Filed 6/22/16 In re R.H. CA2/3

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

In re R.H., A Person Coming Under the Juvenile Court Law.	B268138 (Los Angeles County Super. Ct. No. YJ37090)
THE PEOPLE, Plaintiff and Respondent, v. R.H., Defendant and Appellant.	

APPEAL from a judgment of the Superior Court of Los Angeles County, Irma J. Brown, Judge. Affirmed.

Holly Jackson, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Jason Tran and Jonathan J. Kline, Deputy Attorneys General, for Plaintiff and Respondent.

INTRODUCTION

The juvenile court declared R.H. a ward of the court, finding he attempted to dissuade a witness from prosecuting a crime and made a criminal threat. The court also found R.H. committed the crimes for the benefit of a criminal street gang. R.H. contends insufficient evidence supports the court's findings that he attempted to dissuade a witness and made a criminal threat; he does not challenge the court's gang allegation finding. We affirm.

FACTUAL BACKGROUND

In November 2013, Aretha Holiday lived in, and managed, an eight-unit apartment complex near 102nd Street and Normandie Avenue in Los Angeles. The complex is located in territory claimed by the Ten Deuce Budlong Gangster Crips street gang (Budlong). R.H., who was 15 years old at the time and associated with members of Budlong, would hang out in front of Holiday's apartment where he tried to sell drugs. R.H. would often say " 'this is Budlong' " in a threatening manner while standing in front of Holiday's apartment. Holiday would confront R.H. because she did not want him selling drugs near the apartment complex. As of November 2013, she had reported R.H. to the police about 16 times. Holiday also had confronted and reported to the police other Budlong members whom she believed were selling drugs near the apartment complex. Holiday's apartment complex had been spray painted with graffiti and her car tires flattened after several of her confrontations with Budlong members.

During the morning of November 29, 2013, Holiday noticed that someone had spray painted "911" on the hood of her car,[1] which was parked in front of the gate outside her apartment unit. While Holiday and her roommate were outside cleaning the car, R.H. and another minor, A.B., who also associated with Budlong members, approached Holiday from across the street. A.B., who had his hand in his pocket as if

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[1] According to the People's gang expert, spray painting "911" on someone's property is a way for gang members to label that person as a snitch.

he were holding a weapon, stood in front of Holiday and said, "Say something. We shoot you all ass now." R.H., who was standing next to A.B., then said, "Yeah. Say something. Say something." Afraid that one of the minors was carrying a gun, Holiday immediately retreated to her apartment and called the police.

Before R.H. was detained on December 21, 2013, Holiday spoke to law enforcement on five occasions to discuss her confrontation with R.H. and A.B. During the first four interviews, Holiday identified only A.B. as a suspect; she did not report that R.H. or any other person had also threatened her. However, during the fifth interview, Holiday reported that R.H. had also threatened her. She told the investigating officer that she had not reported R.H. earlier because A.B. was the primary aggressor and she believed she needed to identify him first. Holiday also was reluctant to identify R.H. in the field after he was detained. According to the officer who detained R.H., Holiday cried and sounded afraid when he asked her to identify the minor.

On December 24, 2013, the District Attorney's Office filed a Welfare and Institutions Code section 602 petition against R.H., alleging he attempted to dissuade a witness from prosecuting a crime (Pen. Code,[2] § 136.1, subd. (b)(2) - count 1) and made a criminal threat (§ 422 - count 2), both felonies. The petition also alleged as to both counts that the crimes were committed for the benefit of, at the direction of, or in association with, a criminal street gang (§ 186.22, subd. (b)(1)(A)).

Following a six-day contested jurisdiction hearing conducted during June and July 2014, the court declared R.H. a ward of the court, finding he made a criminal threat and attempted to dissuade a witness from prosecuting a crime. The court also found true the allegation that R.H. committed the crimes for the benefit of a criminal street gang. In making its findings, the court explained that it found Holiday's testimony was credible. The court ordered R.H. placed in a camp community placement program for

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[2] All undesignated statutory references are to the Penal Code.

a term of five to seven months, and set a maximum term of confinement of eight years and four months.

R.H. timely appealed.

