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

STATE OF WASHINGTON, Respondent, v. JOEY T. AYALA, Appellant.	No. 29865-5-III UNPUBLISHED OPINION

Brown, J. • The juvenile court adjudicated Joseph T. Ayala guilty of disorderly conduct and fourth degree assault. He appeals, mainly contending the evidence is insufficient to support the adjudication on either count. We disagree, and affirm.

FACTS

On the evening of October 31, 2010, Mr. Ayala and his friends Joseph Tretheway and Nicholas Nunez, all juveniles, were trick-or-treating. As the group approached the home of a friend, they noticed Eduardo Torres and Pedro Toscano with two juvenile female companions. It appeared to Mr. Tretheway that Mr. Torres and Mr. Toscano were throwing gang signs. Mr. Tretheway and Mr. Nunez recognized Mr. Torres and Mr.

Toscano from a prior incident in which Mr. Ayala had been stabbed. According to Mr. Torres and his female companion, Mr. Ayala and his friends were "talking smack" and "saying stuff." Report of Proceedings (RP) at 77, 45. Mr. Ayala told the other group of juveniles to "get outta here" and "you don't need to be here." RP at 123. Mr. Ayala and his friends then chased the other four juveniles out of the neighborhood. The group of four ran into a nearby home and the residents called the police.

Officer James Vaught and Corporal Gordon Thomasson responded to the call and the juveniles explained what had happened. Officer Vaught offered to give them a ride home. They declined his offer of a ride, and decided to walk home through a nearby park. Officer Vaught offered to meet them on the other side of the park and then follow them home. As Officer Vaught approached the other side of the park, followed by Corporal Thomasson, he saw the group of four juveniles being chased by three other juveniles, later identified as Mr. Ayala, Mr. Tretheway, and Mr. Nunez. In the chase, Mr. Nunez overtook Mr. Torres and pushed him. Mr. Torres and his female companion fell to the ground. Corporal Thomasson stopped, drew his weapon, and ordered everyone to the ground. After interviewing all seven juveniles, Officer Vaught and Corporal Thomasson arrested Mr. Ayala and his friends, Mr. Tretheway, and Mr. Nunez.

The State's amended charges were disorderly conduct and fourth degree assault.

At an adjudicatory hearing, the juvenile court orally ruled Mr. Ayala committed

both counts, reasoning:

> You saw others in -- in an area you didn't want them to be and you deliberately chased them, trying to exclude them from a place they had a lawful right to be . . . . That in and of itself is threatening behavior.

RP at 151. It also reasoned:

> And then as it relates to the assault in the fourth degree . . . Mr. Nunez assaulted whichever one he -- one or ones that he pushed.
>
> You're responsible for that because you aided and abetted him in doing so by being part of a group that might out number . . . or . . . create the impression of having greater physical strength. You aided and abetted in that and you were acting in concert with this intention that they be excluded from this -- that neighborhood.

RP at 151-52.

Mr. Ayala appealed. Later, the juvenile court entered findings of fact:

1. On October 31, 2010, Respondent Joey Ayala and two accomplices deliberately chased the victims in this matter in a neighborhood in Pasco, Franklin County, Washington, in an effort to exclude them from the neighborhood. The victims had a lawful right to be in that neighborhood.
2. The manner in which Respondent and his accomplices chased the victims intentionally created a risk of public inconvenience, annoyance, or alarm.
3. Respondent's behavior towards the victims was threatening.
4. Co-Respondent Nicolas Nunez pushed one of the victims, causing two victims to fall to the ground. The most reasonable and logical inference was that this push was an unwanted touching, and therefore it was an assault. Respondent aided and abetted Co-Respondent Nunez in that assault.

Clerk's Papers (CP) at 7-8. Based on the foregoing findings of fact, the court made the following conclusions of law:

1. Respondent intentionally created a risk of public inconvenience, annoyance, or alarm.
2. Respondent's behavior toward the victims was threatening in concert with a co-respondent who physically assaulted one of the victims.
3. Respondent is guilty of Assault in the Fourth Degree and Disorderly Conduct.

CP at 8.

ANALYSIS

The issue is whether the evidence sufficiently supports Mr. Ayala's disorderly conduct and fourth degree assault adjudications. He contends the State failed to prove his behavior was threatening or created any kind of public disturbance or that he knew his codefendant would assault one of the victims.

Typically, we review bench-trial evidence sufficiency challenges by first determining whether substantial evidence supports the trial court's findings of fact and, if so, whether those findings support the court's conclusions of law. *State v. Madarash*, 116 Wn. App. 500, 509, 66 P.3d 682 (2003); *Landmark Dev., Inc. v. City of Roy*, 138 Wn.2d 561, 573, 980 P.2d 1234 (1999).

Juvenile Court Rule 7.11(d) partly states:

> The court shall enter written findings and conclusions in a case that is appealed. The findings shall state the ultimate facts as to each element of the crime and the evidence upon which the court relied in reaching its decision.

Substantial evidence "is a sufficient quantity of evidence to persuade a fair-

minded, rational person of the truth of the allegation." *State v. Echeverria*, 85 Wn. App. 777, 783, 934 P.2d 1214 (1997) (citing *State v. Halstien*, 122 Wn.2d 109, 128-29, 857 P.2d 270 (1993)). Under this framework, "[e]vidence is sufficient to support an adjudication of guilt in a juvenile proceeding if any rational trier of fact, viewing the evidence in a light most favorable to the State, could have found the essential elements of the crime beyond a reasonable doubt." *Echeverria*, 85 Wn. App. at 782 (citing, inter alia, *State v. Green*, 94 Wn.2d 216, 221-22, 616 P.2d 628 (1980)).

