

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

J.R.,
Appellant-Respondent,

v.

State of Indiana,
Appellee-Petitioner.

October 6, 2023

Court of Appeals Case No.
23A-JV-1150

Appeal from the Wabash Circuit
Court

The Honorable Robert R.
McCallen, III, Judge

Trial Court Cause No.
85C01-2211-JD-21

Memorandum Decision by Judge Riley
Judges Mathias and Crone concur.

Riley, Judge.

STATEMENT OF THE CASE

[1] Appellant-Respondent, J.R., appeals the juvenile court’s Order adjudicating her to be delinquent for an act of Level 6 felony intimidation, Ind. Code § 35-45-2-1(a)(4), (b)(1)(A).

[2] We affirm.

ISSUE

[3] J.R. presents this court with one issue: Whether the State proved beyond a reasonable doubt that she committed what would be Level 6 felony intimidation if committed by an adult.

FACTS AND PROCEDURAL HISTORY

[4] In the fall of 2022, J.R. and L.F. were both juniors at North Manchester Junior/Senior High School (NMHS) in North Manchester, Indiana. Although the two students were not close friends, they had mutual acquaintances and got together at times to play games. Both students participated in theater activities at school.

[5] On October 11, 2022, J.R. went onto a social media site chat channel entitled “Vent” and made the following posts, which we present in their entirety, unaltered:

tw: murder, killing, blood, mania, ect :))

Maybe I should worried about ths fact imaging trying to strangle them¹ and then seeing them later and having them flinch is making me laugh maniacally

Imagine THEM being SCARED of ME!! I could jump a little and they'd flinch! It's so funny!! Imagine saying I'd kill them over and over and over and over and over again and they would just hear it and they they'd be scared of me!!

Maybe stabbing them and making them scared. Imagine bringing a knife to school just to kill them. Just to stab them in the heart and see how much blood I draw.

I should be worried haha, but I'm just smiling 😊

Oh, these thoughts aren't intrusive in the least! They are welcome! They are beautiful images! Happy pictures of SCREAMING!! They would SCREAM because of ME!!

Wouldn't that be hilarious? Why even be subtle? I want to kill [L.F.]. Maybe not fully kill but I'd LOVE to try!

I want to feel them fear more than they ever have and all by my hands hahaha, no they wouldn't get away with anything anymore! They would be gone!

Maybe they'd even get a restraining order and never come near me again! Oh how joyous I have no intention of actually attempting to fully kill them in case you're worried. Don't tell the school, I wouldn't do it publicly anyway. Still though, at least a [obscured]

¹ In her October 11, 2022, posts, J.R. referred to L.F. using third-person plural pronouns. J.R. confirmed at the fact-finding hearing that the references in her October 11, 2022, posts were to L.F. only.

(Exh. Vol. pp. 4-6).

- [6] Although L.F. was not a part of the chat where J.R. made these posts, L.F. quickly became aware of them when a friend showed her screenshots. L.F. was “terrified” by the posts. (Transcript p. 26). L.F. attempted to ignore what had happened, but L.F. was anxious about going to school and would become scared of impending injury whenever L.F. saw J.R. reaching into her backpack. On October 14, 2022, L.F., who was accompanied by her boyfriend, approached J.R. in the common area at school. L.F. told J.R. that she had seen the posts and asked J.R. why she had said those things. J.R. stood up, put her hands on the table, laughed, smiled, and said, “I’m going to kill you. Well, maybe not, but I really want to.” (Tr. p. 30). When L.F. asked why, J.R. explained that it was because L.F. unintentionally interfered in J.R.’s friendships with mutual acquaintances and made people feel bad “when good things happen to [L.F.] and they don’t happen to other people.” (Tr. p. 28).
- [7] At that point, L.F. walked away from J.R. After speaking to J.R., L.F. felt threatened, very scared, and “shaky.” (Tr. p. 28). L.F. took J.R.’s statement, “I’m going to kill you,” as a threat. (Tr. p. 27). That same day, L.F. reported the incident to the NMHS resource officer and showed the officer screenshots of J.R.’s online chat posts. After J.R. was advised of her *Miranda* rights and had had time to consult with her mother at school, J.R. spoke with the resource officer and admitted to having written the October 11, 2022, posts and to having told L.F. in the common area at school that she was going to kill her.

- [8] On November 15, 2022, the State filed a petition seeking to have J.R. adjudicated as a delinquent for having committed an act of Level 6 felony intimidation. On April 10, 2023, the juvenile court held a fact-finding hearing on the State's petition. L.F. testified consistently with the aforementioned facts. J.R. denied intending to place L.F. in fear when she communicated to L.F. that she was going to kill her. Instead, J.R. contended that she only wanted L.F. to leave her alone. That same day, the juvenile court issued its order adjudicating J.R. to be a delinquent as alleged in the State's petition.
- [9] On May 5, 2023, the juvenile court held J.R.'s dispositional hearing. The juvenile court ordered J.R. to complete six months of reporting probation, followed by six months of non-reporting probation.
- [10] J.R. now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

- [11] J.R. challenges the evidence supporting her adjudication. We have summarized our standard of review in such matters as follows:

When the State seeks to have a juvenile adjudicated delinquent for committing an act that would be a crime if committed by an adult, the State must prove every element of that crime beyond a reasonable doubt. Upon review, the reviewing court applies the same sufficiency standard used in criminal cases. When reviewing sufficiency of the evidence claims with respect to juvenile adjudications, the reviewing court neither reweighs the evidence nor judges the credibility of the witnesses. Rather, the reviewing court considers only the evidence most favorable to the judgment and the reasonable inferences drawn therefrom and

will affirm if the evidence and those inferences constitute substantial evidence of probative value to support the judgment.

