2011 IL App (2d) 101297-U
No. 2-10-1297
Order filed November 22, 2011

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re CHRISTOPHER O., a Minor	)	Appeal from the Circuit Court
	)	of De Kalb County.
	)	
	)	
	)	No. 10-JD-19
	)	
(The People of the State of Illinois,	)	Honorable
Petitioner-Appellee, v. Christopher O.,	)	William P. Brady,
Respondent-Appellant).	)	Judge, Presiding.

JUSTICE BURKE delivered the judgment of the court.
Justices McLaren and Hutchinson concurred in the judgment.

ORDER

Held: Respondent was properly found delinquent for committing disorderly conduct: the fact that a later version of the statute placed a felony classification on threats to schools did not mean that threats to schools were not previously prohibited; the evidence was sufficient for the trial court to find that respondent knew or should have known that his conduct would alarm or disturb, and we presumed that the court applied that proper standard.

¶ 1 Christopher O., a minor in a delinquency proceeding, appeals a delinquency adjudication based on disorderly conduct (720 ILCS 5/26-1(a)(1) (West 2008)). He argues that the disorderly conduct provision as it then existed did not cover his act, a comment to a fellow student that he would like to bring a gun to school to shoot staff members. Alternatively, he argues that the

evidence was insufficient to prove that his conduct was "knowing" in the way that the provision required. We hold that the provision did cover the minor's conduct. We further hold that the evidence was sufficient. Therefore, we affirm the adjudication.

¶ 2 I. BACKGROUND

¶ 3 The State filed a petition seeking a delinquency adjudication of the minor. It alleged that, on December 1, 2009, the minor committed disorderly conduct by, while at school, saying that he was going to bring hollow-point bullets to the school and shoot staff members; this alarmed and disturbed Brian Furman, a staff member. Trial on the charge took place on July 15, 2010.

¶ 4 Furman, an individual assistant at the minor's school, testified that, at the time of the incident, he was in a classroom. Several other staff members were present, as were students. The minor had become upset during the class and had left the classroom; the teacher had followed him out. Furman further explained this as the minor being "frustrated in the classroom"; he agreed that the minor was "raising his voice." When the minor returned, he still seemed to be upset.

¶ 5 Some unspecified time after the minor returned, Furman "overheard him saying that he wanted to bring a gun with hollow-point bullets and shoot staff at the school." The minor made the comment to another student who was sitting next to him. A third student was also nearby. Furman estimated that he was seated two feet from the minor and the other students and at an angle to them. He did not think that the minor intended him to hear the comment. He did not say who else was in the vicinity or what else was going on in the room. On hearing the comment, Furman spoke to the minor and "informed him that it was completely inappropriate to say those things." The minor "mentioned that he didn't care."

¶ 6 The minor's original comment caused Furman great concern.

¶ 7 Chad McNett of the De Kalb police testified that he had gone to the school to investigate the incident. He had spoken to the minor with staff members present. The minor said that "if he was talking about guns it was only hypothetical and that Mr. Furman misunderstood, heard him incorrectly."

¶ 8 The minor's counsel told the court that he would not be putting on evidence and sought a directed finding.

¶ 9 The parties argued at length whether the minor's comment fell into one of the categories of speech, such as true threats, that are not protected by the first amendment. In the context of addressing whether a threat had to take some specific form to fall within the disorderly conduct provision, the court considered each of the provision's clauses:

> "I guess I'm looking in this statute for some part of the statute that isn't here. It says 'does any act in such an unreasonable manner'***. I think there's *** enough cases that say that *** type of stuff is the type of act that can be subject to this type of charge.
>
> 'In such an unreasonable manner', a statement saying 'I'm going to shoot somebody' certainly is unreasonable. 'As to alarm and disturb another', and certainly I think it's not unreasonable to say Mr. Furman was alarmed and disturbed[.]"

¶ 10 The court then discussed whether there had been a breach of the peace. The court suggested that the minor's statement amounted to the same thing as "yelling 'fire' in a crowded theater," especially given current public sensitivity about threats of school violence. The court parties then briefly discussed whether it was sufficient for there to have been a breach of the peace that the police were brought in. The court stated:

"I said that certainly his schooling stopped and that the teachers, the administration, whatever, had to get the police to come. To me do I think that's a breach of the peace? Yes, I do.

