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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

DARRELL FREDRICK DOTSON,

Defendant and Appellant.

D058819

(Super. Ct. No. JCF24771)

APPEAL from a judgment of the Superior Court of Imperial County, Joseph W. Zimmerman, Judge. Affirmed.

Darrell Fredrick Dotson was convicted of stalking his estranged wife and disobeying a restraining order. He was sentenced to three years in state prison, suspended in favor of probation. Dotson now appeals, claiming insufficient evidence supports his stalking conviction. He also claims the trial court erred in admitting witness testimony about a threat to the victim. We disagree with both claims, and affirm the judgment of conviction.

FACTUAL AND PROCEDURAL OVERVIEW

Dotson married his wife Deanne in 1986. Their relationship became tumultuous, in large part due to Dotson's erratic behavior and use of crystal methamphetamine. The pair would frequently yell at each other, including in front of their two children.

During one altercation in 2005, Dotson became enraged and punched a pillow on which Deanne's head was resting. He then told her he had a gun, went and got bullets out of their safe and threatened to kill himself. Although he did not physically strike Deanne, she feared for her safety and thus obtained a temporary restraining order. Deanne did not file for a permanent restraining order, however, as she felt they could reconcile.

Despite their attempts to work things out, including attending counseling, their relationship deteriorated further. In 2009 another series of incidents prompted Deanne to seek a second restraining order. On June 26 Dotson flew into a rage and punched a number of holes into their bathroom wall. On July 2 he screamed at her and pushed a stool she was sitting on, causing her to fall to the ground. During the latter incident, he threatened her, chased her around the couch and told her she would be sorry. Deanne obtained a restraining order on July 27 and filed for divorce shortly thereafter.

On August 26 the superior court issued an order prohibiting Dotson from any contact with Deanne. By the terms of the order, Dotson was to stay 100 yards from the house and only communicate with Deanne for parenting purposes.

Dotson failed to comply with the order and continued to contact Deanne, who catalogued his actions. For example, in one instance Dotson left a long handwritten note

at Deanne's house complaining about what she had done to hurt him. In the note, he acknowledged violating the restraining order by leaving the note itself, and told her he could never live without her. Deanne took this to mean he intended to harm her. The perceived threat was exacerbated when Dotson returned home to pick up some belongings, wielded a rubber mallet and used it to strike a table in front of Deanne and her mother.

In another incident, Dotson went to Deanne's workplace and left a note inside her car. At the end of the note, he wrote: "Last chance to get right with me, Deanne, or you are going to be sorry." He also appeared at her work, rode up to her car on his motorcycle, blocked her so she could not drive off and poked her in the head.

Dotson called Deanne repeatedly throughout the month of August, leaving rambling messages on her voicemail until it was full. He also sent her several e-mails. Neither the calls nor e-mails had anything to do with parenting. In one e-mail, he again told her she would be sorry and demanded the return of his gun.

On September 10, 2009, Deanne called the police, informing them Dotson had been driving his motorcycle past her house. She gave Officer Eric Granado copies of the restraining order, notes, e-mails, texts, and voice messages that Dotson had sent her. Officer Granado called Dotson, who admitted to contacting Deanne.

A week later, Deanne again called police after Dotson left her a voicemail demanding his gun and telling her she was "going down." Sergeant Richard Kotzin

drove to Dotson's house and arrested him. Sergeant Kotzin suspected Dotson was under the influence of methamphetamine at the time of his arrest.

Even after being arrested, Dotson continued to contact Deanne. He attempted to call her repeatedly throughout October and November, occasionally as often as 10 to 20 times per day. None of the calls were about the children. Dotson also began driving by her house at night ostensibly to see who was parked there.

Deanne became more fearful of Dotson, and made further reports to police. On November 27, 2009, Officer Granado arrested Dotson. On December 5, Officer Granado was at home when he saw Dotson pull in to Granado's cul-de-sac. When Officer Granado got into his patrol vehicle, Dotson backed out of the cul-de-sac and drove off.

Deanne testified she heard Dotson claim he would "bury or waste" her and Officer Granado. She was frightened enough by Dotson's behavior that she installed a security system in her home, regularly carried pepper spray and a flashlight and had somebody walk her into and out of work. She also testified she missed work due to her fear.

Tina Hussey is a social worker for Child Protective Services. At a barbershop, Dotson told Hussey that Deanne was having an affair with Officer Granado and that he would "bury them both." Over Dotson's objection, Hussey testified to these statements at trial. Deanne also testified she heard about Dotson's threat, pointing out that Imperial was a "small town" and "everybody talks."

DISCUSSION

I

Substantial Evidence for Stalking Conviction

Under Penal Code section 646.9, stalking occurs when a defendant "willfully, maliciously, and repeatedly follows or willfully and maliciously harasses another person and makes a credible threat with the intent to place that person in reasonable fear for his or her safety, or the safety of his or her immediate family." Dotson claims insufficient evidence was presented to prove either the willful and malicious harassment or credible threat elements of the offense. We disagree.

In reviewing sufficiency of evidence claims, we consider the evidence "in a light most favorable to respondent and presume in support of the judgment the existence of every fact the trier could reasonably deduce from the evidence." (*People v. Johnson* (1980) 26 Cal.3d 557, 576.) The test is whether substantial evidence supports the decision, not whether the evidence proves guilt beyond a reasonable doubt. (*People v. Mincey* (1992) 2 Cal.4th 408, 432.)

