Filed 5/29/14 In re K.E. CA2/6

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**



IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

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| In re K.E., a Person Coming Under the Juvenile Court Law. | 2d Juv. No. B248581<br>(Super. Ct. No. JV50654)<br>(San Luis Obispo County) |
| THE PEOPLE,<br><br>Plaintiff and Respondent,<br><br>v.<br><br>K.E.,<br><br>Defendant and Appellant. | |

Appellant K.E., a minor, made threatening remarks to a custodial officer while housed at juvenile hall. He was subsequently charged in a juvenile wardship petition with making criminal threats (Pen. Code,[1] § 422, subd. (a)), and obstructing or resisting an executive officer in the performance of her duties by means of threats or violence (§ 69). (Welf. & Inst. Code, §§ 602, subd. (a), 777.) At a contested adjudication hearing, appellant presented expert testimony to support a theory that he lacked the requisite intent to commit the charged offenses by reason of his Asperger's Disorder. The court found the evidence dispositive of the section 69 charge, reasoning

[1] Unless otherwise noted, all further undesignated statutory references are to the Penal Code.

that "[b]ecause it's a specific-intent crime and because of the complications from [appellant's] syndrome, I do find that I can't reach specific intent on that count." On the charge of making criminal threats, however, the court had "no difficulty" in finding appellant had committed the offense because "[t]hat's a general-intent crime." In addition to sustaining the wardship petition (the D petition), the court sustained a subsequent wardship petition pursuant to appellant's admission of misdemeanor oral copulation with a minor (§ 288a, subd. (b)(1)) (the E petition), and found appellant in violation of his probation in a prior matter (the F petition).[2] Appellant was ordered to serve 83 days in juvenile hall, with credit for 83 days served.

In his opening brief, appellant contends the order sustaining the D petition must be reversed for insufficient evidence. He also argues that he was detained on the F petition in violation of Welfare and Institutions Code section 631, subdivision (a), and rule 5.752(b) of the California Rules of Court. In response to a request for supplemental briefing, appellant asserts that the order sustaining the D petition must be reversed because the court's finding that appellant made criminal threats is based on the erroneous premise that section 422 is a general intent crime. We agree with the latter assertion. Accordingly, we reverse the order sustaining the D petition and remand for further proceedings. Otherwise, we affirm.

## STATEMENT OF FACTS

### *The D Petition*

#### *Prosecution*

In August 2012, appellant was 15 years old and in custody at juvenile hall under a prior wardship petition. The facility was overseen in part by Juvenile Services Officer Melissa Paramore.

On August 23, 20102, appellant told Paramore's supervisor that appellant would slap Paramore if she worked in appellant's housing unit. A month later, Paramore

[2] The three matters were filed under the same case number, with corresponding letter designations of D, E, and F. Consistent with the parties, we refer to the primary wardship petition as the D petition, the subsequent petition as the E petition, and the probation violation as the F petition.

checked on appellant while he was in his room serving "reflection time" for poor behavior earlier that day.[3] Appellant was yelling at girls in the yard and saying they were "bomb" and needed breast implants. Paramore told appellant he would receive an incident report for the behavior and would have to spend 24 hours in his room. When Paramore checked on appellant again about 10 minutes later, he clenched his fists, raised his voice, and said, "you're such a fucking bitch. Wait until I get out of my room. I'm going to fucking kill you, whore." Paramore feared that appellant "would attempt to either carry out his threat or that he might attack [her] on the unit."

Six days later, Paramore was writing a comment on appellant's assessment sheet when he said, "Yeah, that's right; you better not, or else. Are you serious, Melissa? Wait until I get out of my room, then." Paramore asked appellant if that was a threat, and he replied, "Yeah, just wait, bitch." About five minutes later, appellant repeated, "just wait until I get out of my room."

