

Not Reported in Cal.Rptr.2d, 2001 WL 1250145 (Cal.App. 2 Dist.)
 Nonpublished/Noncitable (Cal. Rules of Court, Rules 8.1105 and 8.1110, 8.1115)

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Court of Appeal, Second District, Division 1, California.

In re HEATHER B., a Person Coming Under the
 Juvenile Court Law.

The PEOPLE, Plaintiff and Respondent,
 v.

HEATHER B., Defendant and Appellant.
 Nos. B146289, (Los Angeles County Super. Ct. No.
 FJ24737).

Oct. 18, 2001.

Appeal from an order of the Superior Court of Los
 Angeles County, Mitchell Beckloff, Temporary Judge.
 (Pursuant to [Cal. Const., art. VI, § 21.](#)) Reversed.

[Terran T. Steinhart](#) for defendant and appellant.
[Bill Lockyer](#), Attorney General, Robert R. Anderson,
 Acting Chief Assistant Attorney General, [Carol Wendelin](#)
[Pollack](#), Senior Assistant Attorney General, [William T.](#)
[Harter](#), Supervising Deputy Attorney General, [Michael A.](#)
[Katz](#), Deputy Attorney General, for plaintiff and
 respondent.

[MALLANO, J.](#)

*1 The juvenile court found that Heather B., a minor,
 made a terrorist threat against one Polvka. The minor
 appeals, claiming the court erred in evidentiary rulings and
 in weighing the evidence. We reverse because the trial
 court prejudicially erred in not permitting the minor's
 mother to testify that the mother did not threaten Polvka.

THE FACTS

Polvka testified that the minor's mother threatened to
 kill her on June 22, 2000. There were no corroborating
 witnesses. Polvka caused the minor's mother to be arrested
 for making a terrorist threat. The same day, according to
 Polvka, the minor, upset over her mother's arrest, also
 made a terrorist threat against Polvka. Specifically, Polvka
 testified that the minor threatened her as follows: "You
 cracker bitch. You bitch. I'm going to f* *k you up. You
 know, you're dead. Things like that. Just-I'm not giving it
 to you verbatim, but." "I mean, I was shocked. I didn't
 expect this. It was just such a horrible thing. The whole
 thing...." When asked how she felt after the minor said that
 she was going to kill her, Polvka testified: "Afraid that she
 would act upon it...." Again, there were no corroborating
 witnesses to this threat. A police officer testified that he
 contacted Polvka late on June 22, 2000, and found Polvka
 to be "very agitated. She couldn't really sit still. She was
 scared. She was talking a lot. Seemed to be in fear; a lot of
 fear." Polvka told the officer that a juvenile neighbor "told
 her that she was going to kill her." The prosecution called
 the mother in its case-in-chief to establish that the minor
 knew right from wrong.

The defense called Dinwiddie, a witness at the scene
 of the mother's alleged threat. She testified that the minor's
 mother did not threaten Polvka. When the defense called
 the minor's mother to testify that she had not made a
 threat, the court ruled that the mother's testimony was
 cumulative to Dinwiddie's and excluded the testimony.

DISCUSSION

1. The Exclusion of the minor's mother's testimony

The minor contends that the court erred in not
 allowing the minor's mother to testify that she did not
 threaten Polvka. We agree.

Whether the mother threatened Polvka was an
 important issue. Polvka testified that the mother threatened
 her. Polvka caused the mother to be arrested. The arrest
 upset the minor. On the same evening, according to
 Polvka, the minor threatened to kill Polvka. Polvka caused

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the minor to be arrested. There were no corroborating witnesses to either threat. The Attorney General recognizes the significance of the excluded evidence: “Respondent acknowledges the report regarding [the minor's] mother was not totally irrelevant. If Polvka made a false report regarding [the minor's] mother, this would have affected Polvka's credibility.” Thus, the entire case rests upon the credibility of Polvka. Whether Polvka lied about the mother's making a threat is directly relevant to whether she lied about the minor. ([Evid.Code, § 210.](#))

*2 The evidence in the case was not overwhelming. No witness corroborated Polvka's testimony regarding the threats by the mother and the minor. Defense witness Hyman, whose testimony the court found to be “very believable,” after testifying that he lost sight of the minor around the time of her alleged threat to Polvka, corrected himself and testified that he did not lose sight of the minor and that she did not threaten Polvka.