DISCUSSION

1. Standard of Review

We apply the same standard of review to sufficiency of the evidence claims in juvenile cases and adult criminal cases. (*In re Matthew A.* (2008) 165 Cal.App.4th 537, 540.) We review the whole record in a light most favorable to the judgment to determine whether it contains substantial evidence—i.e., evidence that is reasonable, credible, and of solid value—from which a rational trier of fact could find the minor committed the crimes alleged in the petition. (*In re Ryan D.* (2002) 100 Cal.App.4th 854, 860; see also *People v. Avila* (2009) 46 Cal.4th 680, 701.) In doing so, we neither reweigh the evidence nor reevaluate the credibility of witnesses. (*People v. Lindberg* (2008) 45 Cal.4th 1, 27 (*Lindberg*).) " ' "If the circumstances reasonably justify the trier of fact's findings, the opinion of the reviewing court that the circumstances might also reasonably be reconciled with a contrary finding does not warrant a reversal of the judgment." ' " (*People v. Cravens* (2012) 53 Cal.4th 500, 508.) Therefore, before we may set aside the judgment, it must be clear " ' "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.)

2. Sufficient Evidence Supports the Court's Finding that R.H. Committed a Criminal Threat

R.H. contends insufficient evidence supports the court's finding that he made a criminal threat to Holiday because she failed to report him as a suspect during her first four meetings with law enforcement. R.H. argues that based on the testimony of the officer who interviewed Holiday during those meetings, it is "questionable" whether R.H. was even present at the time A.B. threatened to shoot Holiday. He contends that in light of the officer's testimony, the court should have discredited Holiday's testimony that R.H. had approached her and said "[s]ay something[,] [s]ay something" after A.B.

threatened to shoot her. Essentially, R.H. asks us to reweigh the evidence, reevaluate the court's credibility determinations, and make new factual findings. That, however, is not our role in reviewing a sufficiency of the evidence claim on appeal. It is well-established that we will not second guess the trial court's credibility determinations or reweigh the evidence as if we are the trier of fact. (See *People v. Richardson* (2008) 43 Cal.4th 959, 1030 [under the substantial evidence test, "we defer to the trier of fact's evaluation of credibility"] (*Richardson*).) Instead, we must defer to the trial court's credibility determinations and view the evidence in the light most favorable to the judgment. (*Lindberg*, *supra*, 45 Cal.4th at p. 27.)

Here, the court observed the behavior and demeanor of each witness, including Holiday, during the hearing. In issuing its final ruling, the court recounted Holiday's testimony and her demeanor on the stand and expressly found that Holiday's testimony about the November 29, 2013 confrontation with R.H. and A.B. was credible. We will not second guess that determination on appeal. (*Richardson*, *supra*, 43 Cal.4th at p. 1030.)

R.H. also contends that his conduct during the November 29, 2013 confrontation with Holiday did not rise to the level of a criminal threat. To support a true finding for making a criminal threat under section 422, the People must prove: (1) the minor willfully threatened to commit a crime which will result in death or great bodily injury to another person; (2) the minor made a statement with the specific intent that it be taken as a threat, even if there is no intent to carry out the threat; (3) the statement, on its face and under the circumstances in which it was made, was 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) the statement 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) the threatened person's fear was

reasonable under the circumstances.[3] (*In re George T.* (2004) 33 Cal.4th 620, 630.) Section 422 was not enacted to punish emotional outbursts; rather, it targets "those who try to instill fear in others." (*In re Ryan D.* (2002) 100 Cal.App.4th 854, 861.)

R.H. relies on *In re Ricky T.* (2001) 87 Cal.App.4th 1132 (*Ricky T.*) to argue his statement to Holiday did not rise to the level of a criminal threat. In *Ricky T.*, the reviewing court held a high school student's outburst directed at his teacher did not constitute a criminal threat. (*Id*. at pp. 1136-1141.) In that case, the student left class to use the restroom. (*Id*. at p. 1135.) When he returned, the door to the classroom was locked. (*Ibid*.) After the student pounded on the door, the teacher opened it, hitting the student's head. (*Ibid*.) The student became angry, yelling at the teacher, " 'I'm going to get you' " or " 'I'm going to kick your ass.' " (*Id*. at pp. 1135-1136.) Although the teacher felt physically threatened by the student, he admitted that the student did not make a specific threat or engage in any other aggressive behavior. (*Id*. at p. 1135.) The Court of Appeal held the student's outburst did not constitute a criminal threat because his statements were ambiguous, and there was no evidence that a physical confrontation was imminent. (*Id*. at pp. 1138, 1141.) Instead, the student's statements were a rash, emotional reaction to the teacher accidentally hitting him with the classroom door. (*Ibid*.)

