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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

ALEXEI FAJARDO,

Defendant and Appellant.

B239036

(Los Angeles County
Super. Ct. No. PA065561)

APPEAL from a judgment of the Superior Court of Los Angeles County, Jesse I. Rodriguez, Judge. Affirmed.

Leonard J. Klaif, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Steven D. Matthews and Timothy M. Weiner, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant Alexei Fajardo appeals from the judgment entered following the jury verdict finding him guilty of making a criminal threat.¹ (Pen. Code, § 422.)² He was sentenced to 16 months in state prison. His sole contention is the conviction is not supported by the evidence. He urges that, at best, he is guilty of attempting to make a criminal threat and the judgment must be amended accordingly. We conclude the conviction is supported by substantial evidence and affirm the judgment.

STATEMENT OF FACTS

I. The Prosecution Case³

Hilda Maciel and her 10-year-old son lived in an apartment in Arleta and had resided there for eight years. Defendant lived in the same complex. On two occasions, defendant came to Maciel's apartment and asked if he could come inside and have a drink with her. Both times, Maciel told him to leave her alone and threatened to call his wife and the police. On September 11, 2009, Maciel went to her car, which was parked directly in front of her apartment. She retrieved some items from the car, turned toward her apartment, and saw defendant standing in her path.

Defendant began yelling at Maciel, saying he was tired of her being there because she was friendly with everyone and was a gossip. He said, "I want you out of this world." Maciel described his voice as "powerful" and "very scary." Maciel told defendant to leave her alone and to let her by. Defendant repeated several times that he was tired of her and advised her to listen to him. Maciel said she was going to call the

¹ Defendant also was charged with assault with a deadly weapon; however, the jury was unable to reach a verdict. A second jury found defendant not guilty of that charge.

² All further statutory references are to the Penal Code.

³ Because defendant is challenging the sufficiency of the evidence with respect to the criminal threat conviction, it is unnecessary to set forth the testimony concerning the assault charge.

police, pushed her way into the apartment, got the telephone, and called 911.⁴ She said to the operator, “[Y]es, I’m calling because one of my neighbors is very violent and he says that he’s not gonna move from my door until I come out and that he’s gonna kill me and my son and I’m by myself with my son.” When the operator asked whether the neighbor was in front of her door, Maciel replied, “Yes. And he’s screaming out loud that he’s not gonna move from there until I go outside and that then he’s gonna get me.” While Maciel spoke on the telephone, defendant was kicking Maciel’s front door, hitting the windows, calling Maciel a “bitch,” and yelling at her to come outside. Maciel was crying and screaming for help. The operator said someone would be sent to the complex.

As she waited, Maciel tried to comfort her son. Defendant continued to kick the door and hit the windows. After about an hour, she again called 911. Defendant sat near some stairs and screamed that he would stay there until Maciel came out of the apartment. Maciel remained inside with the door closed.

Maciel received a call from Edgar Torres. Torres had lived in the complex and had dated Maciel previously. Torres knew defendant. On this evening, Torres called to ask Maciel if she wanted to go to dinner. She told him that she could not talk and hung up the phone. Maciel looked out the window to see if the police were coming. Defendant was pacing outside and yelling at Maciel. Torres called again. Maciel said she could not talk, explaining that she had an emergency and the police were coming. Torres, who could hear yelling, asked if it was defendant. Maciel ended the call. She did not tell Torres about defendant’s threat or attempt to contact her family because she did not want anyone to get hurt.

Maciel called 911 a third time and told the operator the police needed to come to the apartment. A period of time passed, and she saw Torres in the complex. Maciel screamed at him to leave because she heard defendant say that whoever came in would get what she was supposed to get. Torres continued to approach and defendant walked toward him. Defendant pulled something out of his pocket and the two men began to

⁴ This was one of two 911 calls Maciel made that were recorded. The recordings were played for the jury. The last recorded call was made at 7:47 p.m.

fight. Maciel immediately saw blood spurting from Torres's arm. The men continued to punch each other and then Torres began to run away with defendant in pursuit. Torres fell against Maciel's car and collapsed on her doorstep.

Maciel opened her door and tried to pull Torres inside. He was yelling that he could not take the pain in his chest. Maciel began screaming for help. She got the phone and called 911. She told the operator that Torres had been stabbed and was bleeding profusely.

As she waited for help, Maciel saw defendant leaning on her car. He said, "You see what I'm capable of doing? I told you, I told you that this was for you and I told you not to come out and no matter what I'm still going to get you." Maciel believed defendant was still holding the knife in his hand. Maciel was very frightened by defendant's statement because she saw Torres lying on the ground covered with blood and believed she or her son was facing the same fate.

Maciel's son pleaded with her not to let Torres die. As Maciel screamed for help, she heard sirens. Defendant left. When paramedics arrived, she told them that the person who had stabbed Torres was getting away.

Maciel moved from the apartment complex approximately a week or two after the incident.