The next day, Paramore was conducting safety checks when she heard appellant yell "slut" and "whore." Paramore confronted appellant about the remarks, and he denied making them. Paramore decided to give appellant the benefit of the doubt, so she crossed out what she had written on appellant's salmon sheet. When she showed appellant that she had crossed out what she had written, he began threatening her again. Less than an hour later, appellant said, "Melissa, I'm going to beat you down. I will kill you. I will make you bleed. Go fuck yourself." Paramore believed appellant meant what he was saying and feared he would harm her or her family if given the opportunity to do so.

After this last threat, Paramore's job duties were limited to prevent her from having any contact with appellant. She could not walk past his room, escort other inmates to or from units where appellant was present, or be in the yard when appellant

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[3] The juvenile hall's disciplinary process involves "graduating sanctions" that begin with a "time-out" of five to 45 minutes. The next step is reflection time. If the behavior is more serious, the inmate receives an incident report and must spend at least 24 hours in his room. While inmates are in their rooms under an incident report, their behavior is documented on a "salmon sheet" that is taped to their door.

was there. Notwithstanding these changes, appellant's threats continued. The next day, Paramore heard appellant yell, "Fuck you, Melissa. I got my hour out. Now I can say whatever I want to you. I'm going to fuck your mouth. When I get out of my room, I'm going to fucking kill you. I will destroy you. You can gargle my balls. I'm going to skull fuck your head. When I get out of my room, I will kill you, bitch. You're a fucking bitch. I will bitch-slap you." About an hour later, Paramore heard appellant yell, "Melissa, you camel-toe bitch, just because you're on your period doesn't mean you have to be a bitch all the time. There are plenty of tampax here to go around, bitch. I hate you because you write me up all the time." As a result of these remarks, Paramore continued to fear that appellant "would attempt to cause harm to [her] if he did get out of his room."

Two days later, Paramore overheard a conversation appellant had in holding with his brother K., who was also in custody. Appellant said, "Melissa, next time I'm here, I'm going to spray your ass." Appellant's brother responded, "That's who I was waiting for." Appellant replied, "She's the biggest bitch. I hate her more than I hate Terrence. Hey, [K.], she's probably orgasming that you're here." Appellant told his brother not to say anything to Paramore or appellant would not get his hour out that day. Paramore knew that appellant's brother had pepper-sprayed officers, and feared he would try to do the same to her.

Two weeks later, appellant told another minor, "Hey, Tim, tell Melissa I'm going to cut her face off and wear it like a mask. I'm going to fuck her both ways. I'm going to butt fuck her. I'm going to fuck her up." This message was relayed to Paramore, who now feared that appellant "was going to start having other minors threaten [her] for him or that he would enable them to attack [her]." Paramore also continued to fear that appellant would harm her or her family if she ever saw him outside of custody. As a result of these fears, she looked into having a security system installed at her house.

Paramore knew appellant had been diagnosed with Asperger's Disorder, and acknowledged receiving written instructions on how to communicate with him. The document stated among other things that "[a]lthough [appellant] may appear as if he is able to understand directions and rules like everyone else, it needs to be understood that

his brain is not wired the same way and so the way he processes information is very different. It may appear as if he is trying to be difficult [but] he may just not be 'getting' what is being told to him. H[e] is very impulsive and may focus on what his consequences could be rather than what he is being directed to do."

*Defense*

Dr. Carolyn Murphy, a clinical psychologist, testified as an expert on appellant's behalf. After conducting a psychological evaluation of appellant, Dr. Murphy concurred in a prior diagnosis of Asperger's Disorder. The doctor explained that individuals with the disorder "have difficulty with empathy and understanding abstract concepts that have to do with social relationships, such a social reciprocity, sharing emotions, understanding cause and effect, particularly the emotional impact of their actions on others."

