Review of Recent Juvenile Cases (2007)

by
The Honorable Pat Garza
Associate Judge
386th District Court
San Antonio, Texas

In terroristic threats charge, State was not required to prove that respondent had the capability or the intention to actually carry out his threat.[In the Matter of T.T.](07-1-6)

On November 15, 2006, the Tyler Court of Appeals held that in terroristic threats charge, State was not required to prove that respondent had the capability or the intention to actually carry out his threat, only that he acted with the specific intent to "threaten" imminent harm.

¶ 07-1-6. **In the Matter of T.T.,** ___S.W.3d___, No. 12-06-00034-CV, 2006 Tex.App.Lexis 9927 (Tex.App.—Tyler, 11/15/06).

Facts: On December 8, 2005, T.T. was in a theater arts class at John Tyler High School in Tyler, Texas. The regular teacher was absent and a substitute teacher was in the classroom. There was no lesson plan, and T.T. and his ninth grade classmates were left to their own devices. T.T. was listening to music on a compact disk player. Several other students asked him what he was listening to, and he told them that it was music that he had made. They doubted him, and this started an argument between T.T. and several of the young women seated at his table.

T.T. escalated the situation significantly when he told the young women that he would throw something at them that would knock them out and cause them to be "crazy" when they awoke. Although he was not more specific, the young women all assumed that he meant to throw darts, presumably loaded with some chemical, at them. To heighten the threat, T.T. pulled on latex gloves, rummaged in his pockets, and began to count down from "ten." The young women were sufficiently frightened that they went to their teacher for relief. When none was forthcoming, they ran from the classroom to the principal's office.

The police officer stationed at the school conducted a brief investigation, and the State filed a petition alleging that T.T. was a delinquent child and that he had committed what would have been criminal acts had he been an adult. An amended petition was filed alleging that T.T. had committed two counts of what would have been the misdemeanor offense of terroristic threat had he been an adult. T.T. denied the allegations, and a jury trial was held. The jury found the allegations to be true. T.T. had previously been adjudicated as a delinquent child and committed to the Texas Youth Commission. T.T. was on parole from that institution at the time of this offense, and the trial court ordered that he be committed to Texas Youth Commission. This appeal followed.

Held: Affirmed

Memorandum Opinion: T.T. contends that the evidence was legally and factually insufficient to support the decision of the jury. Specifically, he contends that the evidence did not show that he acted with the specific

intent to place the young women in imminent fear of serious bodily injury, that the young women were not placed in fear, and that no reasonable person would have been placed in fear by his actions.

Standards of Review

Even though appeals of juvenile cases are generally treated as civil matters, adjudications of delinquency are based on the criminal standard of proof, and we review the sufficiency of the evidence as we would in a criminal case. *See TEX. FAM. CODE ANN. § 54.03(f)* (Vernon Supp. 2006); ***In re C.M.G.**, 180 S.W.3d 836, 838 (Tex. App.-Texarkana 2005, pet. denied)*; ***In re D.J.**, No. 12-04-00131-CV, 2005 Tex. App. LEXIS 8151, at *4 n.1 (Tex. App.-Tyler Sept. 30, 2005, no pet.)* (mem. op., not designated for publication). In criminal cases, the due process guarantee of the *Fourteenth Amendment* requires that a conviction be supported by legally sufficient evidence. *See **Jackson v. Virginia**, 443 U.S. 307, 315-16, 99 S. Ct. 2781, 2786-87, 61 L. Ed. 2d 560 (1979)*; ***Ross v. State**, 133 S.W.3d 618, 620 (Tex. Crim. App. 2004)*; ***Willis v. State**, 192 S.W.3d 585, 592 (Tex. App.-Tyler 2006, pet. ref'd)*. Evidence is not legally sufficient if, when viewing the evidence in a light most favorable to the verdict, no rational trier of fact could have found the essential elements of the offense beyond a reasonable doubt. *See **Jackson**, 443 U.S. at 319, 99 S. Ct. at 2789*; *see also **Johnson v. State**, 871 S.W.2d 183, 186 (Tex. Crim. App. 1993)*.

