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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re CRISTIAN R., a Person Coming  
Under the Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

CRISTIAN R.,

Defendant and Appellant.

G046675

(Super. Ct. No. DL039994)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Deborah J. Chuang, Judge. Affirmed.

Sachi Wilson, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Peter Quon, Jr. and Susan Miller, Deputy Attorneys General, for Plaintiff and Respondent.

Cristian R. appeals from a judgment after the juvenile court declared him a ward of the court pursuant to Welfare and Institutions Code section 602, and found true he committed forcible rape, misdemeanor dissuading a witness from testifying, and misdemeanor sexual battery by restraint. Cristian argues insufficient evidence supports his conviction for misdemeanor dissuading a witness from testifying, and he asks us to review one of the victim's school records. As we explain below, sufficient evidence supports his conviction for misdemeanor dissuading a witness from testifying, and the juvenile court properly concluded there was no relevant evidence in the victim's school records. We affirm the judgment.

## FACTS

*T.A.*

In July 2010, Cristian and T.A., students at the same high school, met online and dated for about one month. The following month, after they had broken up, Cristian called T.A. and asked her to "hang out." She agreed, and they met at school. After talking briefly, Cristian tried to kiss T.A. T.A. pushed Cristian away and reminded him that he had ended their relationship. Cristian grabbed T.A.'s hands and tried to put them on his penis, but she pulled her hands away and slapped him.

Cristian told T.A. that he wanted to show her something. He grabbed her by the hand and led her to a nearby rock. T.A. repeatedly stopped Cristian from grabbing her hands and putting his hands down her pants before she grew tired of fighting him off and walked away. Cristian followed her and pinned her against a wall. After he unzipped her shorts, Cristian put his hand down her shorts and touched her vagina on top of her underwear. T.A. told him to stop, slapped him again, and walked away. She initially did not tell anyone what happened because she was embarrassed but changed her mind when she learned about what Cristian had done to a classmate, Jessica A.

*Jessica A.*

Jessica attended the same high school and knew Cristian, but they had never socialized outside of school, until September 2010, when Cristian asked Jessica to go to a nearby building and “see a view.” Jessica agreed and went with Cristian and three others, including Ulysses V., to the building, after stopping at 7-11 to pilfer four alcoholic beverages.

They went to the 10th floor and drank the alcoholic beverages. A little later, Cristian took Jessica to one of the rooms while Ulysses stood in the hallway. Inside the room, Cristian pushed Jessica against the wall. Jessica asked him what he was doing, and Cristian replied, “Don’t act stupid. I know you want to do it.” Jessica told him that she did not want to have sex and she wanted to leave. Cristian ignored her and continued to take off her clothes. Jessica was scared and had her eyes closed for much of the time. When she opened her eyes, Cristian was naked and standing with an erect penis. Cristian pushed Jessica onto the floor and got on top of her. She told Cristian to stop, but he spread her legs and put his penis inside her vagina. Cristian had sexual intercourse with Jessica for about 15 minutes. When he finished, Jessica got up, dressed, and left; she passed Ulysses in the hallway.

A few months later, Cristian approached Jessica at school. Cristian said, “[she] shouldn’t go to court[.]” and “[h]e wanted to talk to [her] after school about it.” Cristian also said he had “heard [T.A.] had spoke to the police, and he would get into a lot of trouble if [she] went as well[.]” She ignored him and walked away.

A consolidated and amended petition charged Cristian with the following: Jane Doe No. 2-forcible rape (Pen. Code, § 261, subd. (a)(2))<sup>1</sup> (count 1), and misdemeanor dissuading a witness from testifying (§ 136.1, subd. (a)(1)) (count 2); and Jane Doe No. 1-misdemeanor sexual battery by restraint (§ 243.4, subd. (a)) (count 3).

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

Jessica testified concerning the events as described above. On cross-examination, Jessica stated Cristian did not threaten to hurt her when he told her not to go to court, but she was scared.

Cristian offered Ulysses' testimony. In addition to testifying concerning going to the building, Ulysses stated he did not hear Jessica scream or cry for help. Ulysses said that when they left the room, Jessica was talking to Cristian. He described Jessica as happy and not upset or sad. Ulysses said Cristian made comments about what happened, but Jessica denied them. Ulysses heard a rumor Cristian had raped a girl.

The juvenile court found true the offenses and declared Cristian a ward of the court. The court stated the maximum term of confinement was eight years and six months, placed Cristian on probation, and committed him to juvenile hall for 830 days less credits.

