Filed 5/29/12 In re Brandon M. CA2/7

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

In re Brandon M., a Person Coming Under the Juvenile Court Law.	B233630 (Los Angeles County Super. Ct. No. NJ25865)
THE PEOPLE, Plaintiff and Respondent, v. Brandon M., Defendant and Appellant.	

APPEAL from an order of the Superior Court of Los Angeles County, John C. Lawson II, Judge. Reversed.

James M. Crawford, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Victoria B. Wilson and Kim Aarons, Deputy Attorneys General, for Plaintiff and Respondent.

Brandon M. appeals from the juvenile court's order declaring him a ward of the court and placing him home on probation. He contends the evidence is insufficient to support the finding he made a criminal threat. We reverse.

FACTUAL AND PROCEDURAL BACKGROUND

1. *The Petition*

A petition was filed pursuant to Welfare and Institutions Code section 602 alleging 15-year-old Brandon made a criminal threat to Deborah Broadway (Pen. Code, § 422) (count 1) and threatened her as a public officer (Pen. Code, § 71) (count 2).

2. *The Jurisdiction and Disposition Hearings*

In 2010, Brandon was a student at Wilson High School in Long Beach. He had been placed in a special education program because of chronic behavioral problems, truancy and failing grades. At a meeting attended by Brandon, assistant principal Deborah Broadway and others, it was determined that Brandon was to be "heavily supervised" on campus, which meant he was to be escorted by an adult between classes, no longer free to be alone on school grounds. Brandon was angry and upset over this new restriction.

The morning of October 25, 2010 was Brandon's first day of heavy supervision. When he was escorted to his special education class, Brandon entered the classroom and began yelling, "Fuck my schedule and fuck the school." Brandon sat down quietly at his desk, but again started yelling profanities. Joaquin Bravo, Brandon's special education teacher, attempted to calm Brandon. Brandon refused, stating that he intended to walk into the office of the assistant principal (Deborah Broadway) and "I'm going to trash up the place and blow up the office on my last day of school." Bravo observed that Brandon's face was red and that he was raising his arms as he was yelling. Having known Brandon for a year, Bravo took his threat seriously. Bravo alerted Broadway to Brandon's threat and had Brandon escorted to the campus suspension room.

Deborah Broadway was one of four assistant principals at Wilson High School who oversaw student discipline, enforced school rules and regulations, and supervised students during "passing periods" between classes. The task of dealing with behavioral

problems of individual students was divided among the four assistant principals. Brandon was one of the students assigned to Broadway.

Since the beginning of the semester in September 2010, Broadway had met with Brandon on multiple occasions in her office to address episodes of his defiant behavior, use of profanity, or leaving class or school grounds without permission. Broadway had witnessed Brandon's escalating anger and emotional outbursts during these meetings. As a result, when notified of Brandon's threat, she took it seriously. Broadway explained that because she was "always" in her office, she was concerned for her safety. Noting that when Brandon becomes angry, he "loses it," Broadway decided to involve police, worried that Brandon would follow through on his threat, and she would be injured.

Brandon neither testified nor presented other evidence in his defense.

3. *The Juvenile Court's Findings and Disposition Order*

The juvenile court found true the allegation that Brandon had made a criminal threat against Deborah Broadway, determined it was a felony, and declared Brandon a ward of the court. The court found not true the allegation that Brandon had threatened her as a public officer. At the disposition hearing the court ordered Brandon home on probation.[1]

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1 The juvenile court calculated a maximum period of physical confinement of three years, which has no legal effect because Brandon was placed home on probation. (See Welf. & Inst. Code, § 726, subd. (c); *In re Matthew A.* (2008) 165 Cal.App.4th 537, 541 [court required to specify maximum period of physical confinement only when minor removed from physical custody of his or her parent or guardian]; *In re Ali A.* (2006) 139 Cal.App.4th 569, 573-574 [same].) Accordingly, we order that term stricken from the court's minute order.

DISCUSSION

1. *The Standard of Review*

The same standard governs review of the sufficiency of evidence in juvenile cases as in adult criminal cases: "[W]e 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." (*People v. Zamudio* (2008) 43 Cal.4th 327, 357; see *In re Matthew A.* (2008) 165 Cal.App.4th 537, 540.)

