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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.

DELFINO MORA,

Defendant and Appellant.

E063944

(Super.Ct.No. RIF1408711)

OPINION

APPEAL from the Superior Court of Riverside County. Charles J. Koosed, Judge.

Affirmed with directions.

Patricia L. Brisbois, 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, and Charles C. Ragland and Kathryn Kirschbaum, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant Delfino Mora stands convicted of four sexual offenses against minors, including two offenses involving his own daughter. They came to light when his

daughter reported the sexual abuse to his wife, who in turn reported it to the police. Then, in a phone call with his wife, defendant threatened to kill her relatives. As a result, he was also convicted of making a criminal threat. (Pen. Code, § 422, subd. (a).)

In this appeal, defendant contends that there was insufficient evidence that his wife's fear was both reasonable and sustained. We disagree; hence, we will affirm his conviction for making a criminal threat. In addition, we will direct a correction to the abstract of judgment.

I

FACTUAL BACKGROUND

As of 2009 or 2010, defendant lived with his then-girlfriend and their daughter, Jane Doe No. 1 (Doe 1),¹ Jane Doe No. 3 (Doe 3),² who was the girlfriend's daughter from a previous relationship, also lived with them. There was substantial evidence, not questioned in this appeal, that when Doe 3 was ten or eleven years old, defendant touched her vagina over her clothes and made her touch his penis.

As of 2013 and 2014, defendant was living with his then-wife, M.M., and Doe 1. Again, there was substantial evidence, not questioned in this appeal, that when Doe 1 was nine, while M.M. was on a trip to Australia, defendant touched Doe 1's vagina. While

¹ The trial court ordered that the minors who were the alleged victims of the sexual offenses be identified by fictitious names. (Pen. Code, § 293.5.)

² There was a Jane Doe No. 2, who was allegedly the victim of a nonforcible lewd act on a child under 14, but the jury acquitted defendant on this charge.

Doe 1 was still nine, but after M.M. got back from Australia, defendant put his finger in Doe 1's vagina. Doe 1 reported this incident to M.M.; M.M. called the police.

While M.M. was at the police station, defendant phoned her. The police did not let her answer until they were in a position to record the call; then, either M.M. called defendant back or he called her again. The investigating officer described the call as a "pretext" call, which he defined as "trying to corroborate a statement or an allegation being made by a victim." He added that during a pretext call, officers are "sometimes, frequently, writing questions or trying to steer the conversation."

Throughout the phone call, defendant denied touching Doe 1 inappropriately. However, he made the following threats:

1. "Don't even think about taking my [daughter], because I swear that I'll take yours away. An eye for an eye and a tooth for a tooth."

2. "[S]ay goodbye to you[r] daughter and your sons."

3. "MORA: . . . [Y]ou're also going to pay for your mistakes with one of your daughters.

"[M.M.]: Are you threatening to kill my daughter?"

"MORA: I'm not threatening you, I'm not threatening you. You want them to take my daughter from me? Okay. Then an eye for an eye and a tooth for a tooth."

4. "[Y]ou should be saying goodbye to one of your kids right now, if I get to the house and they're there."

5. "Here I am, I'm almost at the house"

6. “Do you want to see your kids . . . in coffins? You’re going to see them in coffins.”

7. “Who do you want to go down first? Your mom? Your son . . . ?”

8. “Right now I’m go[ing] to your mom’s”

9. “[M.M.]: . . . [W]ho’s going to be dead?

“MORA: Your daughter [L.]. In an hour if you don’t bring [my daughter] to me.”

10. “[Y]ou’re never going to see your daughter [L.] again.”

11. “I’m here at the house. By the way, she hasn’t gotten here yet, but be careful.”

12. “I swear on my . . . whole family, that your whole family is going to disappear.”

13. “[B]uy a coffin for each one of your kids”

Eventually, defendant hung up. There was then this discussion between M.M. and the police:

“[M.M.]: My mom is calling me. My — my — I don’t want — my — he’s — he’s gonna threat — he — you heard him.

“WOMAN: Yeah.

“[M.M.]: That — a ‘cajón’ means that, uh — like, start getting a — a grave, a coffin for all my kids ready. He’s really furious. (Unintelligible) won’t be that furious. Look at my — look at my hands.

“[OFFICER]: Hey, relax. I have several . . .

“[M.M.]: He’s not home.

“[OFFICER]: I have several — he’s at the Shell [g]as [s]tation.”

At trial, M.M. testified:

“Q. Did you take those threats seriously?”

“A. At the moment, yes, I did.

“Q. Did you feel that he was capable of doing those harms that he threatened to your family and yourself?”

“A. That same day, yes.”

Similarly, she testified:

“Q. Were you afraid that Mr. Mora meant what he said on the phone call when he threatened you and your family at the time in July 2014?”

“A. The first day when he said it, yes.”

However, she also testified:

“Q. . . . Now, do you remember last Tuesday talking to an investigator regarding those threats over the telephone?”

“A. Yes.

“Q. Okay. Did you tell that investigator . . . that you felt Delfino did not mean the things that he was saying that day?”

“A. After a couple of months, yes, I did.”

II

PROCEDURAL BACKGROUND

After a jury trial, defendant was found guilty as follows:

Count 1: Sexual penetration of a child aged 10 or younger (Pen. Code, § 288.7, subd. (b)), committed against Doe 1.

Count 2: A forcible lewd act on a child under 14 (Pen. Code, § 288, subd. (b)(1)), committed against Doe 1.

Count 3: Making a criminal threat. (Pen. Code, § 422, subd. (a).)

