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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE, Plaintiff and Respondent, v. MARK ANTHONY GALLEGOS, Defendant and Appellant.	B289459 Los Angeles County Super. Ct. No. BA457134

APPEAL from a judgment of the Superior Court of Los Angeles County, Katherine Mader, Judge. Affirmed.

Russell S. Babcock, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Colleen M. Tiedemann and Michael Katz, Deputy Attorneys General, for Plaintiff and Respondent.

INTRODUCTION

A jury convicted defendant Mark Anthony Gallegos of three counts of making criminal threats and three counts of attempted extortion. On appeal, defendant contends: (1) the evidence was insufficient to support the convictions because the threats to the victim were not sufficiently specific or immediate; (2) the trial court improperly admitted evidence of defendant's prior misconduct; (3) the trial court improperly excluded evidence of the victim's arrest; and (4) trial counsel was ineffective for failing to object to evidence of a threat in which defendant did not participate. We affirm.

PROCEDURAL BACKGROUND

The People charged defendant with three criminal threats (Pen. Code,[1] § 422, subd. (a); counts 1, 3, and 5) and three attempted extortions (§ 524; counts 2, 4, and 6) against Raul Barragan.[2] The jury found defendant guilty of all six charges. The court sentenced defendant to a total term of four years and four months for the criminal threats: three years on count 1; eight months on count 3, and eight months on count 5. The court imposed and stayed (§ 654) three 16-month sentences for the attempted extortions. Defendant filed a timely notice of appeal.

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[1] All undesignated statutory references are to the Penal Code.

[2] The conduct alleged in counts 1 and 2 occurred on April 1, 2016; the conduct alleged in counts 3 and 4 occurred on August 3, 2016; and the conduct alleged in counts 5 and 6 occurred on August 5, 2016.

FACTUAL BACKGROUND

Raul Barragan operated a business selling dried chiles and spices at a large wholesale produce market in downtown Los Angeles. Barragan bought his chiles from Ismael Lopez, the owner of Red Hot Chiles. Over time, Barragan accumulated a $24,000 debt to Lopez that he could not pay. Unable to meet this and other obligations, Barragan closed his business in June 2016. Barragan then went to work for Rafa's Produce, another seller at the market.

On three different occasions, defendant threatened to harm Barragan and his family if Barragan did not pay his debt to Lopez. Lopez himself threatened Barragan once. After these threats, Barragan moved himself and his family to a new address: "I moved because my family asked me to. They were scared. They knew where we lived. And my family asked me to move." Barragan rated his fear as an 11 on a scale of one to 10.

1. Defendant and Lopez threatened Barragan to collect a $24,000 debt.

1.1. April 1, 2016 (Counts 1 and 2)

On April 1, 2016, defendant visited Barragan's business and introduced himself as "Sharky" from "Sharky's Collection Mediators." Barragan had seen Sharky around the market before. Barragan testified that Sharky "would always arrive with very big people, tattooed."

Defendant told Barragan "he was there on behalf of Mr. Ismael Lopez, the owner of Red Hot Chiles." "[H]e was there to collect money." In a confident, threatening tone, defendant advised Barragan it would "be better if we come to an agreement because he knew where I lived and that I wouldn't want anything

to happen to my children." He said, "I know where you live. You live in Chino Hills. I know where your house is." Defendant told Barragan "he had some very ugly people." Defendant told Barragan to sign a document saying that Barragan owed $24,000. When Barragan questioned the legality of this, defendant "just said, my client wants you to pay him. And I am going to get the money."

Barragan was frightened defendant would do something to harm his family. After his business closed for the day, Barragan called Detective Barboza, who advised Barragan to write down what had happened and to keep a record of any future visits.

1.2. July 10, 2016

On Sunday, July 10, 2016, Lopez, the owner of Red Hot Chiles, showed up at Barragan's house. He told Barragan, "I know where you live now. I want my money, and you're going to pay me. If not, I'm going—if not I'm going to hurt your family." Lopez insisted, "You're not going to take me for a punk. You're going to pay me or you're going to pay me." Lopez's visit frightened Barragan "a lot because now they were close to my house where my children are, where my family is. And that scares a person. And you feel like yes, they are going to do something to you."