Dr. Murphy reviewed the statements attributed to appellant and concluded they reflected a lack of empathy on his part. The doctor explained that "the lack of empathy is not like you would see in a psychopath where there's a complete lack of recognition there's another who might be physically harmed or suffer injuries and they take[] enjoyment from that. This is different. This is a lack of awareness of the type of feelings or emotional impact of their actions, but after they can learn and experience guilt or remorse or sadness for what they have done. But in the moment, particularly if it is a very highly emotionally-charged situation, they can lack awareness."

Based on her interactions with appellant, Dr. Murphy concluded that he had a "fixation on freedom, being free." When the doctor saw appellant in her office, he was "very fearful of going back[.]" Appellant's records "indicated that he deteriorated when he was in custody." In the doctor's office, "he was improved . . . because he was out of custody[.]"

For an individual with Asperger's Disorder, "change is very distressing and disorganizing" and "you can't go the route of punishment. It has to be rewards, what we call natural consequences." The doctor explained that "being repeatedly put into a room or not being allowed out of a room because of their behavior – doesn't work."

"[E]xplaining the rules in advance and the consequences of the rules and the rewards if compliance occurs is very important, but it can't be done generally. It needs to be specific to each situation."

Dr. Murphy acknowledged that the statements attributed to appellant "could have just been from an angry teenager." In reviewing the comments in their entirety, however, the doctor concluded they were "characteristic of someone" with Asperger's Disorder because "some of the profane statements made were nonsensical and way over the top and went on and on . . . ."

Individuals with Asperger's "often perceive people are persecuting them or harassing them when they are simply doing their job or setting limits, and there can be a great difficulty if that's not intervened therapeutically to shift them away from that." These "perceptions do potentially rise to the level of almost psychotic in nature," but there are no "physical violence concerns. It is more verbal and acting-out inappropriately thus far." An individual "lashing out" in this fashion most likely would not be intending to cause fear. Rather, "[i]t is just a fundamental lack of awareness of the impact of their actions on others but not from a lack of caring. It is a lack of neurological understanding. And once they are told there's often, in fact, remorse, sadness, guilt, shame because they didn't know in the moment." Without treatment, however, "it is like holding a grudge because that implies an intent to harbor anger. There is not. It is a fixation almost like a frontal-lobe-injured person or stroke victim would have. They just can't move off that track unless they're derailed."

Under questioning by the court, Dr. Murphy testified that appellant's "statements made in their entirety denote anger" and "don't automatically made me think, oh, a person with Asperger's said them[.]"

*The E and F Petitions*

In October of 2012, appellant was released from juvenile hall and placed in the residential Youth Treatment Program (YTP). On November 1, 2012, a social worker observed appellant and a female YTP resident touching each other in violation of the group home's rules. On November 30, 2012, appellant admitted to the same social

worker that he had recently ingested an opiate medication that had not been prescribed to him.

On January 11, 2013, appellant asked a 17-year-old classmate to walk outside with him. They went to the rear of a building and began kissing. Appellant then forced the victim to perform fellatio on him. Appellant initially denied the incident, and later claimed it was consensual.

## DISCUSSION

### *The D Petition*

#### *Sufficiency of the Evidence*

In his opening brief, appellant contends the order sustaining the D petition must be reversed because the evidence is insufficient to support a finding he made criminal threats in violation of section 422, subdivision (a). We are not persuaded.

In reviewing the sufficiency of the evidence to support a judgment sustaining allegations of a juvenile wardship petition under Welfare and Institutions Code section 602, "we must apply the same standard of review applicable to any claim by a criminal defendant challenging the sufficiency of the evidence to support a judgment of conviction on appeal. Under this standard, the critical inquiry is 'whether, after reviewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.' [Citation.] An appellate court 'must 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 a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt.' [Citations.]" (*In re Ryan N.* (2001) 92 Cal.App.4th 1359, 1371.) "[A]ppellant has a heavy burden in demonstrating that the evidence does not support the juvenile court findings." (*In re Ricky T.* (2001) 87 Cal.App.4th 1132, 1136 (*Ricky T.)*.)

