2018 IL App (2d) 160129-U
No. 2-16-0129
Order filed August 20, 2018

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. ERIC ARELLANES, Defendant-Appellant.	))))))))))	Appeal from the Circuit Court of Lake County. No. 15-CF-2093 Honorable George D. Strickland, Judge, Presiding.

JUSTICE BURKE delivered the judgment of the court.
Presiding Justice Hudson and Justice Hutchinson concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant's conviction must be reversed because he was not proved guilty of threatening a public official beyond a reasonable doubt.

¶ 2 Round Lake Beach Police Officers Erik Landsverk and Michael Stevens arrested defendant, Eric Arellanes, for disorderly conduct. Defendant expressed suicidal thoughts and was sent to a therapist who reported that defendant threatened to seek out the officers at their homes and shoot them. Following a stipulated bench trial, defendant was convicted of two counts of threatening a public official, one for each officer. See 720 ILCS 5/12-9(a)(1)(i) (West 2014).

¶ 3 On appeal, defendant argues that the State failed to prove him guilty beyond a reasonable doubt because there was no evidence that the threats were conveyed, directly or indirectly, to the officers. We agree and reverse the convictions.

¶ 4 I. BACKGROUND

¶ 5 At 11:50 a.m. on August 16, 2015, Officers Landsverk and Stevens responded to a report that defendant was drunk and refused to leave his friend's house. They arrested defendant for disorderly conduct and transported him to the police station. During the booking process, defendant made statements suggesting that he was suicidal, so he was transported to a hospital for psychiatric evaluation.

¶ 6 Defendant was placed in the care of a therapist, Devin Stieber, who summoned the police based on a threat defendant made during his evaluation. Stieber told Officer David Duncan that defendant had expressed a desire to shoot and kill the officers who had arrested him. Stieber informed Officer Duncan that defendant was "highly intoxicated," with a blood alcohol concentration (BAC) of .268 and traces of marijuana and cocaine in his system.

¶ 7 Officer Duncan called Sergeant Nicole Cheney of the Round Lake Beach police department and informed her of the threat. In response, Sergeant Cheney sent a report to the department's investigations division. At Sergeant Cheney's direction, Officer Robinson went to the hospital to interview Stieber and take his written statement.

¶ 8 In his written statement, Stieber asserted that defendant said, "If I get out of here, I'll look up where they live and kill them," apparently referring to the arresting officers. Stieber wrote that defendant bragged that the shootings would be televised and that he would also kill his stepfather. He also wrote that defendant was intoxicated, with alcohol, cocaine, and cannabis in his system at the time he made the threat.

¶ 9 While at the facility, Officer Robinson overheard defendant say, "Cops are just thugs, a gang. It would not be a bad thing to shoot a cop in the head." Officer Robinson reported that he would forward his observations to the investigations division.

¶ 10 Detective David Prus interviewed Stieber by telephone on August 17, 2017, the day after the arrest. Stieber told Detective Prus the same story he had told the other officers. Detective Prus obtained a copy of Officer Duncan's initial report and ran a Firearm Owners Identification (FOID) check, which disclosed that defendant did not have a FOID card.

¶ 11 The indictment alleged two counts of threatening a public official, one for each arresting officer. Each count alleged that defendant knowing conveyed indirectly to the officer, a public official, being a sworn law enforcement officer for the Round Lake Beach police department, a communication containing a threat that would place the officer in reasonable apprehension of future bodily harm in that defendant told Stieber that he would look up the residences of the two officers who cited him, and shoot both officers.

¶ 12 The trial court found that defendant's statement was a specific threat against Officers Landsverk and Stevens and that defendant was guilty of both counts of threatening a public official. Defendant's motion for a new trial was denied, and he timely appeals.

¶ 13 II. ANALYSIS

¶ 14 On direct appeal, defendant challenges the sufficiency of the evidence. In a challenge to the evidence supporting a criminal conviction, a reviewing court does not retry the defendant. *People v. Smith*, 185 Ill. 2d 532, 541 (1999). "When reviewing the sufficiency of the evidence, 'the relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.' (Emphasis in original.)" *People v. Bishop*, 218 Ill. 2d 232, 249

(2006) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)); *People v. Collins*, 106 Ill. 2d 237, 261 (1985). "Testimony may be found insufficient under the *Jackson* standard, but only where the record evidence compels the conclusion that no reasonable person could accept it beyond a reasonable doubt." *People v. Cunningham*, 212 Ill. 2d 274, 280 (2004). Our duty is to carefully examine the evidence while giving due consideration to the fact that the finder of fact saw and heard the witnesses. The testimony of a single witness, if it is positive and the witness is credible, is sufficient to convict. *Smith*, 185 Ill. 2d at 541. The credibility of a witness is within the province of the trier of fact, and the finding on such matters is entitled to great weight, but the fact finder's determination is not conclusive. We will reverse a conviction where the evidence is so unreasonable, improbable, or unsatisfactory that it creates a reasonable doubt of the defendant's guilt. *Smith*, 185 Ill. 2d at 542. This standard of review applies regardless of whether the evidence is direct or circumstantial and regardless of whether the defendant was tried before the bench or a jury. *People v. Cooper*, 194 Ill. 2d 419, 431 (2000).

