2012 IL App (3d) 100461-U

Order filed February 21, 2012

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2012

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of the 14th Judicial Circuit, Mercer County, Illinois,
Plaintiff-Appellee,	)	
	)	Appeal No. 3-10-0461
v.	)	Circuit No. 09-CF-117
	)	
JUSTIN M. MELTON,	)	Honorable Greg G. Chickris,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE O'BRIEN delivered the judgment of the court.
Justice Wright concurred in the judgment.
Justice Holdridge dissented.

ORDER

¶ 1 *Held*: The evidence was sufficient to prove defendant's conviction for threatening a public official. The jury could infer that defendant's threatening statement was conveyed to the official, and the State proved defendant knowingly made the threat.

¶ 2 Defendant, Justin M. Melton, appeals his conviction for threatening a public official (720 ILCS 5/12-9(a)(1)(i), (a)(2) (West 2008)). On appeal, defendant contends that the State failed to present evidence that his threatening statements were conveyed to

the victim and that the State failed to prove that defendant knowingly conveyed the threat to the victim. We affirm.

¶ 3 FACTS

¶ 4 On March 29, 2010, defendant was charged by amended information with two counts of threatening a public official. Count I alleged that defendant knowingly conveyed threats of harm against James G. Conway, circuit court judge of the Fourteenth Judicial Circuit. Count II alleged that defendant knowingly conveyed threats of harm against Gregory J. McHugh, Mercer County State's Attorney. Defendant purportedly made these threats while he was incarcerated in the Mercer County jail. Defendant pled not guilty to both counts, and the case proceeded to a jury trial.

¶ 5 At trial, two of defendant's fellow inmates testified that they heard defendant threaten to kill Conway and McHugh. Jamal Jefferson testified that defendant talked about killing a prosecutor and a judge. Initially, Jefferson thought defendant was "just talking[.]" However, Jefferson took defendant's threat seriously when he observed defendant start calling the State's Attorney's office. Jefferson reported that the State's Attorney would not answer the telephone because "[t]hey knew he was calling trying to threaten him." Jefferson noted that defendant did not specifically name the judge or prosecutor, but he stated it was the "Judge in his case." Jefferson never spoke to anyone about defendant's statements until he was interviewed by a detective.

¶ 6 Fellow inmate Bruce Cotton testified that he was playing cards with defendant when defendant told him that he had made calls to the State's Attorney's office, but they did not accept his calls. Defendant was angry because the judge and the State's Attorney

would not release him. Cotton recalled that a correctional officer told defendant to stop calling the State's Attorney, and defendant became angry. Defendant then said he was going to " 'fuck' the Judge up and the State's Attorney, he knew where they lived at." Defendant never asked Cotton to convey his threats.

¶ 7 Detective William Glancey testified that he was called to the Mercer County State's Attorney's office in December 2009. Upon arrival, defendant received a written statement from a local attorney's client regarding defendant. The note was handed over to Glancey, and he started his investigation. Glancey first went to the Mercer County jail to interview Jefferson and Cotton. Afterwards, Glancey met with defendant. Defendant allegedly told Glancey that he made threats against Conway and McHugh to the other inmates. Glancey testified that defendant had threatened to place a bomb in Conway's mailbox and had threatened to "beat McHugh down." Glancey recalled that defendant stated he was not serious about the threats and he was upset about his situation. Defendant did not instruct Glancey to convey the threats to Conway or McHugh.

¶ 8 The State asked the court to take judicial notice of the fact that Conway was a duly elected judge in the Fourteenth Judicial Circuit and McHugh was the duly elected State's Attorney for Mercer County. Therefore, both victims were public officials as defined by the statute. Defendant stipulated to these facts. The State then rested, defendant elected not to testify, and the case proceeded to closing arguments. Afterwards, the jury found defendant guilty on both counts.

¶ 9 After the trial, defendant filed a posttrial motion for judgment of acquittal notwithstanding the verdict. Defendant argued that the State failed to present evidence

that defendant's alleged threats were conveyed to Conway or McHugh. The court set aside the verdict on count I and sustained the verdict on count II. The court reasoned that the jury was "entitled to make a reasonable inference as to the fact that [the threat] obviously had been conveyed to the State's Attorney" because there was evidence presented which showed that the threats were delivered to the State's Attorney's office. Defendant appeals.