To find a violation of section 422, subdivision (a), "'[t]he prosecution must prove "(1) that the defendant 'willfully threaten[ed] to commit a crime which will result in death or great bodily injury to another person,' (2) that the defendant made the threat

'with the specific intent that the statement . . . is to be taken as a threat, even if there is no intent of actually carrying it out,' (3) that the threat—which may be 'made verbally,' 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 of the threat,' (4) that the threat actually caused the person threatened 'to be in sustained fear for his or her own safety or for his or her immediate family's safety,' and (5) that the threatened person's fear was 'reasonabl[e]' under the circumstances." [Citations.]'" (*People v. Fierro* (2010) 180 Cal.App.4th 1342, 1347-1348.)

Appellant asserts that findings on the first two prongs of the statute are fatally undermined by the evidence of his Asperger's Disorder. He claims this evidence precludes a finding that he "was capable of making the specific threats prohibited by" the statute. Dr. Murphy's testimony, however, was not admissible to prove that appellant lacked the capacity to commit the crime. "Expert opinion on whether a defendant had the capacity to form a mental state that is an element of a charged offense or actually did form such intent is not admissible at the guilt phase of a trial. [Citation.] Sections 28 and 29 permit introduction of evidence of mental illness when relevant to whether a defendant actually formed a mental state that is an element of a charged offense, but do not permit an expert to offer an opinion on whether a defendant had the mental capacity to form a specific mental state or whether the defendant actually harbored such a mental state." (*People v. Coddington* (2000) 23 Cal.4th 529, 582, fns. omitted, disapproved on other grounds by *Price v. Superior Court* (2001) 25 Cal.4th 1046, 1069, fn. 13.)[4]

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[4] Section 28 states, in relevant part: "(a) Evidence of mental disease, mental defect, or mental disorder shall not be admitted to show or negate the capacity to form any mental state, including, but not limited to, purpose, intent, knowledge, premeditation, deliberation, or malice aforethought, with which the accused committed the act. Evidence of mental disease, mental defect, or mental disorder is admissible solely on the issue of whether or not the accused actually formed a required specific intent, premeditated, deliberated, or harbored malice aforethought, when a specific intent crime is charged." Section 29 states: "In the guilt phase of a criminal action, any expert testifying about a defendant's mental illness, mental disorder, or mental defect shall not testify as to whether the defendant had or did not have the required mental states, which include, but are not limited to, purpose, intent, knowledge, or malice aforethought, for the

Dr. Murphy's testimony supported a finding that appellant's statements, although threatening on their face, were not made with the specific intent that they be taken as threats. But the testimony did not *compel* such a finding. Although Dr. Murphy testified that appellant's "nonsensical and way over the top" statements were typical of someone suffering from Asperger's, she acknowledged that other statements he made "could have just been from an angry teenager." The doctor also acknowledged that the statements considered as a whole "d[id]n't automatically made [her] think" they were made by a person with Asperger's. Appellant made numerous offensive statements over the course of a month, only a few of which were identified as "nonsensical and way over the top." The trier of fact could thus reasonably find that at least some of appellant's statements—which included remarks that he was going to "kill," "destroy," "[pepper] spray," and "butt fuck" the victim—were made with the requisite intent to constitute criminal threats under section 422.

Appellant contends the evidence is also insufficient to establish the third prong of the statute, i.e., that his statements were on their face and under the circumstances in which they were made "so unequivocal, unconditional, immediate, and specific as to convey to [the person threatened] a gravity of purpose and an immediate prospect of execution of the threat." In so arguing, appellant reiterates his unmeritorious claim that he could not have had the specific intent to make criminal threats due to his Asperger's Disorder. He also selectively focuses on his isolated "nonsensical and way over the top" statements and offers that he (1) "only made these [threatening] statements when he was locked up;" (2) "never threatened Paramore when he was in close physical contact with her;" and (3) "never hit Paramore or harmed her in any physical way."

