Filed 5/8/18 In re William J. CA2/2

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

In re WILLIAM J., a Person Coming Under the Juvenile Court Law.	B283762 (Los Angeles County Super. Ct. No. YJ38299)
THE PEOPLE, Plaintiff and Respondent, v. WILLIAM J., Defendant and Appellant.	

APPEAL from a judgment of the Superior Court of Los Angeles County. David S. Wesley, Judge. Affirmed.

Lynette Gladd Moore, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Susan Sullivan Pithey and William H. Shin, Deputy Attorneys General, for Plaintiff and Respondent.

In a November 7, 2016, petition filed by the Los Angeles County District Attorney's Office pursuant to Welfare and Institutions Code section 602, it was alleged that William J. (minor) committed three batteries upon three police officers. (Pen. Code, § 243, subd. (b).) [1] On November 7, 2016, minor admitted the allegation of one of the counts; the other counts were dismissed; minor was placed home on probation.

On April 12, 2017, the Los Angeles County District Attorney's Office filed a second petition pursuant to Welfare and Institutions Code section 602, alleging that minor committed three counts of threatening a public officer (§ 71; counts 1-3) and three counts of battery on a school employee (§ 243.6; counts 4-6). Minor denied the allegations.

After a contested adjudication, the juvenile court found the allegations as to counts 1, 4, 5, and 6 true. It dismissed counts 2 and 3 pursuant to Welfare and Institutions Code section 701.1. It terminated the prior order of probation and ordered minor to remain a ward of the juvenile court pursuant to Welfare and Institutions Code section 602. The juvenile court ordered minor to be placed in a camp community placement program for seven to nine months.

Minor appeals from the juvenile adjudication. He argues that the true finding as to count 1 of the petition must be reversed because it is not supported by substantial evidence.

We affirm.

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[1] All further statutory references are to the Penal Code unless otherwise indicated.

FACTUAL AND PROCEDURAL BACKGROUND

On April 10, 2017, at approximately 1:30 p.m., Ronald McClinton (McClinton) was teaching a special education class at Antelope Valley High School in Lancaster. Minor, who was one of McClinton's students, attempted to turn in an assignment that had been "balled up." Minor and another student had been involved in "some horseplay" that caused his assignment papers to be crumbled. McClinton had a classroom policy that "'Your work should look like you,'" so he refused to accept minor's crumbled assignment. Minor became "very upset," threw the balled paper assignment on the table, and said "'[F***] that,'" "'You are weird,'" "'On Crip,'" and "'I am not doing the assignment.'" Minor then walked across the room, turned around, and said, "'Hey, do you want to squabble?,'" which McClinton understood as asking if he wanted to fight. McClinton thought that minor was being confrontational and that his "general stance was that of someone that was prepared to fight."

McClinton told minor, "'Don't be a punk,'" and minor continued with phrases like, "'On Crip,'" "'[F***] that,'" "'You're weird,'" and "so on and so forth." McClinton got closer to minor to prevent him from running up to him and "do[ing] what [he] sa[id he] want[ed] to do." McClinton physically restrained minor's arms and detained him against a railing to prevent him from attacking. Minor resisted and threatened McClinton, saying that "he was going to knock my chin off and 'Crip this.'"

A school administrator arrived with two security officers, Arturo Gonzalez (Gonzalez) and Christopher Fiscus (Fiscus), to assist McClinton. Minor was yelling a lot of obscenities at McClinton. Minor also said that "he was going to be with [McClinton's] wife later." Together, McClinton, Gonzalez, and

Fiscus attempted to handcuff minor, but minor grabbed onto his belt loop and refused to be handcuffed. McClinton, who used to be a wrestling coach, had to manipulate minor's arm to finally get him handcuffed. Minor continued to threaten McClinton by saying, "'Once these cuffs are off, it will be a different story.'" Fiscus understood this statement to mean that if minor's cuffs were to be removed, there would be a further physical confrontation. When minor turned around, he spat on McClinton's face. McClinton grabbed minor's jaw and held his mouth to avoid any further spitting.

Throughout the confrontation, minor did not attempt to strike McClinton, but he grabbed and placed his hands around McClinton's neck. McClinton believed that had he not controlled the situation, minor would have certainly attempted to strike him. When asked whether he felt concerned for his safety during the confrontation, McClinton answered, "Most definitely."

Gonzalez and Fiscus escorted defendant to the administration building as he continued to physically struggle and resist. Fiscus asked minor to sit on a bench, but minor got up and tried to get past Fiscus by using his shoulders. When Fiscus grabbed minor to place him back on the bench, minor said that "he was going to f*** [Fiscus] up." A deputy sheriff arrived and assisted in placing leg restraints on minor.

DISCUSSION

Minor contends that the juvenile court's true finding as to count 1 is not supported by sufficient evidence.

As the parties agree, we apply the substantial evidence test. (*People v. Cuevas* (1995) 12 Cal.4th 252, 260.) In doing so, we review the record in the light most favorable to the verdict below to determine whether it discloses evidence that is

reasonable, credible, and of solid value such that a reasonable trier of fact could find the minor guilty beyond a reasonable doubt (*People v. Bolin* (1998) 18 Cal.4th 297, 331).

