Filed 11/19/19 In re Andrew P. CA2/6

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

In re Andrew P., a Person Coming Under the Juvenile Court Law.	2d Juv. No. B293300 (Cons. w/ No. B294577) (Super. Ct. No. PJ52876; Los Angeles County) (Super. Ct. No. 2018035145; Ventura County)
THE PEOPLE, Plaintiff and Respondent, v. ANDREW P., Defendant and Appellant.	

The juvenile court sustained an allegation that Andrew P. made a criminal threat (Pen. Code, § 422). It deemed the crime a misdemeanor, declared Andrew a ward of the court, and ordered him placed at home on probation. Andrew contends

there was insufficient evidence that his victim experienced sustained fear as a result of his threat. We affirm.

FACTUAL AND PROCEDURAL HISTORY

On February 14, 2018, there was a shooting at a Parkland, Florida, high school. Seventeen people died. Over the next week, students at a Castaic high school discussed the shooting. Many, including A.B., were scared.

On February 21, A.B. overhead Andrew talking about the Parkland shooting during their art class. Andrew said, "I am going to shoot up . . . the school" and "kill 16 or 18 kids." A.B. thought Andrew was talking to her and asked what he had said. Andrew replied, "Never mind." A.B. "wasn't very worried at that time" because Andrew did not make her "feel threatened in any way." The two had additional classes together throughout the day, and continued to engage in conversation. They did not talk about the shooting again.

A.B. did not believe that Andrew would actually "shoot up" the school. She nevertheless told her mother what he had said "just to be safe." They decided to report it to school officials. When A.B. did so the next day, a teacher thought she appeared "very nervous" and "afraid."

Based on her prior interactions with Andrew, the teacher to whom A.B. reported the threat deemed it credible. The teacher called the school principal, who told her to have law enforcement put the school on "soft lockdown." Students were to remain in their classrooms with the doors locked for the remainder of the day.

Later that afternoon, A.B. spoke with a sheriff's deputy and told him that Andrew said that he would kill himself with a gun. A.B. said that she told Andrew not to do that.

Andrew said, "Okay. I'll just have someone shoot me." He also said that he would "shoot up" the school and "shoot about 16 to 18 people."

A school counselor was present when A.B. spoke to the sheriff's deputy. She said that A.B. appeared "solemn, serious, subdued, [and] somewhat fearful." "There was fear present."

Andrew testified at the jurisdictional hearing. He said he was sitting next to A.B. when he was talking to another friend about the Parkland shooting. He was being sarcastic when he said he was going to shoot 16 to 18 people and then kill himself. He did not tell A.B. that he was joking when she asked him what he had said. But he did tell her that the Parkland shooting was wrong and that "you don't do that." He did not intend to make her feel threatened.

DISCUSSION

To uphold the juvenile court's finding that Andrew made a criminal threat, there must be proof that: (1) he "'willfully threatened to commit a crime [that would] result in death or great bodily injury'"; (2) he "made the threat 'with the specific intent that the statement [was] to be taken as a threat'"; (3) the threat "was 'on its face and under the circumstances in which it was made, so unequivocal, unconditional, immediate, and specific as to convey to the person threatened, a gravity of purpose and an immediate prospect of execution'"; (4) the threat "actually caused [A.B.] 'to be in sustained fear for [her] own safety or for [her] immediate family's safety'"; and (5) A.B.'s fears were "'reasonable' under the circumstances." (*People v. Toledo* (2001) 26 Cal.4th 221, 227-228, alterations omitted.) Andrew challenges the fourth of these elements, contending the

prosecution presented insufficient evidence that his threat caused A.B. to experience sustained fear. We disagree.

When evaluating a challenge based on the sufficiency of the evidence, we "'review the whole record in the light most favorable to the judgment below to determine whether it discloses substantial evidence—that is, evidence which is reasonable, credible, and of solid value—such that'" the juvenile court could have found that Andrew made a criminal threat. (*People v. Davis* (1995) 10 Cal.4th 463, 509.) We presume in support of the court's findings the existence of every fact it could reasonably deduce from the evidence. (*Ibid.*) "Conflicts and even testimony [that] is subject to justifiable suspicion do not justify the reversal of a judgment, for it is the exclusive province of the [juvenile court] to determine the credibility of a witness and the truth or falsity of the facts upon which a determination depends." (*People v. Maury* (2003) 30 Cal.4th 342, 403 (*Maury*).) Reversal "'is unwarranted unless it appears "that upon no hypothesis whatever is there sufficient substantial evidence to support"' the [court's findings]. [Citation.]" (*People v. Zamudio* (2008) 43 Cal.4th 327, 357.)

We are required to uphold a judgment or order when the record contains supporting evidence, even if that evidence can be more reasonably reconciled with a contrary finding. (*People v. Garcia* (1969) 275 Cal.App.2d 517, 521.) Such evidence exists here. A.B. was concerned enough to report Andrew's statements to her mother after school. She appeared nervous and afraid when she reported them to a teacher the next day. And she appeared fearful to a school counselor when she later talked to the sheriff's deputy. The juvenile court credited the teacher's and counselor's testimony, and inferred that the growing fear A.B. displayed was due to Andrew's threat. We have no power to

second-guess that determination. (*Maury*, *supra*, 30 Cal.4th at p. 403; cf. *People v. Solis* (2001) 90 Cal.App.4th 1002, 1014 [statement not initially considered a threat can later cause fear].)

This case is unlike *In re Ricky T.* (2001) 87 Cal.App.4th 1132, on which Andrew relies. In *Ricky T.*, a teacher said that he "'felt threatened'" when Ricky told him that he would "'kick [his] ass.'" (*Id.* at p. 1136.) But Ricky immediately complied with the teacher's order to report to the principal's office, and the teacher did not report his threat to police until the next day. (*Id.* at p. 1140.) Any fear the teacher felt thus "did not exist beyond the moments of the encounter," and was insufficient to constitute "sustained fear." (*Ibid.*)

Here, in contrast, Andrew's threat disturbed A.B. enough that she told her mother about it after school. She appeared nervous and afraid when she reported it to school and law enforcement officials the next day. A.B.'s fear was thus more than "momentary, fleeting, or transitory." (*People v. Allen* (1995) 33 Cal.App.4th 1149, 1156.) It was sufficient to constitute "sustained fear." (*Ibid.*)

DISPOSITION

The juvenile court's order sustaining the allegation that Andrew P. made a criminal threat is affirmed.

NOT TO BE PUBLISHED.

TANGEMAN, J.

We concur:

YEGAN, Acting P. J.

PERREN, J.

Morton Rochman, Judge
Superior Court County of Los Angeles

Kevin J. McGee, Judge
Superior Court County of Ventura

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