The prosecution called the minor's mother in its case-in-chief to testify that the minor knew right from wrong. Yet the court would not allow the defense the time it would take for the mother to testify that she did not threaten Polvka, because it was cumulative to Dinwiddie's testimony. Allowing the minor's mother to answer “no” to the question “Did you threaten Polvka?” can hardly be said to have “necessitate[d] undue consumption of time....” ([Evid.Code, § 352.](#)) To compound matters, the court later stated that Dinwiddie's testimony was “discredit[ed],” thus making the minor's mother's testimony crucial.

Accordingly, it was error to exclude the minor's mother's testimony, and, given the closeness of the case, the error was prejudicial.

2. Substantial Evidence

In light of the foregoing, we need not discuss the minor's other claims. Although she does not appear to make a standard “sufficiency of the evidence” argument, she finds fault in how the court weighed the evidence.

Assuming that the minor contends that substantial evidence does not support the finding that the minor made a terrorist threat, we disagree. Looking at the whole record, including Polvka's testimony that the minor threatened her, stated “you're dead,” and that Polvka was afraid that the minor would act on her threats, along with the police officer's testimony of Polvka's frightened state and report of a death threat from a juvenile neighbor, we cannot say that the evidence was insufficient. ([People v. Holt \(1997\) 15 Cal.4th 619, 667.](#))

DISPOSITION

The order of wardship is reversed.
 NOT TO BE PUBLISHED.

I concur: [SPENCER](#), P.J.

[VOGEL \(MIRIAM A.\)](#), J.

I dissent.

The juvenile court resolved several credibility issues against 13-year-old Heather B., found that she had committed a terrorist threat against a neighbor, declared her a ward of the court, and placed her on probation. My colleagues reverse the judgment because (in their words) there “were no corroborating witnesses.” (Maj.opn., p. 2.) They miss the point. There is no way that the exclusion of an additional scrap of testimony by the mother—who had already testified and proved herself not credible—could possibly have affected the juvenile court's decision in this case. In my view, the majority is wrong, and could only reach its conclusion by construing the evidence *against* rather than in support of the judgment, a point necessarily conceded by the majority's finding that substantial evidence supports the judgment. (Maj.opn., p. 4.) I would affirm.

FACTS

*3 Heather and her mother lived in an apartment next door to Julianne Polvka. As Polvka stood in her doorway one day, Heather's mother (believing that Polvka had alerted authorities that the mother had abused Heather)

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threatened to kill Polvka, told her she had “better move out,” that she was “in trouble,” and that her “days were numbered.” Polvka, “fearful” and believing that Heather’s mother “would make good on her threats,” drove to the police station and reported the incident.

The police drove to the building (with Polvka following in her own car). When Polvka drove up, Heather and her mother were in the front yard. Polvka waited in her car and watched as Heather’s mother was arrested. As other neighbors watched, Heather gestured toward Polvka by extending her middle fingers from closed fists and mouthed the words “fuck you.” Polvka drove into her parking space behind the building. Heather followed, making the same gesture.

When Polvka got out of her car, Heather stood within three feet of her, called her a “cracker bitch,” and said in a “menacing” tone, “I’m going to fuck you up. You know. You’re dead.” Polvka was “afraid” that Heather would act on her threat (in part because she had on another occasion heard Heather tell two teenage boys which cars and which apartments belonged to the tenants of their apartment building). Polvka called the police (and was still “agitated” and “scared” that evening when the police came to take her report).

By petition, Heather was charged with one count of making terrorist threats. At her hearing, the People presented evidence of the facts summarized above, plus testimony from Heather’s mother that she had taught Heather that it is wrong to threaten people. The juvenile court rejected Heather’s defense (she said she did not make any threats and called two neighbors, Phillippe Hyman and Lisa Dinwiddie, neither of whom, the court concluded, were in a position to see or hear Heather at the time of the offense), and sustained the petition.

DISCUSSION

I discuss the issues raised by Heather in the order that shows how carefully the juvenile court weighed the evidence, and how the court’s exclusion of further testimony by Heather’s mother could not possibly have

affected the outcome. So viewed, I believe it is clear that the judgment should be affirmed.

I.

Heather contends the trial court did not weigh the evidence and that, therefore, the substantial evidence rule does not govern this appeal. The juvenile court’s ruling shows that Heather’s premise is wrong:

“THE COURT: ... I think I got a very good picture of what happened that night....