Section 71, subdivision (a), provides: "Every person who, with intent to cause, attempts to cause, or causes, any officer or employee of any public or private educational institution or any public officer or employee to do, or refrain from doing, any act in the performance of his duties, by means of a threat, directly communicated to such person, to inflict an unlawful injury upon any person or property, and it reasonably appears to the recipient of the threat that such threat could be carried out, is guilty of a public offense."

Thus, the elements of section 71 are: "'"(1) A threat to inflict an unlawful injury upon any person or property; (2) direct communication of the threat to a public officer or employee; (3) the intent to influence the performance of the officer or employee's official duties; and (4) the apparent ability to carry out the threat.'" [Citations.]" (*In re Ernesto H.* (2004) 125 Cal.App.4th 298, 308.)

Ample evidence supports the juvenile court's finding that minor violated section 71. Minor became "very upset" after McClinton refused to accept a crumbled assignment. Minor threw the balled paper assignment on the table just before telling McClinton, "'[F***] that'" and "'On Crip,'" an apparent gang reference. These words were followed by minor's challenge to fight or "squabble" McClinton. McClinton perceived minor's words and demeanor to be confrontational and that his "general stance was that of someone that was prepared to fight." After McClinton had begun restraining minor, minor continued to verbally attack McClinton by invoking the Crips gang name,

challenging him to fight, threatening to "knock [McClinton's] chin off," and even making disparaging remarks about McClinton's wife. Even after he was handcuffed, minor threatened to fight McClinton; he even spat in his face to emphasize that he fully intended to carry out his threats. McClinton "[m]ost definitely" felt concerned for his safety. Viewing the evidence in the light most favorable to the prosecution (*People v. Ochoa* (1993) 6 Cal.4th 1199, 1206), sufficient evidence supports the juvenile court's true finding that minor threatened McClinton, as alleged in count 1.

Relying on *In re Ricky T.* (2001) 87 Cal.App.4th 1132 (*Ricky T.*), minor argues that he did not utter his threats with an intent that they be taken seriously, and that he had no apparent ability to carry out his threats because he was already being detained by McClinton. *Ricky T.* is factually distinguishable. In that case, the minor high school student "left [his teacher's] class to use the restroom. When [the minor] returned, he found the classroom door locked and pounded on it. [The teacher] opened the door, which opened outwardly, hitting [the minor] with it. [¶] [The minor] became angry, cursed [at the teacher] and threatened him, saying 'I'm going to get you.' [The teacher] felt threatened and sent [the minor] to the school office. [The teacher] said he felt physically threatened by [the minor]; however, he said [the minor] did not make a specific threat or further the act of aggression." (*Id.* at p. 1135, fn. omitted.) Later, a Welfare and Institutions Code section 602 petition was filed against the minor, alleging that he had made a felonious terrorist threat in violation of section 422. (*Ricky T.*, *supra*, at p. 1134.) The juvenile court found that the minor had committed a misdemeanor terrorist threat, and the minor appealed, arguing

that the finding was not supported by sufficient evidence. (*Id*. at p. 1135.)

The Court of Appeal agreed with the minor and reversed the judgment. It found that there were no circumstances corroborating a true threat. "[T]here was no evidence . . . to suggest that [the minor] and [the teacher] had any prior history of disagreements, or that either had previously quarreled, or addressed contentious, hostile, or offensive remarks to the other." (*Ricky T.*, *supra*, 87 Cal.App.4th at p. 1138.) And, the minor's "intemperate, rude, and insolent remarks hardly suggest[ed] any gravity of purpose; there was no evidence offered that [the minor's] angry words were accompanied by any show of physical violent—nothing indicating any pushing or shoving or other close-up physical confrontation. . . . There [was] no evidence that [the minor] exhibited a physical show of force, displayed his fists, damaged any property, or attempted to batter [the teacher] or anyone else." (*Ibid*.)

In contrast, minor here acted aggressively and verbally threatened McClinton. McClinton "[m]ost definitely" believed that minor meant to inflict harm and acted accordingly by preemptively retraining minor against a railing so that he could not carry out his threats. The fact that minor was unable to immediately carry out his threats against McClinton because he had already been restrained is irrelevant as, unlike section 422, section 71 "contains no requirement of immediacy" of the threat. (*People v. Dunkle* (2005) 36 Cal.4th 861, 920, disapproved on another ground in *People v. Doolin* (2009) 45 Cal.4th 390, 421, fn. 22.)

We similarly conclude that minor's reliance upon *People v. Tuilaepa* (1992) 4 Cal.4th 569 is misplaced. In that case, as

minor concedes, the defendant's threats did not frighten anyone. (*Id*. at p. 590.) Here, on the other hand, McClinton was afraid that minor would carry out his threats.

Finally, we reject minor's contention that the evidence shows that his "threats were mere bluster," also characterized as an "adolescent outburst[]." We cannot, and will not, reweigh the evidence. (*People v. Ochoa*, *supra*, 6 Cal.4th at p. 1206.)

DISPOSITION

The judgment is affirmed.

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_____, Acting P. J.
ASHMANN-GERST

We concur:

_____, J.
CHAVEZ

_____, J.
HOFFSTADT