

No. 1-14-2265

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 13 CR 3832
)	
REY TREVINO,)	Honorable
)	Thomas M. Davy,
Defendant-Appellant.)	Judge Presiding.

PRESIDING JUSTICE ROCHFORD delivered the judgment of the court.
Justices Hoffman and Delort concurred in the judgment.

ORDER

¶ 1 **Held:** We reversed defendant's conviction for threatening a public official, finding the State failed to prove him guilty beyond a reasonable doubt.

¶ 2 Following a bench trial, defendant, Rey Trevino, was convicted of threatening a public official (720 ILCS 5/12-9(a)(1)(ii) (West 2012)), and sentenced to six months' imprisonment, time considered served, and two years of probation. On appeal, defendant contends: (1) the State failed to prove him guilty beyond a reasonable doubt; and (2) his conviction violated his first amendment right to free speech. We reverse.

¶ 3 Defendant was arrested and charged with three counts of aggravated intimidation and one count of threatening a public official in connection with a threat he allegedly made to set fire to Officer Daniel Castillo's garage.

¶ 4 At trial, Officer Castillo testified that from November 2, 2012, to January 25, 2013, he was assigned to patrol the Hegewisch area in Chicago, where he also lived. He was very well known in the Hegewisch community as the officer who responds to "calls for burglaries, calls for service, whatever the case may be." Officer Castillo owns a home in the area with many surveillance cameras, and also owns a silver truck.

¶ 5 On an unidentified date, Officer Castillo and other officers executed search warrants involving certain Latin Dragon gang members in Hegewisch, during which they impounded a car and 120 grams of cannabis. Defendant, a member of the Latin Dragons, was present during the execution of these search warrants.

¶ 6 Subsequent to the execution of the search warrants, Dennis Biondich, whom Officer Castillo had never met before, approached him during a traffic stop on January 23, 2013, read his name plate, and appeared to recognize him. Mr. Biondich also pointed toward Officer Castillo's nearby house down the street, and to the silver truck parked in front, and correctly stated that the vehicle belonged to Officer Castillo. Mr. Biondich told the officer that defendant had held a meeting with the Latin Dragons. During the meeting, defendant informed them of the officer's vehicle, his home address and that his house was covered with security cameras, and defendant threatened to throw a "cocktail bomb" into his house to disable the security cameras and set his garage on fire. Officer Castillo subsequently notified his superiors of defendant's threat.

¶ 7 On cross-examination, Officer Castillo stated that Mr. Biondich never told him that defendant directed Mr. Biondich to threaten the officer or to tell the officer about defendant's intent to disable his security cameras with a cocktail bomb and set fire to his garage. Officer Castillo also stated that, based on the information Mr. Biondich had related to him, a police

report was written stating: "Biondich did not realize at the time it was Officer Castillo who was the intended target and victim."

¶ 8 Assistant State's Attorney (ASA) Reginald Newton testified he took a handwritten statement from Mr. Biondich on January 25, 2013, regarding defendant's threat to Officer Castillo. The statement was admitted into evidence and published.

¶ 9 Mr. Biondich stated that he was 36 years old, earned a GED in 1998 or 1999, and works in construction. Mr. Biondich and defendant had known each other since defendant was about nine years old. Mr. Biondich knew defendant "mainly from the neighborhood and from [defendant's] older siblings," and they would "bump into" each other from time to time. Mr. Biondich believed that defendant was a member of the Spanish Cobras gang.

¶ 10 Mr. Biondich stated that, about a month and a half earlier, he was at his sister's house with some other people, when defendant and some of his friends arrived. Defendant asked Mr. Biondich if he knew "that f***ing Mexican cop that lives down there," and pointed in the direction of a nearby street. Defendant said that the officer had taken something from one of his friends. Mr. Biondich asked him to further identify the officer. Defendant responded that the officer lived in a house with security cameras and that a silver truck was parked one house over from the officer's house. Defendant said he was going to burn down the officer's garage by throwing a cocktail bomb "because he didn't want to be seen by the cameras."

¶ 11 Mr. Biondich initially "discounted" defendant's threat, and did not recognize the officer to whom he was referring. Mr. Biondich subsequently came into contact with Officer Castillo on January 23, 2013, when the officer was in the process of arresting someone from the neighborhood in an unrelated case. Mr. Biondich "put two and two together," and recognized

him as the officer whose garage defendant had threatened to burn down. Mr. Biondich told the officer of defendant's threat.

