NO. COA05-731

NORTH CAROLINA COURT OF APPEALS

Filed: 16 May 2006

IN THE MATTER OF J.H.

Cumberland County
No. 02-JB-772

Appeal by respondent from judgment entered 14 February 2005 by Judge Edward A. Pone in Cumberland County District Court. Heard in the Court of Appeals 10 April 2006.

Roy Cooper, Attorney General, by Jennifer M. Jones, Assistant Attorney General, for the State.

Lisa Skinner Lefler, for Respondent-Appellant.

MARTIN, Chief Judge.

J.H., respondent-appellant, was adjudicated delinquent of simple assault and communicating a threat by order entered 14 February 2005, *nunc pro tunc* to 9 February 2005. Both the adjudication and disposition hearings were held on 9 February 2005. On the same day, J.H. filed a written notice of appeal regarding his adjudication of communicating a threat. Although the notice of appeal document provided by the trial court to appellants does not specify the appeal is from the disposition order, a juvenile only has a right of appeal from a disposition order, *see* N.C. Gen. Stat. § 7B-2602 (2005), and therefore we accept J.H.'s written notice of

appeal as an appeal of the disposition order. For the reasons stated below, we affirm.

The juvenile, J.H., and his juvenile victim, C.F., had a tempestuous dating relationship, with frequent yelling and arguing. On 25 October 2004, J.H. and C.F. had an argument at school, and J.H. told her: "I'm going to cut your throat if you mess with any other guys." At the time of the statement, J.H. had no weapon in his possession and no immediate access to a weapon, and C.F. was not restrained from leaving his presence.

After J.H. made this statement, C.F. left the scene and continued her day at school. J.H. followed C.F. around and would not leave her alone. C.F. spoke to a friend about J.H.'s statement, who convinced her to tell the school principal about the situation. C.F. informed the principal approximately one hour after J.H. made the statement.

In the weeks following J.H.'s statement, C.F. and J.H. stopped dating, but continued to have some contact via letters and email. In several of these communications, C.F. professed her love for J.H. and her regret at the situation. In one letter she wrote: "I wish that they could just see what I see. You're not a bad person and you're not trying to hurt me."

At the delinquency hearing, C.F. testified regarding whether she believed J.H. when he said he would cut her throat. According to her testimony, C.F. initially believed J.H. when he told her he would cut her throat because "he swore on everything he would."

She later changed her mind, and did not believe the statement. Months later, however, she changed her mind again and did believe the statement.

After the hearing, the trial court adjudicated J.H. as delinquent on the charge of communicating a threat. J.H. appealed.

When reviewing the sufficiency of the evidence in a juvenile delinquency case, this Court must "determine whether there was substantial evidence to support the adjudication." *In re Heil*, 145 N.C. App. 24, 29, 550 S.E.2d 815, 819 (2001). We consider the evidence in the light most favorable to the State, and give it the benefit of all reasonable inferences. *Id.*

For the offense of communicating a threat, the State must prove beyond a reasonable doubt:

> (1) [The juvenile] willfully threatens to physically injure the person . . .;
> (2) The threat is communicated to the other person, orally, in writing, or by any other means;
> (3) The threat is made in a manner and under circumstances which would cause a reasonable person to believe that the threat is likely to be carried out; and
> (4) The person threatened believes that the threat will be carried out.

N.C. Gen. Stat. § 14-277.1 (2005). The conduct proscribed by N.C.G.S. § 14-277.1 does not require that the threat be carried out. *State v. Roberson*, 37 N.C. App. 714, 715, 247 S.E.2d 8, 9 (1978). Furthermore, a conditional threat is covered by the statute, and the accused does not have the right to impose conditions on the victim. *Id.* at 715-16, 247 S.E.2d at 9-10.

J.H. admits he orally made the threat to C.F., and therefore the first two prongs of N.C.G.S. § 14-277.1 are not in dispute. On appeal, J.H. argues a reasonable person would not have believed the threat, and that C.F. did not actually believe the threat.

The third prong of N.C.G.S. § 14-277.1 requires consideration of whether a "reasonable person" would believe the threat, and as such is an objective prong. The State provided evidence J.H. had previously acted in a "rage," which C.F. testified she had seen "a lot." Arguments between J.H. and C.F. would escalate and get "out of control." Their relationship was a "bad one" where J.H. "always yelled" at C.F. In the conversation during which J.H. told C.F. he would cut her throat if C.F. "messed with" other guys, J.H. made the statement specifically because he was "mad" and thought C.F. was "messing with other guys." After making the statement, J.H. then followed C.F. around the school. Viewing the evidence in the light most favorable to the State, there was substantial evidence a reasonable person would believe J.H. would likely carry out the threat, given his past incidents of rage, the escalation of their previous arguments, and his suspicion of C.F.

The fourth prong is a subjective prong, requiring the person who was threatened to believe the threat would be carried out. At the adjudication hearing, C.F. was asked whether she believed the threat:

> Q. What did he say?
>
> A. He said, I'm going to cut your throat if you mess with any other guys.
>
> Q. And at the time did you believe he would do that?

A. Yes.

Q. Why did you believe it at the time?

A. Because he said he would and he said he swore on everything he would.

After her conversation with J.H., and after J.H. continued to follow her around the school, C.F. was concerned enough to speak to a friend about the situation. Following that conversation, C.F. informed the school principal about J.H.'s statement.

J.H. points to evidence C.F. later changed her mind and did not believe that J.H. would cut her throat. But C.F. changed her mind weeks after J.H. made the statement. In any case, C.F. later changed her mind yet again, and did believe the threat from J.H. Pertinent here is that *at the time* J.H. made the statement, C.F. believed him, confided her concern in a friend, and informed the principal. Viewing the evidence in the light most favorable to the State, substantial evidence shows C.F. believed the threat would be carried out. Accordingly, the State provided substantial evidence on all four prongs of N.C.G.S. § 14-277.1.

Finally, J.H. contends the trial court erred by failing to use a standard of proof of beyond a reasonable doubt. No such contention is included in the assignments of error in the record, as required by Appellate Procedure Rule 10, and as such the argument is not permitted on appeal. N.C.R. App. P. 10(c). As for the merits of this contention, the trial court stated at the adjudication hearing, "The standard in this court is beyond a reasonable doubt," and the adjudication order itself states "the

court finds said allegation has been proven beyond a reasonable doubt." Consequently, this argument is without merit.

Affirmed.

Judges HUDSON and BRYANT concur.

Report per Rule 30(e).