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Court of Appeals
Division III
State of Washington
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NO. 35777-5-III

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION THREE

STATE OF WASHINGTON,

Respondent,

v.

KARLO MEDINA,

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR BENTON COUNTY, JUVENILE
DIVISION

The Honorable Cameron Mitchell, Judge

BRIEF OF APPELLANT

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A. ASSIGNMENT OF ERROR

The trial court erred under JuCR 7.11(d) when it failed to enter all necessary written trial findings and conclusions.

Issue Pertaining to Assignment of Error

Under JuCR 7.11(d), the juvenile court failed to enter all necessary written findings of fact and conclusions of law. Is remand appropriate for consideration of the relevant evidence and entry of appropriate findings and conclusions?

B. STATEMENT OF THE CASE

The Benton County Prosecutor's Office charged juvenile Karlo Medina with one count of felony Harassment alleged to have been committed against Andy Wellington, a "criminal justice participant." CP 1-2.

Evidence at trial revealed that, on August 21, 2017, at the Benton-Franklin Juvenile Justice Center, detention officer Wellington confronted Medina after Medina left the recreation yard without permission. RP 7-10. When Wellington asked Medina to go to his room, Medina – well known for not cooperating with Wellington or other staff – instead sat down and started dialing a telephone. RP 10-11, 16, 19-20, 26. Wellington told Medina he was not to use the phone, and Medina became angry. RP 11.

According to Wellington, Medina stood up and made several statements that he perceived as threatening. RP 11-12, 15-16. Medina said, "Try your luck, Andy," "Don't even go there," "Do you want to go to the dark side, Andy?" and "Let's go Andy." RP 12-13. Medina had initially been about ten feet from Wellington but began to approach with his arms at his side and "squinting." RP 13-14, 16. Wellington retreated slightly, called to other staff for assistance, grabbed Medina by the arms, took him to the floor, and held him until others arrived and helped secure him with cuffs. RP 14, 17-19, 21-30. Although Medina resisted, he did not ever physically assault Wellington. RP 15, 25, 29.

Wellington testified that in his 20 years as a detention officer, he has only been assaulted once. RP 9, 14. He feared Medina presented a similar threat on this occasion based on his statements, body language, proximity, and history of non-compliance. RP 10-14. Wellington noted that, in the previous two months, there had been negative log entries regarding Medina from some 10 different staff members at the facility. RP 14. Personally, however, Wellington had always gotten along well with Medina. RP 20.

Detention Supervisor Rudy Ruelas, one of two individuals who responded to Wellington's call for assistance, testified that Medina

warned Wellington he would regret this. RP 21-23. Medina wasn't yelling. He was using a calm voice, but it "felt intimidating" and "eerie," and "it was kind of weird." RP 22-23, 26. Ruelas also confirmed that Medina had a long history of antagonizing staff and general non-compliance, and he was acting consistently that day. But when his misbehavior had escalated to more serious levels in the past, he did not act that way for very long. RP 26.

At the close of evidence, the defense argued that Medina should be acquitted of the charge because his statements and actions did not qualify as threats. Rather, particularly based on his well-known history of defiance and non-compliance, his conduct on August 21, 2017 was simply more of the same "idle talk" and poor attitude. See RP 32-35. The prosecution argued that, "[w]hile the statements were not necessarily clear as to what kind of harm Karlo might have intended . . . or what specifically he was going to do," RP 31, they were sufficient, in combination with all the circumstances, to constitute a threat of harm. RP 31-32, 35-36.

The Honorable Cameron Mitchell found Medina guilty and entered written findings and conclusions.¹ RP 36-39; CP 43-46. At

¹ The court's written findings and conclusions are attached to this brief as an appendix.

disposition, Judge Mitchell imposed 15 to 36 weeks' detention, and Medina timely filed his Notice of Appeal. RP 41-42; CP 30, 37-38.