¶ 10 ANALYSIS

¶ 11 On appeal, defendant first argues that the State failed to present any evidence that his threatening statement concerning McHugh was conveyed, directly or indirectly, to McHugh.

¶ 12 Reviewing the sufficiency of the evidence, we will only reverse a defendant's conviction if, after viewing the evidence in the light most favorable to the prosecution, no rational trier of fact could have found the crime to have been proved beyond a reasonable doubt. *People v. Collins*, 106 Ill. 2d 237 (1985).

¶ 13 A person commits the offense of threatening a public official when: (1) they knowingly convey, directly or indirectly, a threat to a public official; (2) the threat would place the public official in reasonable apprehension of immediate or future bodily harm; and (3) the threat was related to the official's public status. 720 ILCS 5/12-9(a)(1), (a)(2) (West 2008).

¶ 14 Here, defendant argues that the State failed to prove that defendant's threats were conveyed to McHugh. However, Jefferson and Cotton testified that defendant had threatened to harm the State's Attorney, and that defendant had called the State's

Attorney's Office. Jefferson further testified that, according to defendant, the State's Attorney would not take his calls because he knew defendant was trying to threaten him. Glancey testified that he received a written note from the State's Attorney's office, concerning defendant, that initiated the investigation. The inference from the testimony was that this note relayed the threat defendant made against McHugh while incarcerated. Glancey's testimony that he received a written note from the State's Attorney's office, along with the other testimony, permitted the jury to infer that defendant's threat was conveyed to McHugh. See *People v. Kirkpatrick*, 365 Ill. App. 3d 927 (2006) (in determining a defendant's guilt, the trier of fact is entitled to draw reasonable inferences that flow from the evidence). Even though defendant's threat may have been indirectly conveyed to McHugh, we find that the jury could have reasonably inferred that McHugh received the threat.

¶ 15 Defendant next argues that the State failed to prove that he knowingly conveyed the threat, directly or indirectly, to McHugh.

¶ 16 The determination of whether a defendant acted with the requisite intent is for the trier of fact to decide. *People v. Price*, 225 Ill. App. 3d 1032 (1992). When the facts give rise to more than one inference of a defendant's intent, a reviewing court will not substitute its judgment for that of the trier of fact unless the inference accepted by the trier of fact is inherently impossible or unreasonable. *Id.*

¶ 17 The offense of threatening public officials requires a person to "knowingly and willfully deliver[ ] or convey[ ]" a threat to a public official. 720 ILCS 5/12-9(a)(1) (West 2008). Testimony in the present case indicated that defendant made repeated calls

to McHugh's office and made the threats in front of two other inmates. Defendant's attempts to directly call McHugh and his repeated statements made in front of the other inmates were sufficient for the jury to infer that defendant knew his threats would be conveyed to McHugh.

¶ 18 CONCLUSION

¶ 19 For the foregoing reasons, the judgment of the circuit court of Mercer County is affirmed.

¶ 20 Affirmed.

¶ 21 JUSTICE HOLDRIDGE, dissenting:

¶ 22 I dissent. I would find that the evidence was insufficient to convict the defendant of the offense of threatening a public official. As the majority noted, a person commits the offense of threatening a public official when: (1) they knowingly convey, directly or indirectly, a threat to a public official; (2) the threat would place the public official in reasonable apprehension of immediate or future bodily harm; and (3) the threat was related to the official's public status. 720 ILCS 5/19-9(a)(1), (a)(2) (West 2008).

¶ 23 In the instant matter, viewing the evidence in the light most favorable to the prosecution (*People v. Collins*, 106 Ill. 2d 237 (1985)), no rational trier of fact could have found that the defendant knowingly conveyed a threat, directly or indirectly, to McHugh.

