

FILED
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In the Office of the Clerk of Court
WA State Court of Appeals, Division III

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION THREE

STATE OF WASHINGTON,)	No. 29487-1-III
Respondent,)	
v.)	
EDGAR ALONSO ARROYOS,)	UNPUBLISHED OPINION
Appellant.)	
)	

Korsmo, C.J. • Edgar Alonso Arroyos challenges the sufficiency of the evidence to support his conviction for felony harassment. The evidence allowed the trier of fact to conclude that he threatened to kill a police officer. The conviction is affirmed.

FACTS

This appeal arises from an arrest on August 7, 2010. Talking to Mr. Arroyos in the course of a graffiti investigation, Officer Andrew Corral of the Pasco Police Department (PPD) observed that Mr. Arroyos showed signs of alcohol consumption. Officer Corral arrested Mr. Arroyos, then 19 years old, for being a minor in consumption of alcohol. During a search incident to the arrest, Officer Corral found a photograph that

depicted Mr. Arroyos and several other members “throwing” a gang sign associated with the Florencia gang. Mr. Arroyos stated that the other people in the picture were his “family” and that he associated with Florencia because it gets him some respect.

While being booked at jail, Mr. Arroyos complained that the PPD was locking up all of Florencia. He began discussing a local shooting incident that had recently taken place at Chiawana Park. In response to these comments, Officer Corral advised Mr. Arroyos that 6 or 7 people associated with Florencia were locked up for that shooting. Officer Corral also stated that it was ridiculous that a shooting would occur in the middle of a heavily populated park. Mr. Arroyos replied, “That’s how Florencia does it,” and his facial expression indicated that he took pride in the incident. Report of Proceedings (Oct. 13, 2010) (RP) at 22.

At that point, Mr. Arroyos became verbally agitated and yelled, “fuck a buster.” *Id.* Officer Corral understood “buster” to be a derogatory name for police officers. Officer Corral acknowledged that at that point he was very frustrated with the whole situation and yelled back, “fuck Florencia.” *Id.*

After this exchange, the two men walked to the booking area where Officer Corral told Mr. Arroyos that he had been cooperative initially, and that if he cooperated again the booking could be completed without further incident. In the course of the booking process, Mr. Arroyos again became highly verbal. He stated that Officer Corral would see him on the streets again. He then said, “The next time I get arrested, who knows. It

might be for shooting or stabbing somebody.” *Id.* at 23. Mr. Arroyos then asked for Officer Corral’s name and said, “Okay. Okay, I’ll see you on the streets again, and you’ll know its Florencia.” *Id.* Officer Corral did not offer any response to this other than “okay.” *Id.* at 24. As the booking continued, another officer had to secure Mr. Arroyos in a holding room because he would not sit down, he tried to use the phone without permission, and he was staring at Officer Corral.

Officer Corral continued to be bothered by the comments after booking. The officer was aware of recent intelligence reports that older Florencia members were encouraging younger gang members to shoot police officers. He was also aware that the Florencia has access to firearms and that recently a juvenile member of Florencia had been arrested for shooting someone and pointing a gun at a police officer. After discussing the situation with his supervisor, Officer Corral returned to the jail and booked Mr. Arroyos for felony harassment. This arrest occurred between 30 to 45 minutes after the statements were made.

Mr. Arroyos was charged with one count of felony harassment. The defense and prosecution stipulated that Mr. Arroyos’ oral and written statements on August 7, 2010, were voluntary and not made pursuant to a custodial interrogation. Mr. Arroyos waived a jury, and he did not testify at trial. Officer Corral testified at trial that he believed that Mr. Arroyos had threatened to kill him, that Mr. Arroyos could easily try to carry out his threat, and that if Mr. Arroyos saw Officer Corral on the streets again Officer Corral’s

safety would be in jeopardy, especially if he was off-duty.

At the conclusion of trial, the court found that, after considering all the circumstances of the incident and the context in which the statements were made, Mr. Arroyos' statements were threats that placed Officer Corral in reasonable fear that the threats would be carried out. The court further found that Mr. Arroyos should have reasonably foreseen that his threats would be taken seriously, and that the threat was a threat to kill because Mr. Arroyos specifically indicated that he would use a knife or gun, both of which are deadly weapons, and it can reasonably be inferred that the type of harm threatened was a threat to kill. The court found Mr. Arroyos was guilty of harassment.

