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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SIXTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

CHARLES WILLIAM TOWNSEND,

Defendant and Appellant.

H036592

(Santa Clara County

Super. Ct. No. C1070576)

A jury convicted defendant Charles William Townsend of making criminal threats (Pen. Code, § 422).<sup>1</sup> The trial court suspended imposition of sentence and placed him on five years' probation on condition, among others, that he serve one year in jail.

On appeal, defendant claims there was not substantial evidence to support the jury's verdict, and the trial court prejudicially erred in excluding evidence of the prosecution's "threats" to charge a defense witness (defendant's mother) with attempting to dissuade the victim (his wife) from testifying against him. We affirm.

**I. Background**

Defendant married Claudia Vera in February 2008. Their relationship was rocky, with "[a]t least 10" incidents of domestic violence over the next two years. In May 2008,

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<sup>1</sup> Subsequent references are to the Penal Code unless otherwise noted.

defendant grabbed Vera's wrists and said he could punch her if he wanted to. He said the Bible required her to submit to him, "and that [she] wasn't submissive." He claimed that Jesus got angry, so he could get angry, too. Vera "got scared" when he started speaking words she could not understand. "Like in tongues . . . ." "[A]t that point I didn't feel safe in the house, and I felt that I needed to leave . . . because of the state of mind that he was in." She obtained a restraining order.

After an argument in June 2008, Vera said she wanted a divorce and told defendant to leave. He agreed to leave and said he would give her "an easy divorce" for \$900. She told him to "put it in writing." When she disputed what he wrote, he became "very angry and he started . . . using foul language." As she was calling 911, "he said I am going to make you go to jail. He said . . . I wasn't going to have a clean record anymore . . . . So he went outside and . . . punched himself in the eye." He then "called 911 in front of me and said that I had punched him." Vera wanted to call his father, but defendant told her not to, "[a]nd that I couldn't talk to his mom." Police removed defendant from the property. Later that day, an anonymous caller warned Vera not to contact defendant's parents. The caller "knew where I lived, and . . . where my children [two daughters from a prior marriage] went to school."

During another incident, defendant was "yelling at the door and pounding the door," and Vera's daughter opened but then shut it. Defendant left, and soon after that, Vera noticed that her car (which she had "recently inspected and it was fine") had been keyed. Suspecting defendant, she called police. She obtained a restraining order. She sought removal of the order in November 2009 "[b]ecause he had gone through counseling . . . and finished an anger management course . . . . So I was going to give him yet another opportunity . . . ."

The couple started having arguments again in January 2010, and Vera thought maybe they "shouldn't be together," since she "was starting to see some of the same patterns like with the foul language and just anger." She overheard defendant telling his

mother “[i]n a very loud voice” on the phone “that he was going to ask me the next morning for a divorce because he wanted out, and he felt like hurting me . . . .” Vera did not call police, however, “[b]ecause he wasn’t actually saying that he was going to do it.” The next morning, she asked him to leave. Defendant apologized and told her that “when he gets upset he says things . . . he does not mean, and he would never hurt me or the girls.” She “ended up taking him back” because she “didn’t want the instability” for her daughters.

On February 23, 2010, defendant texted Vera that he was doing the laundry and had “just found underwear” that was not his. Vera “didn’t make much of his text” because he was at a laundromat, “and people leave stuff all the time.” When she told him that, he texted back, “I found them in the middle of our clothes. . . . You better start talking. If you cheated on me then you better or never come home again.” Vera telephoned defendant, “shocked [and] kind of taken aback” that he would think she had cheated. He was “very angry,” but she managed to calm him down after about 30 minutes. She believed “[i]t ended well because then he said, Okay, I believe you.”

When she arrived home that evening, however, the mood was “not good.” Defendant accused her of “acting guilty” and said he was going to “shout it to the world” that she was “an adulterer.” Vera went out to her car and telephoned his mother because she saw the tension escalating and knew “that when things get that way, it does not end up well. So I wanted some intervention before something happened.” Defendant spoke with his mother. Later that night, he apologized, and things were “okay” for a while after that.

