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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
THIRD APPELLATE DISTRICT  
(Sacramento)

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THE PEOPLE,

Plaintiff and Respondent,

v.

THOMAS PAUL BUCKNER,

Defendant and Appellant.

C071755

(Super. Ct. No. 11F07570)

A jury convicted defendant Thomas Paul Buckner of exhibiting a deadly weapon (Pen. Code, § 417, subd. (a)(1) - count III)<sup>1</sup> and of disturbing the peace (§ 415 - count V), each a misdemeanor. The jury acquitted defendant of making criminal threats (§ 422 - count I), assault by means of force likely to produce great bodily injury (§ 245,

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<sup>1</sup> Undesignated statutory references are to the Penal Code in effect at the time of the charged offenses.

subd. (a)(1) - count II), and damaging property (§ 594, subd. (a) - count IV).<sup>2</sup> Defendant was sentenced to 270 days in county jail, but in light of his 500 days of presentence custody credit (250 actual, 250 conduct) his sentence was deemed served.

On appeal, defendant contends the evidence is insufficient to support his conviction for violation of section 415 on either of two theories argued by the prosecution. We disagree and affirm.

### **FACTUAL AND PROCEDURAL BACKGROUND**

On November 14, 2011, Amber Buzick and her three-year-old son, David, were in room 39 of the Greenbrier Motel in Sacramento. Around noon, as Buzick was coming out of the bathroom, she saw defendant with his face pressed against the outside window to the room. David was sitting in a chair under the window. When defendant saw Buzick, he began screaming, “I’m going to kill this mother fucker,” pointing at David. Defendant, who had a bicycle pump in one hand, began hitting the window with the palm of his other hand and yelling, “I’m going to break this glass and bash your head in.” Defendant then struck the door three times. Buzick called her husband, David Johnson, who was visiting friends in an upstairs room. Defendant walked away, hitting pillars with the pump and continuing to yell.

Johnson came down and saw defendant at the end of the corridor hitting the walls with the pump and yelling. Defendant called Johnson a “cracker” and said he was going to kill Johnson’s “white bitch” wife and “cracker” kids in their sleep.

Jonathan Laroche and Anthony Watson, private security officers, went to the motel. They saw defendant standing in the threshold of room 35 with a bicycle pump in his hand, which he tossed inside the room. Defendant was agitated and screaming obscenities as he approached the security officers.

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<sup>2</sup> Defendant had entered a not guilty by reason of insanity plea, but withdrew this plea following the jury’s acquittal of the felony counts.

Laroche and Watson tried to calm defendant and asked him to take a seat on a nearby staircase, but defendant continued to advance, closing the distance between him and the two security officers. Laroche told defendant the officers were not there to arrest or harm him, they just wanted to understand what was going on. In an effort to calm defendant, Laroche placed his hand on defendant's shoulder. Defendant responded by coming forward, grabbing Laroche's uniform and microphone, and yanking Laroche toward him. Laroche grabbed defendant's hand in an attempt to dislodge it and struggled to loosen defendant's grip. Defendant placed Laroche in a headlock and attempted to strike Laroche in the face.

Watson intervened and all three fell to the ground, causing Laroche to dislocate his shoulder. Defendant was eventually subdued.

Johnson told the police that he heard defendant tell the security officers, "bring it on."

Janice Nakagawa, a psychologist, testified in the defense case. Nakagawa testified that defendant was suffering from a psychotic disorder and was responding to internal stimuli at the time of the incident. She opined that defendant was so psychotic that he did not have the specific intent to make threats intended to be taken as credible.

## **DISCUSSION**

Defendant contends the evidence is insufficient to support his conviction for disturbing the peace on either of the two theories advanced by the prosecution -- fighting in public and use of words in public that are likely to provoke a violent reaction. We conclude the evidence overwhelmingly supports the fighting in public theory.<sup>3</sup>

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<sup>3</sup> This conclusion renders it unnecessary to address defendant's contention that the evidence was insufficient to support the conviction on the prosecution's alternate theory that defendant used words likely to provoke a violent reaction. (See *People v. Catley* (2007) 148 Cal.App.4th 500, 506 ["If a jury is instructed on two alternative theories of criminal liability, one of which is legally sufficient and one of which is not, we will

### **A. Standard of Review**

“ “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.]’ ” (*People v. Castaneda* (2011) 51 Cal.4th 1292, 1322.)

