Filed 2/4/15 In re B.C. CA2/1

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re B.C., a Person Coming Under the Juvenile Court Law.	B254149 (Los Angeles County Super. Ct. No. YJ37315)
THE PEOPLE, Plaintiff and Respondent, v. B.C., Defendant and Appellant.	

APPEAL from an order of the Superior Court of Los Angeles County, Irma J. Brown, Judge. Affirmed as modified.

Steven A. Torres, 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, Steven D. Matthews, Supervising Deputy Attorney General, and Timothy M. Weiner, Deputy Attorney General, for Plaintiff and Respondent.

B.C. appeals from the trial court's order declaring him a ward of the court and committing him to long-term camp, after the court found true two allegations that B.C. made criminal threats. We order modification of the disposition minute order to correct the probation conditions and otherwise affirm.

A petition filed July 16, 2013, pursuant to section 602 of the Welfare and Institutions Code, alleged that on May 15 and 16, 2013, B.C., then 15 years old, made two criminal threats against his middle school principal in violation of Penal Code section 422,[1] subdivision (a), and that both threats were felonies. A second petition filed the same day alleged that on July 12, 2013, B.C. possessed a firearm in violation of section 29610, which was also a felony.

At the adjudication, a teacher testified that on May 15, 2013, he was teaching at the middle school, and was in the resource room for special education students with two other staff members, including a member of the administration. Something had happened earlier, and B.C. came into the room, upset and pacing, and about 10 feet away from the staff members was "talking almost to himself just saying how like, you know, it wasn't right and how he was going to like F., you know, the principal up and where was he." B.C. was making general threats, saying, "'Who does he think he is?' and 'I'll F him up,' and, 'I know where he lives.' I know he said something about knowing where his family was or who they were." The teacher did not report the statement, but "there was somebody in the administration there." B.C., who was pretty easygoing, often came into the room to vent, and had made statements like that before that were "slips of the tongue or joking. This was just like a different demeanor." B.C. was "talking like at air, you know, instead of with us," and "his tone was a little louder than usual." The teacher and the other staff members in the room did not interrupt, although he thought at the end that someone tried to say something encouraging.

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[1] All subsequent statutory references are to the Penal Code, unless otherwise indicated.

The principal of the middle school testified that he had known B.C. for two years. As a seventh grader, B.C. had threatened or bullied other students. Even when the principal moved him to another campus to prevent him from threatening a specific student, B.C. showed up at the bus stop to wait for the student, and the principal had to station school police officers at the bus stop. When the situation de-escalated and B.C. was back on campus, the principal received multiple complaints from students and teachers that B.C. bullied and intimidated them. Los Angeles Police Department officers and school police officers had told the principal that B.C. had been arrested, including an arrest B.C. had been around or associated with and in which a gun was present. B.C. admitted to a past affiliation with a gang, and students on campus and neighborhood parents knew B.C.'s name and considered him an "intimidating presence."

In the weeks leading up to May 15, B.C. had been suspended, mostly for bullying. On one occasion two or three weeks earlier, after the principal had suspended B.C. for behavior in a classroom around other students, an agitated B.C. went to the office to talk to him about the suspension. Staff told B.C. where the principal was. B.C. found the principal in an empty hallway and walked toward him in an intimidating way, with his fists balled up, as if to threaten him or do him harm. The principal asked, "'You look as if you were going to hit me. Are you going to hit me?'" B.C. did not hit him.

At the end of the day on May 15, a staff member who had been in the classroom that morning had told the principal that B.C. had just returned from a suspension, was cursing while using a computer, and would not calm down. When she went to the classroom phone and told B.C. she was calling the principal, B.C. threatened to "F [the principal] up, that he knew my wife, he knew where I lived, and he knew people." The principal was afraid for himself and his family.

