2023 IL App (4th) 220299-U

NO. 4-22-0299

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
February 9, 2023
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. NATHAN O. ROACH, Defendant-Appellant.	)))))))))	Appeal from the Circuit Court of Winnebago County No. 21CF945 Honorable Robert P. Pilmer, Judge Presiding.

JUSTICE STEIGMANN delivered the judgment of the court.
Justices Cavanagh and Knecht concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court reversed defendant's conviction for threatening a public official.

¶ 2 In May 2021, defendant, Nathan O. Roach, was charged with threatening a public official (720 ILCS 5/12-9(a)(1)(i) (West 2020))—namely, Judge Joseph McGraw. In January 2022, a jury found defendant guilty of the offense, and the trial court later sentenced him to two years in prison.

¶ 3 Defendant appeals, arguing, among other things, the State failed to prove beyond a reasonable doubt that (1) he knowingly delivered or conveyed a communication to McGraw and (2) his communication was a "true threat." We agree with defendant's second contention and reverse defendant's conviction.

¶ 4 I. BACKGROUND

¶ 5 In May 2021, the State charged defendant with a single count of threatening a

public official (*id.*), alleging generally he knowingly and willfully conveyed a threat to McGraw that would place him or his family in reasonable apprehension of bodily harm. Specifically, the State alleged defendant told his trial counsel, "I'm going to get that judge."

¶ 6 In January 2022, the trial court conducted defendant's jury trial, during which the following evidence was presented.

¶ 7 Attorney Patrick Braun testified that in July 2020, he was appointed by McGraw to represent defendant in an unrelated criminal case. In November 2020, during a meeting with defendant at the Winnebago County jail, defendant told Braun, "When I get out of here, I'm going to get that judge." Braun responded, "That sounds like a threat." Defendant said, "I don't make threats. I make promises." Braun testified defendant was a little agitated, and Braun took defendant's statements seriously "based upon all the information [Braun] had at that time." The two then discussed other issues regarding defendant's case.

¶ 8 The next morning, Braun prepared a motion asking the trial court to vacate his appointment as attorney for defendant. He then presented that motion to the court at a scheduled status hearing, telling the trial judge, McGraw, what defendant had said to him. Following a hearing, the court granted the motion.

¶ 9 McGraw testified that at the status hearing, which defendant attended virtually using Zoom, he read Braun's motion to defendant, but defendant did not respond. A corrections officer in the room with defendant indicated to McGraw that defendant could hear him but just chose not to respond. Regarding the alleged threat, McGraw testified he considered it to be serious "based on the nature of the threat and [defendant] and his background." McGraw further testified, "I believed he was serious. I believed that I was in jeopardy because of what he said."

¶ 10 On cross-examination, McGraw testified defendant never verbalized any

threatening statement to him directly, and the only way he learned of defendant's statement was from Braun.

¶ 11 David Witt, a detective with the Winnebago County Sheriff's Office, testified that he was assigned to investigate defendant's statement to Braun. In February 2021, he conducted an interview with defendant, which was audio- and video-recorded. The video, which was nearly an hour long, was played in its entirety for the jury.

¶ 12 During the first 25 minutes of the video, defendant denied threatening McGraw. At around the 25-minute mark of the video, the detectives left the interview room and defendant began speaking to the camera. Defendant expressed his anger with McGraw, trial counsel, and the police through a cacophony of expletive-filled, violent statements, punctuated by brief asides to say he was not threatening anybody. Defendant's comments toward the camera continued until Witt returned to the interview room, at which time defendant maintained to Witt that he did not threaten McGraw.

¶ 13 Following closing arguments, the jury found defendant guilty of threatening a public official and the trial court later sentenced defendant to two years in prison.

¶ 14 This appeal followed.

