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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

ARTHUR J. RANDALL,

Defendant and Appellant.

A139281

(Mendocino County
Super. Ct. No. SCUKCR-70857)

Following a jury trial, defendant Arthur J. Randall was convicted of misdemeanor assault, misdemeanor battery, and making a criminal threat. On appeal, he challenges his felony conviction for making a criminal threat on the ground there was insufficient evidence to show that the victim had a sustained fear for his safety. We affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

The Mendocino County District Attorney filed a three-count information in February 2013 charging defendant with making a criminal threat (Pen. Code, § 422), assault by force likely to produce great bodily injury (Pen. Code, § 245, subd. (a)(4)), and misdemeanor battery (Pen. Code, § 242). In May 2013, a jury found defendant guilty of making a criminal threat and misdemeanor battery. The jury found defendant not guilty of the felony assault charge but did find defendant guilty of the lesser included offense of misdemeanor simple assault. (Pen. Code, § 240.) The court suspended imposition of sentence and placed defendant on probation subject to various conditions, including that he serve 120 days in jail. Defendant timely appealed.

Defendant's convictions resulted from what could be described as a "road rage" incident. The relevant facts adduced at trial are set forth below.

Prosecution case

In December 2012, Kevin Akin was entering the freeway as he was driving his truck. While merging onto the freeway, Akin heard a honk and realized that defendant's car was on his left side in his blind spot. Akin hit the brakes and allowed defendant to drive in front of him. Defendant then abruptly hit his brakes for no apparent reason. Akin pulled into the fast lane and continued driving. At one point, Akin and defendant made eye contact when one vehicle passed the other. According to Akin, they did not exchange any gestures and he did not honk his horn, which was inoperable. Defendant followed Akin on the freeway and continued to follow Akin as he got off the freeway.

After exiting the freeway, Akin parked in the Rainbow Ag store parking lot. Defendant had followed Akin into the parking lot and pulled his car alongside Akin's truck in an area that was not a parking spot. As Akin was getting out of his truck, defendant approached and began screaming at Akin about cutting him off earlier. Akin was slow in moving and getting out of his truck because he had recently had surgery on his lower spine and had been in a cast until two days earlier. Akin, shocked by defendant's outburst, did not respond. Defendant pushed Akin against his truck, causing him to fall forward. Defendant got behind Akin, put him in a choke hold, and threw him to the ground. Defendant remained on top of Akin, choking him. Akin did not resist because he was concerned about his back and did not want to further aggravate defendant. Akin kept his hands to his side to demonstrate he was not trying to fight and repeatedly told defendant to get off him because he just had spinal surgery. After approximately three minutes, several Rainbow Ag employees came out of the store to intervene. Defendant released Akin.

Upon releasing Akin, defendant yelled three or four times, "If I ever see you again, I'm going to kill you." Defendant appeared to be mostly directing the threat towards Akin, although at one point he also directed the threat towards an employee. Defendant appeared to be "very mad."

Akin testified that he was very concerned about his safety after hearing those threats. He had never seen defendant before and “had great fear of him” after being attacked for no reason. Akin believed that defendant was serious and meant what he threatened to do.

One of the Rainbow Ag employees who witnessed the incident saw defendant yelling at Akin and flailing his arms around. The employee saw defendant push Akin backwards when it appeared that Akin was trying to retrieve something from his truck. According to the employee, it looked like Akin was about to push defendant back when defendant grabbed Akin in a head lock and pushed him to the ground. The employee never saw Akin do anything to provoke the attack. Rather, it appeared that Akin was trying to get away.

Akin and some of the employees followed defendant to his car and told him to leave. They also tried to get his license plate number for the police. Defendant yelled out his home address as he was pulling away. Akin immediately called the police

Officer Christopher Long responded to the call. Officer Long took a statement from Akin, who looked “shaken up, nervous, [and] scared about what had just happened to him.” Because Akin wanted to go to the emergency room and was mainly concerned about his spine, he told the officer that he was unsure if he wanted to press charges. He contacted the officer the next day.

During an interview with Officer Long, defendant claimed that as Akin passed him to get off the freeway, Akin flipped him off and honked his horn. Defendant admitted that he followed Akin to the Rainbow Ag parking lot to confront him. He was particularly irritated about the incident because his children were in the car with him. Defendant told the officer he was irritated but not angered by the situation; if he had been angry, he said he would have “slammed the hand that flipped him off in the car door” and “ripped him” out of the car instead of waiting for Akin to open the door himself. Defendant admitted yelling at Akin but claimed that Akin yelled back some profanity and pushed defendant first in a slight manner. In response, defendant pushed Akin back. Defendant told Officer Long that he placed Akin in a choke hold because he thought

Akin was lunging at him. He could not remember whether he threatened to kill Akin, but he did remember saying, "I'm going to fuck you up . . . if I see you around town."

