Juvenile Law Case Summaries

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Retaliation statute is not overbroad or vague [In re C.B.L.] (01-2-09).

On March 22, 2001, the El Paso Court of Appeals upheld the adjudication of a juvenile for threatening to kill a teacher against a claim that the retaliation statute was overbroad and vague.

¶ 01-2-09. In the Matter of C.B.L., UNPUBLISHED, No. 08-00-00116-CV, 2001 WL 282761, 2001 Tex.App.Lexis ____ (Tex.App.—El Paso 3/22/01)[Texas Juvenile Law (5th Edition 2000)].

Facts: This is an appeal from an adjudication of delinquency. Appellant C.B.L. was placed on probation until his eighteenth birthday, July 17, 2001. He brings four issues on appeal: (1) whether Tex.Pen.Code Ann. § 36.06(a)(1) is overbroad and vague and therefore violates Appellant's right to free speech and expression under the U.S. Const. amend. I & XIV and Tex. Const. art. I, § 8; (2) whether Tex.Pen.Code Ann. § 36.06(a)(1) is overbroad and vague and therefore violates Appellant's due process rights under the U.S. Const. amend. XIV; (3) whether the evidence was legally sufficient; and (4) whether the evidence was factually sufficient.

SUMMARY OF THE EVIDENCE

C.B.L. was fifteen years old when he was charged with two counts of delinquency. The first count alleged that C.B.L. intentionally and knowingly threatened to kill Jose Urribarri on May 13,1999, in violation of Tex.Pen.Code Ann. § 22.07. The second count alleged that C.B.L. threatened to kill Yolanda Silva in retaliation for her service as a prospective witness on May 18, 1999, in violation of Tex.Pen.Code Ann. § 36.06. Trial was held on November 17, 1999. The State proceeded at trial on the second count only.

Silva was a speech and debate teacher at Burgess High School. On May 13, 1999, C.B.L. came to her after school and told her that he would blow up and shoot Urribarri and other students who had been giving him trouble. Silva reported the incident to the assistant principal, who called C.B.L. into the office the next day. Silva was told not to allow C.B.L. into her classroom, but C.B.L. came into her classroom anyway and "flipped off" Silva, called her a "bitch," and knocked down furniture. A security guard escorted him out.

Shawn Hardcastle went to Burgess High School and knew C.B.L. as an acquaintance for two to three months. On May 17, 1999, C.B.L. came up to Hardcastle and repeated over and over again that he would kill Silva. C.B.L. said that he would put a pipe bomb into the tailpipe of Silva's car. Hardcastle was very positive that C.B.L. said "pipe bomb" and that what C.B.L. said "stuck in [his] brain." C.B.L. was upset because Silva had written him up many times. Hardcastle warned Silva of C.B.L.'s threats the next day. Thereafter, Silva walked to her car escorted by an assistant principal, inspected the car regularly, and brought different vehicles to the school. She also reported the incident to the police.

C.B.L. testified that he was trying to talk to Silva because he did not want to be paired up with Urribarri for debate. After that, because he had been reported three times, C.B.L. became frustrated and admitted to calling Silva a bitch. He also said he had told Hardcastle that he would put a potato, not a pipe bomb, into the tailpipe of Silva's car to make it stall. Hardcastle and he laughed and joked about it. C.B.L. was just relieving his anger.

On December 7, 1999, the trial court found that C.B.L. engaged in delinquent conduct and placed him on probation until his eighteenth birthday (July 17, 2001).

Held: Affirmed.

Opinion Text: A. Constitutionality of the Statute

In his first two issues, C.B.L. challenges the constitutionality of Tex.Pen.Code Ann. § 36.06(a)(1)(A)(Vernon Supp.2001). [FN1] A party attacking the constitutionality of a statute has the burden to overcome the presumption that a statute is valid on its face and that the legislation did not act arbitrarily in enacting it. See Tex.Gov't Code Ann. § 311.021 (Vernon 1998); Ex parte Granviel, 561 S.W.2d 503, 511 (Tex.Crim.App.1978).

FN1. The State brought charges against C.B.L. under Tex.Pen.Code Ann. § 36.06(a)(1)(A), which states:

> (a) A person commits an offense if he intentionally or knowingly harms or threatens to harm another by an unlawful act:
>
> (1) in retaliation for or on account of the service or status of another as a:
>
> (A) public servant, witness, prospective witness, or informant....