Matter of K.Y., 175 N.E.3d 820, 824-25 (Ind. Ct. App. 2021) (internal citations omitted), *trans. denied*.

[12] The State alleged that J.R. was delinquent for having committed an act of Level 6 felony intimidation in relevant part as follows:

On or about the 14th day of October, 2022, . . . [J.R.] did communicate a threat, with the intent . . . that [L.F.] be placed in fear that the threat will be carried out and the threat was the type described in I.C. [§] 35-45-2-1(c)(1); and the threat was to commit forcible felony[.]

[13] (Appellant’s App. Vol. II, p. 36); I.C. § 35-45-2-1(a)(4), (b)(1)(A). For purposes of the intimidation statute, a ‘threat’ is defined in relevant part as “an expression, by words or action, of an intention to . . . unlawfully injure the person threatened or another person[.]” I.C. § 35-45-2-1(c)(1).

[14] J.R. acknowledges on appeal that her statement that she was going to kill L.F. constituted a ‘threat’ under the statutory definition, but she argues that the State failed to prove that she uttered that statement with the requisite intent. The trier of fact determines whether a statement is a threat. *B.B. v. State*, 141 N.E.3d 856, 860 (Ind. Ct. App. 2020). A juvenile’s intent in making a statement may be proven by circumstantial evidence alone, and knowledge and intent may be inferred from the facts and circumstances of each case. *Id.* Our supreme court has observed that, for purposes of the intimidation statute, whether a particular

statement constitutes a true threat depends on two necessary elements, namely “that the speaker intend his communications to put his targets in fear for their safety, and that the communications were likely to actually cause such fear in a reasonable person similarly situated to the target.” *Gates v. State*, 192 N.E.3d 222, 227 (Ind. Ct. App. 2022) (quoting *Brewington v. State*, 7 N.E.3d 946, 964 (Ind. 2014)). In assessing intent in this context, “[t]he intent that matters is not whether the speaker really means to carry out the threat, but only whether he intends it to place the victim in fear of bodily harm or death.” *K. Y.*, 175 N.E.3d at 825 (quoting *Brewington*, 7 N.E.3d at 963)).

[15] Here, J.R. was upset with L.F. for what J.R. perceived as L.F.’s meddling in J.R.’s relationships with others and L.F.’s attitude about her own good fortune. Based on those feelings, J.R. made posts in which she expressed her desire to strangle, stab, and ultimately kill L.F. so that L.F. would be scared of her and “flinch” when she saw J.R. (Exh. Vol. p. 4). J.R. explicitly stated in her posts that she hoped L.F. would become so scared of her that she would seek a protective order. J.R. expressed joy and laughter when hoping for these outcomes, and she stated that she would find L.F.’s fright “hilarious[.]” (Exh. Vol. p. 5). On October 14, 2022, when L.F. asked J.R. why she had made these posts, J.R. immediately answered, “I’m going to kill you. Well, maybe not, but I really want to.” (Tr. p. 30). In light of J.R.’s stated desire to scare L.F. as put forth in J.R.’s posts, the fact-finder could reasonably conclude that, on October 14, 2022, when J.R. told L.F. she was going to kill her, she did so with the intent to place L.F. in fear for her safety. We also conclude that an objectively

reasonable sixteen-year-old who had been the subject of such posts would likely be placed in fear for her safety by J.R.'s October 14, 2022, statement, which J.R. made in a manner echoing the tone of her online posts, in that she smiled and laughed while saying it.

[16] Nevertheless, J.R. argues that she did not act with the requisite intent on October 14, 2022, because she did not include L.F. in the online chat, she used some precatory language in her posts, and she stated in her posts that she did not intend to “fully kill” L.F. (Exh. Vol. pp. 5, 6). J.R. also argues that she could not have acted with the necessary intent because she immediately repudiated her October 14, 2022, statement that she was going to kill L.F. by saying, “Well, maybe not, but I really want to.” (Tr. p. 30). However, online posts are easily shared, and there was no evidence presented at the fact-finding hearing that J.R. was unaware that others could share screenshots of her posts. J.R.'s other arguments are unpersuasive because the question before us is whether J.R. intended to place L.F. in fear for her safety, not whether J.R. actually intended to follow through on her threats. *See Gates*, 192 N.E.3d at 227. J.R. testified at the fact-finding hearing that her reason for making the posts and her October 14, 2022, statement to L.F. was so that L.F. would leave her alone, something which would also be accomplished by scaring L.F. Ultimately, J.R.'s arguments seek a reweighing of the evidence, which is not

part of our review.² *See K. Y.*, 175 N.E.3d at 825. Accordingly, we do not disturb the juvenile court’s Order adjudicating J.R. to be delinquent.

CONCLUSION

[17] Based on the foregoing, we conclude that the State proved beyond a reasonable doubt that J.R. committed an act of Level 6 felony intimidation.

[18] Affirmed.

[19] Mathias, J. and Crone, J. concur

² J.R. also argues that her adjudication violates her First Amendment right to freedom of expression, relying on *Counterman v. Colorado*, 600 U.S. 66, 143 S.Ct. 2106, 216 L.Ed.2d 775 (2023). However, J.R. did not raise any First Amendment claims during her adjudication proceedings, and, therefore, she waived this claim. *See State v. Allen*, 187 N.E.3d 221, 228 (Ind. Ct. App. 2022) (“Arguments raised for the first time on appeal, even ones based upon constitutional claims, are waived for appeal.”), *trans. denied*.