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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

KEVIN JAMES DEAN,

Defendant and Appellant.

D068813

(Super. Ct. No. SCD252950)

APPEAL from a judgment of the Superior Court of San Diego County, Runston G. Maino, Judge. Affirmed.

Heather L. Beugen, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Julie L. Garland, Senior Assistant Attorney General, Allison V. Hawley and Charles C. Ragland, Deputy Attorneys General, for Plaintiff and Respondent.

A jury found Kevin Dean unlawfully entered an apartment and assaulted the woman who lived there. The jury convicted Dean of robbery, residential burglary,

assault by means likely to produce great bodily injury, attempting to prevent or dissuade a witness from reporting a crime, and false imprisonment by violence. The jury also found Dean perpetrated the robbery in an inhabited dwelling and that he acted with others, but found not true the allegation that Dean personally used a firearm in committing the robbery. Dean admitted he had a prior serious felony conviction and a prior strike conviction. The trial court dismissed Dean's prior strike conviction and sentenced him to 11 years in prison.

On appeal, Dean challenges only his conviction of attempting to prevent or dissuade a witness from reporting a crime. (Pen. Code, § 136.1, subd. (b)(1); hereafter § 136.1(b)(1).) He contends insufficient evidence supported the conviction. We reject this contention and affirm the judgment.

BACKGROUND

In December 2013, Lyndsey Duran was home alone in her apartment, which she shared with her boyfriend. She heard hard, continuous knocking on her front door. Duran looked through the peephole and saw a man she did not recognize. She telephoned her boyfriend to tell him there was someone at the front door and to ask him if he was expecting company. He told her no, not to answer the door, and to call the police.

Duran called 911, described the knocking, and told the 911 operator that she thought someone was trying to break into her apartment. After the 911 call, Duran called her boyfriend again and explained to him that the 911 operator was waiting for an available officer. Duran's boyfriend told her to call 911 again, so she did.

While Duran was speaking with the 911 operator, Dean broke into the apartment through a sliding glass door on the balcony. Other men came in behind Dean, one of whom opened the front door to allow even more men to enter. Duran testified regarding what Dean then said to her: "He said, bitch, you called the police or the cops, or why did you. You know, asking me why, if I'm on the phone with the police." Dean walked towards Duran and took the phone away from her.

At trial, the jury heard an audio recording of the interrupted 911 call. In the recording, Duran went from speaking to the 911 operator to yelling at the intruders to get out of her apartment, followed by crying and unintelligible screaming. The recording ended with the 911 operator calling Duran after the call was disconnected and leaving her a voicemail message.

After Dean took the phone away from Duran, he grabbed her from the neck area of her robe and threw her to the floor. He held her down and repeatedly hit her. Dean told one of the other men, "Grab the bitch." That man grabbed Duran by the neck and started punching her. The men proceeded to steal items from the apartment. Dean told them to hurry up because Duran had called the police.

DISCUSSION

Dean challenges the sufficiency of the evidence to support his conviction of attempting to prevent or dissuade a witness from reporting a crime.

A. Standard of Review

In reviewing a sufficiency of the evidence claim, the appellate court must consider the whole record and determine whether it contains substantial evidence of each essential

element of the offense. (*People v. Zamudio* (2008) 43 Cal.4th 327, 357.) Substantial evidence to support a verdict 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." (*Ibid.*) We neither reweigh the evidence nor evaluate its credibility. (*People v. Misa* (2006) 140 Cal.App.4th 837, 842.) "[W]e review the facts adduced at trial in the light most favorable to the judgment" (*Ibid.*)

B. *Legal Principles*

Section 136.1(b)(1) states: "[E]very person who attempts to prevent or dissuade another person who has been the victim of a crime or who is witness to a crime from doing any of the following is guilty of a public offense and shall be punished by imprisonment in a county jail for not more than one year or in the state prison: [¶] (1) Making any report of that victimization to any peace officer or state or local law enforcement officer or probation or parole or correctional officer or prosecuting agency or to any judge."

Section 136.1(b)(1) "targets prearrest efforts to prevent a crime from being reported to the authorities." (*People v. Navarro* (2013) 212 Cal.App.4th 1336, 1347 (*Navarro*)). For a defendant to be found guilty of violating this section, the prosecution must prove the following elements beyond a reasonable doubt: "'(1) the defendant has attempted to prevent or dissuade a person (2) who is a victim or witness to a crime (3) from making [a] report . . . to any peace officer or other designated officials.'" (*Ibid.*)

Making a report means "notifying the authorities that the crime has occurred *and providing information about the offense.*" (*People v. Fernandez* (2003) 106 Cal.App.4th

943, 948 (*Fernandez*), italics added.) Intentionally blocking a victim or witness's access to a phone can constitute an attempt to prevent the victim or witness from making a police report. (See *People v. McElroy* (2005) 126 Cal.App.4th 874, 882 (*McElroy*)). Any words or actions attempting to induce a victim or witness not to report a crime may show the defendant attempted to dissuade the victim or witness from making a report. (See *People v. Mendoza* (1997) 59 Cal.App.4th 1333, 1344 (*Mendoza*) [interpreting an analogous provision in the same statute].) Section 136.1(b)(1) is a specific intent crime, which requires the prosecution to prove " 'the defendant's acts or statements [were] intended to affect or influence a potential witness's or victim's testimony or acts.' " (*Navarro, supra*, 212 Cal.App.4th at p. 1347.)

C. Analysis

There was sufficient evidence for a jury to reasonably infer that Dean attempted to prevent Duran from reporting his criminal conduct to authorities. Dean interrupted what he knew to be a 911 call, thereby precluding Duran from providing necessary information to the 911 operator. Duran testified that Dean broke into her apartment; said something to the effect of, "Bitch, why did you call the cops?"; took the phone away from her; threw her to the floor; held her down; and repeatedly punched her. An audio recording corroborated that the 911 call had been interrupted. After the interruption, the 911 operator unsuccessfully attempted to reestablish contact with Duran. The evidence also showed Duran told his associates to hurry up because he knew a call to the police had been made.

Viewed together, these facts are sufficient to support a section 136.1(b)(1) conviction. (See *McElroy, supra*, 126 Cal.App.4th at pp. 881-882.)

Dean contends he did not *prevent* Duran from reporting his conduct because she had already called the 911 operator before he broke into the apartment. He argues that his *interrupting* the call does not constitute preventing or dissuading a witness, emphasizing that Duran had already made the report when he grabbed the phone and then assaulted her.

This argument is unavailing. The fact that Dean did not prevent Duran from notifying the authorities a crime was occurring does not end the inquiry. Making a report means both notifying the authorities that a crime is occurring *and* providing information about the offense. (*Fernandez, supra*, 106 Cal.App.4th at p. 948.) By forcefully taking the phone away from Duran, Dean prevented Duran from providing full information about the crimes to the 911 operator.

Additionally, the dissuading-a-witness crime requires only an attempt, not a successful action. (§ 136.1(b)(1); see *People v. Foster* (2007) 155 Cal.App.4th 331, 335; see also *People v. Kirvin* (2014) 231 Cal.App.4th 1507, 1519.) The jury could reasonably have found that by assaulting Duran immediately after taking away the phone, Dean was attempting to dissuade Duran from later disclosing additional information about the crime to the responding police officers, including identifying him as the perpetrator of the crime. (See *Mendoza, supra*, 59 Cal.App.4th at p. 1343.)

Substantial evidence supports Dean's conviction under section 136.1(b)(1).

DISPOSITION

The judgment is affirmed.

HALLER, J.

WE CONCUR:

NARES, Acting P. J.

PRAGER, J.*

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