1. First Amendment

In analyzing the facial challenge to the overbreadth and vagueness of a statute, a court first determines whether the statute reached a substantial amount of protected conduct. See Village of Hoffman Estates v. Flipside, Hoffman Estates, Inc., 455 U.S. 489, 494-95, 102 S.Ct. 1186, 1191, 71 L.Ed.2d 362 (1982). If the statute does not infringe upon a protected right, then the overbreadth challenge fails and the court can proceed to examine its facial vagueness. See id. If the statute is impermissibly vague on all of its application, it will be held unconstitutional. See Village of Hoffman Estates, 455 U.S. at 494-95, 102 S.Ct. at 1191.

First, we will analyze whether Tex.Pen.Code Ann. § 36.06(a)(1) infringed upon the right to free speech, a protected right. See Village of Hoffman Estates, 455 U.S. at 495, 102 S.Ct. at 1192. We first note that Texas constitutional provisions guaranteeing freedom of expression and assembly are coextensive with the corresponding federal guarantees and will apply the same analysis and principles of construction in interpreting them. See Puckett v. State, 801 S.W.2d 188, 192 (Tex.App.--Houston [14th Dist.] 1990, pet. ref'd), cert. denied, 502 U.S. 990, 112 S.Ct. 606, 116 L.Ed.2d 629 (1991); Reed v. State, 762 S.W.2d 640, 644 (Tex.App.--Texarkana 1988, pet. ref'd), cert. denied, 493 U.S. 822, 110 S.Ct. 81, 107 L.Ed.2d 47 (1989).

a. Overbreadth

An overbroad statute sweeps too broadly by attempting to regulate constitutionally protected activity. See Village of Hoffman Estates, 455 U.S. at 495, 102 S.Ct. at 1191. C.B.L. does not challenge the facial constitutionality of the statute. Rather, C.B.L. claims the statute is unconstitutionally overbroad, because his expression of his frustration with Silva to a school friend is considered a threat under the statute. He contends that he was exercising his right to free speech in talking to his friend about his feelings.

The question of what a threat is can be analyzed under either a subjective or objective test. See Puckett, 801 S.W.2d at 193. Under the objective test, a defendant is subject to prosecution for any statement that might reasonably be interpreted as a threat, regardless of the speaker's intent. See id. Under the subjective test, however, a defendant may only be convicted for statements which he intends to be interpreted as expressions of an intent to kill or injure. See id. Neither test has been held to be ruling, but under either of the tests in this case, C.B.L. was making a threat to cause harm to Silva when he said repeatedly to Hardcastle that he wanted to kill Silva and that he would stuff a pipe bomb into the tailpipe of her car, because he was angry with her for reporting him to the assistant principal. Such statement is not mere conversation between two friends.

C.B.L. argues that statements such as "[i]f they ever make me carry a rifle the first man I want to get in my sights is L.B.J.," Watts v. United States, 394 U.S. 705, 706, 89 S.Ct. 1399, 1401, 22 L.Ed.2d 664 (1969), or "We'll take the f---ing street later," Hess v. Indiana, 414 U.S. 105, 107, 94 S.Ct. 326, 328, 381 L.Ed.2d 303 (1973), were considered protected speech.

Statements like these however should be taken in context. Indeed, the Court in Watts distinguished this kind of statement as not one uttered as a "true threat" but said as a "political hyperbole." See id. at 708, 89 S.Ct. at 1401. C.B.L.'s statement can no way be taken as a "political hyperbole." We are unwilling to concede that an expression of

frustration against a teacher between two juveniles, absent precedent, should be considered in the same league as a political speech. Since Tex.Pen.Code Ann. § 36.06(a) distinguishes a threat to do harm by an unlawful act from other kinds of speech, it is not overbroad.