1.3. August 3, 2016 (Counts 3 and 4)

On August 3, 2016, defendant visited Barragan at Rafa's Produce. Defendant showed him invoices for the amounts Barragan owed Lopez. Defendant "raised his voice, and he looked at [Barragan] steadily. And he made it seem that he meant what he was saying." Defendant threatened Barragan, "You have to come to a payment agreement. I know where you live. You don't

want anything to happen with your family." This last part was something defendant "always repeated." Defendant made Barragan "scared that something fatal might happen" to Barragan or his family.

As Barragan watched, defendant walked away and spoke with Lopez, whose business was close to Rafa's Produce. When defendant returned, he told Barragan that Lopez wanted Barragan to work for him. Lopez would pay Barragan $800 a week and forgive the debt. Barragan declined because he "was already working, and I didn't know how true that was."

1.4. August 5, 2016 (Counts 5 and 6)

On August 5, 2016, defendant visited Barragan again at Rafa's Produce. When defendant learned that Barragan had not reached an agreement with Lopez, defendant raised his voice, spread his arms, and challenged Barragan: "Okay. That's the way you want things? That's how it's going to go." Barragan interpreted defendant's comments and demeanor to mean "that something was going to happen to my family or me."

2. Defendant had a history of using threats and violence to collect debts.

Defendant had used threats or violence to collect debts at least twice before.

2.1. Margarita Campos and Andres Quiroz

Margarita Campos owned a restaurant on South Main Street in Los Angeles. In March 2015, the restaurant called to tell her there were men at the restaurant who wanted to speak with the owners. When Campos and her husband, Andres Quiroz, arrived with their baby, "there were two guys, one on each door, and then another guy [defendant] inside the restaurant."

Inside the restaurant, defendant explained he was there to collect on an invoice. When Quiroz and Campos explained the debt belonged to the previous owners of the restaurant, defendant replied "he didn't care because now we were the owners and when we bought the business, we bought everything, like the bills and everything." "The owner had to tell you something about the invoices and you have to pay me." Defendant was in a "really bad mood" and "he was screaming, like almost screaming, talking, like, really loud." Defendant "said that he was going to destroy [Campos's] business. He said that he was going to send someone for them to do something to the business and to me and my husband because he had my address where I lived and he had all the information for me and my husband." Defendant knew that Quiroz was from Mexico, and he threatened to have him deported. After about 30 minutes, defendant told them he would be back for the money and left.

About a week later, defendant returned with the same two men. One of the men came inside and asked Quiroz to come outside where defendant and the other man were waiting. When Quiroz would not pay, defendant repeated his threats from the first visit. He added that he would destroy Campos's car and steal her baby "out of [her] arms." One of defendant's men held Quiroz and the other started hitting him. When Campos threatened to call the police, defendant told her, "I'm not scared of the police. I don't care." Defendant told them that if they did not pay "that it was going to get worse … he was going to get the money." Otherwise, they "would never be able to live in peace … and that [Campos] should keep [her] mouth shut; if not, [her] eyes would see something that they were not going to like."

2.2. Jose Espinosa

Jose Espinosa grew vegetables in Ventura County and sold them to markets in Los Angeles. In late 2014 or early 2015, defendant came to Espinosa's office. Defendant brought three men with him: one came inside the office with defendant and stood inside the door; the other two stood "outside the office by the door to make sure nobody came in." Espinosa was alone.

In an aggressive manner, defendant demanded that Espinosa pay a business debt of about $30,000 "which he said I owed him." When Espinosa explained he was just a manager and employee, defendant "said that the debt was specifically mine." From the moment he arrived, defendant threatened Espinosa. He said that he "knew where my children went to school at, where I lived, and he had all the information about me and my family." Espinosa "thought that at any moment he might strike me." Espinosa was "completely traumatized."

Defendant drew up a document in the office saying that Espinosa owed $100,000. Defendant pushed and threatened Espinosa until he signed that document out of fear. Defendant demanded some immediate satisfaction, "and he took one of the company's forklifts." Espinosa was afraid to stop him.