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[3] Section 422, subdivision (a), provides: "Any 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 by imprisonment in the county jail not to exceed one year, or by imprisonment in the state prison." (§ 422, subd. (a).)

R.H.'s reliance on *Ricky T.* is misplaced for two reasons. First, R.H. significantly understates the nature of his conduct during his confrontation with Holiday. In comparing this case to *Ricky T.*, R.H. asserts that his conduct did not rise to the level of a criminal threat because Holiday "described him as showing little aggression" and "did not report him saying any words at all." It is not clear, however, from where R.H. draws these facts. He does not cite to any portion of the record in which Holiday described him as "showing little aggression." Indeed, R.H. ignores Holiday's testimony, in which she described both the threatening manner in which R.H. approached her and R.H.'s statements daring her to "say something" after A.B. threatened to shoot her if she did just that.

Second, R.H.'s statements, when viewed in context, are more threatening than the student's statements in *Ricky T.* Unlike the student's statements in that case, R.H.'s statements were preceded by aggressive behavior, and there was evidence that a physical confrontation was imminent. R.H. and A.B. approached Holiday in a threatening manner while she was inspecting the graffiti on her car. A.B. walked up to Holiday and stood in front of her with his hand in his pocket, as if he were holding a gun or other weapon, and threatened to shoot her (furthering the appearance that he was carrying a gun) if she said "something," presumably about the graffiti on her car. R.H. stood next to A.B. and repeated part of A.B.'s threat. Holiday took the minors' threats seriously, immediately returning to her apartment to call the police because she was scared that one of the minors would shoot her. Indeed, Holiday took the threats so seriously that she was still afraid of R.H. when she was asked to identify him in the field several weeks after the confrontation.

The circumstances surrounding Holiday's confrontation with the minors further demonstrate the immediacy of R.H.'s threat and the reasonableness of Holiday's fear that the threat would be carried out. Holiday and R.H. had a contentious relationship prior to their November 29, 2013 confrontation. Holiday knew that R.H. associated with Budlong members, and she had on several occasions confronted him and other Budlong members about selling drugs near the apartment complex, frequently reporting

them to the police. Despite Holiday's efforts to keep R.H. from selling drugs near the complex, R.H. would continue to hang out there, often saying " '[t]his is Budlong' " in a threatening manner, as if attempting to intimidate Holiday. Indeed, Holiday's car was often vandalized shortly after she would confront R.H. and other Budlong members.

R.H. contends that his history of confrontations with Holiday tends to mitigate the threatening nature of his conduct on November 29, 2013. He asserts that because Holiday had not been afraid to confront him or report him to the police in the past about selling drugs near her apartment, she likely did not take his threat seriously when he confronted her on November 29, 2013. We disagree. The fact that Holiday had confronted R.H. in the past does not mean that she would not have taken his threat seriously. Unlike during their previous confrontations, R.H. threatened Holiday with violence, and he did so in the presence of another teenager who also threatened to use violence and appeared to be carrying a gun or other weapon.

In light of the foregoing, we conclude substantial evidence supports the court's finding that R.H. made a criminal threat to Holiday.

3. The Court Properly Found R.H. Attempted to Dissuade a Witness from Prosecuting a Crime

R.H. also contends insufficient evidence supports the court's finding that he attempted to dissuade Holiday from prosecuting a crime under section 136.1, subdivision (b)(2).[4] Again, R.H. argues the court erred in finding Holiday's testimony was credible. He makes no attempt, however, to explain why his conduct during the November 29, 2013 confrontation with Holiday, including his statement prompting Holiday to "[s]ay something" after A.B. threatened to shoot her if she did speak up,

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[4] Section 136.1, subdivision (b)(2) provides in relevant part: "[E]very person who attempts to prevent or dissuade another person who has been the victim of a crime or who is witness to a crime from doing any of the following is guilty of a public offense and shall be punished by imprisonment in a county jail for not more than one year or in the state prison. . . . [¶] Causing a complaint, indictment, information, probation or parole violation to be sought and prosecuted, and assisting in the prosecution thereof."

does not satisfy the requirements of section 136.1, subdivision (b)(2). Thus, for the same reasons discussed above, we reject R.H.'s contention that the court should have not relied on Holiday's testimony and conclude the court properly found R.H. attempted to dissuade Holiday from prosecuting a crime.

DISPOSITION

The judgment is affirmed.

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LAVIN, J.

WE CONCUR:

EDMON, P. J.

HOGUE, 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.