I realize that the defendant might very well not have had any intent to do any of those actions. *** [T]here are limits to everything including our rights to say what we're going to do in the situation. If he said that at his home, would it be the same? No. But he said it at school and I don't think the fact that he was talking to one individual means that he can't expect other people, other students, et cetera, to have heard it.

Now, it just so happened it was a teacher that heard it as opposed to one of the other students. You think if one of the other students heard that they would not have been alarmed and disturbed? I think that they would have been as alarmed and disturbed as the teacher was."

¶ 11 After defense counsel's brief comment on the minor's first amendment rights, the court responded:

"In the school setting to say that 'I'm coming back to school with a gun and bullets and shooting people' is sufficient evidence to me to alarm and disturb anybody, and I believe the peace was provoked [*sic*] so there will be a finding of guilty."

¶ 12 The minor moved for reconsideration. He argued that the knowing-act requirement of the disorderly conduct statute required that a person be aware that his or her conduct was likely to cause a breach of the peace. He argued that, because there was no evidence that he had known that Furman could hear what he was saying, his conduct was not knowing in the relevant sense. The court denied the motion, saying:

> "I've read the motion. I'm not persuaded otherwise as far as what my view of it was. Now, am I right? I don't know. All I know is just what I think and what I'm supposed to do what I think under the law and I believe I did that."

The minor did not seek clarification; he did not ask the court to explain whether it thought that the evidence he had asserted was missing was legally unnecessary or whether it thought that the evidence that the State presented was sufficient. The court sentenced the minor to 12 months' probation, and he timely appealed.

¶ 13 II. ANALYSIS

¶ 14 On appeal, the minor makes two arguments: (1) that his conduct was not within the scope of the disorderly conduct statute as it was then written and (2) that the evidence was insufficient that his conduct was knowing in the relevant sense. The first argument is clear and requires no prior analysis before we can address it. The second argument seems to have more pieces than the minor has made fully explicit. He unequivocally argues that the State was required to prove that he knew that his comment would tend to alarm or disturb and knew that it was practically certain to cause a breach of the peace. However, he also asserts that "the judge did not make *a finding* as to whether [he] acted 'knowingly,' when [he] made the alleged statements." (Emphasis added.) In other words, he seems to suggest that the court used the wrong legal standard, one missing requisite knowingness elements, to decide the sufficiency of the State's evidence. Further, he asserts that "the State failed to present evidence disputing that [his] statement was anything other than a friend 'letting off steam' to another friend." We will address these subsidiary arguments of the minor's when we address his second argument.

¶ 15 We note that the minor does not argue here that his conduct was protected speech. First amendment protections are therefore an issue only in that the disorderly conduct statute depends for

its validity upon constructions that do not impinge on those rights. See *United States v. Woodard*, 376 F. 2d 136, 143 (1967) (deeming the Illinois statute acceptable because the Illinois courts could be expected to give it narrowing interpretations that keep it in line with the first amendment); see also *Terminiello v. City of Chicago*, 337 U.S. 1, 4-6 (1949) (holding that a provision was unenforceable because it had been given impinging interpretations by lower courts).

¶ 16 We also note that the minor does not now contest that a breach of the peace in fact occurred. We therefore accept for the purposes of this appeal that what occurred at his school—apparently, a nonemergency call to the local police—was a breach of the peace.

¶ 17 We turn now to the minor's first argument. We review *de novo* issues of statutory construction. *People v. Taylor*, 221 Ill. 2d 157, 162 (2006). The minor asserts that, because the legislature amended the disorderly conduct statute in 2010 to specifically define threats to schools as offenses, we should presume that such threats were not previously offenses. Before we can address the argument, we must set out the relevant provisions.

¶ 18 The minor was charged under section 26-1(a)(1), the broadest of the disorderly conduct statute's provisions:

> "(a) A person commits disorderly conduct when he knowingly:
>
> (1) Does any act in such unreasonable manner as to alarm or disturb another and to provoke a breach of the peace[.]" 720 ILCS 5/26-1(a)(1) (West 2008).