On March 5, 2010, defendant cooked an early dinner for the family. It was a “normal” dinner. Afterwards, Vera’s 12-year-old daughter was doing the dishes, and Vera was in the bedroom “[p]utting stuff away” when she overheard defendant tell her daughter “you need to clean the stove or you better clean that, too or something along those lines.” He came into the bedroom, “very upset” and “angry,” and in a raised voice

announced that her “rude and disrespectful” daughter could no longer live with them. “He said she was a lying manipulative b-i-t-c-h and that she needed to go [live] with her dad.” Vera decided to get out of the house and took the girls with her to run errands, but they returned after about an hour since “it only gets worse if it doesn’t get addressed.” “He gets angrier and angrier.” “[W]e need to talk, and I need to get through to him so that he can calm down.”

While Vera was out, defendant texted her and also left two angry voicemails, but she was driving and did not listen to them until she returned home.

In the first voicemail, defendant blamed Vera for allowing her daughter to “disrespect” him. “This is my house. I pay the bills, you don’t. You need to get that right.” He again accused her of having an affair, and told her to “stay the fuck away from the house period.” In the second voicemail, defendant criticized Vera’s parenting and threatened to call Child Protective Services (CPS). “We’re going to have to remove the children from your care because you don’t want to be a responsible parent.”

Defendant was driving away when Vera arrived home. She locked the door because she “didn’t want it to escalate” to “a domestic violence situation” involving her daughters. But when defendant later knocked and then “pounded” on the door, she “knew I better open that door.” Defendant was “really angry,” and they continued to argue. He accused her of being “sarcastic” when she pointed out that she paid bills too. He said, “I’m going to beat . . .” but “caught himself, and . . . didn’t finish.” “He brought up the whole adultery thing again,” and got “even angrier.”

Vera became “[a] little afraid,” and she decided to ask his mother Cheryl Seabright to “reason with him because it had worked a week ago.” Leaving him in the bedroom, Vera went into the living room and called Seabright, who seemed to blame Vera for being “too busy” to go to counseling.

Seabright eventually agreed to speak with defendant. As Vera walked toward the bedroom to hand him the phone, Seabright told her, “[O]h, wait a minute. He’s on the

other line.” Vera was “right in front of the bedroom” at the time. The bedroom door was locked. “Because I think I tried to open it to give him the phone.” Although the girls had the television in their room on, Vera could hear defendant speaking loudly on the phone to his mother. She heard him tell his mother, “Well, I hope you’re ready to visit me in jail. And then there was a pause. And then he said, ‘Because I am getting ready to kill [Vera] and I am going to get a knife and I am going to kill her in the next five minutes. I’m going to kill them all.’” “He was screaming it so very loud”—not any louder than his earlier screaming, but “angry” and “yelling.” The phone has a “double line” feature, and defendant’s sister Margie may also have been on the line, but Vera believed he was speaking to his mother. Vera was afraid “for my life and for my daughters, so I got my daughters out of the house. I told them, girls, we need to leave right now. They said should we get something? No, let’s go now, and I left the apartment, and I got myself out and I called 911.”

Vera told the dispatcher “Um, my husband is very upset right now, and um, he’s told his mother that he’s going to kill me and my two daughters.” She explained that she “had told him . . . if you don’t involve the girls, . . . we can deal with it, we can go to counseling and stuff. But now that he’s actually involving the girls, the scenario changes, and um, now there’s also a death threat . . . .”<sup>2</sup> Defendant was arrested that evening. Vera obtained a “no contact” criminal protective order.

Vera described these incidents at trial. Asked on cross-examination whether she had “announc[ed her] presence” outside the locked bedroom door, she testified that she had not, nor had she spoken to defendant through the door. “I remember [Seabright] said pass the phone, but at this time I don’t remember if I knocked . . . or moved the door knob [*sic*], but I do remember that I was going to pass the phone to him.” “Then I heard,

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<sup>2</sup> A recording of Vera’s 911 call was played for the jury, and jurors were given transcripts.