As we have explained, neither appellant's Asperger's Disorder nor the nonsensical nature of some of his remarks precluded a finding that he intended to threaten Paramore with the specific intent that the remarks be taken as threats. Moreover, appellant's statements were neither equivocal nor conditional with regard to his intent.

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crimes charged. The question as to whether the defendant had or did not have the required mental states shall be decided by the trier of fact."

'"[T]he determination whether a defendant intended his words to be taken as a threat, and whether the words were sufficiently unequivocal, unconditional, immediate and specific they conveyed to the victim an immediacy of purpose and immediate prospect of execution of the threat can be based on all the surrounding circumstances and not just on the words alone. The parties' history can also be considered as one of the relevant circumstances. [Citations.]'" (*People v. Butler* (2000) 85 Cal.App.4th 745, 754.) As the People note, appellant threatened to kill Paramore or inflict bodily harm on her "on at least 14 different occasions, and on at least 7 different dates." The response to those threats demonstrates that they were taken seriously. The fact that the threats were made while appellant was in custody is of no moment because appellant made it clear he intended to carry out the threats at the first available opportunity. (See *People v. Wilson* (2010) 186 Cal.App.4th 789, 814-186, and cases cited therein.) "A threat is sufficiently specific where it threatens death or great bodily injury. A threat is not insufficient simply because it does 'not communicate a time or precise manner of execution, section 422 does not require those details to be expressed.' [Citation.]" (*Butler*, at p. 752.)

Finally, appellant claims the evidence is insufficient to support findings on the fourth and fifth prongs of the statute, i.e., that the threats actually caused Paramore to be in sustained fear for her or her family's safety, and that Paramore's fear was reasonable under the circumstances. He argues that "[a]ny reasonable person in [Paramore's] position would have understood that [appellant's] statements, although clearly offensive, were the angry rantings of a frustrated teenager suffering from a disability which prevented him from responding to directions like everyone else." We are not persuaded. Paramore gave detailed testimony establishing that appellant's threats had placed her in sustained fear for her and her family's safety. The juvenile court, as sole arbiter of Paramore's credibility (*Ricky T., supra*, 87 Cal.App.4th at p. 1136), found her testimony to be credible. Moreover, nothing about the nature of appellant's threats, the circumstances in which they were made, or Paramore's knowledge and experience as a juvenile services officer rendered her fear unreasonable. Given the relentlessness and seriousness of the threats, Paramore could reasonably believe that appellant intended to

physically harm her if given the chance to do so. Although Paramore was aware of appellant's diagnosis and received a document regarding his condition, nothing in that document precluded her from taking appellant's threats seriously.

Appellant's reliance on *Ricky T., supra*, 87 Cal.App.4th 1132, is unavailing. In that case, a 16-year-old student angrily told a teacher "I'm going to get you" and "I'm going to kick your ass" after the teacher accidentally hit him in the head with a door. The student admitted speaking angrily, but said he did not mean to sound threatening and apologized for the incident. (Id. at pp. 1135-1136.) In concluding that the evidence was insufficient to support a finding that the student had made a criminal threat in violation of section 422, the court reasoned that his remark "I'm going to get you" was ambiguous and "no more than a vague threat of retaliation without prospect of execution." (*Id.* at p. 1138.) The court found that the "I'm going to kick your ass" remark was merely made in response to his accident with the door. (*Ibid.*) The court further noted that there was no evidence of any prior history of disagreements between the student and teacher. (*Ibid.*) The court concluded there was nothing in the record to support a finding of sustained fear and reasoned that the student's "statement was an emotional response to an accident rather than a death threat that induced sustained fear." (*Id.* at p. 1141.)

Unlike the student in *Ricky T.*, appellant made repeated unequivocal threats against Paramore and the two had a history of negative interactions. Moreover, Paramore overheard appellant talking to his brother about pepper-spraying Paramore, and she knew that appellant's brother had previously used pepper spray against other officers. *Ricky T.* thus fails to undermine our conclusion that the evidence is sufficient to support a finding that appellant made criminal threats in violation of section 422, subdivision (a).