Once a month for "close to nine months" defendant visited Espinosa and demanded money. On each visit, Espinosa would try to give him from $1,000 to $1,500, but sometimes he had no money to give. Defendant always brought extra men and always made the same threats. During one visit, defendant's men held Espinosa by the arms, and defendant hit Espinosa in the face.

Espinosa began living in motels, and changing motels every couple of weeks. He did this for about four months. Finally, he "could no longer tolerate the situation," and he called the police.

3. Defense Case

Defendant had been convicted of felony burglary three times in the 1990s, roughly once every three years. In 2003, he was convicted of felony forgery. He was now, however, "a good man." He was 46 years old, had two daughters and a wife of 22 years, and no longer lived "a life of mischief as a young kid … ."

Defendant admitted he had visited Campos/Quiroz and Espinosa at their workplaces to collect debts, but he denied threatening them. He had been in the collections business for about 18 years. He was "really good at it." His principal means of getting payment was "picketing people." A flier he handed Barragan during their first meeting had a photo of three people picketing a "Global Fresh" store, holding signs saying in large capital letters "BEWARE GLOBAL FRESH IS WRITING BAD CHECKS." Defendant testified, "Embarrassing people works. And that is what I do is embarrass people." Defendant's policy was to always stay "cool, calm, collected." He did not go into businesses "huffing and puffing" because the police would be called. He never threatened to hurt anyone or their family.

Defendant met Barragan in 2013 or 2014 when defendant first began doing collections at the produce market. Defendant "thought [they] got along well."

Lopez had asked defendant "to go ahead, see if I could help him out with Mr. Barragan," and defendant spoke with Barragan in April 2016 about the debt. He admitted returning on August 3 and 5, 2016. According to defendant, he offered to help Barragan collect on debts that were owed to him so that Barragan would have money to pay Lopez. Defendant never threatened Barragan, and he had nothing to do with Lopez threatening Barragan.

Defendant admitted he lied to police when he told them he had never contacted Barragan about the Lopez debt.

DISCUSSION

1. Sufficiency of the Evidence to Support Defendant's Convictions for Criminal Threats and Extortion

Defendant contends insufficient evidence supports his convictions for criminal threats and extortion. As we will explain, substantial evidence supports the convictions.

1.1. Standard of Review

When a defendant challenges 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 any rational trier of fact could have found the evidence proved the elements of the crime beyond a reasonable doubt. (*People v. Manibusan* (2013) 58 Cal.4th 40, 87.) We draw all reasonable inferences in favor of the judgment and do not resolve credibility issues or evidentiary conflicts. (*Ibid.*)

1.2. Criminal Threats

To support a conviction for criminal threats under section 422, the People must prove: (1) the defendant willfully threatened to commit a crime which would result in death or great bodily injury; (2) the defendant made the statement with the intent that it be taken as a threat; (3) the threat, on its face and under the circumstances in which it was made, was 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; and (4) the threat caused the other person reasonably to be in sustained fear for her own safety

or for the safety of her immediate family, regardless of whether the defendant actually intended to carry out the threat. (*People v. Butler* (2000) 85 Cal.App.4th 745, 753 (*Butler*).)

Defendant's appeal challenges only the third element—whether his threats were sufficiently immediate and specific to convey to Barragan a gravity of purpose and immediate prospect of execution of the threats. He contends he did not specify precisely what he would do or when, and that his threats, therefore, lacked the immediacy and specificity required by the statute: "[Defendant] never indicated that any perceived threat on his part would be immediate; for instance he did not say, 'if you don't pay up, I will be over there tomorrow.' Nor does he indicate with any specificity what would happen to Mr. Barragan or his children. He never specifically said, 'I am going to kill you or cause bodily injury to your children.' Thus, all of [defendant's] remarks, while offensive, are not immediate and are equivocal and ambiguous."