Counts 4 & 5: A nonforcible lewd act on a child under 14 (Pen. Code, § 288, subd. (a)), committed against Doe 3.

A multiple victim special circumstance for purposes of the “One Strike” law was found true. (Pen. Code, § 667.61, subd. (e)(4); Pen. Code, former § 667.61, subd. (e)(5).) As a result, defendant was sentenced to a total of 57 years to life in prison, along with the usual fines, fees, and miscellaneous sentencing orders.

III

THE SUFFICIENCY OF THE EVIDENCE OF THE NECESSARY FEAR

Defendant contends that there was insufficient evidence that M.M. was in sustained fear or that her fear was reasonable to support his conviction for making a criminal threat.

“““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.] We determine “whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of

fact could have found the essential elements of the crime beyond a reasonable doubt.”

[Citation.] In so doing, a reviewing court “presumes in support of the judgment the existence of every fact the trier could reasonably deduce from the evidence.”

[Citation.]” (*People v. Rangel* (2016) 62 Cal.4th 1192, 1212-1213.)

The elements of the crime of making a criminal threat are “(1) that the defendant “willfully threaten[ed] to commit a crime which will result in death or great bodily injury to another person,” (2) that the defendant made the threat “with the specific intent that the statement . . . is to be taken as a threat, even if there is no intent of actually carrying it out,” (3) that the threat . . . was “on its face and under the circumstances in which it [was] made, . . . so unequivocal, unconditional, immediate, and specific as to convey to the person threatened, a gravity of purpose and an immediate prospect of execution of the threat,” (4) that the threat actually caused the person threatened “to be in sustained fear for his or her own safety or for his or her immediate family’s safety,” and (5) that the threatened person’s fear was “reasonabl[e]” under the circumstances.’ [Citation.]” (*In re George T.* (2004) 33 Cal.4th 620, 630, fn. omitted.)

“Sustained fear occurs over ‘a period of time “that extends beyond what is momentary, fleeting, or transitory.”’ [Citation.] ‘Fifteen minutes of fear . . . is more than sufficient to constitute “sustained” fear for purposes of . . . section 422.’ [Citations.]” (*People v. Wilson* (2015) 234 Cal.App.4th 193, 201.)

M.M. testified that she was afraid on “[t]he first day,” i.e., the day of the call. This suggests that her fear lasted closer to an entire day than to a few minutes or even an hour. The phone call itself was approximately 45 minutes long. It covers 137 transcript pages.

Defendant's first threats are on page 17 ("I swear that I'll take yours away. An eye for an eye and a tooth for a tooth") and page 24 ("say goodbye to you[r] daughter and your sons"), well before the halfway mark. By the end of the call, M.M. was stuttering and her hands were shaking. Moreover, it is fairly inferable that she remained afraid for some time, until she could be sure her family was safe. Thus, there was substantial evidence of the necessary sustained fear.

Defendant argues that M.M.'s fear was not reasonable because the "[p]olice . . . let [M.M.] know that they would be arresting appellant as soon as the call was completed and that they knew where he was located. In fact, at the end of the call [the police] told [M.M.] to relax, and indicated to her [they] had several officers there at the gas station where appellant was located." This is an excessively wishful interpretation of the record. There is no evidence that the police told M.M. they would arrest defendant at the end of the call. The only evidence that they even knew where he was is that, after defendant hung up, an officer said, "[H]e's at the Shell [g]as [s]tation." However, it is not clear how he knew this, nor is it clear that the police could arrest him there. The officer also said, "I have several —." Defendant takes this to mean that there were several officers at the gas station. However, this is entirely speculative. Admittedly, defendant was arrested the same day, but the record does not show where, how, or how long after the phone call.

Presumably M.M. did not believe that defendant could hurt her, because she was at the police station. However, his threats were directed toward her mother and her children. He made it sound as if he was in a position to carry out his threats. For

example, he said, “Right now I’m go[ing] to your mom’s” “[Y]ou should be saying goodbye to one of your kids right now, if I get to the house and they’re there.” “Here I am, I’m almost at the house” M.M. testified that, at the time, she felt that he was capable of doing what he threatened.

Finally, defendant argues that there was no evidence that he was armed or that he had previously “engaged in physical violence against [M.M.] or her family” However, an adult male can readily kill an unsuspecting person in a house with a kitchen knife or a blunt object. While evidence of arming or prior violence would be relevant, we know of no authority that it is required; otherwise, the law would be, in effect, that everybody gets at least one free criminal threat.

We conclude that there was substantial evidence that M.M.’s fear was reasonable.

IV

CLERICAL ERROR IN THE ABSTRACT OF JUDGMENT

Defendant contends that the dates of two of the offenses as reflected in the abstract of judgment must be corrected. Counts 4 and 5 (nonforcible lewd act on a child) — the charges involving Doe 3 — took place in 2009 or 2010. However, the abstract lists the date these offenses were committed as 2014. The People concede that this is a clerical error. Accordingly, in our disposition, we will direct the clerk of the superior court to correct the abstract.

V

DISPOSITION

The judgment is affirmed. The clerk of the superior court is directed to prepare an amended abstract of judgment, changing the dates when counts 4 and 5 were committed to “2009 or 2010” (see part IV, *ante*), and to forward a certified copy of the amended abstract to the Department of Corrections and Rehabilitation. (Pen. Code, §§ 1213, subd. (a), 1216.)

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RAMIREZ
P. J.

We concur:

HOLLENHORST
J.

MILLER
J.