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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

In re TYLER S., a Person Coming Under the Juvenile Court Law.	
THE PEOPLE, Plaintiff and Respondent, v. TYLER S., Defendant and Appellant.	F064314 (Super. Ct. No. JD2238) **OPINION**

THE COURT*

APPEAL from a judgment of the Superior Court of Merced County. David W. Moranda, Judge.

Arthur L. Bowie, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Michael P. Farrell, Assistant Attorney General, Stephen G. Herndon and Harry Joseph Colombo, Deputy Attorneys General, for Plaintiff and Respondent.

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* Before Levy, Acting P.J., Gomes, J., and Kane, J.

The court found that appellant was a person described in Welfare and Institutions Code section 602 after it sustained allegations in a petition charging him with making criminal threats on November 1, 2011, (Pen. Code, § 422)[1] and violating a previous grant of probation (Welf. & Inst. Code, § 777).

On December 15, 2011, appellant was continued as a ward of the court on probation.

On appeal, appellant contends the evidence is insufficient to sustain the court's findings that he: 1) committed the criminal threats offense; and 2) violated his probation. We will affirm.

FACTS

The evidence at appellant's jurisdictional hearing established that on June 4, 2011, G.L. initiated an exchange of text messages with appellant on Facebook that eventually turned to G.L.'s ex-girlfriend, A.Q., who was then dating appellant. During the exchange, appellant warned G.L. that he would appreciate it if G.L. did not touch his girlfriend or things would get personal and appellant would do anything to make sure G.L. left her alone. In a series of text messages that followed, G.L. told appellant that he had had sexual relations with A.Q at his house earlier that day, but that she did not tell him she had a boyfriend. Appellant eventually told G.L. that it did not matter because he did not know G.L., but he warned him to keep away from A.Q. After G.L. replied that he would continue to talk with A.Q. and have sexual relations with her, appellant replied, "[Q]uit wasting my time on [Facebook] … I wanna see u try to talk shit to me in person cuhs you'll catch a whole clip …[.]" G.L. sent three more text messages to appellant in which he called A.Q. "a slut," told appellant that A.Q. was "playing" appellant, and told

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[1] All further statutory references are to the Penal Code, unless otherwise indicated.

appellant that A.Q. had told G.L. that appellant was ugly and that she dated him only because he was nice.[2]

On November 1, 2011, at 10:34 p.m., appellant sent G.L. a picture of his hand next to a pellet gun that looked like a real handgun with the caption, "just for you nigga[.]"[3] G.L. replied, telling appellant to drop the matter. Appellant responded that he was not dropping anything, and asked G.L. if he was scared. He also warned G.L. that "[it's] funk on sight" and that G.L. was going to "get it" from the "deadend and gb homies." G.L. replied that he was not scared and called appellant a derogatory name because he could not fight one-on-one. Appellant replied, asking G.L. when he wanted to fight one-on-one and he stated that "they" wanted to jump G.L. and that after appellant "fuck[ed] [him] up," "they" were going to "fuck [him] up more[.]" Appellant also said that he was not going to drop anything until he "handle[d]" it and he told G.L. to be at IHOP on Friday at around "6" so that they could "handle it one on one" and then appellant would drop the matter. Appellant warned G.L. that if anyone else jumped in they would be shot. G.L. then told appellant to leave him alone, but that if he wanted to fight one-on-one, appellant should go to G.L.'s house by himself and that G.L. was not scared. Appellant replied that G.L. was not "down" for fighting one-on-one and that appellant might as well wait and catch him "slippin" and then he would "fuck [him] up[.]" Appellant also told G.L. that if he wanted to fight one-on-one with appellant to meet him Friday, but if he did not, appellant would wait to catch G.L. "slippin" and whoever was with appellant at the time would "fuck [him] up too[.]" After a brief reply from G.L., appellant warned him

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[2] G.L. discussed the June 2011 exchange of text messages with his parents and they told him to report the matter to the police.

[3] During an in-custody interview, appellant told Merced Police Officer Emily Foster that he initiated the text messaging with G.L. on November 1, 2011, because he had heard that A.Q. had come in contact with G.L. at a party the previous weekend.

that there was no more time for talking and he stated, “nigga meet me up so I [can] put a bullet in ur punk ass[.]”

G.L. testified that when he read the June 4, 2011, text message that referred to G.L. catching “a whole clip” he believed that appellant meant that he would shoot him and that he felt scared. G.L. further testified that he believed the gun in the picture appellant sent him on November 1, 2011, was real and that it scared him because he believed appellant was going to shoot him with it. The November messages made G.L. afraid to leave his house. He also believed that appellant’s reference to catching G.L. “slippin” meant that if appellant saw him in public he would beat up G.L. or shoot him. G.L. interpreted appellant’s statement that he would put a bullet in G.L. to mean that appellant was serious about shooting him and he did not text appellant back after that remark.[4] Instead, G.L. showed the message to his father who advised him to leave it at that and report the matter to the authorities.

On November 2, 2011, G.L. reported the matter at Merced High School to Officer Foster, who was assigned as the gang violence intervention officer at the school. G.L.’s fear lasted for about two weeks after Officer Foster told him that she had arrested appellant.