"[I]t is the circumstances under which the threat is made that give meaning to the actual words used." (*Butler*, *supra*, 85 Cal.App.4th at p. 753.) Thus, " '[t]he determination … whether the words were sufficiently … immediate and specific … can be based on all the surrounding circumstances and not just on the words alone. … [Citations.]' [Citation.]" (*Id.* at p. 754.) "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." (*Id.* at p. 752, internal quotes omitted; see also *People v. Mendoza* (1997) 59 Cal.App.4th 1333, 1340–1341 (*Mendoza*) [same].) And while immediacy is a necessary element of section 422, the statute does not require an immediate ability to carry out the threat. (*People v. Lopez* (1999)

74 Cal.App.4th 675, 679–680; CALCRIM No. 1300.) The word "immediate" in section 422 means "that degree of seriousness and imminence which is understood by the victim to be attached to the *future prospect* of the threat being carried out, should the conditions not be met." (*People v. Melhado* (1998) 60 Cal.App.4th 1529, 1538.)

The first time defendant met with Barragan on April 1, 2016, he introduced himself as Sharky and told Barragan that he was there to collect a $24,000 debt. Defendant told Barragan he should come to an agreement about the debt because Barragan "wouldn't want anything to happen to [his] children." Defendant did not need to be more specific than this. (See *Mendoza*, *supra*, 59 Cal.App.4th at p. 1340.)

In *Mendoza*, the actual words were only " 'you fucked up my brother's testimony. I'm going to talk to some guys from Happy Town[.]' " (*Mendoza*, *supra*, 59 Cal.App.4th at p. 1340.) Just two days before these words, the victim had testified against Mendoza's brother, who was on trial for murdering a police officer. (*Id.* at p. 1341.) The appellate court concluded this was sufficient to affirm a conviction for violation of section 422. "[A]lthough appellant's words were ambiguous, did not mention a particular criminal act or give other particulars, a rational juror could have found—based on all the surrounding circumstances—appellant's words were sufficiently unequivocal, unconditional, immediate and specific to convey to [the victim] a gravity of purpose and immediate prospect of death or serious bodily injury." (*Mendoza*, at p. 1342.) The court explained that the jury could interpret Mendoza's words in the context of Mendoza and the victim's mutual association with the Happy Town gang. (*Id.* at p. 1341.) The victim "knew Happy Town gang members were

capable of violence and would not hesitate to retaliate against her for hurting a fellow gang member and to prevent her from giving further testimony at his trial." (*Ibid.*)

In the present case, Barragan owed a sizable debt and he was being pursued outside the legal process by a large, intimidating man who called himself "Sharky." Defendant knew precisely where Barragan lived. Defendant suggested he "had some very ugly people" who worked for him. As in *Mendoza*, these probative circumstances allowed the jury to understand that defendant was communicating a specific and immediate plan to inflict great bodily injury or death if Barragan did not pay the debt.

Defendant's threats during the second incident, on August 3, 2016, followed the same pattern, and they were also sufficient to support a criminal threats conviction. Defendant "raised his voice" and told Barragan again "You have to come to a payment agreement. I know where you live. You don't want anything to happen with your family." By this point, Lopez himself had come to Barragan's home, when Barragan's children were home, and threatened to harm Barragan and his family. This second threat by defendant was immediate and specific enough that Barragan was afraid "something fatal might happen … ."

In the third incident, on August 5, 2016, when defendant learned Barragan had not reached an agreement with Lopez, defendant raised his arms, spread them wide, and said "Okay. That's the way you want things? That's how it's going to go." Barragan interpreted defendant's words as a threat "that something was going to happen to [him or his family]." The jury was free to consider this threat in the context of defendant's fuller, more explicit prior threats and in light of Lopez's threats

at Barragan's home. (*Mendoza*, *supra*, 59 Cal.App.4th at p. 1340 ["The parties' history can also be considered as one of the relevant circumstances."].)

Defendant relies on *In re Ricky T.* (2001) 87 Cal.App.4th 1132 to show that his threats were too vague and nonspecific to support his convictions. Defendant, however, omits important facts from that case. In *Ricky T.*, a school teacher opened a door into the head of a 16-year-old student. (*Id.* at p. 1135.) The student admitted "getting in [the teacher's] face and saying he would 'kick [his] ass.' " (*Id.* at p. 1137.) The court determined there was "no immediacy to the threat" because the police were not called until the following day. (*Id.* at pp. 1137–1138.) Here, by contrast, Barragan perceived defendant's threat as sufficiently immediate that he reported it to the police as soon as the market closed that day. The words in *Ricky T.* were "an emotional response to an accident," an immediate reaction, whereas defendant's words in this case were repeated by defendant on at least two occasions and by Lopez on one occasion. (*Id.* at p. 1141.)