C. ARGUMENT

THE TRIAL COURT FAILED TO FIND AN ESSENTIAL ELEMENT OF THE CHARGED OFFENSE AND FAILED TO ENTER SUFFICIENT WRITTEN FINDINGS AND CONCLUSIONS.

When a juvenile appeals a conviction, the trial court must enter written trial findings and conclusions. JuCR 7.11 provides, in pertinent part:

(c) Decision on the Record. The juvenile shall be found guilty or not guilty. The court shall state its findings of fact and enter its decision on the record. The findings shall include the evidence relied upon by the court in reaching its decision.

(d) Written Findings and Conclusions on Appeal. The court shall enter written findings and conclusions in a case that is appealed. The findings shall state the ultimate facts as to each element of the crime and the evidence upon which the court relied in reaching its decision. The findings and conclusions may be entered after the notice of appeal is filed. The prosecution must submit such findings and conclusions within 21 days after receiving the juvenile's notice of appeal.

JuCR 7.11 (c),(d).

This rule requires that the court, in a juvenile adjudicatory hearing, enter formal findings and conclusions regarding each element of the offense charged. Otherwise, they will be deemed

inadequate. State v. Souza, 60 Wn. App. 534, 537, 805 P.2d 237, review denied, 116 Wn.2d 1026, 812 P.2d 103 (1991). The purpose of written findings is to allow the reviewing court to determine the basis on which the case was decided and to review any issues raised on appeal. State v. Pena, 65 Wn. App. 711, 715, 829 P.2d 256 (1992), overruled on other grounds, State v. Alvarez, 128 Wn.2d 1, 19-21, 904 P.2d 754 (1995).

Medina was charged with Harassment of a criminal justice participant. Under Washington law:

- (1) A person is guilty of harassment if:
 - (a) Without lawful authority, the person knowingly threatens:
 - (1) To cause bodily injury immediately or in the future to the person threatened or to any other person; [and]
 - ...
 - (b) The person by words or conduct places the person threatened in reasonable fear that the threat will be carried out. . . .

RCW 9A.46.020(1)(a)-(b). Harassment of a "criminal justice participant," which includes staff members at juvenile detention facilities, elevates the crime to a class C felony. RCW 9A.46.020(2)(b), (4).

An essential element of this crime is knowledge:

The statute requires that the defendant “knowingly threatens” RCW 9A.46.020(1)(a)(1). This means that “the defendant must subjectively know that he or she is communicating a threat, and must know that the communication he or she imparts directly or indirectly is a threat to cause bodily injury to the person threatened or to another person.” [State v. J.M., 144 Wn.2d 472, 481, 28 P.3d 720 (2001)]

State v. Kilburn, 151 Wn.2d 36, 48, 84 P.3d 1215 (2004).

Moreover, while not considered an essential element, under the First Amendment, harassment must involve a “true threat,” requiring evidence that a reasonable person in the defendant’s position “would foresee that his comments would be interpreted as a serious statement of intent” to harm. Id. at 41-44, 48; State v. Allen, 176 Wn.2d 611, 626, 294 P.3d 679 (2013). “Whether a true threat has been made is determined under an objective standard that focuses on the speaker.” Kilburn, 151 Wn.2d at 44. Mere hyperbole or idle talk may not be criminalized. State v. Schaler, 169 Wn.2d 274, 283, 236 P.3d 858 (2010).

“Whether language constitutes a true threat is an issue of fact for the trier of fact in the first instance.” State v. Johnston, 156 Wn.2d 355, 365, 127 P.3d 707 (2006). In jury trials, an instruction properly defining “true threat” is deemed sufficient to ensure a

proper conviction. See Allen, 176 Wn.2d at 628-630; see also Schaler, 169 Wn.2d at 286-290 (reversing where no instruction given). In a bench trial, there is no similar method for determining compliance absent appropriate findings and conclusions. See State v. Kohonen, 192 Wn. App. 567, 572, 583, 370 P.3d 16 (2016) (in trial of juvenile defendant, court expressly finds “true threat” established, but reversed on appeal as “hyperbolic expressions of frustration”).