“I was troubled by Ms. Dinwiddie’s testimony. I do not think that Ms. Dinwiddie’s testimony was consistent with Mr. Hyman’s testimony. Mr. Hyman struck me as the type of witness who wants to make very sure that [he is] completely right about the facts.... At one point, he corrected himself[.] When he was putting the top on the Cabriolet he said that Heather wasn’t with him and there was a pause and he waited quite a long period of time and corrected himself and said Heather was with him.

*4 “I also know ... from his testimony that Lisa Dinwiddie disappeared for some period of time after she ... brought her car out of the driveway. And based on M[r]. Hyman’s description of where the Cabriolet was and how many parking spaces were around, I did not find it credible that Ms. Dinwiddie was present when the victim Julianne [Polvka] was driving back into the driveway.

“I have reviewed Mr. Hyman’s testimony a number of times. And Mr. Hyman stated that Heather was very upset. That she was almost emotionless and there was some strange quality about the manner in which Heather was behaving. And at one point, Mr. Hyman wanted to explain it more and he struggled to explain how someone can be very upset but emotionless. In contrast, Ms. Dinwiddie testified Heather was very upset. She gave her a hug and told Heather to calm down. She told Heather to go sit on the stairs and that was immediately after Heather gave the victim the finger.

“I believe that Ms. Dinwiddie was not being truthful

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with the court when she talks about being around Heather from the moment that Julianne got home until the grandmother arrived.

“Mr. Hyman testified that Lisa [Dinwiddie] was the most mobile of all of the people that were around. Mr. Hyman also testified that he felt like a father figure to Heather.... I think, he enjoyed some of the excitement based upon his own occupation [involving the reenactment] of crimes on America's Most Wanted. That he was talking to neighbors. I think [the prosecutor] asked about whether he was talking with anybody during this period of time that the top was going on the Cabriolet and he said he didn't remember any conversations until after the grandmother came to remove Jordan and Heather. And then he later stated immediately after that that he may have been having brief conversations with people.

“I found Mr. Hyman's testimony to be very believable. I believe that he believes that Heather was at all times in his presence. He was aware of Heather. He testified that she was in his line of sight. But I don't think—in fact, I believe he stated that he was not certain or could not be certain that Heather was around him at all times. He was very aware of her presence. And he believed her to be in front of the apartment building at all times.

“[G]iven the amount of detail that Mr. Hyman seemed to like to testify to and his denying that Lisa ... Dinwiddie [was] present when Heather made the gesture to Julianne, the victim, and he answered that a couple of different times, I discredit Ms. Dinwiddie's testimony. And I found Ms. Polvka to be very credible.

“And while [defense counsel] may characterize her testimony as friendly and cheerful when the prosecutor was talking to her, I think that what [defense counsel] characteriz[ed] as h[au]g[hty] and perhaps ar[d]e[nt]... was a frustration at the amount of detail [defense counsel] requir[ed] from her. I think that her story was consistent. [¶] ... I agree with [the prosecutor] about ... her sitting in

the dark. I agree with [her] rebuttal statement concerning what alternatives were open to [Polvka] if she didn't want to be seen in the neighborhood. If she was so ashamed, she would have driven away.

*5 “I think that Heather threatened great bodily injury with ‘I'm going to fuck you up.’ I think she threatened death with ‘I'm going to kill you.’ I believe she had the specific intent that that statement be taken as a threat. [¶] I believe under *In re David L.* [1991] 234 Cal.App.3d 1655 that the threat was unequivocal and unconditional, immediate and was stated in such a manner that there was immediate prospect of execution.

“Ms. Polvka stated that she just wanted to get into her apartment and she had to go around the minor. I don't find anything about this minor's nature such that I wouldn't be intimidated by someone coming up to me and making those statements.

“The fact Ms. Polvka may or may not be bigger or smaller, I think, it is irrelevant. I think that Heather testified on her own that she's never been so angry[,] she's never given anyone the finger. She had seen her mother taken away by the police. Her sibling Jordan was crying. There was this disturbance in the neighborhood. Lisa Dinwiddie screaming ‘Billy, Billy’ at the apartment building next door. And I think Heather lost control. I think she caused Mrs. Polvka to reasonably be in sustained fear of her life.

“And on that basis, I find count 1 to be true beyond a reasonable doubt. The minor is a person described by section 602.”

In my view, the ruling speaks for itself. (*People v. Holt* (1997) 15 Cal.4th 619, 667.)

II.

