Filed 2/6/13 In re Juan P. CA2/2

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

In re JUAN P., a Person Coming Under the Juvenile Court Law.	B238119 (Los Angeles County Super. Ct. No. YJ35227)
THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff and Respondent, v. JUAN P., Defendant and Appellant.	

APPEAL from a judgment of the Superior Court of Los Angeles County. Wayne C. Denton, Commissioner. Affirmed.

Susan L. Ferguson, 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, Victoria B. Wilson, Kim Aarons, and Connie Kan, Deputy Attorneys General for Plaintiff and Respondent.

Minor and appellant, Juan P. (minor), appeals from a judgment of the juvenile court entered after the court sustained a petition filed pursuant to Welfare and Institutions Code section 602 (petition or section 602 petition). Minor contends that the judgment is not supported by substantial evidence. We find no merit in minor's contention and affirm the judgment.

BACKGROUND

Procedural history

The People filed a section 602 petition alleging in count 1 that minor made criminal threats in violation of Penal Code section 422.[1] The petition was later amended to add count 2, attempted criminal threats, in violation of section 664/422. At the adjudication and disposition hearing, the juvenile court sustained count 1, declared it to be a felony, and dismissed count 2. On July 14, 2011, the court declared minor to be a ward of the court under Welfare and Institutions Code section 602, and placed him at home on probation on specified terms and conditions. Minor filed a timely notice of appeal.

Prosecution evidence

On October 27, 2010, while minor was a student at Hamilton High School, he was on campus in the company of other students, one of whom had his cellphone out in violation of a school rule. Physical education teacher, Larry Williams (Williams), testified that when he asked that student to give up his cellphone, minor intervened and said, "I don't like you. We had you last year." The student with the cellphone then disappeared into the crowd as minor kept speaking to Williams. Williams decided to "just let it go" as such incidents occurred on a regular basis.

The following day, as Williams came out of the school office at the end of a passing period, he noticed that two students from his class were "hanging out" in the quad with minor. As this behavior was unacceptable to Williams, he told his students to go to class. Once again, minor intervened. He came close to Williams's face and said, "I

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

told you I didn't like you." Minor then cursed at Williams, said, "I'll fuck you up," and told Williams he knew someone from another gang who had "messed up" a Shoreline member, adding, "I'm going to get him to do the same thing." Williams understood minor's statement as meaning that minor knew a gang member who had beaten a member of his rival gang, the Venice Shoreline Crip gang, and that he would have this person beat Williams. When security guards approached, Williams asked them to take minor away.

Although Williams testified that he considered minor's behavior to be "a lot of bravado" and that he was not afraid of minor, he also testified that he was concerned for his safety, took minor's threats seriously, and believed that minor would have someone beat him. Williams was still concerned for his safety at the time of the adjudication hearing. He explained that he came from an area with many young gang members and that his mother still lived there. A rumor had circulated at Hamilton High School that Williams was a member of the Venice Shoreline gang. Williams said he was "fed up" with students identifying him with gang life. He was concerned for his safety, as he had known of many innocent people who had been injured or killed due to gang association or "hearsay." Minor dressed, spoke, and carried himself like a gang member, which contributed to Williams's concern that "something could happen." Williams considered consistent reporting and holding students accountable to be a safety precaution.

DISCUSSION

Minor contends that the evidence was insufficient to support a finding that he made a criminal threat. In particular, minor contends that the evidence established that his threats were not genuine threats or intended to be taken as threats, but were mere angry or emotional outbursts. He also contends that there was insufficient evidence that the victim experienced sustained fear.

A challenge to the sufficiency of the evidence to support a juvenile court judgment sustaining criminal allegations is reviewed under the same standard of review applicable to any criminal appeal. (*In re V.V.* (2011) 51 Cal.4th 1020, 1026.) Thus, we review the whole record in the light most favorable to the prosecution to determine whether it discloses 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." (*People v. Johnson* (1980) 26 Cal.3d 557, 578; see also *Jackson v. Virginia* (1979) 443 U.S. 307, 318-319; *In re Ryan N*. (2001) 92 Cal.App.4th 1359, 1372.) "'[W]e must presume in support of the judgment the existence of every fact the trier of fact could reasonably have deduced from the evidence. [Citation.]"' (*In re V.V*., *supra*, at p. 1026.) "The same standard applies when the conviction rests primarily on circumstantial evidence. [Citation.]" (*People v. Kraft* (2000) 23 Cal.4th 978, 1053.) We do not reweigh the evidence or resolve conflicts in the evidence. (*People v. Young* (2005) 34 Cal.4th 1149, 1181.) Reversal on ground of insufficient substantial evidence "is unwarranted unless it appears 'that upon no hypothesis whatever is there sufficient substantial evidence to support [the conviction].' [Citation.]" (*People v. Bolin* (1998) 18 Cal.4th 297, 331.)

A criminal threat is a statement, willfully made with the specific intent that it be taken as a threat, which threatens to commit a crime that will result in death or great bodily injury to another person "even if there is no intent of actually carrying it out." (§ 422, subd. (a).) The threat must "on its face and under the circumstances in which it is made, [be] 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 . . . ." (*Ibid*.)

Intent

Minor contends that the threat was not intended to be taken seriously, because the words used were equivocal, ambiguous, or conditional, and the circumstances showed no more than an angry outburst.

