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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE,

Plaintiff and Respondent,

v.

ENRIQUE HERNANDEZ  
RELLES,

Defendant and Appellant.

B276563

(Los Angeles County  
Super. Ct. No. VA139562)

APPEAL from a judgment of the Superior Court of Los Angeles County, John A. Torribio, Judge. Affirmed.

Heather E. Shallenberger, 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, Margaret E. Maxwell and Tasha G. Timbadia, Deputy Attorneys General, for Plaintiff and Respondent.

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Defendant Enrique Hernandez Relles challenges his multiple convictions arising out of his threats to kill several family members. We find no error and affirm.

### **BACKGROUND**

On July 6, 2015, defendant and his wife of 24 years were in the midst of divorce proceedings. They were still living in the same house, along with their daughter Gabriela Hernandez, her boyfriend Rafael Ramos, and Gabriela and Rafael's then five-month-old son. Defendant's wife, Angelica Hernandez testified that defendant regularly accused her of sleeping with other men even though the accusations were baseless.

At the time of the incident underlying defendant's convictions, Angelica had been coping with defendant's extreme jealousy for a year and a half, and Gabriela confirmed that defendant started accusing Angelica much earlier. Gabriela was afraid to leave her mother alone with her father. Angelica had a domestic violence order issued prior to the events underlying defendant's conviction. A neighbor was forced to move when defendant accused her then 14-year-old son of sleeping with Angelica and warned the neighbor that he had a gun.

On July 6, 2015, defendant was acting erratically and aggressively. Angelica speculated that he may be drunk. Rafael heard defendant scream that "he was going to end everything" and was going to kill Angelica. Defendant said he would kill Angelica and then kill himself. Defendant also threatened to kill the whole family as well as the neighbors. As he shouted these threats, defendant displayed a gun. The threats scared Rafael, especially because he saw defendant holding a gun. Rafael also saw defendant retrieve a knife to try to pick the locked door to Angelica's bedroom, knowing that Angelica was inside.

Gabriela, who was in another bedroom with her son, heard banging and heard defendant say “he wanted to just end everything.” She did not see her father holding a gun but later learned that he had one. Gabriela was afraid of defendant and called 911.

Angelica did not see defendant drinking but heard him open one can of beer. Angelica heard defendant say, “tonight it would all be over,” and heard Rafael warn her that defendant had a gun. Eventually, she retrieved defendant’s gun, but defendant continued his threats, telling Angelica that he had other guns and would kill her.

When interviewed by a deputy sheriff, Angelica stated that defendant threatened to kill her and kill everyone in the family. She was aware that defendant was armed. Defendant also warned Angelica that he had other guns and would kill “all of you.” Angelica later reported being afraid for herself and all of her family members inside the house.

Defendant was convicted of three counts of criminal threats (Pen. Code,<sup>1</sup> § 422, subd. (a)) against Angelica, Gabriela, and Rafael, each with a firearm use enhancement (§ 12022.5, subd. (a)). Defendant also was convicted of unlawful firearm activity (§ 29805), possession of ammunition (§ 30305, subd. (a)(1)), and violating a restraining order (§ 273.6, subd. (a)). The court sentenced defendant to a 13-year prison term for one count of terrorist threats with the firearm use enhancement and concurrent terms for the remaining counts.

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<sup>1</sup> Undesignated statutory citations are to the Penal Code.

## DISCUSSION

### 1. Sufficiency of the Evidence

Defendant challenges the sufficiency of the evidence to support the convictions for criminal threats and challenges the gun enhancement on the count involving Gabriela. As we shall explain, his arguments are not persuasive.

“When the sufficiency of the evidence to support a conviction is challenged on appeal, we review the entire record in the light most favorable to the judgment to determine whether it contains evidence that is reasonable, credible, and of solid value from which a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. [Citation.] ‘Conflicts and even testimony which is subject to justifiable suspicion do not justify the reversal of a judgment, for it is the exclusive province of the trial judge or jury to determine the credibility of a witness and the truth or falsity of the facts upon which a determination depends.’ [Citation.] Unless it describes facts or events that are physically impossible or inherently improbable, the testimony of a single witness is sufficient to support a conviction.” (*People v. Elliott* (2012) 53 Cal.4th 535, 585.)

#### ***a. Criminal Threats***

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, in writing, or by means of an electronic communication device’—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.’ ” (*People v. Lipsett* (2014) 223 Cal.App.4th 1060, 1064.)

Defendant argues that there was no evidence that he intended his statements be understood as a threat and no evidence his daughter Gabriela understood any of his statements as a threat. Defendant’s argument is meritless.

