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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE, Plaintiff and Respondent, v. MARK PERUZZI, Defendant and Appellant.	B248131 (Los Angeles County Super. Ct. No. VA123984)

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

Susan Morrow Maxwell, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Lance E. Winters, Assistant Attorney General, Victoria B. Wilson and Jessica C. Owen, Deputy Attorneys General, for Plaintiff and Respondent.

Mark Peruzzi was convicted of stalking in violation of a restraining order (Pen. Code, § 646.9, subd. (c)(1))[1] and disobeying a domestic relations court order (§ 273.6, subd. (a)). On appeal he contends insufficient evidence supports count 1, his stalking conviction, and the sentence on his count 2 conviction for disobeying a domestic relations court order is unauthorized under section 654. We affirm as to count 1 and modify the judgment regarding count 2.

Background

Appellant Mark Peruzzi was in a relationship with Dolores Guzman for 23 years. On August 5, 2009, the couple argued, and appellant held Guzman against a wall, hit her, and threatened her life. Guzman ended the relationship and called the police, who arrested appellant. Guzman obtained a temporary restraining order after the altercation, but appellant continued to call and text-message her. In November 2009, he threatened her by texting "Look bitch, I'll have your fat neck in my hands by tomorrow, tramp." In December, the court issued a three-year injunction prohibiting appellant from contacting Guzman, whether by texting or coming within 100 yards of her. Appellant violated the injunction by sending Guzman both nonthreatening and threatening text messages, calling her, and going to her apartment.

On January 20, 2011, the trial court issued a criminal protective order against appellant after Guzman charged that he had made more threats against her. He nevertheless persisted in texting and calling Guzman after the order was in place. For example, when Guzman bought new rims for her car, appellant texted her "Nice rims Dee Dee. Must be nice!!"

Guzman informed Los Angeles County Sheriff's Department Detective Mark Lorenz she thought appellant was stalking her and she feared for her life. When Lorenz placed a GPS tracking device on appellant's car, he found that appellant followed Guzman to her gym and work, loitered for hours at the gas station she frequented, and drove back and forth repeatedly in front of her workplace. Appellant also threatened

[1] Undesignated statutory references will be to the Penal Code.

Guzman by sending text messages to their son, Christian Peruzzi, stating "I've had it with her! Im gonna to take care of her ass! I dont care if I go back to prison Chris. At least I'll go back for something ishoild [*sic*] of done a long time ago!!"

Lorenz began a sting operation on March 8, 2012, to discover if appellant was monitoring Guzman. When an undercover police officer drove Guzman's car past appellant, who was parked at a McDonald's across the street from a market Guzman frequented, he immediately text-messaged her, "Go get ur big mac. I'm leaving!!" Lorenz subsequently arrested him.

Appellant was tried by a jury and found guilty of stalking Guzman while subject to a protective order (§ 646.9, subd. (c)(1); count 1) and of disobeying a domestic relations court order (§ 273.6, subd. (a); count 2). The trial court doubled appellant's sentence on count 1 from 5 to 10 years pursuant to section 1170.12, subdivisions (a)-(d), and also sentenced appellant to one year in county jail on count 2.

Appellant timely appealed.

DISCUSSION

I. Substantial evidence supports appellant's stalking conviction

Appellant contends insufficient evidence supported his stalking conviction. We disagree.

In reviewing for sufficiency of the evidence, we consider the "whole record in the light most favorable to the judgment below" to determine whether "a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt." (*People v. Jones* (2013) 57 Cal.4th 899, 960; *People v. Smith* (2005) 37 Cal.4th 733, 738-739.) Testimony of a single witness, unless physically impossible or inherently improbable, is sufficient to support a conviction. (Evid. Code, § 411; *People v. Young* (2005) 34 Cal.4th 1149, 1181.)

Section 646.9, subdivision (a) provides: "[A] person who willfully, maliciously, and repeatedly follows or willfully and maliciously harasses another person and who makes a credible threat with the intent to place that person in reasonable fear for his or her safety, or the safety of his or her immediate family is guilty of the crime of stalking."

To convict appellant of stalking Guzman, the jury must reasonably find he willfully, maliciously, and repeatedly followed or harassed her, made a credible threat, and placed her in reasonable fear for her safety.

Section 646.9, subdivision (e) states: "For the purposes of this section, 'harasses' means engages in a knowing and willful course of conduct directed at a specific person that seriously alarms, annoys, torments, or terrorizes the person, and that serves no legitimate purpose." Appellant repeatedly violated restraining orders by sending Guzman text messages indicating he was watching her, as when he commented on her new rims and stated, "Go get ur big mac" when a deputy drove Guzman's car past a McDonald's she frequented. His willful and repeated attempts to contact her alarmed her enough to call the police. A reasonable jury could find that appellant's actions, such as driving past Guzman's work eight times in one day, lacked legitimate purpose. Therefore it was reasonable to find appellant to have willfully and maliciously harassed Guzman.

Section 646.9, subdivision (g) provides: "[A] 'credible threat' means a verbal or written threat, including that performed through the use of an electronic communication device, or a threat implied by a pattern of conduct or a combination of verbal, written, or electronically communicated statements and conduct, made with the intent to place the person that is the target of the threat in reasonable fear for his or her safety or the safety of his or her family, and made with the apparent ability to carry out the threat so as to cause the person who is the target of the threat to reasonably fear for his or her safety or the safety of his or her family." Appellant exhibited a pattern of conduct that placed Guzman in reasonable fear for her safety. He had a history of domestic violence against her, directly threatened her, and threatened her in texts to their son. He loitered at Guzman's gym, work, and home and repeatedly attempted to contact her. A reasonable jury could have found him to present a credible threat and to have placed Guzman in reasonable fear for her safety. In light of the entire record, appellant's claim that no evidence supported the verdict is without merit.

II. The sentence on count 2 should be stayed

Appellant contends his one-year sentence for disobeying a domestic relations order violates the prohibition against multiple punishments for the same crime. (§ 654.) Respondent concedes the point, and we agree.

Section 654, subdivision (a) provides in pertinent part, "An act or omission that is punishable in different ways by different provisions of law shall be punished under the provision that provides for the longest potential term of imprisonment, but in no case shall the act or omission be punished under more than one provision." The purpose of section 654 is to ensure that punishment is commensurate with a defendant's culpability. (*People v. Meeks* (2004) 123 Cal.App.4th 695, 705.)

Appellant's conviction for stalking Dolores Guzman was based on his driving to her work on January 20, 2012. This act was also the predicate for his conviction for disobeying a domestic relations court order. Imposition of two sentences for the same act violates section 654. Accordingly, we modify the judgment to reflect that the sentence on count 2 must be stayed.

DISPOSITION

The judgment is affirmed. The clerk of the superior court is directed to amend the abstract of judgment to reflect that the sentence on count 2 is stayed, and to forward a copy of the abstract to the Department of Corrections and Rehabilitation.

NOT TO BE PUBLISHED.

CHANEY, J.

We concur:

ROTHSCHILD, P. J. BENDIX, J.*

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.