

LAW REVIEW

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MINOR'S THREATS AND VULGAR TEXTS A CRIME?

In a case that will offend most parents, the Court of Appeal in Sacramento went out of its way to let a 16-year-old boy off the hook for very questionable text messages to his ex-girlfriend.

"I'M GONNA KILL HALF THE SCHOOL"

16-year-old "C.C." sent his former girlfriend "S" two text messages expressing strong negative feelings about their breakup. The juvenile court found C.C. had sent threatening and obscene texts, put him on probation and ordered him to write a 500-word essay on the Columbine High School shootings. C.C. wrote his essay and filed an appeal.

C.C.'s first text said "Im gonna come to school with one of [P's] gun and kill half the school ill load everyone with bullets and then shoot myself in the head right in front of u. just to show you how much u pushed me."

I don't know, you tell me why that isn't threatening.

Later the same day C.C. sent another text which was laced with vile language using slang words for the female body part and for sexual intercourse. The juvenile court even refused to allow use of the words during the hearing.

PENAL CODE SECTION 653m

“Every person who, with intent to annoy, telephones, or makes contact by means of an electronic communication device with another and addresses to or about the other person any obscene language or addresses to the other person any threat to inflict injury to the other person or property of the person addressed or any member of his or family, is guilty of a misdemeanor.”

The first issue the Court of Appeal dealt with was whether a physical threat was required by Section 653m.

THREAT TO HER

The Court found that C.C.’s text that he will “kill half the school” and then shoot himself in front of S did not threaten physical harm to *her* as the code required. With that narrow interpretation of Section 653m, C.C.’s conviction for a “threat to inflict injury” was overturned.

The lesson here is obvious. When you text someone with a threat, remember it’s okay to threaten to “kill half the school,” but don’t threaten the person you are threatening. Try and remember that.

“OBSCENE”

The second prong of C.C.’s conviction under Section 653m was that his text must have been “obscene.”

The Court of Appeal ruled that in California in this context, “obscene” means “offensive to one’s feelings or to prevailing notions of modesty or decency; lewd.” Interestingly, but perhaps not surprisingly, S, also 16, testified she was not annoyed by the text or offended by the use of the swear words. She

told the juvenile court that C.C. had sent her an apology and that they are again friends. In fact, she did not report the text to the police, but she told a friend who told a friend who told the police, resulting in the criminal charges.

The Court noted that the meaning of words is always contextual and that when one uses the “F” word or the “C” word (yes, *that* “C” word) the overall circumstances are important. The Court noted that in high school such language is in “common parlance.” Plus, the text was private.

RULING

The Court of Appeal concluded, “While the violence described in the first text is arguably *upsetting*, it is not *obscene* – that is, offensive to prevailing notions of modesty or decency – particularly when read in the context in which the text was sent. In short, whatever may be said about the manner in which C.C. expressed himself, it was not criminal.”

EDITORIAL COMMENT

C.C. beat the rap for threatening to kill half the school and using some of the vilest words in the English language, which according to the Court were not obscene in Butte County schools.

I understand that not all vulgar language is obscene and a crime, but I am having a hard time with the threat to kill half the school. Certainly, that is a crime. My college freshman daughter e-mailed, “...the boy should be further questioned and his mental state checked. He shouldn’t be put into jail, but preventative steps should be taken because that is a threat and to just rule it out could lead to unstoppable death of many kids. I’d love to hear your opinions.

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