¶ 15 The stipulated evidence consisted of five police reports written by five officers and the written statement by Stieber. Even in a stipulated bench trial, the State must prove the defendant's guilt beyond a reasonable doubt. *People v. Glazier*, 2015 IL App (5th) 120401, ¶ 13 (citing *People v. Horton*, 143 Ill. 2d 11, 21 (1991)). After a stipulated bench trial in which sufficient evidence is presented, however, factual guilt is a foregone conclusion. *Glazier*, 2015 IL App (5th) 120401, ¶ 13. Neither a reasonable defendant nor a prosecutor would choose to pursue a stipulated bench trial if the evidence were doubtful. *Glazier*, 2015 IL App (5th) 120401, ¶ 13.

¶ 16 A person commits the offense of threatening a public official or human service provider when: (1) that person knowingly delivers or conveys, directly or indirectly, to a public official or

human service provider by any means a communication: (i) containing a threat that would place the public official or human service provider or a member of his or her immediate family in reasonable apprehension of immediate or future bodily harm, sexual assault, confinement, or restraint; or (ii) containing a threat that would place the public official or human service provider or a member of his or her immediate family in reasonable apprehension that damage will occur to property in the custody, care, or control of the public official or his or her immediate family; and (2) the threat was conveyed because of the performance or nonperformance of some public duty or duty as a human service provider, 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. 720 ILCS 5/12-9(a) (West 2014).

¶ 17 For purposes of the offense, a "public official" includes "a sworn law enforcement or peace officer." 720 ILCS 5/12-9(b)(1) (West 2014). In the case of a sworn law enforcement officer, the threat must contain specific facts indicative of a unique threat to the person, family, or property of the officer and not a generalized threat of harm. 720 ILCS 5/12-9(a-5) (West 2014).

¶ 18 Defendant does not dispute that Officers Landsverk and Stevens qualify as public officials or that the content of his threat meets the standard of section 12-9 of the Criminal Code of 2012. 720 ILCS 5/12-9 (West 2014). The threat to shoot the officers at their homes would place the officers in reasonable apprehension of immediate or future bodily harm, and the threat was based on the officers' performance in arresting defendant and because of defendant's hostility toward the officers based on their status. 720 ILCS 5/12-9(a) (West 2014).

¶ 19 However, defendant argues that his conviction must be reversed because the State failed to present any evidence that the threat was actually conveyed to Officers Landsverk and Stevens. The State responds that the stipulated evidence presented at trial supports a reasonable inference that the threat was conveyed indirectly to the officers by some unidentified person in the Round Lake Beach police department or the Lake County State's Attorney's office.

¶ 20 In support, the State relies heavily on *People v. Garcia*, 2015 IL App (2d) 131234, but *Garcia* is factually distinguishable. Garcia made multiple death threats against a judge while speaking to law enforcement personnel. *Garcia*, 2015 IL App (2d) 131234, ¶¶ 2-4. The officers who had contact with Garcia informed another officer, who testified at trial that he informed the judge of the threat. *Garcia*, 2015 IL App (2d) 131234, ¶ 5. Garcia argued on appeal that, although the threat was *about* the judge, he did not make it directly *to* the judge, and therefore he did not communicate the threat "knowingly." We affirmed the conviction, rejecting the notion that the State must prove that Garcia asked that his threat be conveyed to the judge. *Garcia*, 2015 IL App (2d) 131234, ¶ 10. We observed, "That a person does not specifically request that a threat be passed along to the target does not preclude the possibility of circumstances existing that would nearly guarantee that the threat would be conveyed to the target. Here, the jury could reasonably infer that it was a practical certainty that threats against a judge, made in the presence of personnel of law enforcement agencies, would be brought to the judge's attention. Furthermore, the jury could reasonably conclude that [Garcia] was not so uncommonly naïve as to believe otherwise." *Garcia*, 2015 IL App (2d) 131234, ¶ 10.

¶ 21 In advocating an inference that the officers were informed of the threat, the State conflates two elements of the offense: (1) the threat must actually be conveyed, directly or indirectly, to the target and (2) the threat must be made "knowingly," meaning with knowledge

that the threat would be so conveyed. In *Garcia*, the defense argued that the threat was not made "knowingly" because Garcia did not have a reasonable expectation that the target would learn of the threat. However, there was no dispute that the threat was actually conveyed indirectly to the target. Here, there was no evidence that the threat was ever conveyed to Officers Landsverk and Stevens.

