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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

In re MANUEL C., a Person Coming
Under the Juvenile Court Law.

B263153

(Los Angeles County
Super Ct. No. VJ43846)

THE PEOPLE,

Plaintiff and Respondent,

v.

MANUEL C.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County, Fumiko Wasserman, Judge. Affirmed as modified.

Courtney M. Selan, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Scott A. Taryle and Rene Judkiewicz, Deputy Attorneys General, for Plaintiff and Respondent.

Manuel C. appeals from the juvenile court's order declaring him a ward of the court and placing him at Rite of Passage. We conclude the evidence is sufficient to support the findings he made criminal threats and the court failed to award him the correct number of predisposition credits. We affirm the disposition order as modified.

FACTUAL AND PROCEDURAL BACKGROUND

1. The Petitions

In November 2013, a petition was filed pursuant to Welfare and Institutions Code section 602 alleging then 15-year-old Manuel had committed burglary and received stolen property. After Manuel admitted the allegations, the juvenile court sustained the petition, determined the offenses were felonies and declared Manuel a ward of the court. At the disposition hearing, the court ordered Manuel placed home on probation.

On January 20, 2015, a second delinquency petition was filed, alleging then 17-year-old Manuel had made a criminal threat to his stepfather, Gerardo Cisneros, and to his younger brother, Jaime C.,¹ (Pen. Code § 422)² and had committed misdemeanor vandalism of Cisneros's home (§ 594, subd. (a)) and misdemeanor battery against Jaime (§ 242). Manuel denied the allegations.

2. The Jurisdiction Hearing

According to the evidence presented at the jurisdiction hearing, on the afternoon of January 15, 2015, Cisneros, Manuel and Jaime were at home in Cisneros's apartment. Manuel and Cisneros were in the living room next to the kitchen; Jamie was in the kitchen, about two feet away. Cisneros told Manuel to clean his bedroom. Manuel refused, and attempted to leave through the front door. Cisneros blocked Manuel's path, telling Manuel that he could not leave until he had cleaned his room. Manuel became angry and started arguing with Cisneros. Cisneros testified Manuel cursed him and said "he was going to get his friends and they were going to kill me." When asked about his

¹ Although it begins with a "C," Manuel's and Jaime's surname is not Cisneros.

² Statutory references are to the Penal Code.

reaction to that statement, Cisneros testified at the time he neither cared about, nor was afraid of, Manuel's threat. Cisneros explained he "knew" Manuel, and when Manuel was angry, he would make such threats in an effort to scare people. Cisneros testified then Manuel tried to hit Jaime, but Cisneros got between them.

Cisneros told Manuel if he vacuumed his room for three to four minutes, he could leave. Manuel went to his room, pretended to vacuum, and returned to the living room, where he cursed both Cisneros and Jaime, telling them to "watch out" for his friends. Manuel then left the house, picked up a garden gnome and threw it, breaking one of the windows. Cisneros testified he had Jaime telephone the police because two weeks earlier when Jaime was sleeping Manuel started hitting him. Cisneros thought that after Manuel's earlier attack on Jaime, this latest incident "was enough"; it was time to involve the police. When officers arrived, Cisneros told them he believed Manuel was capable of carrying out the harm. Manuel's friends were Florencia Gang members. Worried about Jaime, Cisneros warned him the same day to be careful around Manuel's friends.

Jaime testified when Cisneros stopped Manuel from leaving the apartment and told him to clean his bedroom, Manuel became furious and said, "I'm going to get my friends and get you." Manuel was looking at both Cisneros and Jaime when he made the threat. Jaime testified at the time he believed Manuel was going to get his friends and they would probably come and fight, because Jaime and Manuel "did not get along." Manuel left the apartment and Jaime and Cisneros told him not to return. Manuel threw the garden gnome and broke the window before riding away on his bicycle. Cisneros instructed Jaime to telephone the police. Jaime testified he called the police because he "was afraid" that Manuel "might actually do something bad." Jaime had met one of his older brother's friends; he had seen others with Manuel walking by the apartment. On cross-examination, Jaime acknowledged he did not know the names of Manuel's friends. He also admitted to giggling after Manuel left the apartment.

Jaime and Manuel attended the same high school. On January 16, 2015, the day after the incident, Manuel confronted Jaime outside a classroom and pushed him, causing Jaime to fall.

