Filed 7/26/12 In re R.L. CA2/8

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

In re R.L., a Person Coming Under the Juvenile Court Law.	B235469 (Los Angeles County Super. Ct. No. NJ23442)
THE PEOPLE, Plaintiff and Respondent, v. R.L., Defendant and Appellant.	

APPEAL from the judgment of the Superior Court of Los Angeles County. John C. Lawson II, Judge. Affirmed.

Zoe Rawson, 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, Assistant Attorney General, Eric E. Reynolds and Lauren E. Dana, Deputy Attorneys General, for Plaintiff and Respondent.

The juvenile court sustained a petition filed pursuant to Welfare and Institutions Code section 602, and found minor R.L. (defendant) committed the offense of misdemeanor battery (Pen. Code, § 242), when he threw a shoe at his mother, hitting her in the face and causing her nose to bleed. The court also found defendant committed the offense of felony dissuading a victim from reporting a crime (§ 136.1, subd. (b)(1)) when he subsequently told his mother, "If you call the cops, when I get out, I'm going to come back and stab you." The trial court ordered a midterm camp commitment and declared a maximum term of confinement of four years six months, with credit given for 23 days. On appeal, defendant contends insufficient evidence supports the dissuading a victim count and that he is entitled to additional custody credits. We disagree and affirm the judgment.

FACTS

On July 5, 2011, defendant and his mother were in the living room of their Long Beach home when defendant asked her for a soda. When she brought him the soda, he became angry because it was not cold enough. He cursed at her and called her names. As mother was standing near the kitchen, defendant threw two shoes at her. The second shoe hit her in the nose and upper lip, causing her nose to bleed. When she started to cry, defendant screamed at her and told her to stop crying because her nose was not bleeding. As she was cleaning up the blood in the kitchen, defendant told her in a stern tone, "If you call the cops, when I get out, I'm going to come back and stab you."

Mother testified that she was not scared of defendant and that she did not believe that he meant to carry out his threat. However, mother has feared for her safety and the safety of her other children in the past, based on defendant's "screaming" and "aggressive" behavior. Mother did not call the police, but they arrived at her home within an hour of the incident. Responding officer Andrea Allen testified that mother "was crying. She was scared." Mother told Allen that she feared for her safety and the safety of her other children. Mother admitted to telling responding officers that she was afraid.

DISCUSSION

1. Sufficiency of the Evidence

Defendant contends that insufficient evidence supports his conviction for dissuading a victim. When the sufficiency of the evidence is challenged on appeal, our role in reviewing the evidence is limited. "'The test on appeal is whether substantial evidence supports the conclusion of the trier of fact, not whether the evidence proves guilt beyond a reasonable doubt. The court must view the entire record in the light most favorable to the judgment . . . 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 minor guilty beyond a reasonable doubt. In making such a determination we must view the evidence in a light most favorable to respondent and presume in support of the judgment . . . the existence of every fact the trier could reasonably deduce from the evidence. [Citations.]' [Citation.]" (*In re Paul C.* (1990) 221 Cal.App.3d 43, 52.)

"To prove a violation of [Penal Code] section 136.1, subdivision (b)(1), the prosecution must show (1) the defendant has attempted to prevent or dissuade a person (2) who is a victim or witness to a crime (3) from making any report of his or her victimization to any peace officer or other designated officials. . . . Section 136.1, subdivision (c)(3) makes the offense in subdivision (b)(1) a felony where the person undertakes the acts of dissuasion knowingly and maliciously." (*People v. Upsher* (2007) 155 Cal.App.4th 1311, 1320.) A violation of section 136.1 is committed "knowingly and maliciously" "[w]here the act is accompanied by force or by an express or implied threat of force or violence, upon a witness or victim . . . ." (§ 136.1, subd. (c)(1).) "Malice" is defined as "an intent to vex, annoy, harm, or injure in any way another person, or to thwart or interfere in any manner with the orderly administration of justice." (§ 136, subd. (1).) It is not a defense that the victim was not intimidated or injured by the defendant's threat, because it is the specific intent of the defendant to dissuade the victim that supports a violation of section 136.1. (CALCRIM No. 2622; *People v. Brenner* (1992) 5 Cal.App.4th 335, 339.)

Defendant clearly expressed an implied threat of force or violence when he told his mother that if she called the police, he would come back and stab her. The court could reasonably conclude that the circumstances surrounding the threat suggested defendant expected his mother would take his threat seriously. Before throwing the shoes at her, defendant called his mother a "bitch" and cursed at her. When defendant hit her in the face with his shoe, he expressed no remorse or sympathy. Instead, he screamed at her and told her to stop crying because her nose was not bleeding. Officer Allen testified that mother was scared and feared for both her and her other children's safety. Although mother denied at trial that she had been scared and said she did not think defendant meant what he said, she also testified that on previous occasions she had been fearful of defendant, indicating a history of conflict that lent additional credibility to defendant's threat, such that defendant could expect his threat to be taken seriously.

Defendant contends that the circumstances surrounding his threat "demonstrate that he had an emotional outburst," and therefore "do not clearly support the intent to convey a criminal threat." He also maintains that the "effect of the statement on his mother is relevant to whether it qualifies as a true threat." The cases relied upon by defendant are inapposite. *In re Ryan D.* (2002) 100 Cal.App.4th 854 and *In re Ricky T.* (2001) 87 Cal.App.4th 1132 concerned violations of the criminal threats statute, Penal Code section 422. Section 422, subdivision (a) requires that the threat cause the victim "to be in sustained fear for his or her own safety." (*In re Ricky T.*, *supra*, at p. 1136.) However, there is no such requirement under section 136.1, subdivision (c)(1). Defendant's lack of remorse, coupled with the history of familial disagreements, suggests that his threat was not merely an emotional outburst that he did not intend to carry out. The trial court was free to conclude that mother's testimony that she was not scared was less probative of defendant's intent than the overwhelming evidence that he sought to dissuade her from reporting the battery to the police.

2. Custody Credits

Defendant contends that he received an inadequate amount of custody credits. The trial court set a maximum term of confinement of four years for the felony count of

dissuading a victim. The court then added an additional six months to the maximum term and defendant was given credit for 23 days in custody. Because the trial court did not state its reasons for the six-month term, defendant speculates that his "maximum term of confinement indicates that the court must have imposed an additional two months based on the true finding of the offense of battery, and then an additional four months based on a prior sustained petition. As such, [defendant] is entitled to additional credits for time served on the prior sustained petition."

We find it more likely that the trial court imposed the maximum term of confinement of six months for the battery. (Pen. Code, § 243, subd. (a).) Because the battery was a misdemeanor, the trial court was not required to impose one-third of the midterm of confinement under section 1170.1, subdivision (a) (as defendant seems to suggest), and did not need to state its reasons for imposing a consecutive sentence on the record. (Cal. Rules of Court, rule 4.403; *People v. Fugate* (1990) 219 Cal.App.3d 1408, 1412 [a trial court is not required to state its reasons on the record for imposing consecutive sentences for misdemeanor convictions]; *People v. Hartsfield* (1981) 117 Cal.App.3d 504, 508 [Section 1170.1 governs calculation of consecutive terms upon conviction of "two or more felonies"; the statute does not apply to a sentence for a misdemeanor ordered to be served consecutively to a felony term].) Therefore, defendant's contention that he received an inadequate amount of custody credits does not overcome the presumption of correctness. (*In re Julian R.* (2009) 47 Cal.4th 487, 498-499.)

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

GRIMES, J.

WE CONCUR:

BIGELOW, P. J. FLIER, J.