

**COURT OF APPEALS
DECISION
DATED AND FILED**

April 3, 2001

Cornelia G. Clark
Clerk, Court of Appeals
of Wisconsin

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

No. 00-3095

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

**IN THE INTEREST OF JACOB J.B.,
A PERSON UNDER THE AGE OF 17:**

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

v.

JACOB J.B.,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Buffalo County:
ROBERT W. WING, Judge. *Affirmed.*

¶1 CANE, C.J.¹ Jacob J.B. appeals from a juvenile dispositional order finding, after a non-jury trial, that he intentionally conveyed a bomb threat to the Alma School System, contrary to WIS. STAT. § 947.015. The sole issue on appeal is whether the evidence is sufficient to support the finding that Jacob intentionally conveyed a bomb threat when he sent an e-mail message containing the single word “bomb” to the principal of the Alma High School. This court affirms the dispositional order.

¶2 The underlying facts are undisputed. While in his school library at Cochrane Fountain City High School, Jacob used the school computer to send three messages to the Alma High School. The first read, “barber shop.” The second read, “you fat barber. Go get your hair cut by rich in cochrane.” The third read, “bomb.” It is this third message that is the basis for the juvenile delinquency charge.

¶3 While sending these first two messages, Jacob would show them to Eli, another student working at a computer next to Jacob. When Jacob asked Eli if he should send a bomb threat, Eli left the library without seeing whether Jacob sent the e-mail. Jacob admitted to sending the e-mail containing the word bomb to the Alma School. When the principal at the Alma High School received the message ten minutes before the school was about to close, he contacted the school superintendent. Although the students were released for the day at the normal time, all after-school activities were canceled. With the help of janitors and teachers, the police searched the school building. No bomb was found.

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(e). All references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.

¶4 The crime of “bomb scare” is set forth in WIS. STAT. § 947.015² and contains three elements that the State had to prove. First, Jacob intentionally conveyed a threat or false information concerning an attempt or alleged attempt being made to destroy any property by means of explosives. Second, the threat or information was false. Third, Jacob knew that the threat or information was false. Jacob concedes the evidence supports the last two elements, but disputes whether the evidence was sufficient to show that he intended to convey a threat or information concerning an attempt to destroy property by means of explosives.

¶5 To ensure that individuals are not punished for constitutionally protected speech, courts have required that the communications must constitute a true threat. In *State v. Perkins*, 2000 WI App. 137, ¶12, 237 Wis. 2d 313, 614 N.W.2d 25, we held that the term “threat” means speech or conduct that objectively causes reasonable fear that the threatened purpose will be carried out. It does not mean idle or careless talk, jest or exaggerated political comment. In determining whether a reasonable person would interpret the communication as a serious expression of intent to inflict bodily harm, all relevant contextual circumstances must be considered. This would include the nature of the threat, the events surrounding the making of the threat, and the reaction of those to whom the threat is communicated. *Id.*

¶6 It is up to the trier of fact to determine under all the circumstances surrounding the communication whether Jacob’s e-mail message represented a serious expression of intent to harm or whether the message was merely idle or

² WISCONSIN STAT. § 947.015 provides: “**Bomb scares.** Whoever intentionally conveys or causes to be conveyed any threat or false information, knowing such to be false, concerning an attempt or alleged attempt being made or to be made to destroy any property by the means of explosives is guilty of a Class E felony.”

careless talk. Here, the juvenile court, as the fact finder, concluded that Jacob intended to convey a threat when he sent the e-mail to the Alma High School containing the single word “bomb.” In its opinion, a reasonable person receiving this message at the high school would look at the message as a genuine threat.

¶7 When reviewing the sufficiency of the evidence, we note that the test is not whether this court is convinced of the defendant's guilt beyond a reasonable doubt, but whether the appellate court can conclude the trier of fact could, acting reasonably, be so convinced by evidence it had a right to believe and accept as true. *State v. Poellinger*, 153 Wis.2d 493, 503-04, 451 N.W.2d 752 (1990). When more than one reasonable inference can be drawn from the evidence, this court on appellate review must adopt the inference which supports the fact finder's finding. *Id.*

¶8 Here, the facts surrounding the making of the “threat” supports the trial court's conclusion. Notably, before sending the message, Jacob asked Eli if he should send a bomb threat. Thus, even Jacob viewed the e-mail as a bomb threat. Also, Jacob stated to the investigating officer that he knew by sending the message it would upset someone and the school might be evacuated.

¶9 Additionally, the reaction to the “bomb” message supports the trial court's conclusion. The principal receiving the message immediately regarded it as a serious threat. The police were immediately called, after-school activities were cancelled, the computer labs were closed and an extensive search was made at the school for a bomb. It is not surprising that a reasonable person at the school receiving the message containing the word bomb would consider it a threat. Unfortunately, anyone familiar with the present events in our country must

consider these types of messages as a serious threat of harm. The fact that they are needlessly disruptive and costly to our society makes it even more intolerable.

By the Court.—Order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)4.