Officer Foster testified that she arrested appellant on Friday, November 4, 2011. During an in-custody interview, appellant stated that he sent a picture of a gun to G.L. because he thought the pellet gun looked real and he wanted to scare him.

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[4] G.L. believed appellant was in a gang because one of G.L.’s friends told him that and he believed appellant would get his gang involved.

DISCUSSION

The Criminal Threats Offense

Appellant contends the evidence is insufficient to sustain the court's true finding that he committed the offense of making criminal threats because: 1) the alleged threat did not convey to the victim an immediate prospect of execution; and 2) the victim's fear was unreasonable. We will reject these contentions.

> "'Claims challenging the sufficiency of the evidence to uphold a judgment are generally reviewed under the substantial evidence standard. Under that standard, "'an appellate court reviews the entire record in the light most favorable to the prosecution to determine whether it contains evidence that is reasonable, credible, and of solid value, from which a rational trier of fact could find [the elements of the crime] beyond a reasonable doubt.'" [Citations.] ""If the circumstances reasonably justify the trier of fact's findings, the opinion of the reviewing court that the circumstances might also be reasonably reconciled with a contrary finding does not warrant a reversal of the judgment."'" [Citation.]' [Citation.] Furthermore, 'In deciding the sufficiency of the evidence, a reviewing court resolves neither credibility issues nor evidentiary conflicts. [Citation.] Resolution of conflicts and inconsistencies in the testimony is the exclusive province of the trier of fact. [Citation.] Moreover, unless the testimony is physically impossible or inherently improbable, testimony of a single witness is sufficient to support a conviction. [Citation.]' [Citation.]
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> "[T]he Supreme Court [has] enumerated the elements of a criminal threat under section 422: 'The prosecution must prove "(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—which may be 'made verbally'—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.]' [Citations.]" (*People v. Fierro* (2010) 180 Cal.App.4th 1342, 1347-1348.)

Section 422 "was not enacted to punish emotional outbursts, it targets only those who try to instill fear in others. [Citation.]" (*People v. Felix* (2001) 92 Cal.App.4th 905, 913.) The statute "does not punish such things as 'mere angry utterances or ranting soliloquies, however violent.' [Citation.]" (*In re Ryan D.* (2002) 100 Cal.App.4th 854, 861.) Instead, a criminal threat "is a specific and narrow class of communication," and "the expression of an intent to inflict serious evil upon another person. [Citation.]" (*Id.* at p. 863.)

"A threat is sufficiently specific where it threatens death or great bodily injury. A threat is not insufficient simply because it does 'not communicate a time or precise manner of execution, section 422 does not require those details to be expressed.' [Citation.]" (*People v. Butler* (2000) 85 Cal.App.4th 745, 752.) In addition, section 422 does not require an intent to actually carry out the threatened crime. (*People v. Martinez* (1997) 53 Cal.App.4th 1212, 1220.) Instead, the defendant must intend for the victim to receive and understand the threat, and the threat must be such that it would cause a reasonable person to fear for his or her safety or the safety of his or her immediate family. (*People v. Thornton* (1992) 3 Cal.App.4th 419, 423.)

Appellant was prosecuted for making criminal threats during the November exchange of text messages. During that exchange, appellant clearly threatened to shoot G.L. when he sent G.L. a picture of appellant's hand next to what appeared to be a real gun with the caption "Just for [you]…" and when he told G.L. that he wanted to meet him so he could put a bullet in his "punk ass." Appellant also threatened to shoot and/or beat up G.L. when he warned G.L. that it was "funk on sight" and that appellant and some unnamed individuals would "fuck … up" G.L. when they caught him "slippin." Thus, the record supports a finding that during the November exchange of text messages appellant willfully threatened to commit a crime that would result in death or great bodily injury to G.L. Further, appellant's statement that he used a pellet gun that looked like a

real gun because he intended to scare G.L. supports an inference that appellant had the specific intent that G.L. take appellant's statements as threats. Additionally, G.L. testified that as a result of appellant's threats he remained in fear for his safety for two weeks after appellant was arrested.

Moreover, the court could reasonably find from the number and nature of appellant's threats and from his insistence that G.L. meet him in person in three days or that appellant would carry out his threats when he caught G.L. "slippin," that the threats conveyed a "gravity of purpose and an immediate prospect of execution[.]" The court could also find from these circumstances that G.L.'s fear was reasonable.

Appellant cites *In re Ricky T.* (2001) 87 Cal.App.4th 1132 (*Ricky T.*) to argue that the surrounding circumstances must be taken into account in determining whether a threat violates section 422. He also contends that the following circumstances show that appellant's threats were not so unequivocal, unconditional, immediate and specific as to convey to G.L. a gravity of purpose and immediate prospect of execution: 1) there was no history of violence between appellant and G.L.; 2) most of appellant's text messages were in the nature of a challenge to fight G.L. because of his disrespect of the girl appellant was dating; 3) the text messages did not result in appellant meeting G.L. and did not escalate into a physical fight; and 4) participation in the text messaging was mutual. We will reject this latter contention.