Defendant told the officer that Akin got what he deserved.

Defense case

Defendant testified on his own behalf at trial. He claimed Akin did not see his car as Akin was merging onto the freeway and that their vehicles were nearly touching mirror to mirror. When defendant slowed down, Akin continued to drive around defendant's car. Defendant heard a horn honk and assumed it was Akin honking at him. Defendant claimed that Akin flipped him off. Defendant took the freeway exit that Akin took because he had already planned to exit there in order to take his wife to work. However, instead of driving directly to his spouse's workplace, defendant followed Akin and stopped in the Rainbow Ag parking lot to confront him. Defendant stated he intended to question Akin about his driving ability. He testified that he was a tow truck driver and that he would not normally stop and confront a driver who cut him off, but he was especially "worked up" on this occasion because his family was in the car with him.

Defendant admitted he was "not so subtle with [his] language" and "a little worked up" after Akin's driving endangered his wife and children. Although defendant claimed that Akin has pushed him away, he described the push as a "back up push" rather than a "fighting push." Defendant's wife, who was sitting in the car, testified that Akin raised his palms in front of himself and pushed defendant's chest. Defendant admitted placing Akin in a choke hold but claimed he did so because Akin was coming towards him and he did not know Akin's intentions. Defendant's wife instructed defendant to let Akin go so she could get to work. Defendant released Akin, although the men were still "heated" and cursing at each other. Akin threatened to sue defendant because he had recently had back surgery; defendant claimed he was not aware of defendant's back problems until that point. Defendant could not recall the exact language he used but admitted yelling that he would "mess him up" if he and Akin ever crossed paths again. Defendant stated that his threats were directed only at Akin, and he claimed that his intent

was to communicate the extent of his anger to Akin. According to defendant, the entire incident occurred over the span of about a minute.

DISCUSSION

Defendant's sole contention on appeal is that the evidence was insufficient to support his conviction for making a criminal threat. As we explain, his claim lacks merit.

We review challenges to the sufficiency of the evidence “under the usual standard of the substantial evidence rule, resolving all conflicts in evidence and questions of credibility in favor of the verdict, and indulging every reasonable inference the jury could draw from the evidence.” (*People v. Austry* (1995) 37 Cal.App.4th 351, 358.) We do not reweigh the evidence, resolve conflicts in the evidence, or reevaluate the credibility of witnesses. (*People v. Ochoa* (1993) 6 Cal.4th 1199, 1206; *People v. Green* (1997) 51 Cal.App.4th 1433, 1437.) We “review the whole record in the light most favorable to the judgment to determine whether it discloses substantial evidence—that is, evidence that is reasonable, credible, and of solid value—such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt.” (*People v. Rodriguez* (1999) 20 Cal.4th 1, 11.) “Before a judgment of conviction can be set aside for insufficiency of the evidence . . . it must clearly appear that upon no hypothesis whatever is there sufficient evidence to support it.” (*People v. Rehmyer* (1993) 19 Cal.App.4th 1758, 1765.)

In order to establish that a defendant made a criminal threat in violation of Penal Code section 422, the prosecution must prove the following elements: “(1) that the defendant ‘willfully threaten[ed] to commit a crime which will result in death or great bodily injury to another person,’ (2) that the defendant made the threat ‘with the specific intent that the statement . . . is to be taken as a threat, even if there is no intent of actually carrying it out,’ (3) that the threat—which may be ‘made verbally, in writing, or by means of an electronic communication device’—was ‘on its face and under the circumstances in which it [was] made, . . . so unequivocal, unconditional, immediate, and specific as to convey to the person threatened, a gravity of purpose and an immediate prospect of execution of the threat,’ (4) that the threat actually caused the person threatened ‘to be in

sustained fear for his or her own safety or for his or her immediate family's safety,' and (5) that the threatened person's fear was 'reasonabl[e]' under the circumstances." (*People v. Toledo* (2001) 26 Cal.4th 221, 227–228.)