*Misapplication of Law*

After the parties filed their briefs, we requested supplemental briefing to address whether the court's finding that appellant lacked the specific intent to obstruct an officer in the performance of her duties by means of threat or violence (§ 69) had any effect on its finding that appellant had the requisite intent to make criminal threats (§ 422, subd. (a).) We made this request after our review of the record disclosed that the court

had distinguished the two crimes based on an erroneous belief that the former is a specific intent crime, while the latter is a general intent crime.

In response to our request, appellant filed a supplemental brief contending that the court's misstatement of law in defining section 422 as a general intent crime constitutes reversible error. Although we reject appellant's claim that the error renders the evidence insufficient to support a finding that he made criminal threats in violation of section 422, we agree that the error compels us to reverse and remand for a new adjudication hearing.

"Ordinarily statements made by the trial court as to its reasoning are not reviewable. An exception to this general rule exists when the court's comments unambiguously disclose that its basic ruling embodied or was based on a misunderstanding of the relevant law." (*In re Jerry R.* (1994) 29 Cal.App.4th 1432, 1440 (*Jerry R.*), citing *People v. Butcher* (1986) 185 Cal.App.3d 929, 936–937 (*Butcher*); see also *People v. Tessman* (2014) 223 Cal.App.4th 1293, 1302 [same].) A juvenile wardship order based on such a misunderstanding must be reversed. (*Jerry R.*, at pp. 1434, 1440-1441.)

The record in this case unambiguously reflects that the court misapplied the law in finding that appellant made criminal threats in violation of section 422. In making that finding, the court stated: "I really have no difficulty finding a violation of Penal Code section 422, criminal threats. *That's a general-intent crime.* And with respect to that crime, it's a statement that is taken as a threat. I actually found the [victim's] most compelling testimony to be her concern of confronting [appellant] in public out of custody and what might happen in that circumstance. So I have no trouble sustaining the petition with respect to that count." (Italics added.) The court went on to distinguish the section 69 charge as a specific intent crime, and found that appellant lacked that intent by reason of his Asperger's Disorder. The court reasoned: "The more troublesome count is Penal Code section 69. And that's because that crime, as I understand it, is a specific-intent crime, with the specific intent to deter an officer from performing his or her duty. And while there was a witness who testified about [appellant] saying that this officer

needed to be moved, I'm not sure — and I have to take into account Dr. Murphy's testimony — that he understood the impact of his statements and that those statements would, in effect, deter an officer from performing her duties. [¶] Because it's a specific-intent crime and because of the complications from [appellant's] syndrome, I do find that I can't reach specific intent on that count."

The court erred. Sections 422 and 69 are both specific intent crimes. In concluding that section 422 only required general intent, the court categorically disregarded appellant's defense that he lacked the mental state to commit the crime as a result of his Asperger's Disorder. (§ 28; *People v. Cortes* (2011) 192 Cal,.App.4th 873, 908 [evidence of a mental disorder is inadmissible to prove a defendant lacked the mental state to commit a general intent crime].) Under the circumstances, the matter must be reversed and remanded for a new adjudication hearing on the D petition. (*Jerry R., supra,* 29 Cal.App.4th at p. 1440.)