The next day, May 16, 2013, the principal was participating in a threat assessment meeting with two representatives of the psychological services office, a school police detective, and the assistant principal, regarding B.C.'s "threats against [him] and [his] family on the previous day." B.C. was interviewed separately during the three-hour meeting, without the principal present. The district held such a meeting whenever it

believed that a student could represent a threat to himself or others, to assess whether the student could actually carry out the threat. Toward the end of the threat assessment meeting, a school counselor came in and told the principal that B.C. had come into her office and said, "'I'm going to shoot [the principal].'" The principal took this as a threat, and discussed it with the school police officer, who arrested B.C. just outside of the principal's office. B.C. did not return to the school, and the principal still was afraid for his own and his family's safety. Teachers had told the principal that whenever B.C. was online he brought up images of guns. School police officers patrolled the school for the safety of the principal and other staff, and the school police continually kept the principal abreast of B.C.'s whereabouts.

The school counselor testified that on May 16, while she was dealing with three other students, B.C. walked into the counseling office. She asked him what he was doing and he replied, "'Nothing,'" and starting talking with the other students. She asked him to leave. B.C. left, and when he was out in the hall near the entrance to the counseling office, she heard B.C. say, "'Fuck. Fuck the man in the green shirt,'" and "'I'm going to piss in the police car.'" She could not see his face, but she had known him since sixth grade and recognized his voice. The counselor knew that the threat assessment meeting was underway, and she knew that the detective who participated in the meeting was wearing a green shirt. B.C. then said, "'I'm going to shoot [the principal].'" Thinking B.C.'s statement "was very inappropriate and dangerous," the counselor called the principal, and when he did not pick up the telephone she went to his office, knocked at the door, and told him and the other people meeting inside what she had heard. As a result of her testimony, the counselor was concerned for her own safety.

In B.C.'s defense, a 15-year-old student at the middle school and a friend of B.C.'s testified that he was in the counseling office on May 16 after being kicked out of class for not doing his work. B.C. stood at the door of the counseling office and said, "[the principal] was being messed up to him." B.C.'s friend thought B.C. was mad and frustrated and did not want to be at the middle school any more. B.C. went into the office and then left. The friend did not hear B.C. say anything or make any threats in the hall.

The trial court found both threat allegations true. On August 29, 2013, B.C. admitted the allegation of possession of a firearm by a minor.[2] On January 29, 2014, the trial court sentenced B.C. to long-term camp (nine months) on both petitions, awarded custody credits, and imposed probation conditions. B.C. filed a timely appeal.

I. Sufficient evidence of threats

The petition alleged two counts in violation of section 422, subdivision (a), which penalizes "[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 . . . ." "In order to prove a violation of section 422, the prosecution must establish all of the following: (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, in writing, or by means of an electronic communication device'—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. [Citation.]" (*People v. Toledo* (2001) 26 Cal.4th 221, 227–228.)

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[2] On July 12, 2013, B.C. was walking down an alley, looked back and saw police, and began to run. He reached into his front waistband, removed a gun, and threw it over a fence. Police officers recovered a .22 revolver in the area where B.C. tossed the gun.

B.C. argues that the prosecution did not establish that he made the threats with the specific intent that they be communicated to the principal, and that the threats lacked the gravity of purpose required for a conviction. "[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.) We have reviewed the entire record, viewing the evidence in the light most favorable to the prosecution, and we conclude that a reasonable trier of fact could have found these elements of criminal threat beyond a reasonable doubt. (See *In re Roderick P.* (1972) 7 Cal.3d 801, 808–809.)

A. Intent that the threats be communicated to the victim

"Section 422 . . . requires that the threatening statement be made with the specific intent to be taken as a threat." (*People v. Felix* (2001) 92 Cal.App.4th 905, 911.) The evidence of a defendant's specific intent "'is almost inevitably circumstantial, but circumstantial evidence is as sufficient as direct evidence to support a conviction.' [Citation.] . . . 'We "must accept logical inferences that the [finder of fact] might have drawn from the circumstantial evidence. [Citation.]" [Citation.]'" (*People v. Manibusan* (2013) 58 Cal.4th 40, 87.) Section 422 applies not only to threats made personally to the intended victim, but "may as readily be conveyed by the threatener through a third party as personally to the intended victim." (*In re David L.* (1991) 234 Cal.App.3d 1655, 1659.) Here, the circumstantial evidence included testimony that on May 15, B.C. entered the resource room at the middle school, and within 10 feet of three staff members, "talking almost to himself" but "louder than usual," said, "'"I'll F [the principal] up,"'" and "'"I know where he lives."'" The teacher who testified stated that he had heard B.C. vent before, but this time B.C. had "a different demeanor." On May 16, B.C. left the counseling office and while B.C. was in the hall, the counselor heard his voice saying, "'I'm going to shoot [the principal].'"