¶ 15 II. ANALYSIS

¶ 16 Defendant appeals, arguing, among other things, the State failed to prove beyond a reasonable doubt that (1) he knowingly delivered or conveyed a communication to McGraw and (2) his communication was a "true threat." We agree with defendant's second contention and reverse defendant's conviction.

¶ 17 A. The Applicable Law and the Standard of Review

¶ 18 1. *Sufficiency of the Evidence*

¶ 19 When reviewing a defendant's challenge to the sufficiency of the evidence, after viewing the evidence in the light most favorable to the State, the appellate court must determine whether any rational trier of fact could have found the essential elements of the charged offense beyond a reasonable doubt. *People v. Gray*, 2017 IL 120958, ¶ 35, 91 N.E.3d 876. "It is not the role of the reviewing court to retry the defendant." *Id.* Instead, it is the trier of fact's responsibility "to resolve conflicts in the testimony, weigh the evidence, and draw reasonable inferences from the facts." *Id.* Appellate courts will not reverse a conviction "unless the evidence is so unreasonable, improbable, or unsatisfactory that it justifies a reasonable doubt of the defendant's guilt." *Id.*

¶ 20 2. *Threatening a Public Official*

¶ 21 Section 12-9 of the Criminal Code of 2012 (Code) (720 ILCS 5/12-9 (West 2020)) provides that a person commits the offense of threatening a public official when:

> "(1) that person knowingly delivers or conveys, directly or indirectly, to a public official *** by any means a communication:
>
> (i) containing a threat that would place the public official *** in reasonable apprehension of immediate or future bodily harm ***; and
>
> (2) the threat was conveyed because of the performance or nonperformance of some public duty ***, because of hostility of the person making the threat toward the status or position of the public official or the human service provider, or because of any other factor related to the official's public existence."

Section 12-9 defines a public official as follows:

> "(1) 'Public official' means a person who is elected to office in accordance with a statute or who is appointed to an office which is established, and the qualifications and duties of which are prescribed, by statute, to discharge a public duty for the State or any of its political subdivisions or in the case of an elective office any person who has filed the required documents for nomination or election to such office." *Id.*

¶ 22 3. *True Threats*

¶ 23 Although a government "has no power to restrict expression because of its message, its ideas, its subject matter, or its content" (internal quotation marks omitted) (*Ashcroft v. American Civil Liberties Union*, 535 U.S. 564, 573 (2002)), "the United States Supreme Court has recognized that certain traditional categories of expression do not fall within the protections of the first amendment," including "true threats" of violence. *People v. Ashley*, 2020 IL 123989, ¶ 31, 162 N.E.3d 200. Accordingly, the subject of a prosecution pursuant to section 12-9 of the Code must make a statement that would qualify as a "true threat," or else it violates the first amendment. *People v. Dye*, 2015 IL App (4th) 130799, ¶ 8, 37 N.E.3d 465.

¶ 24 " 'True threats' encompass those statements where 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." *Virginia v. Black*, 538 U.S. 343, 359 (2003); *People v. Swenson*, 2020 IL 124688, ¶ 25, 181 N.E.3d 116. "The speaker need not actually intend to carry out the threat. Rather, a prohibition on true threats protect[s] individuals from the fear of violence and from the disruption that fear engenders, in addition to protecting people from the possibility that the threatened violence will occur." (Internal quotation marks omitted.) *Ashley*, 2020 IL 123989, ¶ 33 (quoting *Black*, 538 U.S., at 359-60).