In challenging this conclusion, the People rely on the rule that """'a ruling or decision, itself correct in law, will not be disturbed on appeal merely because given for a wrong reason. If right upon any theory of the law applicable to the case, it must be sustained regardless of the considerations which may have moved the trial court to its conclusion.' [Citation.]" [Citation.]'" (*In re L.K.* (2011) 199 Cal.App.4th 1438, 1448, quoting *People v. Zapien* (1993) 4 Cal.4th 929, 976.) We decline to apply that rule in this context. The rule is usually applied, as it was in *Zapien*, when an evidentiary ruling is at issue. Although our colleagues in the Fifth District more recently it in disregarding the juvenile court's erroneous belief that the mens rea for direct infliction of child abuse (§ 273a, subd. (a)) is criminal negligence rather than general intent (*L.K.,* at pp. 1445-1446), the appellate court did not go on to find that the defendant acted with the requisite general intent; on the contrary, the court expressly found such evidence was lacking. Instead, the court affirmed on the ground that the evidence was sufficient to support a finding that the defendant had *indirectly* inflicted abuse on the victim, as contemplated under a different prong of section 273a, subdivision (a), for which the mens rea is criminal negligence. (*Id.* at p. 1447.) In doing so, the appellate court relied on the

juvenile court's express credibility determinations, and noted that those determinations were the lower court's "exclusive province." (*Id.* at p. 1446.)

Here, the People purport to apply the *Zapien* rule to overlook the juvenile court's error in finding that section 422 only requires general intent. We are not asked, however, to simply rely on the juvenile court's credibility determinations and uphold its finding of general intent under an alternative theory of guilt. Instead, we are asked to usurp the lower court's fact finding authority and ignore that its misstatement of law deprived appellant of a potential defense, a defense the court found persuasive as to another charge based on the same conduct. We follow *Jerry R.* and accordingly decline the invitation.

The People also assert that there is no inconsistency between the juvenile court's finding that appellant violated section 422 and its finding that he lacked the specific intent to violate section 69. As they correctly note, the former statute requires a specific intent to instill fear, while the latter requires an intent to obstruct an officer in the performance of her duties through the use of threats or violence. The prosecution effectively argued, however, that the two intents were essentially one and the same, i.e., that appellant intended to frighten Paramore so that she would avoid having any contact with him. Moreover, Dr. Murphy's testimony focused on an individual with Asperger's inability to understand the emotional impact of his actions, rather than his ability to understand and/or pursue a particular means to an end.

In any event, it is ultimately irrelevant whether the findings are consistent or inconsistent. It is also of no moment whether the People presented sufficient evidence to support a finding that appellant violated section 422, or whether the record indicates that the juvenile court was presented with a correct statement of the law. Because the record plainly and unequivocally reflects that the court based its ruling on the erroneous premise that section 422 is a general intent crime, the court's order sustaining the D petition on that basis must be reversed and the matter remanded for a new adjudication hearing in which the correct law is applied. (*Jerry R., supra,* 29 Cal.App.4th at p. 1440; *Butcher, supra,* 185 Cal.App.3d at p. 937 ["[I]t cannot be the law that a defendant may

be convicted in circumstances where the conviction appears to be based upon a legally invalid theory of the law notwithstanding the presence of an alternative valid theory"].)

*The F Petition*

Appellant asserts that he was detained on the F petition in violation of Welfare and Institutions Code section 631, subdivision (a) (section 631(a)) and rule 5.752(b) of the California Rules of Court (rule 5.752(b)).[5] He concedes the claim is moot, yet urges us to exercise our discretion to address it because it is an issue of broad public interest that is likely to recur. (*In re Robin M.* (1978) 21 Cal.3d 337, 341, fn. 6.) We conclude the claim is both moot and meritless.[6]

Appellant was taken into custody pursuant to the allegations of the E petition on January 17, 2013. The E petition was not filed, however, until January 22, 2013. At the detention hearing held the following day, the court granted appellant's request that he be released from custody on the ground that the E petition was filed more than 48 hours after he was taken into custody, as provided in section 631(a) and rule 5.752(b). The court ordered that appellant be "released to Y.T.P. pending further orders in this case."