First, in order to adjudicate Mr. Ayala guilty of disorderly conduct, the court had to enter findings that he intentionally caused, or recklessly created, a risk of public inconvenience, annoyance, or alarm by engaging in a fight or in violent, tumultuous, or threatening behavior. JuCR 7.11(d); Pasco Municipal Ordinance 9.06.010. The trial court entered findings specifically stating Mr. Ayala chased the victims and his behavior was threatening which thereby intentionally caused a risk of public inconvenience, annoyance, or alarm. Accordingly, it satisfied the findings requirement of JuCR 7.11(d).

The court had to state the evidence upon which it relied in making those findings. JuCR 7.11(d). Mr. Ayala argues the court could not rely on certain evidence, namely protected speech activities under the First Amendment, to find threatening behavior. The First Amendment and the free speech protections of article I, section 5 of the Washington Constitution extend to local ordinances. *State v. Immelt*, 173 Wn.2d 1, 6, 267 P.3d 305

(2011). A statute or ordinance criminalizing constitutionally protected free speech activities is unconstitutionally overbroad under the First Amendment. *City of Bellevue v. Lorang*, 140 Wn.2d 19, 26, 992 P.2d 496 (2000) (quoting *City of Seattle v. Huff*, 111 Wn.2d 923, 925, 767 P.2d 572 (1989)). However, Mr. Ayala has not challenged Pasco's ordinance as unconstitutionally overbroad. Instead, he suggests without specificity that the trial court may have based its decision on protected expression.

However, the court's written findings specifically show the court considered the threatening behavior to be the act of chasing the victims in an effort to exclude them from the neighborhood. Without supportive argument, Mr. Ayala argues the chasing conduct itself "may be construed as protected speech." Br. of Appellant at 6. The State responds the chasing conduct "falls squarely under true threats not protected by the First Amendment." Br. of Resp't at 6 (citing *Virginia v. Black*, 538 U.S. 343, 123 S. Ct. 1536 (2003)). The State explained that "[i]n *Black*, the Supreme Court described a true threat as one by which 'the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals.'" Br. of Resp't at 6 (citing *Black*, 538 U.S. at 359). We agree with the State.

Mr. Ayala next speculates the court may have relied on the "talking smack" evidence for its threatening-behavior finding. Br. of Appellant at 6. But no reason exists to infer the trial court relied on such evidence, rather than focusing solely on the chase.

The findings specifically mention the chase. The trial court was not required to list all of the evidence it did not rely upon. And because we do look at the entire record, including the oral ruling, we conclude the trial court did rely on the chase as the threatening behavior.

Given all, we reject Mr. Ayala's unsupported argument that the trial court relied on constitutionally protected speech or conduct evidence to reach its decision. The evidence, when viewed in a light most favorable to the State, is sufficient quantity to persuade a fair-minded, rational person, beyond a reasonable doubt, that Mr. Ayala intentionally caused, or recklessly created, a risk of public inconvenience, annoyance, or alarm by engaging in threatening behavior.

Second, in order to adjudicate Mr. Ayala guilty of fourth degree assault as an accomplice, the court had to enter findings that he aided or encouraged another person in an assault, knowing his aid or encouragement would promote or facilitate the assault. JuCR 7.11(d); RCW 9A.08.020(1)-(3); RCW 9A.36.041. The record clearly shows encouragement.

The trial court's findings show Mr. Ayala chased the victims with two codefendants with one codefendant assaulting one victim and Mr. Ayala "aided and abetted" in the assault. CP at 8. This sufficiently satisfies the findings requirement of JuCR 7.11(d). By adding the word "abetted," the trial court addressed the element of

knowledge. "Although the word 'aid' does not imply guilty knowledge or felonious intent, the word 'abet' includes *knowledge* of the wrongful purpose of the perpetrator, as well as counsel and encouragement in the crime." *State v. Hinkley*, 52 Wn.2d 415, 418, 325 P.2d 889 (1958) (emphasis in original).

The court had to state the evidence upon which it relied in making those findings. JuCR 7.11(d). Mr. Ayala again appears to argue the court needed to identify specific pieces of evidence it relied upon in finding the elements. But the trial court's findings of fact and conclusions of law explained it had "reviewed the evidence," and "heard the testimony of witnesses." CP at 7. The findings specifically recite Mr. Ayala and his two codefendants chased the victims and one codefendant pushed one of the victims. The reference to witness testimony sufficiently satisfies JuCR 7.11(d). Moreover, the unlawful touching is undisputed. So the question becomes whether any rational trier of fact, viewing the evidence in a light most favorable to the State, could have found he had such knowledge.

> A person knows or acts knowingly or with knowledge when:
>
> (i) he or she is aware of a fact, facts, or circumstances or result described by a statute defining an offense; or
> (ii) he or she has information which would lead a reasonable person in the same situation to believe that facts exist which facts are described by a statute defining an offense.

RCW 9A.08.010(b)(i)(ii).

Here, the witness testimony showed Mr. Ayala and his codefendants chased the victims in an effort to exclude them from the neighborhood. When viewed in a light most favorable to the State, such evidence could have permitted a rational trier of fact to find that Mr. Ayala had information which would lead a reasonable person in the same situation to believe his involvement in the threatening chase would facilitate and encourage the pushing of one of the victims by one of his codefendants.

Given all, we conclude the evidence sufficiently supports the elements for fourth degree assault as an accomplice. The trial court's findings, by reference to witness testimony, are sufficient to satisfy the evidence requirement of JuCR 7.11(d). Thus, we reject Mr. Ayala's alternative remedy of remand for entry of more specific findings.

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.

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Brown, J.

WE CONCUR:

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Siddoway, A.C.J. Kulik, J.