Defendant challenges only the sufficiency of the evidence supporting the fourth element, which requires the person threatened to be in sustained fear for his safety. A person experiences sustained fear when it lasts for "a period of time that extends beyond what is momentary, fleeting, or transitory." (*People v. Allen* (1995) 33 Cal.App.4th 1149, 1156.) In assessing whether the victim was in a state of sustained fear, the court takes into consideration the victim's knowledge of the defendant's prior conduct. (*Ibid.*) Likewise, the surrounding circumstances in which the threat is made are relevant and should be considered in determining whether the threat actually and reasonably caused the victim to be in sustained fear. (*In re Ricky T.* (2001) 87 Cal.App.4th 1132, 1137.)

The circumstances surrounding the threat in this case support the jury's finding that the threat caused Akin to be in sustained fear. Akin testified that he was in fear for his safety when defendant first issued the threat. According to the responding officer, Akin was nervous, scared, and shaken up when the officer arrived at the scene. The jury could have reasonably concluded that Akin was in fear for at least the several minutes it took to notify the police and for Officer Long to respond. That period of time was sufficient to satisfy the requirements of Penal Code section 422. (See, e.g., *People v. Fierro* (2010) 180 Cal.App.4th 1342, 1349 ["When one believes he is about to die, a minute is longer than 'momentary, fleeting, or transitory.'"].)

Further, the circumstances that led up to the threat tended to support a finding that Akin was in sustained fear of defendant. The threat was not, as defendant would suggest, a momentary emotional outburst that no one could have taken seriously. Defendant went out of his way to follow Akin for the specific purpose of confronting him. Defendant physically attacked Akin with little or no provocation, withdrew only when witnesses approached, and then repeatedly threatened to kill Akin if he saw him again. Given that Akin's only interaction with defendant involved a physical attack that Akin thought was

unprovoked and for no reason, it is not unreasonable to conclude that he believed defendant might carry out his threat.

Defendant claims there were “several indicators” that Akin’s fear was not sustained. First, he argues that Akin would not have followed defendant to his car and attempted to get the license plate if he were truly fearful of defendant. Second, he points out that Akin was initially unsure if he wanted to press charges. According to defendant, if Akin were truly in fear for his safety, he would have told the officer at the outset.

Defendant’s emphasis on these facts is premised on a misinterpretation of the standard of review applicable to a sufficiency of the evidence claim. We are obligated to evaluate the evidence in the light most favorable to the judgment, not in the light most favorable to the party that is challenging that judgment. (*People v. Rodriguez, supra*, 20 Cal.4th at p. 11.) In this case, the jury could have reasonably believed that Akin followed defendant to his car to obtain information that would have assisted in apprehending defendant so that he could not carry out his threat. The jury could also have reasonably believed that Akin felt safe only because he was accompanied by employees of Rainbow Ag whose presence would discourage defendant from taking any further violent action. As for the claim that Akin was not fearful because he did not initially seek to press charges, the evidence at trial showed that Akin’s primary concern at the time was getting to an emergency room because of his back. Nevertheless, the officer noted that Akin displayed symptoms of being fearful immediately after the incident. The jury could reasonably infer that Akin was in sustained fear because he called the officer the following day to pursue the matter instead of letting it drop.

The facts in this case differ from those in *In re Ricky T., supra*, 87 Cal.App.4th 1132, on which defendant relies. In *Ricky T.*, a 16-year old student became angry at his teacher, cursed at the teacher, and said, “I’m going to get you.” (*Id.* at p. 1135.) Although the teacher felt threatened, the student did not make a specific threat or make any physical movements or gestures suggesting he was going to carry out the threat. The teacher did not contact the police until the following day. (*Ibid.*) The court concluded that, judged in context, the threat was not serious or immediate in nature. (*Id.* at p. 1137.)

Here, by contrast, the words defendant chose to use could not be characterized simply as “a vague threat of retaliation without prospect of execution.” (*Id.* at p. 1138.) As noted, defendant went out of his way to confront Akin and physically assaulted him. Akin called the police immediately and then followed up the next day. Unlike in *Ricky T.*, where the court emphasized that the student’s “intemperate, rude, and insolent remarks” were not accompanied by any show of physical aggression or violence (*ibid.*), defendant’s death threats in this case were preceded by physical violence directed at Akin.

Considering the evidence in the light most favorable to the judgment, defendant’s sufficiency of the evidence claim fails.

DISPOSITION

The judgment is affirmed.

McGuinness, P.J.

We concur:

Pollak, J.

Jenkins, J.