Filed 11/30/17 In re Noe G. CA2/3

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

In re NOE G., a Person Coming Under the Juvenile Court Law.	B275453
THE PEOPLE, Plaintiff and Respondent, v. NOE G., Defendant and Appellant.	Los Angeles County Super. Ct. No. MJ23533

APPEAL from a judgment of the Superior Court of Los Angeles County, Denise McLaughlin-Bennett, Judge. Affirmed with directions.

Laini Millar Melnick, 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, and Steven E. Mercer, Corey J. Robins, Deputy Attorneys General, for Plaintiff and Respondent.

INTRODUCTION

Noe G. was declared a ward of the juvenile court based on sustained allegations that he had threatened a public officer (Pen. Code,[1] § 71). On appeal, he contends there was insufficient evidence to support the court's finding. Noe also requests correction of the minute order following the disposition hearing to reflect the court's oral pronouncement of one of his probation conditions. We direct the court to amend Probation Condition 9 to reflect the court's entire oral pronouncement. In all other respects, we affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

Gilbert Torres worked as a uniformed school security officer at Noe's high school. On February 18, 2016, Torres saw Noe and another student leave the school's campus during class time. At the time, Noe was 14 years old and did not have permission to leave the school. After Noe and the other student returned to campus, Torres and another security officer told Noe to get into their golf cart so they could take Noe to the principal's office. After Noe refused to get into the cart, two security guards grabbed Noe's arms and placed him in the cart. Noe then jumped off the cart and yelled, " 'Fuck this, I'm not doing this.' " After Torres tried to stop him, Noe "picked up his pants, balled up his fists, and said, 'Fuck this shit we can handle this.' " According to Noe, he actually said " 'what the fuck, you guys are not going to search me.' " Torres testified that when Noe balled up his fists, he was only three feet away from Torres. Because Torres thought Noe wanted to fight him, Torres backed away.

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[1] Statutory references are to this code unless otherwise indicated.

Eventually, two other security officers handcuffed Noe and brought him to an office. When Torres saw Noe at the office, Noe told Torres to get out, cursed at him, and threatened to have Noe's older brother assault Torres.

On March 24, 2016, the People filed a one-count petition under Welfare and Institutions Code section 602 alleging Noe had threatened a public officer, Torres, in violation of section 71. After a contested adjudication hearing, the juvenile court sustained the petition. On May 24, 2016, Noe was declared a ward of the court and placed in the custody of the probation department for placement in an open facility, subject to conditions of probation. One of those conditions, Probation Condition 9, required Noe to "have good behavior as described by [his] school's code of conduct," and to receive satisfactory grades "of C or above." The clerk's minute order from the disposition hearing does not, however, accurately reflect the court's oral pronouncement of this condition. Instead, Probation Condition 9 in the minute order omits any reference to the school's code of conduct or to grades of "C or above."

This timely appeal followed.

DISCUSSION

1. Substantial evidence supports the court's finding that Noe violated Penal Code section 71.

1.1. Standard of Review

The same standard of appellate review is applicable in considering the sufficiency of the evidence in a juvenile proceeding as in reviewing the sufficiency of the evidence to support an adult criminal conviction. (*In re V.V.* (2011) 51 Cal.4th 1020, 1026; *In re Kyle T.* (2017) 9 Cal.App.5th 707,

712.) In either type of case "we review the whole record to determine whether *any* rational trier of fact could have found the essential elements of the crime or special circumstances beyond a reasonable doubt. [Citation.] The record must disclose substantial evidence to support the verdict—i.e., evidence that is reasonable, credible, and of solid value—such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. [Citation.] In applying this test, we review the evidence in the light most favorable to the prosecution and presume in support of the judgment the existence of every fact the jury could reasonably have deduced from the evidence. [Citation.] '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 trial judge or jury to determine the credibility of a witness and the truth or falsity of the facts upon which a determination depends. [Citation.] We resolve neither credibility issues nor evidentiary conflicts; we look for substantial evidence. [Citation.]' [Citation.] A reversal for insufficient evidence 'is unwarranted unless it appears "that upon no hypothesis whatever is there sufficient substantial evidence to support" ' the jury's verdict. [Citation.]" (*People v. Zamudio* (2008) 43 Cal.4th 327, 357.) " 'Where the circumstances reasonably justify the trier of fact's findings, a reviewing court's conclusion the circumstances might also reasonably be reconciled with a contrary finding does not warrant the judgment's reversal.' " (*People v. Clark* (2016) 63 Cal.4th 522, 626.)

1.2. Governing Law

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 [ ]." The elements of the offense 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. (See *People v. Hopkins* (1983) 149 Cal.App.3d 36, 40-41.) Section 71 is designed to prohibit plausible or serious threats. (*In re Ernesto H.* (2004) 125 Cal.App.4th 298, 310-311.) "The purpose of [section 71] is to prevent threatening communications to public officers or employees designed to extort their action or inaction." (*Id.* at p. 308.)