‘Hello, hello,’ . . . .” “[L]ess than a minute” passed before Vera heard the threat. “It was immediate.” She did not tell defendant she had heard the threat, nor did she tell him that she was leaving. She collected her daughters, calling 911 as she left the apartment. He was still in the bedroom on the phone.

Monica Miller testified that she had a short, live-in relationship with defendant. On June 30, 2006, he asked her to drive a friend to work. Unable to find the friend, she went to her parents’ house instead of immediately returning defendant’s car. When she got home, he was in a “terrible” mood. He had left a message on her parents’ phone “that he was going to hurt me,” that she needed to return the car, and that he was “going to call it stolen.” When she got home, defendant kicked the car door and “yelled” at her, and when they went inside, “[h]e just like punched me in the face out of the blue.” He had something in his hand, “like a box cutter or something,” and said “he was going to cut me from ear to ear. Something like that.” “[S]hocked” and “[s]cared,” Miller told defendant she “wasn’t going to talk to him because he was being impossible.” She left, reported the incident to police, and did not see him again until she was subpoenaed in this case.

Miller admitted three prior misdemeanor convictions for giving false information to police and another misdemeanor conviction for domestic violence. She denied having “any axe to grind” against defendant.

Recordings of telephone calls that defendant placed from jail were played for the jury, and jurors were also given transcripts. In the first call, made to Seabright on the night he was arrested, defendant railed against Vera, whom he claimed was “having affairs” and “wasn’t even at home when she called the police.” “[W]hat she needs to do,” defendant told his mother, “is drop the charges.” “[S]o uh, maybe you could call her, you know. She needs to show up and drop all these things.”

The next day, Seabright told defendant that Vera “said that you . . . were, uh, threatening her with a knife and stuff. But she heard you in the room.” “I never threatened her with a knife,” he replied. “She’s a liar.” Seabright responded, “No.

[Y]ou did tell me on the phone in the bedroom.” Vera “wasn’t at home,” defendant said. “She left the house.” He reiterated that Vera “needs to show up here Monday and have these charges dropped” and “needs to come up with \$2000 and bail me out today.”

In another call that same day, defendant told Seabright, “Um, her saying that I had a knife or whatever, a bunch of lies. Her being in the same (room) with me at any given time is a lie. So, so I made sure to stay away from her because she was doing her psycho crazy stuff, so I was getting angry.”

The next day, Seabright reported having spoken to Vera, who was not going to drop the charges or bail defendant out. “[S]he overheard you in the bedroom, talking on the phone, so that’s what she’s basing . . . the threats o[n]. When you were yelling and screaming.” “So that’s not a threat to her,” defendant countered. “Well she says it is,” Seabright said. “[W]hen you go to court, you gotta be cool, you can’t be all getting excited, you know what I mean. ’Cause that impression with the judge, um . . . you can’t display your anger like that.” Defendant responded, “Yeah, if she won’t drop the charges, I want a divorce, that’s for sure.” “I mean, there’s no way I ever want to see her again.”

Several days later, defendant again told his mother that Vera needed “to make a public statement to the district attorney’s office that she’s not gonna pursue charges and she’s not gonna come to court. And they’re gonna threaten her but they can’t do anything to her.” “But basically she needs to . . . to stop this nonsense, you know. It’s what it boils down to.” In another call, he told his mother that if Vera did not show up for court, “then they’re gonna drop the charges.” “That’s the law. For a domestic violence charge, if the victim does not show up at court after, then they have to drop the charges.” “So how do you - how do you propose her not showing up,” Seabright asked him. “Somebody tell her, [d]on’t show up,” he replied. “If she doesn’t show up, they drop the charges. They won’t press charges on her. They don’t for domestic violence.” “Yeah but again that’s what you say and I just don’t think she’s gonna take what you say

or what we say as the truth. She's gonna wanna find out for herself," an unidentified male on the line told him. "I know," defendant replied, "but somebody's at least gotta tell her. If nobody says anything, she's gonna show up and screw me. See if nobody says anything, that's worse than saying something." He told his mother to tell Vera that.