First, defendant’s argument that he lacked the requisite specific intent fails to consider the appropriate standard of review. The evidence that defendant stood outside Angelica’s room holding a loaded gun and tried to pick the lock while he yelled that he was going to kill her, kill himself, and “end everything” strongly supported the inference that defendant intended to threaten her. Further, Angelica believed that defendant was capable of carrying out his threats. Defendant also threatened Gabriela and Rafael when he stated that he “wanted to just end everything.” Defendant explained that ending everything meant killing everyone in the family. Defendant made these threats multiple times that evening. Based on this evidence, a rational jury could infer defendant harbored the specific intent to threaten Angelica, Gabriela, and Rafael. If, as here, “the circumstances reasonably justify the jury’s findings as to each element of the offense, the judgment may not be overturned . . . .” (*People v. Lewis* (2001) 25 Cal.4th 610, 643-644; see *People v. Bolin* (1998) 18 Cal.4th 297, 331

[reversal for the sufficiency of the evidence is unwarranted unless there is no sufficient evidence under any hypothesis].)

Second, defendant's argument that Gabriela did not hear her father's threats also lacks merit. She testified that she heard her father say "he wanted to just end everything." Gabriela was so concerned that she called 911. Defendant's argument that Gabriela was required to call the police more than once to show she understood defendant's statement as a threat is not supported by legal authority. Nor is it consistent with the elements of the offense, which require only sustained fear that was reasonable. (See *People v. Allen* (1995) 33 Cal.App.4th 1149, 1156 ["Section 422 requires the person threatened 'reasonably be in sustained fear for his or her own safety.'"].)

***b. Gun Use***

As noted, defendant challenges the sufficiency of the evidence to support the gun use enhancement with respect to the threat of Gabriela. Section 12022.5, subdivision (a) provides in pertinent part: "any person who personally uses a firearm in the commission of a felony or attempted felony shall be punished by an additional and consecutive term of imprisonment in the state prison for 3, 4, or 10 years, unless use of a firearm is an element of that offense." Defendant emphasizes the fact that Gabriela did not know until after the incident that defendant used a gun during the incident.

Gabriela's lack of awareness does not vitiate defendant's use of the gun. (*People v. Granado* (1996) 49 Cal.App.4th 317, 326.) The relevant mental state "is the *defendant's intent* to use the gun in furtherance of the crime." (*Id.* at p. 328.) To "make the victim's state of mind an element of the enhancement, would introduce significant complications which lack any apparent

basis in statutory text or, so far as we can determine, legislative or jurisprudential policy.”<sup>2</sup> (*Id.* at p. 326.) As *Granado* persuasively explained: “By merely bringing a gun ‘into play,’ the defendant removes impediments to its actual discharge and thus enhances the danger of violent injury not only through an intentional act by the victim or a third party, but through an impulsive or inadvertent act by the defendant. It requires no statistical study to know that a gun is far more likely to go off while held in the hand than while resting in a pocket, holster, or waistband.” (*Id.* at p. 327.) Here, defendant’s use was evidenced by his active employment of the weapon while he made the threats. The evidence supported the enhancement even though Gabriela did not see her father use the gun.

## **2. No Evidence Warranted an Instruction on Involuntary Intoxication**

### ***a. Additional Background***

Defendant did not testify (and no witness testified for the defense). Defendant sought to elicit evidence of his purported intoxication through the cross-examination of Angelica. She testified that she heard defendant open one beer, but did not see him drinking. She did not hear him open any other beers. Angelica also testified that defendant was acting differently than when he was sober. Angelica testified that she did not see defendant use drugs on July 6, 2015.

The court did not allow defense counsel to ask Angelica whether in her opinion defendant was drunk. The court also struck Angelica’s statement that defendant used drugs. The

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<sup>2</sup> No authority cited by defendant supports the conclusion that the victim’s state of mind is an element of a section 12022.5, subdivision (a) gun use enhancement.

court sustained an objection to the following question: “When Mr. Relles was in a drunk state of mind, how did he act?”

***b. Analysis***

Even if the court erred in excluding Angelica’s testimony and assuming there was evidence that defendant was intoxicated, there was no evidence that defendant’s voluntary intoxication prevented him from forming the requisite specific intent. No proposed testimony broached that topic. An instruction on voluntary intoxication therefore was unwarranted.

A defendant is entitled to an instruction on voluntary intoxication “ ‘only when there is substantial evidence of the defendant’s voluntary intoxication and the intoxication affected the defendant’s “actual formation of specific intent.” ’ ” (*People v. Verdugo* (2010) 50 Cal.4th 263, 295; see *People v. Williams* (1997) 16 Cal.4th 635, 677.) Absent evidence that the intoxication “had any effect on defendant’s ability to formulate intent,” an instruction is not warranted. (*Williams, supra*, at pp. 677-678.) Because there was no evidence that defendant’s (assumed) intoxication affected his ability to formulate intent, the trial court properly denied defendant’s request for an instruction on voluntary intoxication.

**DISPOSITION**

The judgment is affirmed.

FLIER, J.

WE CONCUR:

RUBIN, Acting P. J.

GRIMES, J.