While legal sufficiency review is all that is required by the U.S. Constitution, the Texas Court of Criminal Appeals has determined that the Texas Constitution requires further review of the factual sufficiency of the evidence. ***Clewis v. State**, 922 S.W.2d 126, 129-30 (Tex. Crim. App. 1996)*. Our review of the factual sufficiency of the evidence is without the light most favorable to the verdict, and we determine whether the evidence supporting the verdict is so obviously weak as to undermine our confidence in the jury's determination, or the proof of guilt, although adequate if taken alone, is greatly outweighed by contrary proof. ***Johnson v. State**, 23 S.W.3d 1, 11 (Tex. Crim. App. 2000)*; *see also **Watson v. State**, No. PD-469-05, 2006 Tex. Crim. App. LEXIS 2040, at *39 (Tex. Crim. App. Oct. 18, 2006)* (Evidence is factually insufficient only when reviewing court objectively concludes that the great weight and preponderance of the evidence contradicts the jury's verdict.). Under either standard, our role is that of appellate review, and the fact finder is the sole judge of the weight and credibility of a witness's testimony. ***Wesbrook v. State**, 29 S.W.3d 103, 111-12 (Tex. Crim. App. 2000)*. The fact finder may choose to believe all, some, or none of a witness's testimony. ***Sharp v. State**, 707 S.W.2d 611, 614 (Tex. Crim. App. 1986)*.

As alleged in the amended petition, the State was required to prove that T.T. threatened to commit an offense involving violence against a person with the intent to place that person in fear of imminent serious bodily injury. *TEX. PEN. CODE ANN. § 22.07(a)(2)* (Vernon Supp. 2006).

Analysis

T.T.'s arguments that the victims did not fear an assault and that a reasonable person would not have feared an assault are without merit. The State was not required to prove that the victim or any other person was actually placed in fear of imminent serious bodily injury. *See **Dues v. State**, 634 S.W.2d 304, 305 (Tex. Crim. App. 1982)*. Furthermore, the State was not required to prove that T.T. had the capability or the intention to actually carry out his threat. *See **id.***; ***In re A.C.**, 48 S.W.3d 899, 904 (Tex. App.-Fort Worth 2001, pet. denied)*.

The statute does require, however, that the State prove that a defendant acted with the specific intent to threaten imminent harm. As T.T. points out, the court of appeals reversed the conviction for terroristic threat in ***Bryant v. State**, 905 S.W.2d 457 (Tex. App.-Waco 1995, pet. ref'd)*, where a citizen informed a county commissioner that he was going to assault the commissioner unless the road in front of the citizen's house was graded. ***Id**. at 458, 460*. The court held that such a threat, under those circumstances, was not sufficiently imminent because the promised assault was conditioned on the nonoccurrence of a future event. ***Id**. at 460*.

In cases involving other subdivisions of this statute, courts have held that the requisite intent may be inferred from the acts, words, or conduct of the accused. ***Dues**, 634 S.W.2d at 305*; ***In re C.S.**, 79 S.W.3d 619, 623 (Tex. App.-Texarkana 2002, no pet.)*. In this case, T.T.'s physical actions were sufficient to demonstrate his intent that his threat to assault the young women be interpreted as an imminent threat. In gauging imminence, we must look to the proximity of the threatened harm to the condition. *See **Williams v. State**, 194 S.W.3d 568, 575 (Tex. App.-Houston [14th Dist.] 2006, pet. filed)*. Imminent means "near at hand; mediate rather than immediate; close rather than touching; impending; on the point of happening; threatening; menacing; perilous." ***Devine v. State**, 786 S.W.2d 268, 270 (Tex. Crim. App. 1989)* (quoting BLACK'S LAW DICTIONARY 676 (rev. 5th ed. 1979)). A threat of violence, made with the intent to place the victim in fear of imminent serious bodily injury, is what constitutes this offense. ***Dues**, 634 S.W.2d at 306*.

It is true, as T.T. asserts, that he did not display a weapon in conjunction with his threat. But displaying a weapon is not the only way to make a threat imminent. In fact, counting down numbers may be a more gripping way to make it plain that something is about to happen. At one time movies began after a short countdown, some parents use a countdown ("I'll count to three") in the discipline of their children, and the launch of a space vehicle is preceded by a lengthy countdown. Any threat anticipates future action, and a countdown that is reaching its end may be a more reliable gauge of how close the promised action is than almost any other measure. To be sure, the brandishing of a weapon may commit an actor to a course of action more that a simple countdown would, but the victims in this case were permitted to rely upon T.T.'s promise of what would happen, and were not required to simply wait and see if he had a weapon. As it happens, the young ladies left when T.T. reached "7."

In this case, T.T.'s counting down heightened rather than dispelled any notion that the assault he promised was imminent. Coupled with his preparation of his hands with latex gloves, T.T.'s actions did at least as much to heighten the immediacy of his threat as the brandishing of a weapon would have. The evidence is sufficient for a rational trier of fact to have found that T.T.'s threat to assault the young women was imminent, and the evidence is neither too weak to support the verdict nor is it outweighed by any contrary evidence. We overrule T.T.'s first and second issues.

Conclusion: We ***affirm*** the judgment of the trial court.