The unidentified male on the phone asked, "[t]hen why did she call the police when you threatened to kill her and the kids?" "I didn't threaten to kill her and the kids. I was on the phone with Mom," defendant replied. "Well to her it sounded like a threat, Bill," the male said, and defendant responded, "I'm on the phone with Mom. I'm not talking to her. If I'm in a locked room talking to somebody on the phone, that's a two-person conversation. It's not a three-person conversation. That's what she has to get through her head. I'm . . . doing exactly what it said to do in anger management. . . . I called Mom, and I was angry, yes, and I said stupid things. But I'm not talking to her, I'm talking to Mom 'cause I needed somebody to calm me down. . . . You know, if I was threatening her I would have been outside threatening her. Instead I was in my own room with a locked door talking on the phone. Just because she thinks she overheard something doesn't make it true." "You know, it all boils down to if she shows up to court, I'm done, washed, you know."

On April 4, 2010, defendant asked Seabright if she had talked to Vera "about what she has to say in Court tomorrow." "You wrote it down," he reminded her. "[T]hat she was mistaken about what she heard. That has to be put - said in Court tomorrow. Has to," he emphasized. Seabright replied that she'd "better e-mail [Vera]." "Yeah, or call her 'cause she has to be able to clarify that I was talking on - I wasn't talking to her, that she . . . just overheard . . . , you know, what we talked about today." "[S]he was just eavesdropping and she could have been mistaken what she heard . . . ."

"Okay, hang on," Seabright told him. "I'm gonna call [Vera] now." "Hang on 'cause I'm leaving a message." In a voicemail, Seabright told Vera, "[T]his is Cheryl. I got, um, I have [defendant] on the phone in here, so we were just talking. I forgot to, uh,

mention to you, um, when - when you come to court, and I know you testify, and that we just mentioned that you need to, uh, clarify, you know, about what the police told, the lies that they told. And also that, um, that [defendant] was locked in the room, and he was talking on - on the phone to me and, uh, Marge, and he wasn't directly talking to you, and the door was locked, and that you could have been mistaken in what you heard. The door - and, um, that he didn't come out of the room. Once he went in there, he stayed in there. Okay. So, um, that or we can make sure they take out your letter where you've already said that and had it notarized. Okay. Um, see you tomorrow."

After the People rested, the defense moved for a judgment of acquittal (§ 1118.1), arguing that the People had presented "no evidence at all" that defendant specifically intended to convey threats to Vera. The court found "sufficient evidence to sustain a conviction" and denied the motion.

Kenneth Love, the pastor of defendant's church, testified for the defense that during a temporary separation from Vera, defendant had participated in a church anger management group. The group discussed tools for dealing with anger, including confessing one's anger "to God and to another safe person or safe persons, preferably members of your support group about what you are really feeling and thinking." Pastor Love explained that "you should be able to say anything you want to say to your safe person, what you are thinking, whatever you are feeling because it takes a lot of the power out just expressing some of the maybe definitely weird or strange thoughts that a person is having." "I'm going to kill you" is an "okay thing to say to your safe person," but "you don't want to do it within ear shot [*sic*] of the room where the person is at. Then the person can interpret it as something that's really going to happen."

Seabright testified that Vera called her on March 5, 2010, and asked her to talk to defendant, who was "very upset." This was not the first time Vera had asked Seabright to intervene. "I usually pray with them, talk with him, and then he gets it all out and then he usually goes to sleep." Seabright talked to both of them on the speakerphone at first and

heard them “arguing and screaming.” Vera called her back, and Seabright had just agreed to speak with defendant when her “call waiting” informed her that defendant was on the other line. She told Vera, “Bill’s calling,” and Vera hung up. Seabright said defendant was “really angry about the underwear and all kind of things, and he feels like he wants to kill her and crazy stuff. He’s just angry. And -- what else did he say? I feel I want to go to the kitchen and get a knife. . . . And I was just trying to calm him down.” The threat was not the first thing defendant said to his mother. It was “[n]ot that right away.” “I recall he was upset and telling me about the underwear and he hates her and that sort of thing.” “As to why he’s upset somebody didn’t clean the kitchen. Just these things.” Seabright was “not sure” how much time elapsed before the threat was made. “It could have been maybe five minutes or four minutes to the place where I could tell him, Son, you don’t mean that.” Defendant was “obviously upset, but he wasn’t screaming in [her] ear or anything.” He was “talking very angrily.”