Defendant also contends the threats in *In re George T.* (2004) 33 Cal.4th 620 (*George T.*) were much more egregious than defendant's "comments" to Barragan. If the threats in *George T.* were not criminal, he argues, his "oblique and less threatening comments" were also not criminal. The alleged threats in *George T.*, however, were lines in a poem written by a high school student enrolled in honors English: "For I am Dark, Destructive, & Dangerous. I slap on my face of happiness but inside I am evil!! For I can be the next kid to bring guns to kill students at school. So parents watch your children cuz I'm BACK!!" (*Id.* at p. 625.) The student shared this poem with three classmates, two of whom became frightened. (*Ibid*; *id.* at p. 627.) Although the

words were "perhaps discomforting and unsettling," under the circumstances, they did not "constitute an actual threat to kill or inflict harm." (*Id.* at p. 636.) Importantly, the court explained there was no history of any conflict between the students and "no threatening gestures or mannerisms accompanied the poem." (*Id.* at p. 637.)

The ameliorating circumstances of *George T.* simply do not apply to this case. There were no neutral explanations for defendant's threats. Defendant was not using poetry to express difficult personal feelings. His business was collecting debts through fear and intimidation, and he delivered his words in a manner calculated to promise injury if the debt was not paid.

1.3. Attempted Extortion

Defendant contends that his threats also lacked the specificity and immediacy necessary to support his attempted extortion convictions. There is no merit to this argument.

Attempted extortion is an attempt by means of any threat to obtain money or property from another. (§ 524; CALCRIM No. 1830.) Unlike criminal threats under section 422, extortion does not require a threat to commit a crime resulting in death or great bodily injury; it is enough to threaten injury to the person or property of the person threatened. (§§ 524, 519.) Just as with criminal threats under section 422, extortion does not require any " ' "precise or particular form of words … ." ' " (*People v. Bollaert* (2016) 248 Cal.App.4th 699, 725.) "The threat can be implied from all the circumstances … ." (*Ibid.*)

Here, just as defendant's threats were specific and immediate enough to support the criminal threats convictions, so too were they specific and immediate enough to support his convictions for attempted extortion.

2. Defendant's Uncharged Acts

Defendant next contends the court abused its discretion and violated his right to due process when it admitted evidence of the Campos-Quiroz and Espinosa incidents under Evidence Code section 1101, subdivision (b). He contends these incidents constituted improper propensity evidence and were unduly prejudicial under Evidence Code sections 352 and 1101, subdivision (a). We disagree.

2.1. Relevant Proceedings

The defense theory was that defendant never threatened Barragan: "He might have been there to collect a debt, but he didn't make any threats."

The court found under Evidence Code section 1101, subdivision (b), that "evidence of similar attempts to collect money and claims of threats would be highly relevant and probative as to show whether or not [defendant had threatened Barragan]." The evidence was relevant to prove "intent and [modus operandi] … ." Any prejudice was outweighed by "the highly similar nature of what these other people are alleging … ."

The court excluded evidence of a third incident where the threat was more explicit ("I will kill you"), uttered by a man other than defendant, and where defendant said "we need to leave" after the direct threat. In the court's view, that incident was "a lot of explanation for not a lot of relevancy … ." The court also excluded, as overly prejudicial, evidence defendant wielded a gun during the Espinosa incident, as well as "speculation that the defendant was connected to Mexican cartels" and had attempted to coerce debtors into smuggling drugs across the border in their trucks.