At Medina’s trial, the defense argued that Wellington had not been threatened with harm. Rather, Medina’s statements and conduct were simply additional examples in a long history of non-violent non-compliance. Yet, Judge Mitchell’s written findings and conclusions do not address the issue of Medina’s subjective knowledge. There is no finding that Medina knew he was communicating a threat. See CP 45 (finding 23; conclusion 1; finding a threat of harm, but no finding regarding Medina’s knowledge). Nor is there a finding of a “true threat,” i.e., that a reasonable person in Medina’s position would foresee that his statements would be interpreted as a serious expression of harm. Instead, the findings and conclusions focus on Wellington’s perception of Medina’s conduct and the reasonableness of that

perception. See CP 45 (findings 25-26; conclusions 3-4; Wellington reasonably feared harm).

Because Judge Mitchell failed to enter necessary findings and conclusions on an essential element of the charge (a knowing threat) and failed to enter findings and conclusions on a “true threat,” he erred. The only question is remedy. The Souza court held that remand to the trial court is appropriate so that, if warranted by the evidence, the court can enter missing findings and conclusions. Souza, 60 Wn. App. at 540-41. In Alvarez, 128 Wn.2d at 17-19, the Washington Supreme Court adopted the Souza approach. Once necessary findings and conclusions have been entered, either party may then appeal. State v. Head, 136 Wn.2d 619, 626, 964 P.2d 1187 (1998).

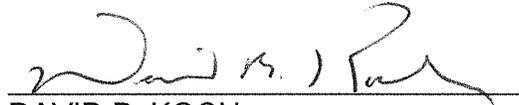
D. CONCLUSION

This case should be remanded for compliance with JuCR 7.11(d). Judge Mitchell should consider whether Medina knowingly threatened Wellington and then enter appropriate findings and conclusions. Moreover, to ensure compliance with the First Amendment, Judge Mitchell should also determine whether there was a "true threat." The failure to find either one should result in an acquittal.

DATED this 18th day of April, 2018.

Respectfully submitted,

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APPENDIX

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 ORIGINAL

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF BENTON – JUVENILE DIVISION

STATE OF WASHINGTON,

NO. 17-8-00370-0

Plaintiff,

vs.

BENCH TRIAL HEARING,
FINDINGS OF FACTS AND
CONCLUSIONS OF LAW

KARLO MEDINA,
DOB: 04/03/2000

Respondent.

HEARING

1. An information was filed with this Court alleging that the above named juvenile is a juvenile offender at the age of 17 on September 12, 2017.
2. On December 5, 2017 a bench trial was held to determine whether the above named juvenile was guilty beyond a reasonable doubt of committing Harassment of a Criminal Justice Participant
3. Persons appearing at the hearing were:

- | | |
|--|---|
| <input checked="" type="checkbox"/> Respondent | <input type="checkbox"/> Custodian's attorney |
| <input type="checkbox"/> Mother | <input type="checkbox"/> Parent's attorney |
| <input type="checkbox"/> Father | <input checked="" type="checkbox"/> Deputy Prosecuting Attorney |
| <input type="checkbox"/> Custodian/Guardian | <input checked="" type="checkbox"/> Respondent's Attorney |
| <input type="checkbox"/> Probation Counselor | <input type="checkbox"/> Other: _____ |

4. Testimony was taken from: Kirk (Andy) Wellington, Rudy Ruelas and Lezlie Ellis.

FINDINGS OF FACT

1. The incident in question took place in the County of Benton, City of Kennewick, State of Washington on or about August 21, 2017.
2. It is undisputed at trial that Kirk (Andy) Wellington was employed as a juvenile security worker at the Benton Franklin Juvenile Justice Center and was working in that capacity on August 21, 2017.

