

FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D19-1974

J.A.W., A Child,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

On appeal from the Circuit Court for Escambia County.
Coleman Lee Robinson, Judge.

November 6, 2019

OSTERHAUS, J.

Twelve-year-old J.A.W. was adjudicated delinquent for telling a bad April Fools' Day joke at school in violation of the "bomb scare hoax" statute, § 790.163(1), Florida Statutes (2018). He argues that the trial court should have granted his motion for judgment of dismissal. We agree and reverse.

I.

Students at J.A.W.'s school were swapping April Fools' jokes in the classroom on April 1, 2019. According to the teacher, "[s]ome [of the jokes] weren't the nicest things, but it wasn't anything serious." That is, until J.A.W.—a student with an almost perfect attendance record and a 3.1 G.P.A.—chimed in with an ill-considered joke: "I'm going to shoot up the classroom, April Fools."

Upon hearing J.A.W.'s joke, the teacher escorted him out of the classroom and to the dean's office. While the school day continued normally for the other jokesters, things changed drastically for J.A.W. In addition to receiving a multi-day suspension from school, J.A.W. was reported to law enforcement and the State instituted a delinquency prosecution. The State's view of J.A.W.'s joke was that it constituted a "false report" concerning the violent use of firearms, intended to deceive, mislead, or otherwise misinform a person, which is prohibited by § 790.163(1). At his subsequent adjudication proceeding, the court denied J.A.W.'s motion for a judgment of dismissal. It found him guilty as charged, adjudicated him delinquent, and placed him on probation until his 19th birthday. J.A.W. appealed.

II.

J.A.W. argues on appeal that we should reverse because § 790.163(1) doesn't criminalize the type of statement that he made. Section 790.163(1) criminalizes bomb scare-type hoaxes. *D.B. v. State*, 825 So. 2d 1042, 1043 (Fla. 1st DCA 2002). It prohibits "any person to make a false report, with intent to deceive, mislead, or otherwise misinform any person, concerning the placing or planting of any bomb . . . or concerning the use of *firearms* in a violent manner against a person or persons." (Emphasis added.)

In this case, the objectionable "false report" was an April Fools' Day joke that "threatened" a future shooting at school. We addressed a similar issue involving a juvenile's threat of harm at a school in *D.B.* See *id.* at 1042. And what we held in *D.B.* was that threats of future violence do not violate § 790.163(1) because they are not "false reports." *Id.* at 1043-44. We said that while § 790.163(1) applies to false reports about live threats, such as "when a person knowingly makes a false report that a bomb or other deadly explosive has been placed or planted," it does not apply to threats of future action, for example, to "blow up' or 'burn down' [a] school at some time in the future." *Id.* at 1042-43.

As a matter of plain English, there is a distinction between a statement that "there is a bomb in the building" and a statement, such as [the defendant's], that 'I'm going to blow up the building.'"

Id. at 1043 (quoting *Moosavi v. State*, 736 A.2d 285, 291-92 (Md. 1999)). See also *J.L. v. State*, 993 So. 2d 103 (Fla. 5th DCA 2008) (recognizing that “a threat to plant a bomb in the distant future does not violate [§ 790.163(1)]”).

Applying *D.B.* here, the firearms-related prohibition in § 790.163(1) plainly prohibits knowingly false and misleading reports about active shooting-type situations. See, e.g., Spencer S. Hsu, *Boy Who Falsely Shouted That an Active Shooter Was Present Set Off Ballston Quarter Panic*, Wash. Post, Sept. 15, 2019, https://www.washingtonpost.com/local/public-safety/boy-who-falsely-shouted-that-an-active-shooter-was-present-set-off-ballston-quarter-panic/2019/09/15/2388395c-d7d8-11e9-bfb1-849887369476_story.html. But the statute does not reach future-oriented threats like the one uttered by J.A.W. Because J.A.W.’s April Fools’ Day joke threatened future shooting, it was not a “false report” made with intent to deceive, mislead, or otherwise misinform for purposes of § 790.163(1).*

III.

For these reasons, we reverse the juvenile adjudication and disposition order and remand for dismissal of the delinquency petition.

REVERSED and REMANDED.

KELSEY and JAY, JJ., concur.

* We recognize that J.A.W. made the statement on April Fools’ Day, with students who were telling each other April Fools’ jokes, and that he immediately qualified his statement as an “April Fools” joke. But he does not argue, nor do we reach, the issue of under what circumstances a joke or other statement that is explicitly not intended to be taken seriously can violate § 790.163(1).

Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331.

Andy Thomas, Public Defender, and Jasmine Russell, Assistant Public Defender, Tallahassee, for Appellant.

Ashley Moody, Attorney General, and David Welch, Assistant Attorney General, Tallahassee, for Appellee.