¶ 22 Even if a trier of fact could "reasonably infer that it was a practical certainty" that the officers would learn of defendant's threat (see *Garcia*, 2015 IL App (2d) 131234, ¶ 10), that inference goes to defendant's mental state in making the threat "knowingly." To the extent that defendant reasonably could expect that the officers would be informed of his threat, his convictions still require proof that the threat was actually conveyed to the targets. See *People v. Wood*, 2017 IL App (1st) 143135, ¶ 5; *People v. Kirkpatrick*, 365 Ill. App. 3d 927, 928 (2006) (convictions affirmed where at least one witness testified to informing the target of the threat). Put another way, Officers Landsverk and Stevens could be placed in reasonable apprehension of immediate or future bodily harm only upon learning of the threat. See 720 ILCS 5/12-9(a) (West 2014).

¶ 23 The State argues that the officers must have known of the threat because, as the five police reports show, multiple people in the police department were aware of the investigation. Moreover, the State maintains that Officers Landsverk and Stevens would have been informed of the threat due to safety concerns. Indeed, the stipulated evidence shows that defendant's threat was passed along from Stieber to Officer Duncan, Sergeant Cheney, Officer Robinson, and Detective Prus. Officers Landsverk and Stevens were employed by the Round Lake Beach police department where these officers worked, but the State identified no other individuals as having knowledge of the threat.

¶ 24 Officers Landsverk and Stevens were employed by the same police department that was investigating the threat, but the reports indicated that the threat would be passed along further to the investigations division and there was no evidence that the officers even had contact with that division. Perhaps Detective Prus, after considering that defendant was extremely intoxicated at the time of the threat and did not have a FOID card, decided defendant was unlikely to act on the threat and that it was not worth mentioning to Officers Landsverk and Stevens.

¶ 25 If, in fact, Officers Landsverk and Stevens were aware of the threat against them, such knowledge would have been simple to prove at trial. The circumstances surrounding the officers learning of the threat could have been proved by testimony from the officers themselves or from whoever told them about it. But the State offered no such testimony and consequently failed to prove beyond a reasonable doubt that defendant's threat was conveyed to the officers. The simplicity of proving the element does not excuse the absence of proof, and we decline to infer an easily proven fact not in evidence.

¶ 26 We further reject the State's claim that *People v. Bell*, 327 Ill. App. 3d 238 (2002), compels affirmance of the convictions. In *Bell*, the State introduced a certified copy of conviction to establish Bell's prior felony. *Bell*, 327 Ill. App. 3d at 240. When prompted by the court at trial, defense counsel declined to object, conceding that "I know [the prosecutor] can prove it up." *Bell*, 327 Ill. App. 3d at 240. On appeal from his conviction, Bell argued that the certified copy of conviction was insufficient to prove that he was a convicted felon. *Bell*, 327 Ill. App. 3d at 241. The appellate court held that defense counsel's stipulation to the certified copy of conviction and stipulation that the prosecutor could "prove it up" precluded Bell from later challenging the admissibility of the certified copy of conviction. *Bell*, 327 Ill. App. 3d at 241.

¶ 27 This case is distinguishable from *Bell* because defendant is not challenging the admissibility of the documents that were admitted by stipulation. Defendant stipulated to the State's documentary evidence but not the sufficiency of that evidence to prove the offense. The five police reports and Stieber's written statement did not contain any proof that Officers Landsverk and Stevens were ever informed of defendant's threat. Unlike in *Bell*, there is nothing in the record to indicate that defense counsel conceded the State's ability to prove that the officers were made aware of the threat. The State suggests that defense counsel's closing argument, where he argued that defendant had not actually made a threat and lacked the requisite intent, may be taken as an admission that the conveyance of the threats to the officers was undisputed. We disagree. Defense counsel's decision to challenge the State's proof on one element of the offense is not the functional equivalent of conceding that the State had proven the other elements. Absent such a concession, there is nothing barring an appellate challenge to the sufficiency of the evidence on that element. See *Bell*, 327 Ill. App. 3d at 241.

¶ 28 One could argue that defendant also did not communicate the threat knowing that it would be conveyed to the officers because he considered the communication privileged, based on the therapist-patient relationship, and expected it to remain confidential. We need not consider this alternative basis for reversing the convictions because the State did not prove that the threat was conveyed to Officers Landsverk and Stevens.

¶ 29 Despite our deferential standard of review, we conclude that, when considering all of the evidence in the light most favorable to the prosecution, a rational trier of fact could not have found the essential elements of threatening a public official beyond a reasonable doubt. See *Cunningham*, 212 Ill. 2d at 278. We reverse the convictions because the evidence is so

unreasonable, improbable, or unsatisfactory that it creates a reasonable doubt of defendant's guilt. See *Smith*, 185 Ill. 2d at 542.

¶ 30 III. CONCLUSION

¶ 31 The stipulated evidence showed that defendant communicated a threatening statement about the officers but did not establish that they were directly or indirectly informed about the threat. Without evidence that the threat was conveyed to the officers, the evidence was insufficient to support the convictions of threatening a public official. We are unable to assume facts not in evidence that the officers were informed of the threat, especially given how easy it would have been for the State to furnish evidence to that effect during trial. For the reasons stated, we reverse defendant's convictions of threatening a public official.

¶ 32 Reversed.