¶ 12 In his written statement, Mr. Biondich acknowledged that no threats or promises had been made to get him to make the statement, and that the statement was made freely and voluntarily. Mr. Biondich signed the bottom of each page to show that it was accurate.

¶ 13 Mr. Biondich testified at trial that he lived in the southeast side of Chicago, and that there were a large number of police officers and firefighters in his neighborhood, as well as gang factions. Mr. Biondich admitted he was afraid of the gangs and reluctant to testify at trial, and that the only reason he was in court was because the State had served him with a subpoena. Mr. Biondich had a prior felony conviction for residential burglary.

¶ 14 Mr. Biondich testified he was at his sister's house in November 2012, along with some other persons. Defendant arrived and talked with Mr. Biondich on the outside porch, but Mr. Biondich could not remember what they talked about. Mr. Biondich recalled having a conversation with an ASA on January 25, 2013, and remembered stating that: he knew defendant from the neighborhood; defendant was a member of the Spanish Cobras; defendant asked him at his sister's house if he knew the unnamed "f***ing Mexican cop that lived down there," and that defendant told him the officer had taken something from his friends. Mr. Biondich did not recall stating that defendant pointed in the direction of a nearby street when indicating where the unnamed officer lived, nor did Mr. Biondich recall stating that defendant told him the officer lived in a house with security cameras and that there was a silver truck parked one house over.

¶ 15 Mr. Biondich initially testified he did not recall telling the ASA that defendant said he was going to throw a cocktail bomb at the unnamed officer's garage and burn down the garage, but he later testified that he told the ASA he relayed to Officer Castillo the "threats to his

garage." Mr. Biondich recalled stating to the ASA that he "discounted" defendant's threat to the unnamed officer and did not recognize the officer to whom defendant was referring until he came in contact with Officer Castillo in an unrelated case and deduced that he was the "Mexican cop."

¶ 16 On cross-examination, Mr. Biondich testified there were three or four persons present at his sister's house when he had the conversation with defendant, but that they were about 15 feet away and he did not think they could have heard the conversation. Defendant never told him the name of the officer he was threatening. Defendant never told him to convey the threat to the officer, and never told him to go to the officer's house and tell him "if he doesn't knock it off we're going to burn down his house." Mr. Biondich did not know Officer Castillo prior to meeting him on January 23, 2013.

¶ 17 On redirect examination, Mr. Biondich testified he saw Officer Castillo's name tag, recognized he was a Mexican-American police officer, and told him about defendant's threat to burn down a "Mexican cop's" garage. Mr. Biondich did not tell the officer that it was *his* garage that was going to be burned because he was not sure that Officer Castillo was the Mexican officer to whom defendant had been referring.

¶ 18 At the close of the State's case, the trial court granted defendant's motion for a directed finding on the aggravated intimidation counts set forth in Counts 1 and 2. The cause proceeded on the remaining aggravated intimidation and threatening a public official counts.

¶ 19 In the defense case, defendant testified he never made a statement to Mr. Biondich threatening to burn down Officer Castillo's garage, and never told anyone to convey a threat to Officer Castillo.

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¶ 20 On cross-examination, defendant testified he has lived in the Hegewisch neighborhood for 19 years, has known Mr. Biondich since he was nine years old, and knows who Officer Castillo is, what vehicle he drives, and where he lives. Defendant is a former member of the Latin Dragon street gang, but is no longer a member thereof. Defendant knew that Officer Castillo, as well as other officers, had (at an unidentified time) executed search warrants on the Latin Dragons, made arrests, and seized items belonging to them.

¶ 21 Following all the evidence, the trial court acquitted defendant on the remaining count of aggravated intimidation, but convicted him of threatening a public official. The court sentenced defendant to six months' imprisonment, time considered served, and two years of probation. Defendant appeals.

¶ 22 Defendant contends the State failed to prove him guilty of threatening a public official beyond a reasonable doubt.

¶ 23 When presented with a challenge to the sufficiency of the evidence, the relevant inquiry is whether, after viewing all the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Ross*, 229 Ill. 2d 255, 272 (2008). The reviewing court may not substitute its judgment for the trier of fact. *People v. Maldonado*, 2015 IL App (1st) 131874, ¶ 18. "The weight to be given the witnesses' testimony, the credibility of the witnesses, resolution of inconsistencies and conflicts in the evidence, and reasonable inferences to be drawn from the testimony are the responsibility of the trier of fact." *People v. Sutherland*, 223 Ill. 2d 187, 242 (2006).