The trial court could draw the logical inference that on May 15, by coming into the resource room and making the threat to "F [the principal] up" and his family, only 10 feet away from three staff members, B.C. intended that the threat be communicated to the principal. That B.C. appeared to be "talking almost to himself" is also consistent with a

contrary conclusion, but we do not substitute our judgment for that of the trial court. Further, the principal testified that the staff member told him she went to the phone and told B.C. she was calling the principal, and then B.C. made the threat to "F [the principal] up, that he knew my wife, he knew where I lived, and he knew people," which supports a conclusion that B.C. intended that the staff member communicate the threat.

B.C.'s May 16 threat to shoot the principal was made directly outside the counselor's office after she asked him to leave, while the threat assessment meeting (in which B.C. had participated) was still in progress. Again, the evidence that B.C. made that explicit threat within earshot of the counselor who had just admonished B.C. is consistent with a conclusion that he intended that she communicate the threat to the principal. The trial court could reasonably conclude that B.C. knew and intended that the counselor would take the threatening message to the principal.

Further, "the climate of hostility between the minor and the victim in which the threat was made and the manner in which it was made readily support the inference the minor intended the victim to feel threatened," and the communication of the threat to colleagues of the principal who were "also witness to certain of the antecedent hostilities supports the inference the minor intended the [colleagues] act as intermediary to convey the threat to the victim." (*In re David L.*, *supra*, 234 Cal.App.3d at p. 1659.) The teacher testified that something had happened earlier and B.C. had made similar statements before May 15. The counselor knew the threat assessment meeting was underway. The principal himself testified that B.C. had a history of bullying and intimidation and in an earlier incident after the principal had suspended him, B.C., agitated, had gone to the principal's office and then confronted him in an empty hallway with his fists clenched. The history of hostility by B.C. toward the principal, of which the teacher knew, and the counselor's awareness of the ongoing threat assessment meeting, are sufficient evidence supporting the inference that B.C. intended that the principal learn of the May 15 and 16 threats. The circumstances reasonably justify the trial court's findings, and even if we concluded that the circumstances might also be reasonably reconciled with a contrary

finding, that would not warrant reversal of the judgment. (*People v. Manibusan*, *supra*, 58 Cal.4th at p. 87.)

B. Gravity of purpose

As for section 422, subdivision (a)'s required "gravity of purpose," B.C.'s threats to "F up" the principal and his family where they lived and to shoot him, could be found by a reasonable factfinder to be "so unequivocal, unconditional, immediate, and specific as to convey . . . a gravity of purpose and an immediate prospect of execution of the threat." (§ 422.) "A threat is sufficiently specific whe[n] it threatens death or great bodily injury." (*People v. Butler* (2000) 85 Cal.App.4th 745, 752.) Threatening to "F [the principal] up" and his family and, the next day, to shoot the principal constitute specific words conveying a gravity of purpose. Further, the principal testified that he took the threats extremely seriously, scheduling a threat assessment meeting the next day and feeling continuing fear for himself and for his family.