Seabright did not hear defendant threaten the girls. “He was angry at [Vera], and that is all I heard.” Seabright did not hear Vera in the background when she was talking to defendant, and “that’s why I thought she was gone.” Seabright “prayed for him,” and he calmed down. “Then all of a sudden I heard all this banging . . . and [o]pen the door. . . . We will pound the door down.”

Seabright recalled sending Vera an e-mail disputing her assertion that defendant had made threats: “I was talking to both [of] you during a lot of that argument,” Seabright wrote in her email, “and he was upset but I never heard him threaten you or [the 12-year-old daughter].” Seabright also recalled Vera’s response: “If you honestly don’t know about the threats, then ask your daughter Margie.” Seabright acknowledged hearing defendant’s statements, but maintained that “[h]e did not threaten her. He was talking to me. He was venting with me. I didn’t even know she was around.” She conceded Vera never told her she was leaving. Seabright “assumed” Vera was gone because defendant said she was.

Seabright admitted telling Vera not to go to court but denied asking her to lie or trying to intimidate her. She told Vera not to go to court “because [defendant] didn’t do those things. He was arrested for the restraining order, and that was wrong. So that was one thing that he shouldn’t have been arrested for, and . . . he wasn’t threatening her . . . .” Maintaining that Vera had told her that “she didn’t want to testify against him,” Seabright admitted that she “may have mentioned, well, don’t go to court.”

Seabright “vaguely” recalled leaving a voicemail for Vera three days before the preliminary examination. She admitted that she left it at defendant’s direction and that he told her “exactly what to say.” She maintained, however, that Vera had told her “sometime after this incident” that “she thought she was mistaken,” so Seabright was “just reminding her” about that.

After deliberating for five hours and 45 minutes, the jury returned a guilty verdict. Defendant admitted two prior serious felony conviction allegations (§ 667, subd. (a)), two “strike” conviction allegations (§§ 667, subds. (b)-(i), 1170.12), and two prior prison term allegations (§ 667.5, subd. (b)). The court struck the prior strike findings (§ 1385), suspended imposition of sentence, and placed him on five years’ probation. Defendant filed a timely notice of appeal.

## **II. Discussion**

### **A. Sufficiency of the Evidence**

Defendant claims there was not substantial evidence to support the jury’s finding that he intended that Vera take his statements as a threat. We disagree.

#### **1. Standard of Review**

“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.” (*People v. Young* (2005) 34 Cal.4th 1149, 1181.) “[T]he relevant question is 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.]” (*People v. Johnson* (1980) 26 Cal.3d 557, 576.) “[The] appellate court must view the evidence in the light most favorable to respondent and presume in support of the judgment the existence of every fact the trier could reasonably deduce from the evidence.” (*People v. Reilly* (1970) 3 Cal.3d 421, 425; accord *People v. Pensinger* (1991) 52 Cal.3d 1210, 1237.)

## 2. Analysis

To establish a violation of section 422, the prosecution must prove, among other things, “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.’” (*People v. Toledo* (2001) 26 Cal.4th 221, 228.) “A defendant’s intent is rarely susceptible of direct proof, and may be inferred from the facts and circumstances surrounding the offense.” (*People v. Felix* (2009) 172 Cal.App.4th 1618, 1624.) “Evidence of a defendant’s state of mind is almost inevitably circumstantial, but circumstantial evidence is as sufficient as direct evidence to support a conviction.” (*People v. Bloom* (1989) 48 Cal.3d 1194, 1208.) “[T]he determination whether a defendant intended his words to be taken as a threat . . . can be based on all the surrounding circumstances and not just on the words alone. The parties’ history can also be considered as one of the relevant circumstances. [Citations.]” (*People v. Mendoza* (1997) 59 Cal.App.4th 1333, 1340 (*Mendoza*).)

