Filed
Washington State
Court of Appeals
Division Two

April 24, 2018

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. ANTONIO JULIUS BRADLEY, Appellant.	No. 49845-6-II UNPUBLISHED OPINION

MELNICK, J. – Antonio Julius Bradley appeals his felony harassment conviction, arguing sufficient evidence does not support his conviction because the State failed to prove Bradley had the present and future ability to carry out his threats. We affirm.

FACTS[1]

Fife Police Officer Bryan Pitman stopped Bradley's vehicle for having a defective exhaust system. Bradley informed the officer that he did not have a driver's license. Pitman conducted a records check and discovered Bradley had a felony warrant for vehicular assault and that Bradley's driver's license was suspended.

Pitman arrested Bradley, handcuffed him, and placed him in the rear of Pitman's patrol vehicle. Bradley began swearing at Pitman and calling him names. Bradley's behavior escalated to where Bradley was threatening Pitman; at one point, telling Pitman "I won't hesitate, the next

[1] The facts derive from the trial court's findings of fact, which are unchallenged and are therefore verities on appeal. *State v. O'Neill*, 148 Wn.2d 564, 571, 62 P.3d 489 (2003).

time I see you I'm going to kill you, even if you're walking with your daughter or child, I'll kill them too." Clerk's Papers (CP) at 34. Bradley continued to threaten Pitman that he was going to kill him. As a result of the threats, Pitman was afraid for his life and the lives of his family members.

The State charged Bradley with two counts of felony harassment. Count 1 was based on Bradley's threats to kill and count 2 was based on the incident involving a criminal justice participant.

Following a bench trial, the trial court found that Pitman believed Bradley "had the future ability to carry out his threats." CP at 35 (FF 19). The trial court concluded that Bradley was guilty of both counts. Relevant to this appeal, the trial court concluded:

> [T]he defendant did unlawfully, feloniously, and without lawful authority, knowingly threaten Officer Pitman to cause bodily injury, immediately and in the future, and by words or conduct place the person threatened (Officer Pitman) in reasonable fear that the threat would be carried out, and that further, the threat was made to Officer Bryan Pitman, a criminal justice participant.

CP at 36 (CL 4).

Before sentencing, the State filed a motion to vacate the conviction on count 1 based on double jeopardy principles. The trial court granted the motion. Bradley appeals from his conviction.

ANALYSIS

Bradley contends the trial court erred in concluding Bradley was guilty of felony harassment of a criminal justice participate. He argues the State was required to prove he had the present and future ability to carry out his threats. We disagree.

A. STANDARD OF REVIEW

Following a bench trial, we review whether substantial evidence supports the findings of fact and, if so, whether the findings support the conclusions of law. *State v. Homan*, 181 Wn.2d 102, 105-06, 330 P.3d 182 (2014). As indicated above, the findings of fact are unchallenged and therefore verities in this appeal. *O'Neill*, 148 Wn.2d at 571. We review challenges to conclusions of law de novo. *Homan*, 181 Wn.2d at 106.

B. FELONY HARASSMENT

Under RCW 9A.46.020(1), a defendant is guilty of harassment if, without lawful authority, he or she "knowingly threatens" to "cause bodily injury immediately or in the future to the person threatened or to any other person" and "by words or conduct places the person threatened in reasonable fear that the threat will be carried out." The offense is elevated to a felony under RCW 9A.46.020(2)(b)(iii) if "the person harasses a criminal justice participant who is performing his or her official duties at the time the threat is made." Additionally, "[f]or the purposes of (b)(iii) . . . the fear from the threat must be a fear that a reasonable criminal justice participant would have under all the circumstances. Threatening words do not constitute harassment if it is apparent to the criminal justice participant that the person does not have the present and future ability to carry out the threats." RCW 9A.46.020(2)(b).

The parties agree that Bradley did not have the present ability to carry out his threats since he was handcuffed and in the back of Pitman's patrol vehicle. Bradley argues the State was required to prove he had both the present and future ability to carry out his threats to be guilty of felony harassment of a criminal justice participant.

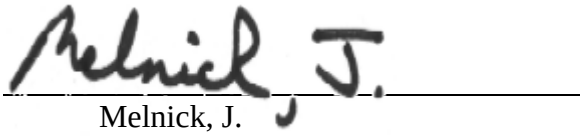
In *State v. Boyle*, 183 Wn. App. 1, 335 P.3d 954 (2014), the court addressed an argument nearly identical to Bradley's. In *Boyle*, the defendant was handcuffed when he told a police officer that someone would kill him and his family. *Boyle*, 183 Wn. App. at 5. Boyle argued that the jury should have been instructed that the State had to prove both a present and future ability to carry out the threat. *Boyle*, 183 Wn. App. at 12. The *Boyle* court determined that Boyle misread the statute: "To the contrary, as the trial court stated, '[T]his sentence is phrased as an exception, not as an element.'" *Boyle*, 183 Wn. App. at 11. Therefore, the court concluded that statements to a criminal justice participant constitute felony harassment if it is apparent to the participant that the speaker had either the present or future ability to carry out the threat. *Boyle*, 183 Wn. App. at 11. The court noted that this interpretation was consistent with the definition of "harassment" under RCW 9A.46.020(1), which includes threats to cause bodily injury "immediately or in the future." *Boyle*, 183 Wn. App. at 11.

We agree with the *Boyle* court that statements to a criminal justice participant constitute felony harassment if it is apparent to the participant that the speaker had either the present or future ability to carry out the threat. Because it is undisputed that Bradley had the future ability to carry out his threats and because the State was only required to prove he had the future ability in this case, the trial court's conclusion that Bradley was guilty of felony harassment of a criminal justice participant as charged in count 2 flowed from the findings of fact.[2]

[2] Based on our above holding, we need not reach the State's argument that if we reverse the conviction on count 2 than we should reinstate the conviction on count 1.

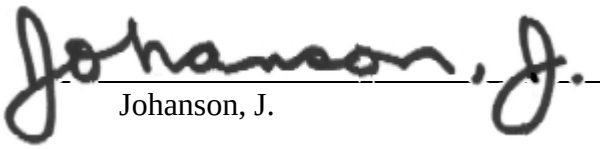
We affirm.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.



Melnick, J.

We concur:



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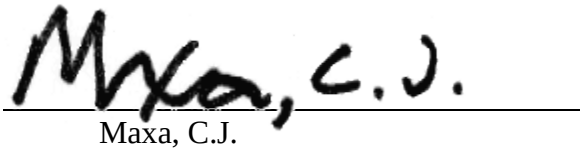

Maxa, C.J.