b. Vagueness

Next, C.B.L. argues that because the term "threaten" in Tex.Pen.Code Ann. § 36.06(a) does not exclude communications between juveniles, it is unconstitutionally vague. A statute that forbids or requires an act in terms so vague that a person of common intelligence must guess as to the meaning and will differ as to the statute's application lacks the first essential of due process. See Webb v. State, 991 S.W.2d 408, 416 (Tex.App.--Houston [14th Dist.] 1999, pet. ref'd). The law must be sufficiently definite so that its terms and provisions may be known, understood, and applied or it is void and unenforceable. See Cotton v. State, 686 S.W.2d 140, 145 (Tex.Crim.App.1985). The law must be definite to avoid chilling protected expression where First Amendment rights are concerned. See Long v. State, 931 S.W.2d 285, 287 (Tex.Crim.App .1996). Threats to harm others are not protected speech under the First Amendment. See Webb, 991 S.W.2d at 415, citing Watts, 394 U.S. at 707-08, 89 S.Ct. at 1401; Jacobs v. State, 903 S.W.2d 848, 851 (Tex.App.-- Texarkana 1995, pet. ref'd), citing Puckett, 801 S.W.2d at 194. When no First Amendment rights are involved, a court may examine only whether a statute is unconstitutionally vague as applied to a defendant's conduct only. See Webb, 991 S.W.2d at 416, citing Bynum v. State, 767 S.W .2d 769, 774 (Tex.Crim.App.1989). It is the challenger's burden to establish that a statute is unconstitutionally vague as applied to him when no First Amendment rights are implicated. See id. Tex.Pen.Code Ann. § 36.06(a) is not vague on its face because threats to harm another by unlawful acts are not constitutionally protected under the First Amendment.

C.B.L. argues that "threat" does not encompass words spoken to a friend during school to express frustration about a teacher. C.B.L. ignores that he told Hardcastle several times that he would kill Silva and that he would place a pipe bomb into the tailpipe of her car. Taken in context, it is obvious that those statements are threats and not innocent communications between friends. A statute is not rendered unconstitutionally vague merely because a term in a statute is not defined. See Ahearn v. State, 588 S.W.2d 327, 338 (Tex.Crim.App.1979). Words in a statute will be read in context and construed according to the rules of grammar and common usage. See Tex.Gov't Code Ann. § 311.011(a); Ely v. State, 582 S.W.2d 416, 419 (Tex.Crim.App.1979), citing U.S. v. Petrillo, 332 U.S. 1, 8, 67 S.Ct. 1538, 1542, 91 L.Ed.2d 1877 (1947). C.B.L. clearly made a threat to harm Silva by an unlawful act: namely, he said to Hardcastle that he would kill Silva and that he would place a pipe bomb in her car's tailpipe. The statute is not vague as to C .B.L.'s conduct.

2. Due Process

It is the basic principle of due process that an enactment is void for vagueness if its prohibitions are not clearly defined. See Grayned v. City of Rockford, 408 U.S. 104, 108, 92 S.Ct. 2294, 2298, 33 L.Ed.2d 222 (1972). The first test is whether a person of ordinary intelligence must necessarily guess at a statute's meaning and differ on its application. See id. at 108, 92 S.Ct. at 2298-99. Second, the law must provide explicit standards to those who apply them in order to prevent arbitrary and discriminatory enforcement. See id. at 108, 92 S.Ct. at 2299. Third, if the law encroaches upon basic First Amendment freedoms, it must not inhibit the exercise of those freedoms. See id. at 109, 92 S.Ct. at 2299.

We understand C.B.L.'s argument in his second issue to be that Tex.Pen.Code Ann. § 36.06(a) does not define with particularity the terms "threat" or "prospective witness" so that juveniles like C.B.L. or Hardcastle could understand it. As noted above, a statute is not rendered unconstitutionally vague merely because a term in a statute is not defined. See Ahearn, 588 S.W.2d at 338. The test is also whether a person of ordinary intelligence is able to decipher and apply the statute. See Grayned, 408 U.S. at 108-09, 92 S.Ct. at 2298-99. Neither is a word to be defined by what a particular addressee thinks. See Chaplinsky v. State of New Hampshire, 315 U.S. 568, 573, 62 S.Ct. 766, 770, 86 L.Ed.2d 1031 (1942). An ordinary person could understand without confusion what a "threat" is and who a "prospective witness" may be. Tex.Pen.Code Ann. § 36.06(a) prohibits a person from threatening to harm by doing an unlawful action. Unlike the coercion statute discussed in State v. Hanson, 793 S.W.2d 270 (Tex.App.--Waco 1990, no pet.), Tex.Pen.Code Ann. § 36.06(a) clarifies what type of threat is prohibited and against whom it is enforceable. The statute is not so unconstitutionally vague that an ordinary person could not have notice of what acts are prohibited or punishable.