1.3 There was substantial evidence Noe threatened Torres.

Noe contends there was no substantial evidence that he made a plausible threat to Torres within the meaning of section 71. Although conceding that his statement, "[f]uck this shit, we can handle this," was confrontational and wrong, Noe argues his words could not be understood to constitute a threat that would be carried out.

To determine whether Noe's statement to Torres may be construed as a threat to inflict an unlawful injury upon a person, we must examine not only the words spoken but also the circumstances surrounding the communication. (See *In re Ryan D.* (2002) 100 Cal.App.4th 854, 860; *In re Ricky T.* (2001) 87 Cal.App.4th 1132, 1137.) In doing so, we are mindful that

section 71 is designed to prohibit plausible or serious threats and "to ignore pranks, misunderstandings, and impossibilities." (*People v. Zendejas* (1987) 196 Cal.App.3d 367, 378–379.)

We agree with Noe that the statement standing alone is ambiguous. When the statement is put in context, however, we disagree with his contention that the statement was not a plausible threat. By his own admission, Noe was mad at Torres when he made the statement. Almost simultaneously with making this statement, Noe faced Torres, picked up his pants, and balled up his fists. When Torres was asked how he interpreted Noe's actions, Torres said he thought Noe wanted to fight him and cause Torres physical harm. Torres's testimony is consistent with his actions: Torres backed away from Noe who was only three feet away from him when he made the statement. Under these circumstances, we conclude Noe communicated a threat of unlawful injury to Torres within the meaning of section 71.

We also find that Torres's fear of being assaulted by Noe was reasonable. That Noe did not actually swing at Torres, that Torres was older and taller than Noe, and that Torres was assisted by other security guards, are not dispositive: "[S]ection 71 does not require a present ability to carry out the threat. . . . It is sufficient if the [minor] made a threat with the requisite intent and it reasonably appears to the recipient that the threat could be carried out." (*People v. Harris* (2008) 43 Cal.4th 1269, 1311 (*Harris*).) As noted, Noe was only three feet away from Torres when he threatened him. Moreover, the reasonableness of Torres's belief is reinforced, not diminished, by the fact that three security guards had to assist Torres, and two of them ended up handcuffing Noe while they placed him on the

ground. (*Id.* at p. 1311 [evidence sufficiently established threats could be carried out when targets testified they took threats seriously and took precautions against them]; *In re Ernesto H.*, *supra*, 125 Cal.App.4th at p. 311 [threat violated section 71 when target of threat testified he felt minor was serious and feared for his safety]; cf. *People v. Tuilaepa* (1992) 4 Cal.4th 569, 590 [threats did not violate section 71 when recipients of threats "indicated they did not actually fear for their safety"].) We also note that even after Noe was handcuffed and taken to an office, he continued to curse at Torres and call him names.

On this record there was ample evidence Noe's threat constituted a violation of section 71.

2. The minute order following the disposition hearing should be amended to reflect the court's complete oral pronouncement.

Noe also contends that Probation Condition 9 as reflected in the dispositional minute order should be amended to accurately state the court's oral pronouncement of that condition. We agree.

The court's oral pronouncement constitutes the judgment. (*People v. Mesa* (1975) 14 Cal.3d 466, 471-472.) The entering of the judgment in the minutes is a clerical function. (*Ibid.*) When the reporter's transcript and the clerk's minute order are in conflict, "[they] will be harmonized if possible; but where this is not possible that part of the record will prevail, which, because of its origin and nature or otherwise, is entitled to greater credence." (*People v. Smith* (1983) 33 Cal.3d 596, 599.) Generally, when there is a discrepancy between the minute order and the oral pronouncement, the oral pronouncement controls. (*People v. Morales* (2014) 224 Cal.App.4th 1587, 1594, citing

People v. Zackery (2007) 147 Cal.App.4th 380, 385 [the clerk's minutes must accurately reflect what occurred at the hearing].)

Here, the dispositional minute order does not reflect all of the terms orally pronounced by the court. When it pronounced Probation Condition 9, the court stated the following: "You must go to school every day, you must be on time to every class, you must have good behavior as described by your school's code of conduct, and you must receive satisfactory grades, which is [sic] a grade of C or above." The minute order does not, however, contain the qualifier that Noe's "good behavior" is measured by his school's code of conduct, or that a satisfactory grade is a grade of C or above. Thus, the juvenile court must amend the dispositional minute order to reflect its entire oral pronouncement of Probation Condition 9. (See *In re D.H.* (2016) 4 Cal.App.5th 722, 726 [minor should not have to piece together the full terms of his probation by reviewing the various potential sources of those conditions].)

DISPOSITION

The juvenile court is directed to amend Probation Condition 9 in the May 24, 2016 minute order to reflect the court's entire oral pronouncement. In all other respects, the judgment is affirmed.

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LAVIN, J.

WE CONCUR:

EDMON, P. J.

STONE, J.*

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* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.