2.2. Applicable Law and Standard of Review

California law precludes propensity evidence. (Evid. Code, § 1101, subd. (a).) Evidence of a person's character (a predisposition or propensity to engage in a particular type of behavior) is inadmissible to prove a defendant acted in accordance with that character on a specific occasion. (*Ibid.*)

This rule, however, "does not prohibit admission of evidence of uncharged misconduct when [it] is relevant to establish some fact other than the person's character or disposition." (*People v. Ewoldt* (1994) 7 Cal.4th 380, 393 (*Ewoldt).*) For example, evidence of uncharged misconduct is admissible if it is "relevant" to establish intent or plan. (Evid. Code, § 1101, subd. (b).) To prove an uncharged act is relevant to common design or plan, the uncharged act and charged offense must share common features that "indicate the existence of a plan rather than a series of similar spontaneous acts, but the plan thus revealed need not be distinctive or unusual." (*Ewoldt*, at p. 403.) To be relevant to intent, even less similarity is required—the charged and uncharged conduct must be similar enough to support an inference that the defendant harbored the same intent in each instance. (*Id.* at p. 402; *People v. Carter* (2005) 36 Cal.4th 1114, 1147, 1149.)

Even if the uncharged act is relevant to establish modus operandi or intent, the trial court must still weigh its probative value against its prejudicial effect. (*Ewoldt*, *supra*, 7 Cal.4th. at p. 404; Evid. Code, § 352.) Uncharged offenses are admissible only if they have "*substantial* probative value," and that probative value is not " 'substantially outweighed by the probability that [their] admission [will] ... create substantial danger of undue prejudice, of confusing the issues, or of

misleading the jury.' " (*Ewoldt*, at p. 404; Evid. Code, § 352.) We review the court's evidentiary rulings for abuse of discretion. (*People v. Lewis* (2001) 25 Cal.4th 610, 637.)

2.3. The court did not abuse its discretion.

Defendant argues that the court erred in admitting evidence of the uncharged acts against Campos-Quiroz and Espinosa because they were not sufficiently similar to the charged offenses and were more prejudicial than probative. Specifically, he notes the following dissimilarities: 1) the two uncharged incidents both involved physical violence against the victims; 2) defendant threatened to have Quiroz deported; 3) defendant took money and a forklift from Espinosa; and 4) defendant threatened Campos's one-year-old child.

Despite these points of dissimilarity, the circumstances of the Campos-Quiroz and Espinosa incidents were similar enough to the Barragan incidents that the court did not abuse its discretion in admitting the evidence. Barragan, Campos, Quiroz, and Espinosa were all involved in the produce business. Defendant approached each victim at his or her place of work. He threatened the families and children of all the victims, telling them he knew where they lived and where their family members could be found. These common features were sufficient to permit the jury to infer defendant had a common method of collecting debts. (See *People v. Balcom* (1994) 7 Cal.4th 414, 424 [several points of similarity supported the inference defendant committed the crimes "pursuant to a design or plan that he either employed or developed in committing the charged offenses"].)

The court also did not abuse its discretion in finding the probative value of the Campos-Quiroz and Espinosa incidents was not substantially outweighed by a "substantial danger of

undue prejudice, of confusing the issues, or of misleading the jury." (Evid. Code, § 352.) Defendant testified he minded his "three Cs," staying calm, cool, and collected when he asked for payment. He denied threatening debtors. The uncharged acts showed, to the contrary, that defendant employed threats against family members and children on at least two other occasions when collecting debts. The uncharged acts had substantial probative value because they had a strong "tendency in reason to prove" whether defendant made the threats Barragan alleged. (See Evid. Code, § 210.) Given the substantial probative value, the court reasonably determined any undue prejudice did not require exclusion. (See *People v. Walker* (2006) 139 Cal.App.4th 782, 806 ["A trial court should not exclude highly probative evidence unless the undue prejudice is unusually great."].)

3. Barragan's Arrest for Threatening Lopez

Defendant further contends the court denied him "a full and fair cross-examination" of Barragan by excluding evidence that Barragan was arrested for threatening Lopez in January 2017. We disagree.