Manuel testified in his defense and acknowledged that he and Cisneros had argued over vacuuming Manuel's bedroom. According to Manuel, when Cisneros insisted that he clean his room, Manuel said he had to go to work and reminded Cisneros that he always paid his younger brother to clean his room. Manuel denied wanting to fight Cisneros, but testified he became angry when Cisneros began cursing him. After Manuel vacuumed his room for a few minutes, Jaime told Cisneros that Manuel had not cleaned enough. When Manuel left the apartment, Jaime and Cisneros were laughing at him, and Cisneros told Manuel, "Go kill yourself." Manuel thought they were laughing and mocking him; and he threw the garden gnome at the window. Manuel denied threatening to kill Cisneros and Jaime or threatening to have his friends kill or hurt them. Manuel admitted he shoved Jaime at school the next day.

Following argument, the juvenile court sustained the petition. The court declared the criminal threat counts felonies and the vandalism and battery counts misdemeanors.

3. *The Disposition Hearing*

At the disposition hearing, the juvenile court declared Manuel a ward of the court, ordered him placed at Rite of Passage and calculated the maximum term of confinement as four years, six months and 121 days based on the current and prior petitions. The court awarded Manuel 56 days of predisposition credit. Manuel filed a timely notice of appeal.

DISCUSSION

Although Manuel's appellate counsel submitted a brief in which no issue was raised pursuant to *People v. Kelly* (2006) 40 Cal.4th 106 and *People v. Wende* (1979) 25 Cal.3d 436, we requested and received from the parties supplemental briefing on whether there was sufficient evidence to support the findings that Manuel had made criminal threats against Cisneros and Jaime, and whether the juvenile court properly calculated the predisposition credits.

1. *The Sufficiency of the Evidence*

a. *The standard of review*

The same standard of appellate review is applicable in considering the sufficiency of the evidence in a juvenile proceeding as in reviewing the sufficiency of the evidence to support a criminal conviction. (See *In re Matthew A.* (2008) 165 Cal.App.4th 537, 540.) 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—from which a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. (*People v. Zamudio* (2008) 43 Cal.4th 327, 357.)³

b. *The evidence is sufficient to support the findings Manuel made criminal threats*

To establish the offense of making a criminal threat, the People must prove (1) the defendant willfully threatened to commit a crime that would result in death or great bodily injury; (2) the defendant made the statement with the specific intent it be taken as a threat; (3) the statement, on its face and under the circumstances in which it was made, was so unequivocal, unconditional, immediate and specific as to convey to the victim threatened a gravity of purpose and an immediate prospect of its execution; (4) the statement caused the victim to be in sustained fear for his or her own safety or for his or her immediate family's safety; and (5) the victim's fear was reasonable. (§ 422, *In re George T.*, *supra*, 33 Cal.4th at p. 630; *People v. Toledo* (2001) 26 Cal.4th 221, 227-228.) Section 422 “does not punish such things as ‘mere angry utterances or ranting soliloquies, however violent.’” (*In re Ryan D.* (2002) 100 Cal.App.4th 854, 861.)

Manuel contends his statement to Jaime, “I’m going to get my friends and get you” did not constitute a threat. Relying on *In re Ricky T.* (2001) 87 Cal.App.4th 1132 (*Ricky T.*), Manuel argues his words were instead angry utterances and did not convey his specific intent to commit a crime resulting in death or great bodily injury. In *Ricky T.*, the

³ This standard applies to review of convictions under section 422 for making a criminal threat when, as here, the defendant does not claim his or her words were constitutionally protected speech under the First Amendment. (*In re George T.* (2004) 33 Cal.4th 620, 630-634.)

court held that a student's outburst did not constitute a threat. In that case, a 16-year-old boy left a classroom to use the restroom. When he returned, he pounded on the locked door. The teacher opened the door outward and hit the student's head. Angry, the student cursed and told the teacher, "I'm going to get you" or "I'm going to kick your ass." The teacher felt physically threatened but conceded the student did not make a specific threat or engage in any other aggressive act. (*Id.* at pp. 1135-1136, 1138.) The court found that the supposed threats were ambiguous, and there was no evidence a physical confrontation was imminent. (*Id.* at pp. 1137-1138.) The court concluded the boy's "intemperate, rude and insolent remarks" were an emotional reaction to an accident rather than a criminal threat. (*Id.* at pp. 1138, 1141.)