Mr. Arroyos timely appealed to this court.¹

ANALYSIS

The sole issue presented is whether Mr. Arroyos threatened to kill Officer Corral. Mr. Arroyos contends that his statements were not a true threat and that Officer Corral was not placed in reasonable fear of the threat being carried out. Although the indirect nature of the threat as well as Mr. Arroyos' alcohol consumption makes this a close call, we believe the evidence supports the trial judge's determination.

This court reviews a trial court's decision following a bench trial to determine

¹ Our Commissioner granted the State's motion on the merits to affirm, but a panel of this court granted Mr. Arroyos' motion to modify. This case was then heard by a panel without argument.

whether substantial evidence supports any challenged findings and whether the findings support the conclusions of law. *State v. Hovig*, 149 Wn. App. 1, 8, 202 P.3d 318 (2009). The reviewing court does not weigh evidence or sift through competing testimony. Instead, the question presented is whether there is sufficient evidence to support the determination that each element of the crime was proved beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979); *State v. Green*, 94 Wn.2d 216, 221-22, 616 P.2d 628 (1980). The reviewing court will consider the evidence in a light most favorable to the prosecution. *Green*, 94 Wn.2d at 221.

Reviewing courts also must defer to the trier of fact “on issues of conflicting testimony, credibility of witnesses, and the persuasiveness of the evidence.” *State v. Thomas*, 150 Wn.2d 821, 874-75, 83 P.3d 970 (2004). “Credibility determinations are for the trier of fact and are not subject to review.” *Id.* at 874.

As charged here, felony harassment requires proof that the offender, without lawful authority, threatened to kill another and by his words or conduct placed the person threatened in reasonable fear that the threat would be carried out. RCW 9A.46.020(1)(a)(i), (2)(b)(ii). The harassment statute is construed in light of the First Amendment to reach only true threats. *State v. Kilburn*, 151 Wn.2d 36, 43, 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 of intention to inflict bodily harm upon or to take the life of [another person].” *State v. Williams*, 144 Wn.2d 197, 207-08, 26 P.3d 890 (2001) (quoting *State v. Knowles*, 91 Wn. App. 367, 373, 957 P.2d 797 (1998)). Comments about harming people that are mere “puffery” or made in jest are not true threats. *Kilburn*, 151 Wn.2d at 43, 46. Thus, it is the context that makes a threat “true.” The test is an objective one, based on the speaker. *State v. Stephenson*, 89 Wn. App. 794, 801, 950 P.2d 38 (1998). The speaker does not have to actually intend to carry out the threat—it is enough that a reasonable speaker would foresee that the threat would be considered serious. *Kilburn*, 151 Wn.2d at 46. A person can indirectly threaten to kill another. *Id.* at 48.

Mr. Arroyos initially argues that the State failed to establish that his statements were a true threat. He alleges that his statements were mere hyperbole or trash talk. Given the context, we believe a reasonable speaker in Mr. Arroyos’ position would foresee that his statements would be interpreted as a serious threat.

Mr. Arroyos made multiple references to the Florencia gang during the arrest process. He told Officer Corral that Florencia was his family, his association with Florencia gained him respect, and he expressed apparent pride over Florencia’s alleged involvement in a recent shooting. The discussion regarding the shooting became confrontational, with both Mr. Arroyos and Officer Corral directing profanity at each other. After both men calmed down and Officer Corral continued the booking process, Mr. Arroyos again became agitated and he told the officer that he would see him on the

streets again, that the next time he was arrested it might be for shooting or stabbing someone, and then requested Officer Corral's name. Mr. Arroyos then stated, "You'll see me on the streets again . . . and you'll know it's Florencia." RP at 22. Following these statements, Mr. Arroyos continued to stare at Officer Corral until another officer secured him in a holding room.

It is true that Mr. Arroyos had been drinking, the statements followed a heated exchange during which the two men traded profanities, and that Mr. Arroyos did not explicitly tell Officer Corral that he was going to kill him. The threats were vague: that Officer Corral would see Mr. Arroyos on the streets again, that the next time Mr. Arroyos was arrested it might be for shooting or stabbing somebody, and that Officer Corral would "know that it's Florencia." RP at 22. However, a person can indirectly threaten to kill another. *Kilburn*, 151 Wn.2d at 48.

The record fairly suggests that Mr. Arroyos was sufficiently in control of his faculties to respond to Officer Corral's comments and perceive the officer's use of profanity directed towards Florencia. The threatening comments were not immediately provoked by the trash-talking exchange between the two men. Instead, after they exchanged profanities, both briefly calmed down and continued with the booking process before Mr. Arroyos again became agitated and made the threatening statements. There also was no pre-existing relationship between the two men such that Mr. Arroyos would have reasonably expected that his statements would not be taken seriously.