## DISCUSSION

### *I. Sufficiency of the Evidence-Count 2*

Cristian argues insufficient evidence supports his conviction for misdemeanor dissuading a witness from testifying because there was no evidence he acted maliciously or that he intended to do a wrongful act. We disagree.

“In reviewing a claim of insufficiency of the evidence, we review the record to determine whether it contains substantial evidence from which a reasonable trier of fact could conclude that the defendant was guilty beyond a reasonable doubt. [Citation.] The test is whether the trier of fact's conclusions are supported by substantial evidence, i.e., evidence that is reasonable in nature, credible, and of solid value. [Citation.] We consider the evidence in a light most favorable to the judgment and draw reasonable inferences in support of the judgment. [Citation.]” (*People v. McElroy* (2005) 126 Cal.App.4th 874, 881.)

Section 136.1, subdivision (a), states, in relevant part: “Except as provided in subdivision (c), any person who does 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) Knowingly and maliciously prevents or dissuades any witness or victim from attending or giving testimony at any trial, proceeding, or inquiry authorized by law.” Section 136, subdivision (1), provides: “‘Malice’ means an intent to vex, annoy, harm, or injure in any way another person, or to thwart or interfere in any manner with the orderly administration of justice.”

“There is, of course, no talismanic requirement that a defendant must say “Don’t testify” or words tantamount thereto, in order to commit the charged offenses. As long as his words or actions support the inference that he . . . attempted by threat of force to induce a person to withhold testimony [citation], a defendant is properly’ convicted of a violation of section 136.1, subdivision (c)(1).” (*People v. Mendoza* (1997) 59 Cal.App.4th 1333, 1344 [a rational juror could find defendant’s statement that he would talk to the “guys from Happy Town,” a criminal street gang, was an implied threat to have gang members inflict violence on the victim]; *People v. McElroy* (2005) 126 Cal.App.4th 874, 877 [defendant violated section 136.1 when, during an argument, he grabbed and hung up telephone when his girlfriend said she was calling police].)

With respect to whether Cristian acted maliciously, we conclude there was evidence from which the trier of fact could conclude he acted with the “intent to vex, annoy, harm, or injure in any way [Jessica], or to thwart or interfere in any manner with the orderly administration of justice.” (Italics added.) The evidence established that months after Cristian forcibly raped Jessica, his classmate, and bragged about it at school, Cristian approached Jessica at school and told her that she should not go to court and that if she went to the police he would get in trouble. In other words, Cristian told Jessica to not report the incident and not testify at trial. Although Jessica claimed she ignored

Cristian and walked away, she also testified she was scared of him. Of course she was. He forcibly raped her just blocks from school and she awoke each morning knowing it was likely she would see her attacker. This was certainly sufficient circumstantial evidence from which the trier of fact could reasonably conclude Cristian intended to annoy Jessica and interfere with the administration of justice. (*People v. Howard* (2010) 51 Cal.4th 15, 34 [circumstantial evidence sufficient to prove guilt beyond a reasonable doubt].)

Finally, Cristian relies on section 7, subdivision (4), and *In re V.V.* (2011) 51 Cal.4th 1020 (*V.V.*), to argue there was no evidence he intended to commit a wrongful act, and thus he did not act with malice. Section 7, subdivision (4), provides the general definition of malice for purposes of the Penal Code and it is similar to section 136, subdivision (1), except the former speaks in the disjunctive with the phrase “or an intent to do a wrongful act,” and the latter in the disjunctive with the phrase “or interfere in any manner with the orderly administration of justice.” Cristian fails to cite to the proper definition of malice applicable to chapter 6 and section 136.1 of the Penal Code. Above, we explain there was sufficient evidence Cristian’s conduct interfered with the orderly administration of justice. Additionally, that same evidence would also support the conclusion he intended to do a wrongful act—preventing Jessica from testifying against him. *V.V.*, *supra*, 51 Cal.4th 1020, is of no assistance to Cristian because that case discusses the general definition of malice as it pertains to the crime of arson. Therefore, we conclude there was sufficient evidence Cristian committed misdemeanor dissuading a witness from testifying.

## *II. School Records*

Cristian asks this court to review T.A.’s sealed school records to determine whether the juvenile court erred in concluding there was no discoverable evidence. The Attorney General does not object. We have reviewed the records. They consist of school enrollment forms, academic progress reports and report cards, standardized tests and

assessments, homework assignments, and health and immunization records. Based on our review of the records, we conclude the court properly concluded T.A.'s sealed school records contained no discoverable evidence relevant to Cristian's defense.

DISPOSITION

The judgment is affirmed.

O'LEARY, P. J.

WE CONCUR:

RYLAARSDAM, J.

BEDSWORTH, J.