¶ 25 The Illinois Supreme Court interpreted the meaning of the phrase "means to communicate" as "requiring that the accused be consciously aware of the threatening nature of his or her speech, and the awareness requirement can be satisfied by a statutory restriction that requires either an intentional or a knowing mental state." *Id.* ¶ 56. "[T]o make a true threat, a defendant must act with either a 'specific intent or a knowing mental state.' " *Swenson*, 2020 IL 124688, ¶ 27 (quoting *Ashley*, 2020 IL 123989, ¶ 55). Accordingly, the defendant must be subjectively aware of the threatening nature of the speech. *Id.*

¶ 26 B. This Case

¶ 27 As an initial matter, defendant does not dispute that McGraw was a public official or that defendant's statement was related to his public status. Defendant argues only that the State did not prove beyond a reasonable doubt that he committed the offense of threatening a public official because (1) he "had no reason to believe that it was 'practically certain' that the alleged communication would be heard, even indirectly, by the judge" and (2) his saying that he was going "to get" the judge was not a true threat because, among other things, the meaning of "to get" the judge was too vague and ambiguous. Because we agree with defendant's second contention, we need not discuss his first.

¶ 28 The State argues defendant's statements constituted a true threat "because he understood the threatening nature of his communication and the import of the words he used." However, notably missing from Braun's testimony is any mention of violence by defendant, explicit or implicit. The only detail Braun provided regarding the circumstances of defendant's isolated statements to Braun ((1) "[w]hen I get out of here, I'm going to get that judge" and (2) "I don't make threats[,] I make promises.") was that defendant was a little agitated when he made them.

¶ 29 The State relies heavily on the video recording of Witt's interview with defendant to explain the purpose and meaning of defendant's statements to Braun. The State asserts that in the interview, defendant clarified what he meant when he told Braun he was going to get McGraw. However, that interview took place months after defendant made the statements to Braun and after defendant had been charged with threatening McGraw. Further, at no point in the interview did defendant clarify what his statements to Braun meant. Instead, defendant maintained all along that he did not threaten McGraw.

¶ 30 This court's earlier opinion in *Dye*, 2015 IL App (4th) 130799, is instructive. In *Dye*, the defendant was meeting with the public defender when he became irate after receiving bad news regarding his case. *Id.* ¶ 4. The defendant then raised his voice, threatened to complain about the public defender to the trial judge, and accused her of "selling him out and working for the State." *Id.* After the public defender told him to leave, defendant told her multiple times, "I'm gonna get you," while pointing at her. *Id.* ¶ 5. She asked if he was threatening her, to which he replied, "No, no. I ain't threatening you." *Id.* A paralegal then stepped between the two because of " 'the way [the defendant] was standing, his mannerisms, how aggressive he was with his speech, [and] his posture.' " *Id.* The trial court found the defendant guilty of threatening the public defender. *Id.* ¶ 1.

¶ 31 On appeal, this court reversed the defendant's conviction, concluding that no reasonable trier of fact could conclude that the defendant intended to physically threaten the public defender. *Id.* ¶ 11. In so holding, this court emphasized the ambiguity of the phrase "I'm gonna get you"—namely, that the phrase does not necessarily mean a threat of violence. *Id.* ¶¶ 11-12. Instead, the court noted, "[T]he victim of a prank or of Machiavellian office politics might tell the perpetrator, 'I'll get you for this,' without intending to be understood that the

retribution will be physical. The Internal Revenue Service will get you if you lie in your income tax return." *Id.* ¶ 11. Accordingly, this court held that the statement "I'm gonna get you" was too vague and ambiguous to be a threat of violence.

¶ 32 Although, the defendant's statement in the present case, that he was going to "get" McGraw, is nearly identical to the defendant's statement in *Dye*, we note that the evidence providing context for the threatening nature of the statement in Dye was much stronger than in the present case. Here, just like in *Dye*, defendant's statement was too vague to communicate anything of substance; instead, his statement requires us to speculate as to what exactly defendant even threatened to do to McGraw. Without more context or additional clarifying statements, defendant's statements do not rise to the level of a true threat.

¶ 33 Accordingly, after viewing the evidence in the light most favorable to the State, we conclude the evidence was insufficient to prove beyond a reasonable doubt that defendant knowingly communicated a threat to a public official.

¶ 34 III. CONCLUSION

¶ 35 For the reasons stated, we reverse defendant's conviction.

¶ 36 Reversed.