Manuel's reliance on *Ricky T.* is misplaced. The evidence of Manuel's threat, directed to Jaime, is significantly different and more serious than the evidence evaluated in *Ricky T.* To be sure, the words, "I'm going to get my friends and get you" did not articulate an intent to commit a specific crime causing death or bodily injury. However, "[t]he determination whether a defendant intended his or her words to be taken as a threat, and whether the words were sufficiently unequivocal, unconditional, immediate, and specific that they conveyed to the victim an immediacy of purpose and immediate prospect of execution of the threat can be based on all the surrounding circumstances and not just on words alone. The parties' history can also be considered as one of the relevant circumstances." (*People v. Butler* (2000) 85 Cal.App.4th 745, 752; accord, *People v. Gaut* (2002) 95 Cal.App.4th 1425, 1431-1432.) Unlike *Ricky T.*, the circumstances here corroborated Jaime's testimony that Manuel's statement was a threat to recruit friends to assault him. According to both Jaime and Cisneros, whose testimony was credited by the juvenile court, the two brothers had a violent relationship. Weeks before this incident, Manuel had attacked Jaime in his sleep. (See *People v. Allen* (1995) 33 Cal.App.4th 1149, 1156 [history of domestic violence between defendant and victim provides meaning for the threats]; *People v. Gaut, supra*, 95 Cal.App.4th at pp. 1431-1432 [defendant more likely to follow through on threats because of a prior violent history].) During the incident, after threatening Cisneros, Manuel attempted to attack Jaime in the

kitchen before Cisneros intervened to stop him. The brothers' volatile history and Manuel's display of force together with his threat to have his friends "get" Jaime conveyed a deliberate statement of purpose. Ample evidence supports the juvenile court's finding that Manuel intended his statement to be taken by Jaime as a threat of imminent physical harm.

Manuel also contends the evidence fails to establish Cisneros and Jaime were in sustained fear for their safety. The evidence, viewed in the light most favorable to the juvenile court's findings, reasonably supports the inference that Manuel's threats in fact caused Cisneros and Jaime to be afraid. With respect to Jaime, his testimony that he called the police because he feared Manuel would "do something bad" was evidence of Jaime's subjective fear. As for Cisneros, it is true, as Manuel asserts, that Cisneros contradicted himself and equivocated enough that a contrary inference, as urged by Manuel, was also plausible: When asked about his initial reaction to Manuel's threat to have him killed, Cisneros testified he did not care about it at the time; the threat did not frighten him. Cisneros then testified he told the police he believed Manuel "was capable" of having him and Jaime killed—not that he was afraid that Manuel would actually carry out his stated intention to do so.

Nonetheless, the juvenile court was free to discount these statements in light of other testimony: Cisneros's testimony that after Manuel threatened to have him killed, he feared what would happen to Jaime, and warned Jaime to be careful around Manuel's friends. It is reasonable to infer although Cisneros did not initially take Manuel's threat seriously, he reconsidered after witnessing Manuel's violent behavior toward Jaime that day. (See *People v. Solis* (2001) 90 Cal.App.4th 1002, 1014 ["a statement the victim does not initially consider a threat can later be seen that way based upon a subsequent action taken by a defendant"].)

While Cisneros also testified that he initially did not care about what Manuel was saying to him, he also stated that upon learning of Manuel's attempt to harm Jaime at school the next day, he became frightened. In *People v. Martinez* (1997) 53 Cal.App.4th 1212, the appellate court concluded while the defendant's words alone may not have

sufficiently conveyed a threat of harm or death, the trier of fact could consider all the surrounding circumstances, including the fact the defendant set fire to the building where the victim worked a day after making the threat. (*Id.* at p. 1220.) “Defendant’s activities after the threat gave meaning to the words and imply that he meant serious business when he made the threat.” (*Ibid.*)

2. *The Award of Predisposition Custody Credits*

Manuel was awarded a total of 56 predisposition custody credits. Manuel contends, the People acknowledge, and we agree the juvenile court miscalculated the number of predisposition custody credits.

A minor who is removed from the physical custody of his parent because of an order of wardship made under Welfare and Institutions Code section 602 “may not be held in physical confinement for a period in excess of the maximum term of confinement which could be imposed upon an adult convicted of the offense . . . which brought or continued the minor under the jurisdiction of the juvenile court.” (Welf. & Inst. Code, § 726, subd. (d).) Consequently, the minor must be given precommitment credit against the maximum term of confinement for the days he or she was in custody. (*In re Eric J.* (1979) 25 Cal.3d 522, 536; *In re Emilio C.* (2004) 116 Cal.App.4th 1058, 1067.) Where, as here, the juvenile court “elects to aggregate a minor’s period of physical confinement on multiple petitions . . . , the court must also aggregate the predisposition custody credits attributable to those multiple petitions.” (*Ibid.*)

Manuel was detained on the first petition for a period of 60 days, from November 16, 2013 through January 14, 2014, and was thus entitled to an additional 60 days credits for a total of 116 days of predisposition custody credits.

DISPOSITION

The disposition order is modified to award Manuel a total of 116 days of predisposition custody credits. As modified the order is affirmed.

ZELON, Acting P. J.

We concur:

SEGAL, J.

BLUMENFELD, J.*

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.