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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

THE PEOPLE,

Plaintiff and Respondent,

v.

RYAN PATRICK GIFFORD,

Defendant and Appellant.

E059972

(Super.Ct.No. RIF1300323)

**OPINION**

APPEAL from the Superior Court of Riverside County. Jean P. Leonard, Judge.

Affirmed.

Jan B. Norman, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

## I

### STATEMENT OF THE CASE

On April 9, 2013, an information charged defendant and appellant Ryan Patrick Gifford with assault with a deadly weapon under Penal Code <sup>1</sup> section 245, subdivision (a) (count 1), and two counts of making criminal threats under section 422 (counts 2, 3).

A jury trial commenced on August 26, 2013 and concluded on August 30, 2013. During the trial, the court dismissed count 3, making criminal threats to Ryan Ayres, pursuant to the prosecution's motion to dismiss. At the conclusion of the prosecution's case, defendant moved for a judgment of acquittal under section 1118.1; it was denied. The jury found defendant guilty of assault with a deadly weapon and attempting to criminally threaten Ashley Ayres. The jury found defendant not guilty on the greater charge of criminally threatening Ashley Ayres.

On October 11, 2013, the court sentenced defendant to three years in state prison (midterm of three years on the assault conviction and midterm of one year on the attempted criminal threat conviction, to run concurrently).

The trial court ordered defendant to pay a restitution fine of \$200 under section 1202.4. The court also imposed a parole revocation fine of \$200, which was stayed. The court further ordered defendant to pay a criminal conviction assessment fee of \$60 under Government Code section 70373, and a court operations assessment fee of \$80 under

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<sup>1</sup> All statutory references are to the Penal Code unless otherwise specified.

section 1465.8. The court awarded defendant a total of 404 days of pre-sentence custody credit – 202 actual days plus 202 conduct days.

On October 31, 2013, defendant filed a timely notice of appeal.

## II

### STATEMENT OF FACTS

#### A. *Prosecution's Case*

On January 2, 2013, Ashley Ayres (the victim) resided on Mimosa Lane with her husband, two children, mother, and stepfather. Defendant lived next door with his parents, brother, and sister. The victim and her mother, Theresa Jones, had known defendant since elementary school. Peter Abkarian lived across the street from the victim. At approximately noon that day, the victim, her husband, and mother were in the front yard taking down Christmas lights. The victim and her husband heard screeching car tires, looked down the street and observed a car traveling at a high rate of speed. Jones also observed a car skidding and driving recklessly.

Just before the screeching of car tires, Abkarian heard the loud slam of a door and went to the window of his house to look outside. He saw defendant leaving his house and getting into his car. Defendant drove away at a very rapid speed.

Three to five minutes later, the car returned. It was moving at a high speed. Defendant was driving the car. He exited the car and ran into his house. A few minutes later, defendant got back into his car and drove out of the driveway. Defendant's car spun at an angle toward the other side of the street. The victim's husband, concerned that

there were children playing in the yard, yelled at defendant to slow down. The victim's mother and her husband also told defendant to slow down.

Defendant stopped his car in the middle of the street, exited the car, and began yelling at the victim in an angry voice. Defendant and the victim argued. Defendant walked toward the victim gesturing as if he had a gun in his pocket. Jones heard defendant saying, "Do you want some of this?" The victim heard defendant yelling that it was time that she "be taken care of." The victim and Jones had the impression that defendant was armed. The victim was afraid. The victim's husband intervened and began arguing with defendant. Defendant again stated that the victim needed to "be taken care of."

Still yelling, defendant got back into his car. Abkarian heard defendant yell, "watch this." Defendant placed his car in reverse and drove back toward the victim. The victim observed that the back window of the car was tinted. She did not know if defendant could see her standing behind the car.

Jones observed defendant put his arm on the back of the seat and press the gas while looking behind. She yelled at the victim, her daughter, to run. Both the victim and her husband were afraid that defendant was going to hit the victim with his vehicle. The victim ran from the street onto the lawn.<sup>2</sup> The car stopped right before the curb, approximately one to one and one-half feet from where defendant had been standing

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<sup>2</sup> Jones recalled that when defendant's car backed toward the victim, she ran across the street and not onto the lawn. Jones also recalled that the victim moved back and forth in the street, and defendant's car followed the victim's movements.

originally. To arrive at that location, defendant had to make a turn. The car was traveling at approximately ten to twelve miles per hour with the tires screeching. Abkarian observed that the car nearly struck the victim and her husband. He and Jones believed that if the victim had not moved, defendant's car would have hit her.

The victim recalled that defendant then again stopped, exited the car, and then immediately jumped back into the car and drove away. Abkarian was certain that defendant did not exit the car after he had backed it toward the victim. Abkarian called 911. He reported that defendant had attempted to strike the victim with his car. The audiotape of the 911 call was played for the jury.

B. *Defense Case*

Kelly Gifford, defendant's mom, recalled that by noon on January 2, 2013, she and defendant had been arguing for over a day and a half. Defendant was using profanity. Gifford told defendant to leave. Defendant gathered some of his belongings and got into his brother's car. Gifford called defendant on her cell phone and spoke with him about taking his brother's car without permission. Defendant stopped the vehicle in the middle of the street, and Gifford continued to argue with him; they were on their cell phones. {RT 274-278}

Defendant exited the car and yelled profanities at his mother. He was standing just outside the open car door and never moved from that position. The victim was yelling at defendant. Gifford ordered defendant to return the car and threatened to call the police if defendant moved the car even one foot further. The victim and defendant

were arguing about defendant making his car skid. Defendant was using profanity directed at the victim. The victim's husband joined in the argument between the victim and defendant. Defendant continued to yell at the victim. Gifford held her cell phone in her hand and threatened to call 911 if defendant moved the car forward. Gifford ordered defendant to back the car up and put it back in the driveway.

The victim's husband told the victim to stop arguing with defendant. He also told defendant that he was going to "mop up the floor with him," because defendant was using profanity when arguing with the victim. Gifford continued to yell at defendant to return the car. Defendant got back into his car and started to back up. The victim screamed. Defendant's car was moving slowly; the victim was not in danger of being struck with the car. Defendant was following Gifford's demands and returning the car. The victim did not move out of the way and did not need to move out of the way. Defendant's car never came less than six to eight feet from the victim.

Defendant drove back into the driveway of his home. The victim accused defendant of attempting to hit her. Gifford responded that none of defendant's actions involved the victim. The victim responded that she was going to call the police. At that point, defendant got back into the car and left.

### III

#### ANALYSIS

After defendant appealed, and upon his request, this court appointed counsel to represent him. Counsel has filed a brief under the authority of *People v. Wende* (1979) 25 Cal.3d 436 and *Anders v. California* (1967) 386 U.S. 738 setting forth a statement of the case, a summary of the facts, and potential arguable issues, and requesting this court to undertake a review of the entire record.

We offered defendant an opportunity to file a personal supplemental brief, but he has not done so. Pursuant to the mandate of *People v. Kelly* (2006) 40 Cal.4th 106, we have conducted an independent review of the record and find no arguable issues.

### IV

#### DISPOSITION

The judgment is affirmed.

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RICHLI  
J.

We concur:

McKINSTER  
Acting P. J.

CODRINGTON  
J.