Under section 26-1(b), a violation of section 26-1(a)(1) is a Class C misdemeanor. 720 ILCS 5/26-1(b) (West 2008). Section 26-1(a)(13), a provision added in 2010, created a Class 4 felony form of disorderly conduct: the knowing transmission or causing of the transmission of a "threat of destruction of a school building or school property, or a threat of violence, death, or bodily harm directed against persons at a school, school function, or school event." 720 ILCS 5/26-1(a)(13)

(West 2010) (defining the offense); 720 ILCS 5/26-1(b) (West 2010) (specifying that the section 26(a)(13) offense is a Class 4 felony).

¶ 19 The minor argues that the legislature's purpose in creating section 26-1(a)(13) must have been to *add* "the act of making threats at a school" as a type of conduct encompassed by the statute. On this point, he cites *In re K.C.*, 186 Ill. 2d 542 (1999): "Where the legislature makes a material change to an unambiguous statute, the presumption is that ' "the amendment was intended to change the law." ' " *K.C.*, 186 Ill. 2d at 548 (quoting *Board of Trustees of Southern Illinois University v. Department of Human Rights*, 159 Ill. 2d 206, 213 (1994), quoting *State of Illinois v. Mikusch*, 138 Ill. 2d 242, 252 (1990)). He contends that, because the legislature added a section explicitly dealing with the act of making threats at a school, applying the rule in *K.C.* we must presume that the older version did not implicitly encompass the act of making threats at a school. This does not follow. With section 26-1(a)(13), the legislature singled out from the broad class of acts that can constitute disorderly conduct certain threats to schools as requiring felony classification. That singling out does not mean that such threats to schools were not already part of the broader class.

¶ 20 The minor argues in the alternative that the State did not present sufficient evidence to prove that the minor acted knowingly when he made his comment. He asserts that section 26-1(a)(1) requires the State to prove that he was "consciously aware that his alleged statements would alarm or disturb another and provoke a breach of the peace." The State responds that only the *act* must be knowing. Both statements oversimplify the matter. Although the knowingness requirement applies only to the doing of the act, another scienter requirement, that the actor knew or should have known, applies to the alarming or disturbing of another. This issue also is a question of statutory interpretation and so subject to *de novo* review.

¶ 21 The minor reads the statute such that the word "knowingly" in the introductory clause of section (a) modifies *every* element in the clause "[d]oes any act in such unreasonable manner as to alarm or disturb another and to provoke a breach of the peace[.]" 720 ILCS 5/26-1(a)(1) (West 2008)). There exist three plausible possibilities as to what must be done knowingly: (1) the doing of the act, (2) the doing of the act in such unreasonable matter as to alarm or disturb another, or (3) the doing of the act in such unreasonable matter as to alarm or disturb another and to provoke a breach of the peace. The supreme court, in *People v. Raby*, 40 Ill. 2d 392, 397 (1968), provided an interpretation that ruled out possibility (2). If possibility (2) is ruled out, so is (3), and the interpretation must be (1).

¶ 22 In *Raby*, the court was addressing a claim that the provision reached conduct with first amendment protection. It looked to the committee comments to determine the provision's breadth. Responding to an argument that the provision could reach protected conduct, the court quoted those comments:

> " 'Section 26-1(a) is a general provision intended to encompass all of the usual types of "disorderly conduct" and "disturbing the peace." Activity of this sort is so varied and contingent upon surrounding circumstances as to almost defy definition. *** In addition, the task of defining disorderly conduct is further complicated by the fact that the type of conduct alone is not determinative, but rather culpability is equally dependent upon the surrounding circumstances. *** These considerations have led the Committee to abandon any attempt to enumerate "types" of disorderly conduct. Instead, another approach has been taken. As defined by the Code, the gist of the offense is not so much that a certain overt type of behavior was accomplished, as it is *that the offender knowingly engaged in some activity in an unreasonable manner which he knew or should have known would tend to disturb,*

> *alarm or provoke others*. The emphasis is on the unreasonableness of his conduct and its tendency to disturb.' " (Emphasis added.) *Raby*, 40 Ill. 2d at 396-97 (quoting Ill. Ann. Stat., ch. 38, ¶ 26-1, Committee Comments (Smith Hurd __).