Later that same day, the prosecution filed the F petition alleging that appellant's November 2012 admission of opiate use and inappropriate behavior with a fellow YTP constituted a violation of his probation in a prior matter. The F petition alleged that appellant had been detained on January 23, 2013, at 12:55 p.m. At the

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**5** Section 631(a) provides in pertinent part that "whenever a minor is taken into custody by a peace officer or probation officer, . . . the minor shall be released within 48 hours after having been taken into custody, excluding nonjudicial days, unless within that period of time a petition to declare the minor a ward has been filed pursuant to this chapter or a criminal complaint against the minor has been filed in a court of competent jurisdiction."

Rule 5.752(b) states: "A child must be released from custody within 48 hours, excluding noncourt days, after first being taken into custody unless a petition or notice of probation violation has been filed either within that time or before the time the child was first taken into custody."

**6** In his opening brief, appellant also argued that his preadjudication detention on the F petition constituted a violation of his double jeopardy rights. He abandons that claim in his reply brief.

detention hearing, appellant again asked the court to order his release from custody pursuant to section 631(a) and rule 5.752(b). Appellant also argued that the F petition could not provide a basis for his continued detention because it was not based on "new facts or previously undiscovered circumstances," as provided in *In re Ryan B.* (1989) 216 Cal.App.3d 1519 (*Ryan B.*). Counsel for appellant's parents offered that the F petition should not provide any basis for appellant's detention because each of the incidents alleged in the petition were previously "addressed by a so-called dunk," i.e., an informal disciplinary measure consisting of a few days in custody.[7]

The court denied appellant's request for release from custody. The court concluded "there's no statutory authority suggesting that [appellant] can't be re-arrested" and added "that probation had the right, once I had ordered [appellant's] release, that they arrest him on these charges given their obligation to provide for his safety, his well-being, his compliance with the terms and conditions [of his probation], and their adjacent role to this court in providing for community safety."

Because appellant is no longer in custody pursuant to the F petition, his claim that his detention was unlawful is plainly moot. Moreover, his reliance on *Ryan B.* is misplaced. That case's reference to the need for "new or previously undiscovered facts" relates to the court's authority to order the detention of minors who appear in court out of custody without any prior notice that they might be detained. (*Ryan B., supra*, 216 Cal.App.3d at pp. 1526-1527.) The court in that case recognized "that judicial authority to detain a minor is limited to the specific statutory procedures which specify when and how a minor may be detained." (*Id.* at p. 1527.) That ruling has no application here, where appellant was lawfully detained for a violation of his probation. (See Welf. & Inst. Code, § 625, subd. (b).)

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[7] Counsel further explained the "dunks" as follows: "Now, the dunks were the subject of an informal meeting where the probation officer advised that, from time to time, there would be minors that would be taken into custody with the expectation that there would be no detention hearings; there would be no petitions filed; and it was thought to be an appropriate disciplinary approach to a very small class of cases."

Similarly unavailing is appellant's claim that he could not be subjected to a probation violation for conduct for which he had already received "punishment" in the form of "dunks." The record is insufficient to substantiate the premise of this claim, much less that the former discipline was intended to have preclusive effect. Even if it were so, the F petition is not based solely on the incidents that took place in November 2012. It also alleges that appellant's recent suspension from school following his arrest for the sexual assault constituted a violation of the condition of his probation that required him to obey school authorities. This allegation was sufficient by itself to justify the petition. It also gave the probation department the authority to take appellant back into custody, which effectively "re-started" the clock for purposes of section 631(a) and rule 5.752(b). Because the F petition was filed less than 48 hours later, appellant's request that he be released from custody was properly denied.

DISPOSITION

The juvenile court's order sustaining the D petition (JV50654D) is reversed. The matter is remanded for the court to conduct a new hearing to determine whether appellant made criminal threats in violation of section 422, subdivision (a), as alleged in the D petition. In all other respects, the judgment is affirmed.

NOT TO BE PUBLISHED.

PERREN, J.

We concur:

GILBERT, P. J.

YEGAN, J.

Linda D. Hurst, Judge

Superior Court County of San Luis Obispo

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Arielle Bases, under appointment by the Court of Appeal, for Defendant and Appellant.

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