¶ 24 A person commits the offense of threatening a public official when: (1) he knowingly delivers or conveys, directly or indirectly, to a public official by any means a communication

containing a threat that would place the public official in reasonable apprehension that damage will occur to property in his custody, care or control; and (2) the threat was conveyed because of the performance or nonperformance of some public duty, because of hostility of the person making the threat toward the status or position of the public official, or because of any other factor related to the official's public existence. 720 ILCS 5/12-9(a)(1)(ii) (West 2012). For purposes of a threat to a police 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 2012).

¶ 25 Thus, one of the elements of defendant's charged crime of threatening a public official is that he *knowingly* conveyed, directly or indirectly, a unique threat to Officer Castillo. *People v. Garcia*, 2015 IL App (2d) 131234, ¶ 10. A person acts knowingly if he is consciously aware that his conduct is practically certain to cause the prohibited result. *People v. Lengyel*, 2015 IL App (1st) 131022, ¶ 45; 720 ILCS 5/4-5(b) (West 2012). Therefore, the State was required to show that defendant was consciously aware that the unique threat he made was practically certain to be conveyed directly or indirectly to Officer Castillo.

¶ 26 The State contends on appeal that it proved beyond a reasonable doubt that defendant knowingly conveyed a unique threat to Officer Castillo indirectly through Mr. Biondich. However, the evidence indicates otherwise. Even if any rational trier of fact, viewing the evidence in the light most favorable to the State, believed defendant told Mr. Biondich of his threat to burn down the "Mexican cop's" garage during their November 2012 conversation, there was no evidence that defendant was consciously aware that Mr. Biondich was practically certain to convey defendant's threat to Officer Castillo in January 2013. In support, we note Mr. Biondich's written statement indicated defendant never identified Officer Castillo by name, but

only as "that f***ing Mexican cop" and that Mr. Biondich expressed resultant confusion over the identity of the unnamed officer to whom defendant was referring, even after defendant allegedly pointed in the direction of the officer's house and stated it was covered in security cameras and that a silver truck was parked one house over. Mr. Biondich's statement was corroborated by the police report written after he spoke with Officer Castillo in January 2013, which indicated that when talking to defendant in November 2012, Mr. Biondich did not know that Officer Castillo was the intended target of defendant's threat. Also, Mr. Biondich stated that defendant's threat to set fire to the unnamed officer's garage by throwing a cocktail bomb at it was so that he would be out of sight of the officer's security cameras and not be caught, thereby indicating that defendant was interested in secrecy, *not* the conveyance of the threat to the officer ahead of time. Further, Mr. Biondich's statement contained no indication that defendant requested or told him to convey the threat to the unnamed officer; and Mr. Biondich never stated that he told defendant he would relay the threat to the officer. At trial, Mr. Biondich specifically testified that defendant never used Officer Castillo's name during their conversation or told him to convey the threat to Officer Castillo; also, Mr. Biondich did not know Officer Castillo at the time defendant made his threat in November 2012 and did not first meet the officer until January 23, 2013. Officer Castillo similarly testified that he first met Mr. Biondich on January 23, 2013, and that in the course of their conversation regarding defendant's threat, Mr. Biondich never told him that defendant directed Mr. Biondich to tell the officer of the threat. Thus, Mr. Biondich told the officer about defendant's threat of his own accord.

¶ 27 The State argues that defendant knew Mr. Biondich would inform Officer Castillo of his threat, even in the absence of a specific request by defendant that Mr. Biondich do so. In support, the State cites *People v. Garcia*, 2015 IL App (2d) 131234. In *Garcia*, the defendant

there was held in contempt for uttering profanities directed at the judge during a bond call. *Id.* at ¶2. Defendant was removed from the courtroom and taken to the police department's booking area, where he made multiple threats against the judge in the presence of law enforcement personnel. *Id.* ¶ 2. The defendant subsequently was convicted of threatening a public official. *Id.* ¶ 1. On appeal, the defendant argued that the State failed to prove him guilty beyond a reasonable doubt because he did not ask anyone to convey the threats to the judge, and therefore did not know they would be so conveyed. *Id.* ¶ 10. The appellate court acknowledged that the fact defendant's threats were conveyed to the judge was not enough to sustain his conviction, and that the State was obligated to prove defendant *knew* his threats would be conveyed to the judge. *Id.* The appellate court held that the State had sufficiently proved defendant's knowledge and affirmed his conviction, holding that where a defendant makes threatening statements about a specific judge in the presence of law enforcement personnel but does not request that the threats be passed on, he knows of the practical certainty that such threats will be brought to the judge's attention. *Id.*