(Note that, although the comments that the *Raby* court quoted seem to imply a disorderly conduct statute with different wording than the current one, in fact, the provision at issue was identically worded. See Ill. Rev. Stat.1967, ch. 38, ¶ 26-1(a) ("A person commits disorderly conduct when he knowingly: (1) Does any act in such unreasonable manner as to alarm or disturb another and to provoke a breach of the peace").) Thus, the supreme court tells us that, although the scienter requirement for the doing of the act is one of knowingness, that for "tend to disturb, alarm or provoke" is "knew or should have known." *Raby*, 40 Ill. 2d at 397. See *People v. Albert*, 243 Ill. App. 3d 23, 27 (1993) (because the defendant "performed her shouting knowingly and also knew or should have known that such noise likely would disturb people such as the complainant," she could properly be found guilty of disorderly conduct.) We understand this requirement to be implicit in the requirement that the act be done in an unreasonable manner.

¶ 23 That the minor has incorrectly stated the scienter requirement does not completely negate his argument. The State still had to prove that the minor *knew or should have known* that his statement would alarm or disturb. We review a claim of insufficient evidence in a delinquency proceeding under a manifest-weight-of-the-evidence standard. *In re Jessica M.*, 399 Ill. App. 3d 730, 736 (2010). Taking the evidence in the light most favorable to the State, we determine whether any rational trier of fact could have found that the elements of the offense were proven beyond a reasonable doubt. *Jessica M.*, 399 Ill. App. 3d at 736 (citing *Jackson v. Virginia*, 443 U.S. 307, 318 (1979), and *People v. Pollock*, 202 Ill. 2d 189, 217 (2002)).

¶ 24 A rational trier of fact could make the necessary inference from the evidence. Furman testified that he was sitting about two feet from the minor. Furthermore, he *did* hear the comment. From that, the court could have reasonably inferred that the minor should have known that Furman would hear the comment. Furthermore, the minor should have had no difficulty in knowing that Furman, as a staff member, would react with alarm.

¶ 25 The minor also suggests that the court erred because it "did not make a finding as to whether [he] acted 'knowingly,' when [he] made the alleged statements." He has failed to create a record sufficient to show this claimed error. We, as a reviewing court, "presume[] that a trial judge knows and follows the law unless the record affirmatively indicates otherwise." *In re Jonathon C.B.*, No. 107750 (Ill. June 30, 2011), slip op. at 21. No requirement exists that a court make an express finding as to every element of an offense; the presumption that the court knows the law means that a general finding of guilt presumes a proper finding as to every element. It is, of course, excellent practice for counsel in a bench trial to take steps to have the court make findings of law on the record. If counsel does that, a reviewing court will have an analogue to jury instructions to tell it what law the trial court applied. And, if a question arises after a bench trial of whether the court applied the proper law, a motion for reconsideration provides another way for counsel to ask the court to state its understanding of the law. Here, the minor's motion for reconsideration did invite the court to state its understanding of the scienter requirements. Unfortunately, the court's extemporaneous comments in denying the motion added nothing to our understanding. However, those comments were not of the sort to discourage further request for clarification. Nothing prevented the minor from simply asking the court what scienter requirements it had applied. He did not, and we do not know what standard the court applied. The record before us does not

affirmatively show that the court applied the wrong scienter requirement. Therefore, we must presume that it applied the correct one.

¶ 26 The minor also suggests that the State put on insufficient evidence in that it failed to show that he was not simply " 'letting off steam.' " The minor's intended meaning is—perhaps—relevant to whether his speech fell outside of any protected category. It would also be relevant were the minor correct that a knowingness requirement applied to every element of the offense. With no first amendment argument in play and the proper lower scienter requirement acknowledged, his intended meaning has no place in our analysis.

¶ 27 III. CONCLUSION

¶ 28 For the reasons stated, we affirm the delinquency finding.

¶ 29 Affirmed.