II. The Defense Case

On September 11, 2009, Juan Aguilar resided in the same apartment complex as Maciel and defendant. He was home during the entire course of the incident that led to the police arriving at the complex. Aguilar had his front door and windows open because of the heat. He did not hear an argument between defendant and Maciel. He did not hear a door or gate being kicked or a window being struck. Nor did he hear Maciel scream at any point. Aguilar saw Torres run through the front gate of the property with something wrapped around his arm. Torres approached defendant and began punching him. Aguilar called 911. He did not see any one with a weapon during the altercation. Aguilar did not hear defendant threaten Maciel after the fight.

Monica Valtierra is defendant's wife. She was home during the late afternoon of September 11. She did not observe defendant in front of Maciel's apartment banging on the door and windows. She and defendant were going to have dinner with Aguilar and a girlfriend. As Valtierra was placing the children in the car, defendant was talking to a neighbor. Valtierra walked over to defendant and the neighbor to tell defendant it was time to leave. She saw Torres enter the complex with something in his hand. He rapidly approached defendant and kicked him. They fought until Torres collapsed to the ground. She did not see defendant approach Maciel after the fight and threaten her.

DISCUSSION

Defendant contends the evidence is insufficient to sustain his conviction for making a terrorist threat. "In order to prove a violation of section 422, the prosecution must establish all of the following: (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 concedes that a reasonable jury could find the evidence established elements (1), (2), (3), and (5). However, he asserts the evidence was insufficient for the jury to conclude that Maciel suffered sustained fear for her safety or for the safety of her immediate family as a result of his threat. At best, he argues, he is guilty of attempting to convey a terrorist threat. For the reasons that follow, we disagree.

“When considering a challenge to the sufficiency of the evidence to support a conviction, we review the entire record in the light most favorable to the judgment to determine whether it contains substantial evidence—that is, evidence that is reasonable, credible, and of solid value—from which a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. [Citation.] . . . We presume in support of the judgment the existence of every fact the trier of fact reasonably could infer from the evidence. [Citation.] If the circumstances reasonably justify the trier of fact’s findings, reversal of the judgment is not warranted simply because the circumstances might also reasonably be reconciled with a contrary finding. [Citation.] A reviewing court neither reweighs evidence nor reevaluates a witness’s credibility. [Citation.]” (*People v. Lindberg* (2008) 45 Cal.4th 1, 27.)

Initially, we note that defendant assumes he issued but one threat, that being his statement to Maciel after Torres had been stabbed when he said, “You see what I’m capable of doing? I told you, I told you that this was for you and I told you not to come out and no matter what I’m still going to get you.” Defendant then argues the prosecution offered no evidence regarding Maciel’s reaction to this threat. His claim that he uttered a single threat is belied by the record.

Maciel testified that when defendant first confronted her outside of the apartment, he said that he was tired of her being there because she was friendly with everyone and was a gossip. He told her in a “powerful” and “very scary” voice that he “want[ed] [her] out of this world.” After pushing past defendant, Maciel went inside her apartment and immediately called 911. As noted above, she told the operator that defendant was violent and had threatened to kill her and her son. In accordance with the standard of review, we presume the jury determined that Maciel told the operator the truth when she said defendant threatened to kill her and her son. Moreover, defendant affirmed that he had threatened Maciel with bodily harm earlier in the evening when he said to her after Torres had been stabbed, “I told you that this (the stabbing) was for you and I told you not to come out and no matter what I’m still going to get you.” There is ample evidence establishing that defendant uttered a terrorist threat when he first confronted Maciel

outside of her apartment. Accordingly, we reject his suggestion that he threatened her once at the end of the incident. We examine next whether defendant's threat caused Maciel to be in sustained fear.

“‘Sustained fear’ refers to a state of mind. As one court put it, ‘[d]efining the word “sustained” [in section 422] by its opposites, we find that it means a period of time that extends beyond what is momentary, fleeting, or transitory.’” (*People v. Fierro* (2010) 180 Cal.App.4th 1342, 1349, citing *People v. Allen* (1995) 33 Cal.App.4th 1149, 1156.)

Upon receiving the initial threat, Maciel demonstrated she was in sustained fear by placing multiple 911 calls to the police. (See *People v. Melhado* (1998) 60 Cal.App.4th 1529, 1538 [call to police after receiving threat is indication victim feared for his safety].) Indeed, she testified that she made the second 911 call because defendant was getting violent and she was “very afraid.” Maciel told the jury on several occasions that during the entire ordeal she was very scared and nervous. She refused to come out of her apartment, choosing to wait for the police. She did not tell Torres of the threat when he called or notify her family because she did not want anyone to get hurt. This is another clear indication that Maciel was in fear because she believed defendant would make good on his threat to do her harm. Finally, there was evidence from which the jury could infer that Maciel remained in fear as a result of defendant's threat a week or two after the incident, as she chose to move from the apartment in which she had lived for eight years. From this evidence, the jury reasonably could conclude that Maciel's fear was not merely “momentary, fleeting, or transitory.” (*People v. Allen, supra*, 33 Cal.App.4th at p. 1156.)

DISPOSITION

The judgment is affirmed.

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SUZUKAWA, J.

We concur:

WILLHITE, Acting P. J.

MANELLA, J.