court's notice of proposed summary disposition, we proposed to hold that the evidence was sufficient. In Defendant's memorandum in opposition, he asserts that his statement to the victim that he would "make her pay" for her involvement with another man is not the sort of threat that the Legislature intended to punish. [MIO 1-2] We are not persuaded. Viewing the evidence in the light most favorable to the judgment, this language could reasonably be construed as a threat to commit a tortious or criminal act. *Cf. State v. Stephens*, 1991-NMCA-019, ¶¶ 17-19, 111 N.M. 543, 807 P.2d 241 (holding that because the defendant's communication did not include criminal or tortious misconduct, his conduct did not constitute a threat as intended by the Legislature).

{3} Therefore, for the reasons stated here and in our notice of proposed summary disposition, we affirm.

{4} IT IS SO ORDERED.

RODERICK T. KENNEDY, Chief Judge

WE CONCUR:

TIMOTHY L. GARCIA, Judge

J. MILES HANISEE, Judge