Judged in the light most favorable to the conviction, the record contains substantial evidence to support both elements Dotson now challenges. The jury heard testimony of how Dotson repeatedly and intentionally contacted Deanne in an inappropriate and upsetting manner, even after he was subject to a restraining order. Dotson's incessant and threatening phone calls, e-mails, drive-bys, notes, texts and

voicemails appear to have been conducted solely for the purpose of causing Deanne anguish at the prospect of ending their relationship. In these instances, Dotson did not contact Deanne for the permitted purpose of parenting. Rather, Dotson focused his campaign on the consequences Deanne's behavior would have for her, and seemed content to place her in fear of physical threat. This evidence, described *ante*, was sufficient to support the finding that Dotson willfully, repeatedly, and maliciously followed and/or harassed Deanne for purposes of Penal Code section 646.9.

Moreover, this same evidence supports the jury's finding that Dotson's behavior during these inappropriate contacts constituted a "credible threat" under Penal Code section 646.9.

Furthermore, the record shows that Dotson committed violent acts in Deanne's presence and repeatedly demanded his gun. He also threatened Deanne, telling her and others that she would be sorry, that she was going down and that he would bury her, or words to that effect. Deanne responded to Dotson's actions by taking personal safety precautions, including carrying pepper spray, installing a home burglar alarm and obtaining assistance when traveling to work. From Dotson's actions and the effects they had upon Deanne, there is substantial evidence from which a jury could find that Dotson caused Deanne to "reasonably fear for her safety" as required under the statute. (See Pen. Code, § 646.9, subd. (g).)

II

Hussey's Testimony

A. Admissibility of Prior Uncharged Acts

Dotson next claims the trial court erred when it allowed Hussey to testify that Dotson threatened to "bury" Deanne and Officer Granado. Dotson contends the testimony was inadmissible under Evidence Code¹ sections 1101 and 352, and that portions of her testimony were improper lay opinion.

We review claims of error under sections 1101 and 352 under an abuse of discretion standard. (*People v. Foster* (2010) 50 Cal.4th 1301, 1328; *People v. Mungia* (2008) 44 Cal.4th 1101, 1130.) This standard is deferential to the ruling below, which will not be disturbed unless it " 'falls outside the bounds of reason' under the applicable law and the relevant facts [citations]." (*People v. Williams* (1998) 17 Cal.4th 148, 162, quoting *People v. DeSantis* (1992) 2 Cal.4th 1198, 1226.)

The Attorney General initially argues Dotson forfeited this claim on appeal by failing to object on proper grounds at trial. We disagree. While failing to object to section 1101 issues constitutes a forfeiture of those issues on appeal, the record shows Dotson adequately objected on this ground during a sidebar conference. We thus reach the merits of the issue.

¹ Unless otherwise noted, all further statutory references are to the Evidence Code.

Section 1101 prohibits admission of uncharged offenses to show a defendant's character, but allows them when relevant to prove facts other than disposition, including "motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake or accident" (§ 1101, subd. (b).)

The trial court properly exercised its discretion when it admitted Dotson's statements to Hussey because the statements were relevant to his intent to place Deanne in reasonable fear of her safety. Detailing a threat to other members of a community, especially in a small town where the victim was likely to hear of the recitation, reinforces the credibility of the threat and shows a distinct intent to cause apprehension in the victim. Moreover, the similarity between the threats Dotson communicated directly to Deanne and those he relayed to Hussey support the inference Dotson harbored the same intent in each instance. (See *People v. Cole* (2004) 33 Cal.4th 1158, 1194; *People v. Yeoman* (2003) 31 Cal.4th 93, 121.)

Dotson claims that even if Hussey's testimony was relevant under section 1101, it was unduly prejudicial under section 352. Again, we disagree.

A trial court has discretion to exclude evidence "if its probative value is substantially outweighed by the probability that its admission will (a) necessitate undue consumption of time or (b) create substantial danger of undue prejudice, of confusing the issues, or of misleading the jury." (§ 352.)

Here, neither was likely to occur. Hussey's testimony was exceedingly short and unlikely to waste undue time. The uncharged act Hussey testified to was clearly

delineated as separate in time from the litany of acts which formed the basis of the stalking charge, but not so attenuated as to be remote. (*See People v. Branch* (2001) 91 Cal.App.4th 274, 285.) In addition, the uncharged act was similar enough to the other acts as to be "no more inflammatory than the testimony concerning the charged offenses." (*See People v. Ewoldt* (1994) 7 Cal.4th 380, 405.)

B. *Lay Opinion*

Finally, Dotson claims Hussey's testimony that he appeared to be threatening the lives of Deanne and Officer Granado constituted an impermissible lay opinion. Dotson contends Hussey's testimony that she thought Dotson would carry out his threat to "bury" the pair was speculation, and was neither rationally based upon her perception of Dotson nor helpful to the jury.

A witness not testifying as an expert is limited to giving an opinion that is: "(a) [r]ationally based on the perception of the witness; and [(¶)] (b) [h]elpful to a clear understanding of his [or her] testimony." (§ 800.) Here, the record clearly shows Hussey testified solely to her perception of Dotson's behavior. She testified as to what he said and her perception that Dotson appeared agitated and was rambling. Hussey also testified that Dotson's statements frightened her. All these were permissible: "[A] witness may testify about objective behavior and describe behavior as being consistent with a state of mind." (*See People v. Chatman* (2006) 38 Cal.4th 344, 397.) Hussey's testimony that Dotson appeared agitated also was helpful to assess the credibility of his threat.

Furthermore, the record shows that when Hussey was asked to speculate about whether Dotson would carry out his threat, the trial court sustained Dotson's objection. Thus, we conclude the trial court properly exercised its discretion when it admitted Hussey's testimony in this case.

DISPOSITION

The judgment of conviction is affirmed.

BENKE, Acting P. J.

WE CONCUR:

McDONALD, J.

IRION, J.