At trial, the defense offered the arrest evidence to impeach Barragan, arguing that it went "to his character, his motive to lie … [a]bout what happened between himself, Lopez and [defendant] because these three people are intimately interconnected." The court ruled that the evidence was inadmissible because it was not relevant.[3]

[3] The court explained: "I just don't see it. I don't find it to be relevant. What happened between Mr. Lopez and Mr. Barragan after this incident, I don't see how it spills over and has any effect on your client

The trial court has broad discretion "to exclude evidence offered for impeachment that is collateral and has no relevance to the action." (*People v. Contreras* (2013) 58 Cal.4th 123, 152.) The confrontation clause and other constitutional guarantees do not limit the court's discretion unless the excluded evidence would have produced a "significantly different impression" of the witness's credibility. (*Ibid.*; see *Delaware v. Van Arsdall* (1986) 475 U.S. 673, 680.)

The court did not abuse its discretion in excluding evidence of Barragan's arrest. First, while evidence of a prior conviction may be used to impeach a witness, that is not necessarily true of evidence of an arrest. (See, e.g., *People v. Dyer* (1988) 45 Cal.3d 26, 48 [victim's arrest on felony charges irrelevant].) Second, the excluded evidence would not have produced a significantly different impression of defendant's credibility. Barragan's arrest for threatening Lopez occurred five months *after* defendant made his last threat in this case. That there were hard feelings between Barragan and Lopez certainly did not require additional proof. Nor did Barragan's arrest, occurring in January 2017, shed any further light on the threats defendant uttered in April and August 2016.

In short, the court did not err in excluding this evidence.

4. Counsel's Failure to Object to Evidence that Lopez Threatened Barragan

Lastly, defendant contends trial counsel was ineffective for failing to object when Barragan testified about Lopez threatening

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and whether or not anything went on between your client and Mr. Barragan on much earlier dates."

him at his home. According to defendant, this testimony was irrelevant and so damaging that counsel could have had no reasonable tactical purpose in not objecting. We are not persuaded.

4.1. Governing Legal Principles

On appeal, when a defendant claims his counsel was ineffective, the reviewing court must consider whether "the record contains any explanation for the challenged aspects of the representation provided by counsel." (*People v. Mitcham* (1992) 1 Cal.4th 1027, 1057–1058, citing *Strickland v. Washington* (1984) 466 U.S. 668.) "If the record on appeal sheds no light on why counsel acted or failed to act in the manner challenged, an appellate claim of ineffective assistance of counsel must be rejected unless counsel was asked for an explanation and failed to provide one, or there simply could be no satisfactory explanation. [Citation.] Otherwise, the claim is more appropriately raised in a petition for writ of habeas corpus. [Citation.]" (*People v. Carter* (2003) 30 Cal.4th 1166, 1211, as modified (Aug. 13, 2003).) In other words, if there is a reasonable explanation for counsel's decision, a claim of ineffective assistance on appeal must fail. "This is particularly true where … the alleged incompetence stems from counsel's failure to object. '[D]eciding whether to object is inherently tactical, and the failure to object will rarely establish ineffective assistance.' " (*People v. Lopez* (2008) 42 Cal.4th 960, 972.)

4.2. Defendant has failed to prove ineffective assistance of counsel on direct appeal.

Here, the record discloses a reasonable explanation for counsel's failure to object to Barragan's testimony about Lopez

coming to Barragan's home and threatening him: Counsel could have reasonably determined any objection would have been futile.

The evidence Lopez threatened Barragan at his home on July 10, 2016, was highly relevant to prove the reasonableness of Barragan's fear when defendant threatened him the second and third times. The jury saw a photo of defendant conferring with Lopez on August 3, 2016, the date of defendant's second threat. Lopez's threat made defendant's August 3 and August 5, 2016 threats more frightening. (*Butler*, *supra*, 85 Cal.App.4th at p. 753 [criminal threats are interpreted considering the surrounding circumstances].) Defendant complains the evidence of Lopez's visit to the Barragan residence "was indisputably much more threatening and ominous than any of the charged conduct." But this is precisely the point. Counsel's objection would have been futile because showing up at Barragan's home, where Barragan's family was present, would have caused a reasonable person to be even more afraid when defendant returned and threatened Barragan again since defendant was collecting a debt for Lopez.

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

LAVIN, J.

WE CONCUR:

EDMON, P. J.

EGERTON, J.