

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON,

Respondent,

v.

M.W.,

Appellant.

No. 41643-3-II

UNPUBLISHED OPINION

Armstrong, J. — M.W.¹ appeals his juvenile court adjudication and disposition for gross misdemeanor harassment. He argues that the State failed to present sufficient evidence that the principal of M.W.’s school reasonably feared that M.W. would carry out a threat to shoot people in the school and that his threat did not constitute a “true threat.” We affirm.²

FACTS

On May 7, 2010, M.W. sent the following text message to A.C., a fellow student in whom he was interested:

I DESERVE YOU and your friends shouldn’t JUDGE ME, and say I’m weird. I thought you hated people who judge or do you just hate me? They’re worse than me. Probably a bunch of smokers and Mariah needs to shut the fuck up, and stop saying I’m your stalker, and you agree with her. Thanks. I shouldn’t even try. I should just walk into the school with an M16, and end everyone just give up just be like, fuck you all, I’m tired of you being stupid.

Clerk’s Papers at 13; Report of Proceedings at 23.

¹ Under RAP 3.4, this court changes the title of the case to the juvenile’s initials to protect the juvenile’s interests in privacy.

² A commissioner of this court considered M.W.’s appeal as a motion on the merits under RAP 18.14 and referred it to a panel of judges.

M.W. sent A.C. other text messages referring to killing others, which she later wrote out. She told a friend about the messages and the friend's mother notified the school that she and M.W. attended. At their request, she showed the text messages to the school's assistant principal, Corrina Durocher, and the principal, David Myers. Durocher transcribed the first message and A.C. transcribed the later messages. After confronting M.W. and searching him, but finding no weapon, Myers expelled M.W.

The State charged M.W. with two counts of gross misdemeanor harassment. Count 1 alleged that M.W. threatened to cause bodily harm to A.C. Count 2 alleged that M.W. threatened to cause bodily harm to Myers. At trial, A.C. testified that "I never really took [M.W.'s messages] seriously like to be honest. Like it was just him kind of venting but with very crude wording." RP at 26. Myers testified that he took M.W.'s messages seriously because he had had previous incidents with M.W. in which he drew pictures of people shooting people and people stabbing people. He also testified to an incident in which M.W. hid a pair of scissors up his sleeve and said he planned to stab another student. And Myers had heard of threats M.W. made to kill another student's family and to poison the water of one of A.C.'s friend's family. He testified that he took the threats personally because "[a]s far as being at the school if this was to happen, there is concern for all of us." RP at 49.

The juvenile court found M.W. not guilty as to Count 1 but guilty as to Count 2. The court entered the following pertinent findings of fact:

1.10 That in his role as principal, David Myers is on-site at the school nearly every day for the entire duration of the school day.

1.11 That the text message from [M.W.] threatening to "end everyone" with an M-16 did not differentiate between students and faculty.

1.12 That [M.W.] had been involved in prior concerning behaviors at

Yelm Middle School, including threatening to stab another student with a pair of scissors.

1.13 That due to the nature of the threat, and due to prior concerns with [M.W.,] Principal Myers took the threat seriously and believed that it could be carried out immediately or in the future.

CP at 35.

ANALYSIS

Evidence is sufficient to support a conviction if, viewed in the light most favorable to the State, it permits any rational trier of fact to find the essential elements of the crime beyond a reasonable doubt. *State v. Montgomery*, 163 Wn.2d 577, 586, 183 P.3d 267 (2008). A claim of insufficiency admits the truth of the State's evidence and all reasonable inferences that can be drawn therefrom. *State v. Turner*, 103 Wn. App. 515, 520, 13 P.3d 234 (2000). We consider circumstantial evidence as reliable as direct evidence. *Turner*, 103 Wn. App. at 520. And we do not review credibility issues; as such determinations are the sole prerogative of the trier of fact. *State v. Thomas*, 150 Wn.2d 821, 874, 83 P.3d 970 (2004).

In order to convict a defendant of harassment based on a threat to inflict bodily harm, the State must prove beyond a reasonable doubt not just that the defendant knowingly threatened to inflict bodily harm, but also that the victim reasonably feared that the threat made is the one that the defendant would carry out. *State v. C.G.*, 150 Wn.2d 604, 610, 80 P.3d 594 (2003). Moreover, because of First Amendment implications, a conviction for harassment based on a threat to inflict bodily harm requires that the State prove also that the threat made was a "true threat." *State v. Kilburn*, 151 Wn.2d 36, 54, 84 P.3d 1215 (2004). A "true threat" is a statement made in a context or under such circumstances wherein a reasonable person would foresee that

the statement would be interpreted as a serious expression to inflict bodily harm or to take a life. *Kilburn*, 151 Wn.2d at 43. We must conduct an independent review of the constitutionally critical facts in the record involved in the legal determination of whether the defendant made a “true threat.” *Kilburn*, 151 Wn.2d at 54.

The State presented sufficient evidence as to both requirements. Myers testified that he took seriously M.W.’s threat to “end everyone” at the school with an M-16 and that he included himself among those at risk. He took the threat seriously based, in part, on M.W.’s previous behaviors. And M.W.’s message constituted a “true threat” because a reasonable person, in M.W.’s circumstances, would have foreseen that Myers would take his threat as a serious expression of his intent to shoot persons at the school.³ Accordingly, we affirm M.W.’s adjudication for harassment.

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.

Armstrong, J.

We concur:

Penoyar, C.J.

³ M.W. and his parents submitted a Statement of Additional Grounds, under RAP 10.10, containing documentation of M.W.’s diagnosis for Asperger’s Disorder and contending that because of his condition, his text messages were not true threats to cause bodily injury. But because none of this evidence was submitted at trial, we cannot consider it on appeal.

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Worswick, A.C.J.