These unambiguous statements were not a "vague threat of retaliation without prospect of execution" like those in *In re Ricky T.*, *supra*, 87 Cal.App.4th at page 1138, where the court found insufficient evidence of a criminal threat when the minor cursed and said, "'I'm going to get you'" after a teacher accidentally hit him with a classroom door. "[T]hreats are judged in their context," and the court emphasized that there was a "striking" lack of information about surrounding circumstances, no immediacy to the threat, and "no evidence in this case to suggest that appellant and [the alleged victim] had any prior history of disagreements, or that either had previously quarreled, or addressed contentious, hostile, or offensive remarks to the other," and "no evidence that appellant exhibited a physical show of force [or] displayed his fists." (*Id.* at pp. 1137–1138.) Further, "there was no evidence of any circumstances occurring *after* appellant's 'threats' which would further a finding of a terrorist threat." (*Id.* at p. 1139.) By contrast, in this case there was ample information about surrounding circumstances, including the principal's knowledge that B.C. had claimed gang affiliation and had been associated with an arrest where a gun was present. There was a prior history of disagreements and hostility between B.C. and the principal (who had suspended him multiple times), a prior

incident when B.C. confronted the principal in the hallway with his fists balled up as if to do him harm, and (as to the May 15 threat) another threat the following day to shoot the principal. After B.C.'s threat to shoot the principal on May 16, he was arrested on July 12, 2013 for being a minor in possession of a firearm.

Nor was the threat in this case comparable to the minor's school project in *In re Ryan D.* (2002) 100 Cal.App.4th 854, 858, 863, a painting depicting the minor shooting a police officer who had patted him down, which the court concluded was an ambiguous statement turned in for credit rather than shown by the minor to the officer. B.C.'s words on May 15 were a direct expression of his intent to harm the principal and his family, and included an expression of intent to find the principal's family where they lived. B.C.'s words on May 16 threatened gun violence against the principal. Judging B.C.'s words in their context, substantial evidence supports the conclusion that the threats conveyed the required gravity of purpose.

II. Declaration of wobbler offenses

A criminal threat in violation of section 422 is a wobbler offense, that is, one that if committed by an adult, is punishable alternatively as a misdemeanor or as a felony. (§ 422, subd. (a).) Welfare and Institutions Code section 702 "requires an explicit declaration by the juvenile court whether an offense would be a felony or misdemeanor in the case of an adult." (*In re Manzy W.* (1997) 14 Cal.4th 1199, 1204.) The California Rules of Court implementing the statute, rule 5.780(e)(5), provides that at the adjudication hearing, "[i]f any offense may be found to be either a felony or a misdemeanor, the court must consider which description applies and expressly declare on the record that it has made such consideration, and must state its determination as to whether the offense is a misdemeanor or a felony." The determination of whether an offense is a felony or misdemeanor "may be deferred until the disposition hearing" (*ibid.*), in which case an identical requirement applies. (Cal. Rules of Court, rule 5.790(a)(1).) B.C. argues that the juvenile court did not expressly declare whether the threat offenses were misdemeanors or felonies.

When the trial court fails to make the mandatory express declaration of status for an offense that may be punishable alternatively as a misdemeanor or a felony, and imposes a felony level of physical confinement, the reviewing court is to search the entire record for any evidence the court understood that it had the discretion to impose a misdemeanor-length period of confinement for the same offense, and actually exercised that discretion. (*In re Manzy W.*, *supra*, 14 Cal.4th at p. 1209.) Requiring that the court make an express declaration "serves the purpose of ensuring that the juvenile court is aware of, and actually exercises, its discretion under Welfare and Institutions Code section 702." (*Id.* at p. 1207.) "[N]either the pleading, the minute order, nor the setting of a felony-level period of physical confinement may substitute for a declaration by the juvenile court as to whether an offense is a misdemeanor or felony. [Citation.]" (*Id.* at p. 1208.)