3. It is undisputed that the Respondent was in custody at the Benton Franklin Juvenile Justice Center on August 21, 2017.
4. Kirk (Andy) Wellington testified that the Respondent had been exhibiting defiant behavior on the date of August 21, 2017 and Wellington asked him to return to his room and to not take a chair with him.
5. Wellington testified that the Respondent made several statements to Wellington, including "Try your luck Andy," "Don't even go there," "Do you want to go to the dark side, Andy?", and "Let's go, Andy."
6. Wellington testified that he took the Respondent's statements very seriously and felt threatened by the Respondent based on his body language and the face to face nature of the statements.
7. Wellington testified that the Respondent was displaying a confrontational posture.
8. Wellington testified that he has been assaulted by a juvenile once before in his career as a detention officer.
9. Wellington testified that he then called for backup and the Respondent was detained.
10. Wellington testified that he and the Respondent had previously gotten along very well.
11. It is undisputed that Rudy Ruelas is currently employed as a detention supervisor at the Benton Franklin Juvenile Justice Center and was working in that capacity on August 21, 2017.
12. Ruelas testified that he was in Master Control when he heard Wellington requesting officer assistance over the radio.
13. Ruelas testified that as he approached the pod, he could hear loud talking or yelling.
14. Ruelas testified that when he entered the pod, he could see Wellington struggling with the Respondent.
15. Ruelas testified that Wellington was giving directives to the Respondent and the Respondent was not complying.
16. Ruelas testified that the Respondent was talking to Wellington but could not recall the exact words.
17. Ruelas testified that the Respondent's statements felt intimidating but he was not screaming. Ruelas characterized the tone of the statements as "eerie".

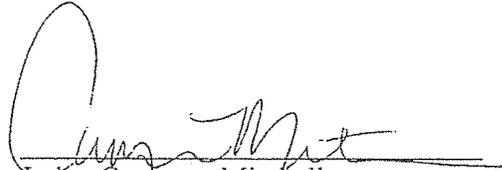
18. Ruelas testified that the Respondent has a history of antagonizing other youths and staff.
19. It is undisputed that Lezlie Ellis is employed as a juvenile detention officer at the Benton Franklin Juvenile Justice Center.
20. Ellis testified that when she arrived the Respondent was already on the ground on his stomach and Wellington was attempting to secure him but the Respondent was continuing to resist.
21. The Court finds that Wellington was a criminal justice participant at the time these events occurred and was acting in that capacity at the time the events occurred.
22. The Court finds that statements were made while the Respondent was approaching Wellington.
23. The Court finds that those statements made by the Respondent were threats for physical confrontation by the Respondent towards Wellington.
24. The Court finds the Respondent's history of non-compliance suggests that the Respondent is willing to defy instruction and resist de-escalation and was something known to Wellington during the incident.
25. The Court finds in light of all the circumstances known to Wellington at the time, in his capacity as a criminal justice participant with 20 years of experience, Wellington was in fear that the threats would be carried out.
26. The Court finds that Wellington's fear that the threats would be carried out was reasonable.

CONCLUSIONS OF LAW

1. The evidence shows, beyond a reasonable doubt, that the Respondent threatened to cause bodily injury to Kirk (Andy) Wellington on August 21, 2017.
2. The evidence shows, beyond a reasonable doubt, that Kirk (Andy) Wellington was a criminal justice participant performing his official duties at the time the threat was made.
3. The evidence shows, beyond a reasonable doubt, that the words and/or conduct of the Respondent placed Kirk (Andy) Wellington in reasonable fear that the threat would be carried out.
4. The evidence shows, beyond a reasonable doubt, that the fear from the threat was a fear that a reasonable criminal justice participant would have under all the circumstances.
5. The evidence shows, beyond a reasonable doubt that the threat was made in the State of Washington.

6. The Respondent is guilty beyond a reasonable doubt of Harassment of a Criminal Justice Participant.

Dated this 22nd day of January, 2018.



Judge Cameron Mitchell

Presented by:



Taylor Clark #49565
Deputy Prosecuting Attorney
OFC ID 91004

Approved as to form:



Alexis Rado #44830
Counsel for Respondent

NIELSEN, BROMAN & KOCH P.L.L.C.

April 18, 2018 - 3:55 PM

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