Heather contends the juvenile court improperly excluded (A) evidence that, a few months before this incident, Polvka had reported a threat by a workman who

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had gone to Polvka's apartment, and (B) testimony by Heather's mother that she (the mother) had not threatened Polvka. Heather says that, given the improbability of being a frequent victim of terrorist threats, this evidence was relevant to Polvka's credibility and admissible under [Evidence Code section 1103, subdivision \(a\)](#). I disagree.

First, both issues were waived by Heather's failure to object on this ground at the hearing. Second, the evidence about the alleged threat by a workman was irrelevant because, based on Heather's offer of proof, Heather had no evidence to support an inference that the report was false. ([People v. Alvarez \(1996\) 14 Cal.4th 155, 199-201.](#)) Third, the mother's testimony was cumulative (Dinwiddie had already testified that the mother did not threaten Polvka) and properly excluded on that ground. ([People v. Price \(1991\) 1 Cal. 4th 324, 412.](#)) That Dinwiddie's testimony was not credible is irrelevant-and my colleagues' failure to cite any authority to suggest otherwise proves my point, not their result-oriented conclusion.

Fourth-and most significantly in light of the majority's conclusion-Heather's mother *did* testify at Heather's hearing, and it is absurd to suggest that a juvenile court judge who heard the juvenile's parent testify on other points would have done a complete about-face had he just allowed the mother to answer one more question-particularly where, as my colleagues concede, the one-word answer ("no") was a forgone conclusion. (Maj.opn., p. 3.) Assuming error, it was harmless beyond a shadow of a doubt.

III.

*6 In a series of related arguments, Heather contends the trial court improperly "assess[ed] the credibility" of Polvka's testimony and failed to give appropriate weight to certain impeachment evidence. I disagree.

A.

Heather's argument is based on three bits of testimony: (1) Polvka denied taking from the courtroom a transcript of her prior testimony in a related civil action

(notwithstanding that, in Heather's view, Polvka must have done so and must have lied to avoid impeachment). (2) Polvka testified that when she saw Heather telling the boys which cars and apartments belonged to which tenants, she took their picture; although Heather denied that this occurred, the prosecutor did not offer the photograph in rebuttal. (3) At trial, Polvka testified that Heather had threatened to "fuck [her] up" and to kill her, but at a prior proceeding had testified only that Heather had threatened to "fuck [her] up." Each time Polvka testified, she explained that she was paraphrasing Heather's statements, and that she was as frightened by the threat to "fuck [her] up" as she was by the threat to kill her.

B.

There is nothing extraordinary about any of this testimony, and there is no reason to view this credibility call as different from every other credibility call made by every trier of fact. As always, "it is the exclusive province of the ... judge ... to determine the credibility of a witness and the truth or falsity of the facts on which that determination depends" ([People v. Ochoa \(1993\) 6 Cal.4th 1199, 1206.](#)) and we are supposed to be "bound by the [juvenile] court's determination of credibility of witnesses and [its] resolution of conflicts in the evidence if supported by substantial evidence" ([People v. Brewer \(2000\) 81 Cal.App.4th 442, 446, fn. 4.](#)) As the juvenile court's comments (Part I, *ante*) make clear, the court found Polvka credible. That the court rejected the interpretations offered by Heather does not (in my view) change the rules where, as here, there is nothing inherently incredible about Polvka's testimony. ([People v. Diaz \(1992\) 3 Cal.4th 495, 545.](#)) ^{FN1}

^{FN1}. For the same reasons, I would reject Heather's identical claims about the juvenile court's rejection of Dinwiddie's testimony and some of Hyman's testimony. These witnesses offered inconsistent testimony about what they saw and heard, and Hyman's testimony defeated Heather's defense on a crucial point. Although the juvenile court's detailed statement (Part I, *ante*) fully explains these credibility calls, the majority opinion ignores both the court's

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comments and the underlying evidence.

IV.

Heather contends the juvenile court should have granted her motion to set aside its findings and to dismiss the petition, and should have permitted her to submit further evidence in support of her motion. ([Welf. & Inst.Code, § 782](#) [the juvenile court may set aside the findings and dismiss the petition if the court finds that the interests of justice and the welfare of the minor require such dismissal].) Since Heather's motion was made on the same grounds raised on this appeal, I disagree. At the hearing on the motion, Heather's lawyer conceded that he had no new evidence that could not have been presented at the time of the hearing. What he wanted was the court's reconsideration of the testimony already rejected. In my view, the motions were properly denied.

I would affirm the judgment.

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