The intent required by section 422 is not the intent to actually carry out the threatened crime, but the intent that the victim receive and understand the threat. (*People v. Wilson* (2010) 186 Cal.App.4th 789, 806.) When the words of a threat are equivocal, ambiguous, or conditional, the intent that the words be taken as a threat must be

determined from all the surrounding circumstances. (*People v. Butler* (2000) 85 Cal.App.4th 745, 753-755.)

Minor suggests that these circumstances mirror those in *In re Ricky T.* (2001) 87 Cal.App.4th 1132 (*Ricky T.*), where the minor "mouth[ed] off" after his teacher accidently hit him while opening the classroom door, by saying that he was going to get the teacher or '"kick [his] ass."' (*Id.* at pp. 1135-1136, 1140.) The student was sent to the school office and the police were not called until the following day. (*Id.* at pp. 1135, 1138.) Because the minor was not violent or physically aggressive and had no history of disagreements, prior quarrels, or even hostile words with the teacher, the appellate court held that the circumstances did not support a finding that the minor's words were a true threat. (*Id.* at p. 1138.)

The circumstances of this case were different from those in *Ricky T.* Here, the victim worked with adolescent boys on a regular basis as a physical education teacher. Williams recognized gang-style attire and "gang talk" among students, and minor dressed, spoke, and carried himself like a gang member. Minor had spoken to the victim in a hostile manner the day before the threat and then uttered his threat while close to Williams's face. Williams came from a gang-dominated neighborhood, still had family there, and had known of many innocent people who had been injured or killed due to gang association or "hearsay." Williams was already the subject of such hearsay; it was rumored among his students that he associated with the Venice Shoreline Crip gang. Williams testified that minor's words caused him to be concerned for his safety. Such circumstances amply supported the conclusion that minor's words were a threat to have Williams physically assaulted by a gang member.

Moreover, minor's reference to the Venice Shoreline gang as a rival to his friend's gang was a good indication that minor had heard the rumor about Williams's association with Venice Shoreline and thus knew that Williams would understand the significance of minor's words as a threat. Such circumstances support the reasonable inference that, unlike the student in *Ricky T.*, whose words just came out in a moment of anger, minor

chose a threat likely to instill fear in this victim, and that minor intended his words be taken seriously as a threat.[2]

Sustained fear

Minor contends that the evidence was insufficient to support a finding that Williams was in fear of imminent death or great bodily injury or that his fear was sustained. A threat is criminal only if it causes the victim "reasonably to be in sustained fear for his or her own safety or for his or her immediate family's safety . . . ." (§ 422, subd. (a).) "'[S]ustained' . . . means a period of time that extends beyond what is momentary, fleeting, or transitory." (*People v. Allen* (1995) 33 Cal.App.4th 1149, 1156.)

Minor makes much of Williams's testimony that he was not afraid of minor at the time of the threat or at the time he gave testimony. We agree with respondent that Williams's testimony expressed fear despite his claim that he was not specifically afraid of minor. A victim's denial that he was afraid may be mere bravado. (*People v. Borra* (1932) 123 Cal.App. 482, 485.) Thus, fear may be inferred from the circumstances of the crime even when the victim denies that he was afraid. (See *People v. Renteria* (1964) 61 Cal.2d 497, 498-499 [robbery; store clerk denied fear].) Williams testified that he was concerned for his safety and that he thought it was possible that minor would follow through with his threat to have a gang member friend assault Williams. Williams's concern was based on his experience with gang culture during his childhood and his knowledge of innocent people being killed or injured by gang members because of mere rumors. We find such circumstances sufficient to raise a reasonable inference that

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[2] Although minor also contends that "the threat was not immediate," he makes no further argument regarding immediacy. As respondent points out, section 422 "does not require an immediate ability to carry out the threat. [Citation.]" (*People v. Lopez* (1999) 74 Cal.App.4th 675, 679.) Nor does it require the threat to "'"communicate a time or precise manner of execution . . . ."'" (*People v. Wilson, supra,* 186 Cal.App.4th at p. 806.) The term "immediate prospect of execution" denotes "that degree of seriousness and imminence which is understood by the victim to be attached to the future prospect of the threat being carried out, should the conditions not be met." (*People v. Melhado* (1998) 60 Cal.App.4th 1529, 1538, fn. & italics omitted.)

minor's threat caused Williams to experience fear -- a fear a high school teacher may be reluctant to express especially in the presence of one of his students.

Further, Williams's fear was not "momentary, fleeting, or transitory." (*People v. Allen*, *supra*, 33 Cal.App.4th at p. 1156.) Williams's concern that he would be physically assaulted by minor's gang member friend persisted and continued until the time he gave testimony, more than one year later.

Minor contends that Williams's fear was not genuine, as demonstrated by his failing to testify that he took precautions such as changing his locks or driving a different route home. Minor suggests that Williams was merely angry, because he was "fed up" with and "sick and tired" of the rumor regarding his gang association. In essence, minor contends that sufficient evidence supports a finding contrary to the judgment of the juvenile court. (*In re Ryan N.*, *supra*, 92 Cal.App.4th at p. 1372.) The test on appeal is not as minor suggests, whether there was substantial evidence in his favor; "'reversal is not warranted merely because the circumstances might also be reasonably reconciled with a contrary finding. [Citations.] The test on appeal is whether there is substantial evidence to support the conclusion of the trier of fact; it is not whether guilt is established beyond a reasonable doubt. [Citation.]'" (*Ibid.*) As we conclude that substantial evidence supports the juvenile court's findings, we reject minor's arguments.

DISPOSITION

The judgment is affirmed.

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_____, J.
CHAVEZ

We concur:

_____, P. J.
BOREN

_____, J.
ASHMANN-GERST