

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-8410
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

KIRK WILLIAM DRAPER, III,

Defendant-Appellant.

Appeal from the United States District Court
for the Western District of Texas
(MO-92-CR-008)

(October 29, 1993)

Before POLITZ, Chief Judge, HIGGINBOTHAM and DeMOSS, Circuit Judges.

PER CURIAM:*

Convicted of six counts of transmitting threatening communications with intent to extort in violation of 18 U.S.C. § 875(d), Kirk William Draper, III, appeals the four counts relating to use of the mails, asserting a lack of evidence of intent to extort. We affirm.

*Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

Background

Draper and Barbara Hoggan were sweethearts in high school. Following their graduation in 1973 they married others and started families. They met sporadically and had an intimate sexual relationship carefully hidden from Hoggan's husband. In September 1991 Hoggan informed her husband that she wanted a divorce in order to marry Draper. She left her home in Midland, Texas and journeyed to San Diego, California, taking her two children and intending to marry Draper. She and Draper signed a lease on an apartment. Informed by Draper that she was one of three women in his life and eschewing polygamy, Hoggan called her husband to tell him of her unhappiness and desire to return home. Following their conversation she returned to Texas.

Thence followed letters from Draper to Hoggan containing veiled threats to make known the details of their intimate sexual relationship, the mailing to Hoggan of a videotape of excerpts of Draper and Hoggan in "*flagrante delicto*" with promises of the release of a much more detailed video presentation, and telephone messages to Hoggan's husband threatening to release the video to their children, friends, and associates if certain of Draper's "expenses" were not promptly reimbursed.

Indicted and convicted of four counts of extortion by mail and two by the use of the telephone, Draper appeals the convictions on the former, claiming insufficient evidence to support the convictions.

Analysis

When reviewing a challenge to the sufficiency of the evidence we examine the record to determine whether a trier of fact, acting reasonably, could have found the essential elements of the offense proven beyond a reasonable doubt,¹ viewing the evidence in the light most favorable to the verdict.²

In determining the sufficiency of the evidence on each of the four mail-related counts, we examine more than the four corners of the individual mailings, but assess their content within the totality of the relevant evidence produced. The language of each letter is not to be evaluated in a vacuum, but must be weighed considering all relevant circumstances. Draper maintains that each mailing should be treated in isolation, without reference to the other evidence. This contention misperceives the controlling principles of law. The evidence sufficiently supports the jury's verdict that each of the four mailings was extortionate and violated 18 U.S.C. § 875(d).

Further, we find no merit in Draper's unsupported suggestion that he cannot be convicted of extortion because he only sought payment of monies owed him by Hoggan. The use of threats to obtain money is clearly proscribed by section 875(d). The law contains an even more severe proscription for the extortionate collection of loans, 18 U.S.C. § 894.

¹ **United States v. Lopez**, 979 F.2d 1024 (5th Cir. 1992), cert. denied, 113 S.Ct. 2349 (1993).

² **United States v. Ruiz**, 987 F.2d 243 (5th Cir. 1993).

AFFIRMED.