Having considered “all the surrounding circumstances” here (*Mendoza, supra*, 59 Cal.App.4th at p. 1340), we conclude there was substantial evidence to support the jury’s finding that defendant intended that Vera take his words as a threat. He had been arguing with her all evening, and the argument was about more than her elder daughter disrespecting him after dinner. The underwear-in-the-laundry issue had been festering for almost two weeks, and he continued to accuse Vera of having an affair. He was “really angry.” He had made other threats that evening, declaring that her elder daughter

could no longer live with them, “and if that’s a problem,” then Vera too needed to move out. He had threatened to have CPS remove both children from Vera’s care. He had also stopped just short of telling Vera he was going to beat her.

This was not the first time, moreover, that defendant had used a loud telephone conversation with his mother to convey a threat to Vera. In January 2010, she heard him tell Seabright “[i]n a very loud voice” that he was going to divorce her and felt like hurting her. He had made threats during previous arguments, telling Vera “he was going to shout to the world” that she was “an adulterer,” threatening to ruin her “clean record” and “make [her] go to jail,” and (as the jury could reasonably have inferred) having a friend place an anonymous phone call warning her not to telephone defendant’s parents. Defendant had also threatened a former girlfriend, telling Miller in a voicemail that he was “going to hurt” her.

Defendant maintains that he was simply “on the phone to his mother and sister, venting his anger behind a closed and locked door” as he had been taught in his anger management class. “Section 422 does not criminalize an angry emotional outburst,” he points out. He claims his “raised tone of voice” signified nothing, since he had been “loudly arguing and yelling all evening.” There was no evidence, he argues, that he was “aware of [Vera’s] eavesdropping presence in the hallway” outside the bedroom. We find his arguments unpersuasive.

It is true that section 422 “is not violated by mere angry utterances or ranting soliloquies, however violent.” (*People v. Teal* (1998) 61 Cal.App.4th 277, 281.) But that does not mean the statute “requires certainty by the threatener that his threat has been received by the threatened person.” (*Ibid.*) “[I]f one broadcasts a threat intending to induce sustained fear, section 422 is violated if the threat is received and induces sustained fear—whether or not the threatener knows his threat has hit its mark.” (*Ibid.*)

We cannot agree with defendant’s characterization of his threat as no more than “an angry confession” made “in a private conversation with a confidant.” Defendant

broadcast his threats here, and the jury could reasonably have concluded that he intended Vera to hear them. He has a naturally “loud” voice, and as he concedes, he had been “loudly arguing and yelling all evening.” That the bedroom door was locked would not have prevented Vera from hearing his threats—it was “a regular door,” and the apartment was a “small” one. The threats were spoken “[i]n a very loud voice,” and Vera testified that she could hear defendant on the phone with his mother even though her daughters had the television in their room on. Defendant was “yelling.” She heard what he said. “He was screaming it so very loud.”

Defendant claims there was no evidence to support an inference that he “intended for his mother or sister to convey the threat to his wife.” That is irrelevant here, because he screamed the threat loudly enough for Vera to hear it herself. The apartment was small, and, although defendant may not have known that Vera was standing right outside the bedroom door, he had no reason to believe that she had gone out again. She had already run errands that night.

Defendant asserts that “the *only* evidence tending to suggest that [he] might have specifically intended to criminally threaten Vera” was evidence that he “may” have committed prior acts of domestic violence or threats, but that evidence was “too dissimilar to be probative of intent within the meaning of Evidence Code section 1101, subdivision (b).” (Italics added.) We are not persuaded.