2. *The Evidence Is Not Sufficient To Support the Finding Brandon Made a Criminal Threat*

Penal Code section 422 states, in relevant part, "[a]ny person who willfully threatens to commit a crime which will result in death or great bodily injury to another person, with the specific intent that the statement, made verbally, in writing, or by means of an electronic communication device, is to be taken as a threat, even if there is no intent of actually carrying it out, which, on its face and under the circumstances in which it is made, is 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, and thereby causes that person reasonably to be in sustained fear for his or her own safety or for his or her immediate family's safety, shall be punished . . . ." "[T]he statute 'was not enacted to punish emotional outbursts, as it targets only those who try to instill fear in others.' (*People v. Felix* (2001) 92 Cal.App.4th 905, 913 (*Felix*).) In other words, [Penal Code] section 422 does not punish such things as 'mere angry utterances or ranting soliloquies, however violent.' (*People v. Teal* (1998) 61 Cal.App.4th 277, 281.)" (*In re Ryan D.* (2002) 100 Cal.App.4th 854, 861 (*Ryan D.*).)

Relying on *Felix, supra,* 92 Cal.App.4th 905 and *Ryan D., supra,* 100 Cal.App.4th 854, Brandon contends his statement about blowing up Deborah Broadway's office could not have been taken as a threat, because there was no showing that, at the time Brandon made the statement, he intended it to be communicated to Broadway. In those cases, the courts recognized Penal Code section 422 requires that, when the threat is made to a third person, the defendant must intend it be relayed to the victim to instill that fear.

In *Felix,* the defendant was convicted of making a criminal threat based on his statement to a psychologist during a therapy session that if he were to see his former girlfriend with somebody else, he would shoot her. The psychologist called the former girlfriend, and immediately after the call, the former girlfriend expressed fear that the defendant was going to kill her. (*Felix, supra,* 92 Cal.App.4th at pp. 909, 912-913.) The *Felix* court acknowledged the requirement of proving that the defendant intended the threat be conveyed to the victim and concluded from the totality of the circumstances the evidence was insufficient to permit a reasonable inference the defendant intended his threat would instill fear in the victim. (*Felix,* at p. 913 ["there [was] no such evidence that [the defendant] knew [the psychologist] would disclose his statements to [the former girlfriend] or that he wanted them to be revealed . . . [and] [t]here is nothing in the record showing that [the psychologist] told [the defendant] that he would contact her."].) "Because the prosecution did not adequately prove the factual setting involving [the defendant's] remarks, it did not show whether his words were the product of therapy, ranting soliloquies, or a crime. (*Felix,* at p. 915.)

In *Ryan D.*, the minor was angry at a campus police officer, who had cited him for possessing marijuana. One month later, the minor painted a picture (depicting the minor shooting the officer in the back of the head) and presented it as his art class project. The teacher took it to the assistant principal's office and, when the painting was later shown to the officer, she became concerned about her safety. Citing *Felix*, the *Ryan D.* court determined that the evidence failed to establish the minor intended the threat to be conveyed to the campus police officer at the time the minor made it. "After all, he did not display it to [the officer] or put it in a location where he knew she would see it. Nor did he communicate with [the officer] in any manner to advise her that she should see the painting. Even [the minor] acknowledged that the students would not expect [the officer] to come into the art classroom. In fact, [the officer] did not learn of the painting until an assistant principal called and then showed it to her." (*Ryan D.* at p. 864.)

Under the totality of circumstances in this case, there was no evidence to support the juvenile court's conclusion that at the time Brandon threatened to blow up Deborah Broadway's office, he intended that she be informed of this statement. Instead, Brandon engaged in an angry and frustrated outburst. He was not in the presence of Broadway, nor was there any showing that he knew his statements would be reported to her. In the absence of such knowledge, the specific intent element of this crime is not satisfied here.[2]

DISPOSITION

The order is reversed.

ZELON, J.

We concur:

PERLUSS, P. J. JACKSON, J.

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[2] In light of this ruling, we do not reach the other grounds asserted.