¶ 24 The defendant's threat was conveyed to McHugh, indirectly, when someone, identified only as "a local attorney," delivered a written note to McHugh's office. The record indicates that the attorney was counsel for an inmate in the Mercer County Jail, and the written note, apparently, conveyed the attorney's client's retelling of the

defendant's threat against McHugh. That is the manner by which the defendant's threat was *conveyed* to McHugh. Clearly, the threat made by the defendant was *indirectly* conveyed to McHugh - - a fellow inmate who overheard the threat conveyed it to his attorney who, in turn, conveyed it to McHugh. But where is the evidence that the defendant *knowingly* conveyed the threat, directly or indirectly, to McHugh? There is no evidence that the defendant *knew* that the fellow inmate would convey the threat to McHugh. There is also no evidence that the defendant told the fellow inmate, or anyone else, to convey, *i.e.*, communicate, his threat to McHugh.[1]

¶ 25 Where knowledge is an element of a criminal offense, a person acts "knowingly" when:

> "(a) The nature or attendant circumstances of his or her conduct, described by the statute defining the offense, when he or she is consciously aware that his or her conduct is of that nature or that those circumstances exist. Knowledge of a material fact includes awareness of the substantial probability that the fact exists. [and]
>
> (b) The result of his or her conduct, described by the statute defining the offense, when he or she is consciously aware that that result is practically certain to be caused by his conduct." 720 ILCS 5/4-5(a), (b) (West 2008).

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[1] The American Heritage Dictionary defines convey as "to communicate or to make known; impart." American Heritage Dictionary of the English Language (1st edition, 1969).

¶ 26 A person is said to act "knowingly" when he is consciously aware that his conduct is practically certain to cause the offense defined in the statute. *People v. Melton*, 282 Ill. App. 3d 408, 417 (1996). Knowledge, by its very nature, is ordinarily established by circumstantial evidence, but there must be sufficient direct evidence and established facts from which an inference of knowledge can be made and the State cannot simply rely upon unsupported inferences to establish the element of guilty knowledge. *People v. Pinta*, 210 Ill. App. 3d 1071, 1078 (1991). Here, to prove that the defendant *knowingly conveyed* the threat to McHugh, there would have to be direct evidence and established facts to establish that the defendant knew that the threat he made in the jail would *practically certainly* be conveyed to McHugh. A review of the record shows no such direct factual evidence from which the jury could infer that the defendant knowingly conveyed the threat to McHugh.

¶ 27 The majority infers that the defendant knowingly conveyed his threat to McHugh because he had attempted to call McHugh's office, purportedly to convey the threats against McHugh, and because he had made the threats in front of other inmates. Viewing the evidence in the light most favorable to the prosecution, this evidence is insufficient to establish that the defendant knowingly conveyed the threat to McHugh. Again, the threat was conveyed in a written note from an inmate who reported the defendant's statements to his attorney. The attorney then conveyed the written note to McHugh. In order to establish guilty knowledge as an element of the offense, the direct factual evidence needed to establish that the defendant was practically certain that his statement would be conveyed to McHugh. The evidence cited by the majority is inadequate to prove the

element requiring the State to prove that the defendant possessed the requisite guilty knowledge beyond a reasonable doubt.

¶ 28 At best, the evidence in the instant matter shows that the defendant *should have known* that his threat would be indirectly conveyed to McHugh. An inference that the defendant should have known that his threat would be conveyed to McHugh is, however, insufficient to establish the element of knowledge. Where a criminal statute requires proof of knowledge as an element of the offense, proof of actual knowledge is required:

> "The term 'knew or should have known' is commonly used in civil cases; however, it should not be equated with the requisite mental state of 'knowledge' in criminal prosecutions. 'Knowledge' is not the same as 'should have known.' 'Knowledge' involves conscious awareness (720 ILCS5/4-5 (West 1992)), while 'should have known' implicates 'the standard of care which a reasonable person would exercise' and therefore pertains to the lesser mental state of 'recklessness' and 'negligence'." *People v. Nash*, 282 Ill. App. 3d 982, 986 (1996).

¶ 29 Since there was no factual evidence upon which a reasonable person could infer that the defendant knowingly conveyed, directly or indirectly, a threat to McHugh, the defendant's conviction cannot stand. I would reverse the judgment of the circuit court of Mercer County.