¶28 *Garcia* is inapposite, because unlike the law enforcement personnel there who immediately recognized the judge whom the defendant was threatening when the threats were made during processing immediately after appearing in court, Mr. Biondich expressed confusion to defendant as to the identity of the subject of defendant's threat. Also, Mr. Biondich was not a law enforcement official, nor did he have any type of prior relationship with Officer Castillo; rather he was an acquaintance/friend of defendant who worked construction and had a criminal record. There was no evidence that Mr. Biondich had any involvement with defendant's gang activities. Defendant and Mr. Biondich saw each other from time to time, and the conversation at issue here occurred in a social setting at Mr. Biondich's sister's house. Even viewed in the

light most favorable to the State, no evidence was presented from which any rational trier of fact could find that defendant was consciously aware of the practical certainty that such a longtime acquaintance/friend, who was not affiliated in any way with law enforcement and who in fact had a criminal record, would relay the threat and thereby implicate defendant to the unnamed officer whose identity he was uncertain about.

¶ 29 The State argues that the conversation between defendant and Mr. Biondich took place in front of other people from the neighborhood, and therefore defendant knew there was a practical certainty that even if Mr. Biondich did not relay the threat, one of the other unidentified persons present during the conversation likely would relay defendant's threat to Officer Castillo, who lived and worked in the area. The State's argument is unavailing as only Mr. Biondich relayed defendant's threat. Also, contrary to the State's argument, Mr. Biondich gave uncontradicted testimony that the conversation he had with defendant was out of earshot of any other person. Thus, Mr. Biondich was the only person (other than defendant) who was aware of the threat and who could have relayed it to the unnamed officer.

¶ 30 The State argues that *People v. Warrington*, 2014 IL App (3d) 110772, and *People v. Kirkpatrick*, 365 Ill. App. 3d 927 (2006), require us to affirm defendant's conviction.

¶ 31 In *Warrington*, the appellate court held that the evidence at trial was sufficient to prove the defendant there threatened a public official, where, in the course of his arrest, he directly threatened the arresting police officer with bodily harm. *Warrington*, 2014 IL App (3d) 110772, ¶¶ 5-11, ¶ 35. *Warrington* is factually inapposite, as defendant here did not directly convey a threat to Officer Castillo.

¶ 32 In *Kirkpatrick*, the defendant there was sentenced by Judge Rossetti and Judge Gilleran Johnson in several cases to terms of imprisonment. *Kirkpatrick*, 365 Ill. App. 3d at 928. The

defendant subsequently wrote Judge Rossetti two letters stating he intended to kill her unless she killed Judge Gilleran Johnson. *Id.* at 928-29. Judge Rossetti informed Judge Gilleran Johnson of the threat, and the defendant subsequently was convicted for threatening both judges. *Id.* On appeal, the defendant argued that the State failed to prove him guilty beyond a reasonable doubt of threatening Judge Gilleran Johnson. *Id.* at 929. No argument was made on appeal that the defendant did not know his threat would be conveyed to Judge Gilleran Johnson. Rather, the defendant's argument on appeal was that Judge Gilleran Johnson could not have been placed in reasonable apprehension of future bodily harm where she did not believe Judge Rossetti would carry out his solicitation to kill her. *Id.* The appellate court rejected the defendant's argument and affirmed his conviction, noting that the contents of the letters and other statements made by him indicated a hostile intent toward Judge Gilleran Johnson, which would cause her a reasonable apprehension of future bodily harm. *Id.* at 930-31. In affirming the defendant's conviction, the appellate court implicitly recognized that he knew Judge Rossetti would convey to Judge Gilleran Johnson his threat to kill her.

¶ 33 The facts of the present case are completely inapposite to those in *Kirkpatrick*, involving not a letter mailed to a judge, threatening to kill her unless she killed another named judge, but rather an oral threat made in the course of a conversation with a longtime acquaintance/friend in which defendant stated his intention to secretly burn down an unnamed officer's garage with a cocktail bomb. As discussed, even when viewed in the light most favorable to the State, no evidence was presented from which any rational trier of fact could conclude that defendant was consciously aware of the practical certainty that Mr. Biondich understood the identity of the unnamed officer and that, on his own volition and without any request from defendant, he would relay the threat and implicate defendant to the officer a month and a half later.

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¶ 34 As the State failed to prove the necessary element that defendant knowingly conveyed his unique threat to Officer Castillo, we reverse defendant's conviction. As a result of our finding, we need not address defendant's other argument on appeal.

¶ 35 Reversed.