We disagree that evidence of defendant’s prior acts was the “only” evidence probative of his intent. The loudness of the threats, the smallness of the apartment, and the fact that the couple had been arguing all evening (and indeed for almost two weeks) about Vera’s supposed “adultery” was sufficient, in our view, to support an inference that he intended to criminally threaten her. Testimony about his prior threats simply added to the quantum of evidence supporting that inference.

We reject defendant’s contention that that evidence was “too dissimilar” to be probative of his intent here. There were clear similarities between defendant’s prior and

current threats. The recipients of those threats, Vera and Miller, were his cohabiting romantic partners. The threats were made in anger and in response to some perceived wrong—after Miller kept his car too long, and after Vera “cheated” on him, “sided with” her allegedly disrespectful daughter, disagreed with his assertion that he paid all the bills, and disputed what he put in writing after he agreed to give her an “easy” divorce. Many of the threats were made indirectly; defendant threatened both Miller and Vera by leaving them angry voicemails, and he threatened Vera by loudly voicing the threats to his mother. This evidence of defendant’s past threats added to the already substantial evidence supporting the inference that he had the specific intent to threaten Vera this time.

Defendant’s reliance on *In re Ryan D.* (2002) 100 Cal.App.4th 854 (*Ryan D.*) is misplaced. In that case, a minor turned in a painting he had done for his high school art class. The painting depicted him shooting the police officer who had cited him for marijuana possession a month earlier. (*Id.* at pp. 858-859.) When the painting was shown to the officer, she became concerned for her safety. (*Id.* at p. 859.) Rejecting the minor’s claim that he was merely “‘letting [his] anger out’ for having gotten into trouble,” the juvenile court sustained a charge of making a criminal threat. (*Ibid.*)

The Court of Appeal reversed. The court found the painting itself ambiguous, since it was not accompanied by any words, “on the painting or otherwise, such as ‘this will be you.’” (*Ryan D.*, *supra*, 100 Cal.App.4th at p. 864.) The surrounding circumstances did not support a finding that the painting constituted a criminal threat either. (*Id.* at p. 863.) The minor had not shown it to the officer, put it where he knew she would see it, or communicated with her in any way that suggested she should see it. (*Ibid.*) He simply turned the painting in for credit—“a rather unconventional and odd means of communicating a threat.” (*Ibid.*) The incident that sparked the minor’s anger had occurred over a month before, and there was “nothing” to suggest he had remained in a rage for the entire month. (*Ibid.*) This evidence was insufficient to establish that the

minor harbored the specific intent to threaten the officer. (*Id.* at p. 864.) Moreover, neither the school authorities nor the police had treated the painting as an immediate threat. (*Id.* at pp. 864-865.) It thus did “not appear to be anything other than pictorial ranting.” (*Id.* at p. 864.)

This case is quite different. Here, unlike in *Ryan D.*, defendant’s threat was loudly broadcast when he had reason to believe Vera would overhear it. By all accounts, he was “very angry” and “upset” when the threat was made. *Ryan D.* is inapposite.

## **B. Exclusion of Evidence**

### **1. Background**

Seabright’s telephone conversations with her jailed son prompted the prosecution to warn her that it was considering charging her with attempting to dissuade a witness (§ 136.1). The district attorney advised the court before Seabright testified that while her office had not decided “a hundred percent” to file charges, “at this point we have enough to file a 136. Whatever she says in court will add to those charges . . . .”

The court advised Seabright that the maximum penalty was three years in state prison and that a conviction would constitute a strike under the “Three Strikes” law. Seabright acknowledged that an attorney from the independent defender’s office had advised her that it was not in her best interest to testify. But she wanted to testify. “I prayed with my pastor and I just feel that I need to speak the truth and love, and if I don’t speak the truth, then it’s not here. And I just feel I’ve left it in the hands of the Lord.” Seabright said she understood the consequences of her decision.

