

FLORIDA CASE LAW UPDATE 24-01

Case: B.W.B. v. State 2023 WL 7577631**Date:** December 18, 2023**Subject:** Threats

FACTS: B.W.B. posted an image on Snapchat and sent it to a friend. The image was of a person – later identified as B.W.B. – in a black cap, wearing large black headphones, a red and black skull mask, black sunglasses, a black hoodie, and a pair of fingerless gloves. In his right hand he was holding what appeared to be a gun. The text at the bottom of the photo read “Don’t go to school tomorrow.” The police received a tip that B.W.B. threatened to shoot up a school. The police interviewed him at the school. B.W.B. admitted to sending the image but denied adding the text, and stated that the weapon was an airsoft toy gun. The police also asked B.W.B. about a notebook he carried around, and he admitted that the notebook contained 1) his thoughts on racial minorities and Jews, 2) a kill list, and 3) notes on the Columbine school shooting. The police then searched B.W.B.’s school computer and found evidence of many Google searches “related to school shootings and hate groups,” including Columbine, guns, Nazi, Nikolas Cruz, terrorism, and extremism. B.W.B. was arrested and charged with violating F.S. 836.10, Written Threats to Kill, Do Bodily Injury, or Conduct a Mass Shooting or Act of Terrorism.

At trial the friend that received the image testified that he thought it was a joke. The friend also testified that he had seen B.W.B. carrying around the notebook, and that B.W.B. showed him a “white supremacist speech” in the notebook. The friend went on to testify that if he had known the notebook contained references to Columbine and was basically a manifesto on how to carry out a school shooting, when he received the message he would have taken it seriously. B.W.B. argued that a reasonable person would not take the image as a “threat” and relied on Puy v. State (whether the threat itself is sufficient to cause alarm in a reasonable person), specifically it was obvious that the gun was not real, there was no threatening message, and that the State did not prove that B.W.B. transmitted the Snapchat. B.W.B. also argued that the statute was unconstitutional on its face. The trial court found B.W.B. delinquent, finding the image 1) was a threat, specifically B.W.B.’s expression of intention to inflict evil, injury, or damage, and 2) that it was sufficient to cause alarm in reasonable persons. The trial court also noted that the friend initially took the Snapchat as a joke, but once asked when combined with the notebook about school shootings whether he would still consider the image to be a joke, his testimony was explicitly no. The trial court also found the statute constitutional because it was not overbroad and did not criminalize free speech. B.W.B. appealed.

RULING: The Fourth District Court of Appeal (DCA) affirmed the trial court’s order adjudicating B.W.B. delinquent; the trial court’s specific finding that the Snapchat was B.W.B.’s “expression of intention to inflict evil, injury, or damage,” was sufficient to establish the requisite mens rea. The appellate court also affirmed the trial court’s order finding the statute constitutional, as the statute is narrowly tailored to criminalize written threats of violence.

DISCUSSION: The Puy case (which was relied on at the trial level) was an appeal from a motion to dismiss, and held that the issue of whether a message could cause alarm in a reasonable person was for the trier of fact to decide. The reasonable person standard is generally known as negligence for mens rea standards. This case was tried before T.R.W. v. State and Counterman v. Colorado (see CLU 23-01) were decided. T.R.W. and Counterman both address criminal intent at trial. T.R.W. (a Florida case) was decided in February of 2023. T.R.W. held to prove a violation of 836.10, the trier of fact must find that the defendant transmitted a communication for the purpose of issuing a threat, or with knowledge that the communication will be viewed as a threat. Months later, the U.S. Supreme Court in Counterman held to establish a true threat, the State must show that the defendant acted recklessly in making the statement. In its ruling, the Fourth DCA noted that the trial court correctly relied on Puy as it was the most recent case related to what was required to prove what constitutes a threat but not the correct mens rea standard. The Fourth DCA declined to adopt a mens rea standard for threats cases, but found the evidence was sufficient to satisfy the tests of Puy, T.R.W., and Counterman.

Officers should consult with their agency legal advisors to confirm the interpretation provided in this Update and to determine to what extent the case discussed will affect their activities.

COMMENTS: When evaluating a written threats case, investigators should pay particular attention to the context of the threat and ensure there is evidence that the writer or defendant, at minimum, acted recklessly in making the threat. This does not mean a confession is needed to prove a threats case. Evidence of intent can be inferred from the circumstances around the threat and other evidence in the case. In this case, investigators found B.W.B. had authored a manifesto on how to carry out a school shooting, Google searches related to school shootings, and multiple references to Columbine in his notebook. This evidence, coupled with the Snapchat, shows that B.W.B. purposely, knowingly, and at a minimum recklessly intended the message to be viewed as a threat.

Mens Rea Standards

- *Purpose.* A person acts purposely when he consciously desires a result - I want my words to be viewed as threats. (T.R.W.)
- *Knowledge.* A person acts knowingly when he is aware that a result is practically certain to follow – there is a practical certainty other will view my words as threats. (T.R.W.)
- *Reckless.* A person acts recklessly when he consciously disregards a substantial and unjustifiable risk that the conduct will cause harm to another – Others could regard my statements as threatening violence but I am making them anyway. (Counterman)
- *Negligence.* A person acts negligently when he is not aware of the risk, but should have been aware of the risk - A reasonable person would view my statements as threatening violence. (Puy)

Heather Griffin Guarch
Regional Legal Advisor
Florida Department of Law Enforcement
Orlando Regional Operations Center

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