In this case, the petition alleged that the two threats were felonies. The minute order of the disposition states: "Offense is declared to be a . . . Felony," checking a box before the word "Felony" and listing both petitions, and leaving blank the box before the word "misdemeanor." The minute order did not merely state that the offenses were felonies but that the juvenile court "declared" them to be so, and it does not stand alone. At the disposition hearing on August 30, 2013, the trial court stated: "[h]e's got two felony sustained petitions as of today, both—one involving a firearm, one involving a threat of violence. There's a prior petition of violence." At the continued hearing on September 30, 2013, the trial court stated that it was concerned "given the seriousness of the offenses that are in front of me. . . . [¶] . . . [¶] . . . there are two felony petitions that have been sustained, one making criminal threats and the other being in possession of a loaded firearm." The court admonished B.C.'s special education attorney: "[Y]ou have to understand the court's concern with any minor with a gun. [¶] . . . [¶] . . . on the street, and certainly one that has mental health issues. [¶] . . . [¶] . . . Emotional, psychological, whatever. I have two violent-nature felony offenses that I'm looking at with a 15-year-old." At a further continued disposition hearing on October 8, 2013, the court stated: "The charges are very serious in nature, the gun and then the threat that was found to be

true and credible by the court" in providing that B.C.'s house arrest "is going to be monitored very tightly." At the continued hearing on December 6, 2013, the court terminated B.C.'s house arrest because B.C. had picked up a new case.

On January 29, 2014, the court noted that the new case, not yet adjudicated, was for possession of a firearm on school grounds on November 21 (separate from the July 12, 2013 possession of a firearm charge which B.C. had already admitted). As to the two sustained petitions that are the subject of this appeal, B.C.'s counsel asked for home on probation. The prosecutor asked for nine months in camp because "based on the nature of the offenses, [B.C.] poses a serious threat to the community." B.C.'s counsel suggested: "If the court is going to send him to camp, three months is sufficient." The court stated: "[W]hat we have now is the two sustained felony petitions, one that the minor made the criminal threats on the campus of his middle school . . . . [¶] . . . [¶] Then within a very short period of time after that offense took place he was arrested on the first gun charge . . . the court cannot take a blind view to the fact that the minor again has been found in possession of a firearm. I would have to concur with the people that that does present a very serious threat to the community." The court continued: "[W]e're not talking about crimes of theft-related kind of petty theft kind of crimes. We're talking about fairly serious felonies where we are engaging in threatening conduct on a school campus to the highest authority on the campus, and then we have . . . him running down the alley . . . with a gun in his pocket. . . . [¶] So [B.C.] has violated some very serious laws . . . he continually appears to be engaging in very dangerous conduct and criminal behavior."

The statement in the minute order that the trial court "*declared* [the offense] to be a . . . Felony" (italics added) is supported by the court's further repeated statements that B.C. had two sustained violent felony petitions, that the offenses were serious as two felony petitions had been sustained, that the court had before it two felony offenses of a violent nature, and that B.C. presented a threat to the community because his crimes were not minor crimes but "fairly serious felonies . . . . [¶] . . . [B.C.] has violated some very serious laws." These statements constitute the required express declaration of status for a

"wobbler" offense under Welfare and Institutions Code section 702. Further, the court's statements demonstrate that in addition to making a finding that the allegations were true, the court understood that it had the discretion to "consider which description applie[d]" (Cal. Rules of Court, rule 5.780(e)(5)), and found that the threats were felonies rather than misdemeanors.

III. The disposition minute order must be modified.

B.C. claims, and respondent concedes, that the January 29, 2014 minute order does not accurately reflect the court's oral pronouncement of the terms and conditions of his probation. Boxes 5 ("You must not leave Los Angeles County unless you first get permission from your Probation Officer, Parent or Caregiver") and 15 ("You must not have any contact with or have someone else contact the victims or witnesses of any offense against you") are checked in the minute order, but the court did not impose the corresponding terms in open court. (The court did pronounce and impose the condition following box 15A, which specifically prohibits contact with the principal or any members of his household.) The oral pronouncement controls. (*People v. Zackery* (2007) 147 Cal.App.4th 380, 385.) We therefore order the minute order corrected to strike the terms following boxes 5 and 15.

DISPOSITION

We direct the trial court to modify the minute order of January 29, 2014 to strike the conditions of probation following boxes 5 and 15 and to so notify the probation office. As so modified, the order is affirmed.

NOT TO BE PUBLISHED.

JOHNSON, J.

We concur:

CHANEY, Acting P. J.

BENDIX, J.*

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