Defendant’s trial counsel asked Seabright on direct whether she was aware that the district attorney had “threatened” to charge her with a felony. The district attorney objected on relevance grounds to the “improper” question. At a bench conference, defendant’s trial counsel argued that the question was “completely relevant to [Seabright’s] credibility. She is here testifying aware that the DA is threatening to charge

her with a crime. She's coming here to testify truthfully. Counsel is going to say how she's intending to dissuade." The court sustained the objection, explaining that "penalty and punishment are not to be considered by the jury. They have been admonished in the very beginning. That is an inappropriate question. You can find other ways to bolster her credibility if you want to, but not that way. That's why we did all of this outside the jury's [presence]."

Seabright testified that she told Vera not to come to court, but claimed she did so only because Vera told her "she didn't want to testify against him." Seabright denied asking Vera to lie or trying to intimidate her. Asked what she was "trying to get" from her conversations with Vera, Seabright replied, "I wanted her to tell the truth." Asked what she meant when she told Vera she was "mistaken," she explained that Vera told her she thought she was mistaken, "so I'm just reminding her of what she told me."

Seabright testified that until the preliminary examination, she was not aware of any kind of no-contact order between defendant and Vera and that she would not knowingly violate a court order. On cross-examination, she admitted that Vera had "[a]t some point" "mentioned" that there was a no-contact order in place that included third-party contact. Seabright could not remember when that was. She admitted discussing the case with Vera. "Yeah. I thought that the contact was between him and [Vera] according to her." "I never saw that paper or understood that, but, yes, I see that when you showed it to me." Seabright testified on redirect that she never saw the restraining order or knew it was in existence.

## **2. Analysis**

Defendant contends that "[t]he trial court was wrong" in excluding the evidence, because his trial counsel's question "in no way invited the jury to consider the penalty or punishment that [he] might suffer if convicted." He claims the error was prejudicial, because evidence that Seabright testified "despite fear of prosecution" would have "bolstered" her credibility—in particular, her testimony that defendant told her during a

March 5, 2010 phone call that Vera “was gone, and he was locked in there.” We agree that the question had nothing to do with penalty or punishment. But that does not advance defendant’s position, because the evidence defendant sought to adduce was not relevant.

“Only relevant evidence is admissible, and the trial court has broad discretion to determine the relevance of evidence.” (*People v. Cash* (2002) 28 Cal.4th 703, 727.) “A trial court’s rulings on relevance and the admission or exclusion of evidence are reviewed for abuse of discretion.” (*People v. Aguilar* (2010) 181 Cal.App.4th 966, 973.)

The court did not abuse its discretion when it sustained the district attorney’s relevance objection. The record does not support defendant’s assertion that Seabright testified “despite fear of prosecution.” It reveals instead that she was not frightened by the possibility of prosecution, which would not in any event have been eliminated had she decided *not* to testify.<sup>3</sup> Seabright “felt the need to speak the truth and love.” The truth, in her view, was that she was “just reminding” Vera of statements she had made. She was not trying to intimidate Vera or asking her to lie. She would not have knowingly violated a court order. She was unaware that there was a no-contact order, and when Vera eventually “mentioned” it, Seabright thought it applied only to Vera and defendant. We think it can readily be inferred from Seabright’s testimony that she believed she had done nothing wrong, viewed any risk of prosecution as minimal, and was not frightened by the possible consequences of her testimony. On this record, evidence that the prosecution was considering charging her with dissuading a witness would not have enhanced her credibility.

Even if we were to assume that the court abused its discretion in sustaining the objection, we would find the error harmless. (Evid. Code, § 354.) As we have explained,

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<sup>3</sup> As the district attorney advised the court, there was sufficient evidence to charge Seabright with a violation of section 136.1 *before* she took the stand.

evidence about the prosecution's "threats" to prosecute Seabright would not have bolstered her credibility. Thus, it is not reasonably probable that defendant would have obtained a more favorable result had that evidence been admitted. (*People v. Watson* (1956) 46 Cal.2d 818, 835-836.)

### **III. Disposition**

The order of probation is affirmed.

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Mihara, J.

WE CONCUR:

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Bamattre-Manoukian, Acting P. J.

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Walsh, J.\*

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\* Judge of the Santa Clara County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.