The statute also provides clear standard to law enforcement in that it prohibits a person from a narrowly defined act (e.g., threatening to do harm by unlawful action) against a specific category of persons (e.g., prospective witnesses). C.B.L. threatened to do unlawful actions: kill Silva and place a pipe bomb in her car. Silva was also a prospective

witness in that she had seen and reported C.B.L.'s threat to another student. Thirdly, we have already discussed that Tex.Pen.Code Ann. § 36.06(a) does not implicate First Amendment rights, since "threat" is not a protected speech. Tex.Pen.Code Ann. § 36.06(a) is not unconstitutionally vague and satisfies the due process requirement of the Fourteenth Amendment.

B. Legal Sufficiency

A case against a juvenile must be proven beyond a reasonable doubt. See Matter of A.S., 954 S.W.2d 855, 857 (Tex.App.--El Paso 1997, no pet.). The State must prove beyond a reasonable doubt that a juvenile has engaged in delinquent conduct or conduct indicating a need for supervision. See Tex.Fam.Code Ann. § 54.03(f)(Vernon Supp.2001). There must be sufficient evidence to support that a rational trier of fact could have found a juvenile guilty beyond a reasonable doubt. See Matter of A.S., 954 S.W.2d at 858. Our duty is not to reexamine the evidence and impose our own judgment as to whether the evidence establishes guilt beyond a reasonable doubt, but only to determine if the findings by the trier of fact are rational. See Lyon v. State, 885 S.W.2d 506, 516-17 (Tex.App.--El Paso 1994, pet. ref'd). Any inconsistencies in the evidence are resolved in favor of the verdict. See Matson v. State, 819 S.W.2d 839, 843 (Tex.Crim.App.1991).

In this case, C.B.L. was charged with the offense of intentionally or knowingly threatening to harm Silva by an unlawful act in retaliation for and on account of her status as a prospective witness, under Tex.Pen.Code Ann. § 36.06(a)(1)(A). The trial court heard testimony from Silva that she had heard C.B.L. threaten to blow up and kill another student, Urribarri. Subsequently, she reported the incident, and C.B.L. was angry at her because of that. Hardcastle then testified that C.B.L. said repeatedly that he would kill Silva and also put a pipe bomb in her car. Hardcastle also said C.B.L. was angry at Silva for writing him up. A rational jury could have found that C.B.L. intentionally and knowingly threatened Silva in retaliation for her reporting him to the assistant principal on his threat against Urribarri.

C.B.L. first argues that he did not threaten Silva directly; however, a threatened party need not be present when the threat is made. See Doyle v. State, 661 S.W.2d 726, 728 (Tex.Crim.App.1983). Next, he contends he did not intend to threaten Silva. However, based upon the evidence presented, a rational trier of fact could have found that C.B.L. intended to threaten Silva. C.B.L., after he was called to the office because of his threat to blow up and kill Urribarri, went to express his anger at Silva that very same day. On the next day, he told Hardcastle that he would kill Silva several times then finally said that he would put a pipe bomb in her car. The trial court obviously found that C.B.L. knew Silva would be a "prospective witness" and that he intended to threaten to harm her by an unlawful act. We will not disturb the fact finder's weighing of the evidence.

C.B.L. finally disputes that he would not have known of Silva's status as a prospective witness at a future official proceeding, since no official proceeding was pending, and also therefore that Silva could not have been a prospective witness. However, an official proceeding need not be initiated before a person may be a prospective witness. See Morrow v. State, 862 S.W.2d 612, 615 n. 3 (Tex.Crim.App.1993). A rational fact finder could find that C.B.L. threatened Silva because of her decision to report him to the assistant principal. We overrule C.B.L.'s third point of error.

C. Factual Sufficiency

In reviewing the factual sufficiency of the evidence, this Court views all of the evidence without the prism of "in the light most favorable to the verdict" on whether the State met its burden to prove beyond a reasonable doubt that the offense was committed. See Matter of A.S., 954 S.W.2d at 860. We will reverse the conviction only if the verdict is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. See id., citing Clewis v. State, 922 S.W.2d 126, 129 (Tex.Crim.App.1996).

There is no evidence so overwhelming that the verdict was clearly wrong or unjust. C.B.L. did not deny that he was angry at Silva for reporting him or that expressed his anger at Silva to Hardcastle. The evidence is conflicting on whether he said he would stuff a potato or a pipe bomb in Silva's car, but even if the trial court believed C.B.L., there was still sufficient evidence such that a fact finder could conclude beyond a reasonable doubt that C.B.L. intentionally and knowingly threatened to harm Silva by performing an unlawful act in retaliation for her reporting him to the assistant principal. We overrule C.B.L.'s fourth point of error.