### **B. Disturbing the Peace**

Section 415, which defines the offense of disturbing the peace, provides: “Any of the following persons shall be punished...: (1) Any person who unlawfully fights in a public place or challenges another person in a public place to fight. (2) Any person who maliciously and willfully disturbs another person by loud and unreasonable noise. (3) Any person who uses offensive words in a public place which are inherently likely to provoke an immediate violent reaction.”<sup>4</sup>

### **C. Fighting In Public**

Using CALCRIM No. 2688, the trial court instructed the jury that to convict the defendant of disturbing the peace on the theory he was fighting in public, the People had to prove that:

“1. The defendant willfully and unlawfully fought;

AND

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affirm unless the record affirmatively demonstrates the jury relied on the unsupported ground.”].)

<sup>4</sup> The court instructed the jury, per CALCRIM No. 3500, that: “The People have presented evidence of more than one act to prove that the defendant committed the offense in Count 5. You must not find the defendant guilty unless you all agree that the People have proved that the defendant committed at least one of these acts and you all agree on which act he committed.”

“2. The defendant and the other person were in a public place when the fight occurred.”

The court further instructed the jury that “[s]omeone commits an act *willfully* when he or she does it willingly or on purpose.” (Italics in the instruction.)

The prosecutor argued that defendant was guilty of fighting in public because Laroche and Watson were simply trying to calm defendant down when Laroche put his hand on defendant’s shoulder and defendant responded by attacking Laroche. Defendant claims the prosecutor’s “version of events,” as argued to the jury, failed to include “details which undermine the conviction.” For example, the prosecutor did not mention that Laroche and Watson were dressed and armed like police officers thereby showing they were capable of applying any force that an officer could apply; that defendant was speaking incoherently and was later admitted to the jail’s psychiatric ward; that Watson had seen defendant toss the bicycle pump into the motel room; and that defendant did not touch Laroche prior to Laroche’s touching defendant. Defendant contends the evidence shows he did not provoke a fight.

On appellate review of a challenge to the sufficiency of the evidence, it is immaterial whether the prosecutor’s argument to the jury left out facts that could be viewed as beneficial to defendant. As we have noted, the issue we must decide on appeal is whether looking at the record in a light most favorable for the judgment, there is reasonable, credible evidence of solid value from which a rational trier of fact could have found defendant guilty beyond a reasonable doubt. We conclude there is.

When officers Laroche and Watson arrived at the motel, they were told defendant was irate and walking around threatening people with a pipe. Watson saw defendant standing in the threshold of room 35 holding an object which defendant threw back into the room as Watson and Laroche started to approach defendant. Defendant exited room 35 and began screaming “obscenities,” “his arms and his fingers were flying all over the place,” and he was yelling “they raped me.” Defendant approached to about 10 feet from

the officers, yelling “fuck” and “shit” “at least a dozen times.” Johnson told the police that at some point, he heard defendant tell the officers, “bring it on.”

Officer Watson asked defendant multiple times to take a seat on a nearby staircase while the officers tried to figure out what was going on. Officer Laroche told defendant the officers were not there to arrest or harm him. However, defendant kept coming toward the officers. In an effort to calm the advancing defendant, Laroche put his hand on defendant’s shoulder and asked him to sit down. Watson described Laroche’s putting his hand on defendant’s shoulder as “an open hand kind of a touch, kind of hey, everything is okay....” At that point, defendant initiated the fight by grabbing Laroche’s shirt and yanking Laroche toward him. Defendant then managed to place Laroche into a headlock.

In sum, the officers were confronted with a man who was irate, screaming and yelling profanities, and advancing on the officers. It was in an effort to avoid a physical fight and to defuse the situation that officer Laroche placed his hand on defendant’s shoulder and tried to assure defendant the officers were not there to arrest or harm him. However, this benign strategy did not work; instead of calming defendant down, defendant responded by initiating a fight with Laroche. There is substantial evidence supporting the conviction.

**DISPOSITION**

The judgment is affirmed.

MURRAY, J.

We concur:

BUTZ, Acting P. J.

MAURO, J.