Although some of appellant's November 2011 text messages were in the nature of a challenge to fight and participation in the text messaging was mutual, the messages also contained several threats by appellant to shoot and/or beat up G.L., and only appellant made any threats. Further, while there was no history of physical violence between appellant and G.L., in June 2011, appellant threatened to shoot appellant. Moreover, it appears that the only reason the text messages did not result in a meeting or a physical fight between appellant and G.L. was because they scared G.L. into reporting the matter

to Officer Foster. Thus, none of these circumstances undermine the juvenile court's implicit finding that appellant's threats conveyed a gravity of purpose and an immediate prospect of execution.

Nor do the facts of *Ricky T.* help appellant. In that case, the minor left his high school classroom to use the restroom. When he returned, he found the door locked and began pounding on it. The teacher opened the door, which opened outwardly, and it struck the juvenile. The juvenile got angry and threatened the teacher, saying "I'm going to get you." During a police interview he admitted getting in the teacher's face and telling him he was going to "kick [his] ass." The minor also denied threatening the victim and stated that he did not mean to sound threatening. (*Ricky T.*, *supra*, 87 Cal.App.4th at pp. 1135-1136.)

The *Ricky T.* court found that the minor did not violate section 422 because his statement, "I'm going to get you" was ambiguous, his threat to "kick [the teacher's] ass" and the cursing statements were made in response to an accident, and there were no circumstances corroborating that the minor's statements were true threats. It also noted that in contrast to cases upholding a violation of section 422, there was an absence of evidence suggesting that the teacher and the minor "had any prior history of disagreements, or that either had previously quarreled, or addressed contentious, hostile, or offensive remarks to the other." (*Ricky T.*, *supra*, 87 Cal.App.4th at p. 1138.) Also, in finding that the juvenile's remarks did not convey a gravity of purpose, the court noted that there was "no evidence offered that [the juvenile's] angry words were accompanied by any show of physical violence" or "that [the juvenile] exhibited a physical show of force, displayed his fists, damaged any property, or attempted to batter [the teacher] or anyone else." (*Ibid.*)

Ricky T. is inapposite because, here, appellant's threats were not ambiguous—he threatened to shoot and/or beat up G.L., and appellant's threat to shoot G.L. when he

caught him "slippin" clearly conveyed an immediate prospect of execution. Thus, unlike *Ricky T.*, the presence or absence of circumstances corroborating that appellant's November 2011 threats were "true threats" is not as critical. Further, in *Ricky T.*, the context of the minor's statements suggested that his statements were not true threats—the minor uttered his threatening comments in response to being hit accidentally with a door and he denied that he intended to threaten the victim. Here, the opposite is true—appellant's November 2011 threats were uttered deliberately and not as part of a reflexive response to an accident. Additionally, it is clear from appellant's admission that he intended to scare G.L. Appellant also intended for G.L. to interpret appellant's statements and the picture he sent as threats.

Appellant also appears to contend that G.L.'s fear was unreasonable because: 1) it can be inferred from G.L.'s insults of appellant and their mutual female acquaintance during the June 2011 text messages that G.L.'s fear did not persist beyond the time that it took him to read the threatening messages; 2) appellant did not take advantage of G.L.'s fear or interfere with his coming and going; 3) G.L. initially reported the matter to his parents and only reported the matter to law enforcement at the prompting of his father; and 4) there was no evidence that G.L.'s fear persisted past the time that he received the threatening text messages. Some of appellant's arguments appear to address whether appellant experienced a sustained fear rather than whether the fear he experienced was reasonable. In either case, appellant is wrong.

G.L. testified that he was in sustained fear for his safety for two weeks after appellant's arrest. Thus, the record refutes appellant's contention that there was no evidence that G.L.'s fear lasted longer than the night that he received the November 2011 text messages from appellant. Further, it does not follow from G.L.'s insulting comments during the June 4, 2011, exchange of text messages that the fear appellant's November 1, 2011, text messages caused G.L. to experience was not reasonable or that it lasted only

for the short time it took G.L. to read these messages. Nor does it follow that simply because G.L. reported the threatening messages to law enforcement after he was advised to do so by his father that G.L. reported them only because of his father advice, that the messages did not cause G.L. to fear for his safety, or that G.L.'s fear was not reasonable. Additionally, appellant made the November 1, 2011, threats after 10:00 p.m. and G.L. reported them to Officer Foster the following day. In view of this, appellant's failure to exploit G.L.'s fear or interfere with his coming or going after making these threats is of no import because appellant did not have time to do so prior to G.L. reporting the threats to law enforcement. Thus, we conclude that the evidence amply supports appellant's adjudication for making criminal threats in violation of section 422.

Appellant's Probation Violation

The juvenile court violated appellant's probation based on his commission of the criminal threats offense discussed above. Appellant contends that because the evidence is insufficient to sustain the court's finding that he committed this offense, it is also insufficient to sustain the court's finding that he violated his probation. Since we have already concluded that the evidence is sufficient to sustain the court's finding that appellant committed the criminal threats offense, we also conclude that it is sufficient to support the court's finding that he violated his probation by committing that offense.

DISPOSITION

The judgment is affirmed.