While a different conclusion was possible, based on the circumstances, the trier of fact concluded that the evidence was sufficient to show a true threat. This court defers to the trier of fact on issues of witness credibility and the persuasiveness of the evidence. *Thomas*, 150 Wn.2d at 874-75. When the evidence is viewed in a light most favorable to the prosecution, there is sufficient evidence in the record from which a trier of fact could find that Mr. Arroyos should have reasonably foreseen that Officer Corral would interpret his statements as an indirect threat to kill.

Mr. Arroyos maintains that his comment that he might be arrested for “shooting or stabbing somebody” could not reasonably indicate a threat to *kill* Officer Corral because not all shootings and stabbings result in death. RP at 22. His argument is unpersuasive.

During booking, Mr. Arroyos and Officer Corral discussed a park shooting which allegedly involved Florencia members, and Mr. Arroyos appeared to be proud of Florencia’s alleged participation in the incident. Mr. Arroyos complained that the PPD was locking up members of Florencia and became angry when Officer Corral made negative comments about Florencia. At trial, Officer Corral testified that he was aware that Florencia’s members were encouraging younger members to shoot police officers and that Florencia has access to guns. Officer Corral also testified that he believed Mr. Arroyos had threatened to kill him, and that his safety would be in jeopardy if he ran into Mr. Arroyos again on the street.

The trial court found that given the circumstances in which the statement was

made, following a discussion of gang membership and a recent gang-related shooting, and the specific reference to use of a knife or gun, both of which are deadly weapons, it could reasonably be inferred that the type of harm threatened was a threat to kill. The decision in *State v. C.G.*, 150 Wn.2d 604, 80 P.3d 594 (2003) supports this conclusion. The court noted there that “the nature of a threat depends on all the facts and circumstances, and it is not proper to limit the inquiry to a literal translation of the words spoken.” *Id.* at 611. Viewing all inferences in favor of the State, a rational trier of fact could find that the communication constituted a threat to kill, not just a threat to injure.

To establish felony harassment, the State also had to prove beyond a reasonable doubt that the threat placed Officer Corral in reasonable fear of it being carried out. Mr. Arroyos contends that the State did not meet its burden because both men were simply “trash talking” and the alleged threat could not have been taken seriously by the officer, given the context of the statements.

Officer Corral testified that he believed the statements constituted a threat to kill, he was afraid that Mr. Arroyos would carry out his threat• especially if Mr. Arroyos saw him when he was off-duty, and he was concerned enough that he felt it necessary to discuss the incident with his supervisor. Officer Corral also testified that this threat felt different than those normally given by an intoxicated person to an officer following a bar fight, stating, “In those type of things I don’t feel threatened. It’s a big difference when this person is a documented gang member. They’re asking for my name. They’re making

specific comments such as shooting or stabbing. There is a history with the gang That's the difference." RP at 39. This testimony is ample evidence of subjective fear.

The State must also establish that Officer Corral's fear was reasonable. *State v. Alvarez*, 74 Wn. App. 250, 260-61, 872 P.2d 1123 (1994), *aff'd*, 128 Wn.2d 1, 904 P.2d 754 (1995). This court considers whether the fear was reasonable in the context in which the statements were made.

Here, Officer Corral was familiar with the Florencia gang. He had personally witnessed the gang's activities and he was aware of intelligence reports of several threats made by Florencia toward law enforcement officers, as well as reports that the senior gang members were encouraging younger members to shoot police officers. He was also aware that the Florencia members had access to firearms. Mr. Arroyos not only claimed membership in Florencia, but also appeared to display pride while discussing past violent acts allegedly committed by Florencia members.

It is true that Mr. Arroyos had been drinking and had no immediate means to carry out the threat. However, he was threatening Officer Corral with future harm or death, telling the officer that he would see him on the streets. *See* RCW 9A.46.020(1)(a)(i) (including both threats of immediate harm as well as future harm in the definition of harassment). Mr. Arroyos complained about the PPD's treatment of Florencia and he was angry that Officer Corral made a derogatory statement about Florencia. Under these circumstances, it was reasonable for the officer to fear that Mr. Arroyos would vindicate

these perceived wrongs to himself and to Florencia by carrying out his threat in the future.

Viewed in the light most favorable to the prosecution, the State presented sufficient evidence that the statements constituted a true threat and that Officer Corral reasonably feared that Mr. Arroyos would carry out the threat to kill him. The trial court did not err in convicting Mr. Arroyos of felony harassment.

Affirmed.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.

Korsmo, C.J.

WE CONCUR:

Sweeney, J.

Brown, J.