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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.

STEPHEN WILLIAM BREWSTER,

Defendant and Appellant.

B284386

(Los Angeles County
Super. Ct. No. GA100123)

APPEAL from a judgment of the Superior Court of Los Angeles County, Rupa Searight Goswami, Judge. Affirmed.

Myra Sun, 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, Shawn McGahey Webb and Noah P. Hill, Deputy Attorneys General, for Plaintiff and Respondent.

Stephen William Brewster assaulted his mother and later, while in jail, attempted to persuade her to recant her statements to police. He was convicted of assault and of dissuading a victim from prosecuting a crime. Brewster appeals from the judgment of conviction for dissuasion, contending insufficient evidence supports the jury's finding of specific intent because when he urged his mother to recant her complaint he meant not to interfere with the police investigation but merely to encourage her to tell the truth—that no crime had been committed.

We affirm the judgment. When a perpetrator attempts to persuade his victim to change her story in a manner that will exonerate him, a jury's finding that he committed the crime necessarily means his design to influence the victim was corrupt.

BACKGROUND

On the evening of December 1, 2016, Brewster came home from work and engaged in a verbal altercation with Kathleen Brewster, his mother. When Kathleen told Brewster he would have to move out, he shouted and swore at her, pushed her against a wall, choked her into temporary unconsciousness, and after she regained consciousness kicked her in the ribs and back. She eventually escaped and ran to a neighbor's house, disoriented, trembling and crying, and called the Los Angeles County Sheriff's Department. She told the dispatcher, "Well my son came home in some kind of rage. . . . He's been hitting me and trying to keep me in the house and threatening to kill me."

When sheriff's deputies arrived they observed Kathleen was shaking and upset. She suffered difficulty breathing, had red marks on her face and neck, and complained her throat and ribs were sore. Brewster was arrested.

Two days later Brewster made a telephone call to Kathleen from jail. The following are excerpts from the conversation, which was recorded:

“B[rewster]: [Y]ou need to fucking go to court Monday and tell them that you fucking lied. . . .

“K[athleen]: I didn’t lie. I didn’t lie. I didn’t have no voice for 24 hours.

“B: What?

“K: You choked me. I lost consciousness. I blacked out.

“B: I didn’t fucking do that, Mom.

“K: Oh, you didn’t choke me?

“B: No.

“K: Now you’re denying it?

“B: Mom, so what it is? You’re against your fucking son? Like I don’t get it. [¶] . . . [¶]

“K: Okay. So you’re denying that you choked me, and you’re denying that [unintelligible] me around the house—

“B: So then what I do, Kathy? So what if I do? What, you’re going to fucking step up and fucking put your own son down? . . . [¶] . . . [¶]

“K: What do you want from me, Stephen? Tell me what you want. [¶] . . . [¶]

“B: Just . . . fucking help me.

“K: What do you want from me? How do you want me to help?

“B: Kathy, Kathy, go to fucking court Monday and tell them that you fucking got drunk and you fucking lied. The fucking truth, it’s like that simple, Kathy

“K: Why would I, why would I say that? [¶] . . . [¶]

“B: Do what you’re fucking supposed to do, Kathy, and fucking help your son.

“K: Well I’m not going to lie – [¶] . . . [¶] You almost killed me, Stephen. You almost killed me.

“B: Because you don’t fucking love me, Kathy. That’s the fucking point.”

Brewster was charged with, among other crimes, aggravated assault (Pen. Code, § 245, subd. (a)(4)),¹ false imprisonment by violence (§ 236), and dissuading a victim from prosecuting a crime (§ 136.1, subd. (b)(2)), and it was alleged he had suffered a prior strike and a prior serious felony conviction (§§ 667, subd. (a), (b)-(j), 1170.12).

Kathleen testified at trial that Brewster had attacked her. Brewster argued that Kathleen was not credible, and there had been no attack.

A jury found Brewster guilty of simple assault (§ 240) and false imprisonment (§ 237, subd. (a)), both lesser included offenses of charged crimes, and of dissuading a victim from prosecuting a crime, and the trial court sentenced him to seven years and eight months in prison.

DISCUSSION

Brewster contends insufficient evidence supported his conviction for dissuading a victim from prosecuting a crime because his attempt to persuade Kathleen to recant her complaint established only that he wanted her to tell the truth, i.e., that the underlying incident had not occurred, not that he intended to interfere with the prosecution.

¹ All further statutory references will be to the Penal Code.

Section 136.1, subdivision (b)(2) prohibits attempting to dissuade a crime victim from causing a complaint or information to be “sought and prosecuted, and assisting in the prosecution thereof.” The crime requires specific intent. (*People v. Young* (2005) 34 Cal.4th 1149, 1210.)

Intent “is usually inferred from all the facts and circumstances surrounding the crime.” (*People v. Lewis* (2001) 25 Cal.4th 610, 643.) If a defendant’s words or actions “are ambiguous, but reasonably may be interpreted as intending to achieve the future consequence of dissuading the witness from testifying, the offense has been committed.” (*People v. Wahidi* (2013) 222 Cal.App.4th 802, 806.)

To determine whether sufficient evidence supports a conviction “we review the whole record to determine whether any rational trier of fact could have found the essential elements of the crime or special circumstances beyond a reasonable doubt. [Citation.] The record must disclose substantial evidence to support the verdict—i.e., evidence that is reasonable, credible, and of solid value—such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. [Citation.] In applying this test, we review the evidence in the light most favorable to the prosecution and presume in support of the judgment the existence of every fact the jury could reasonably have deduced from the evidence. [Citation.] ‘Conflicts and even testimony [that] 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.] We resolve neither credibility issues nor evidentiary conflicts; we look for substantial evidence.

[Citation.]’ [Citation.] A reversal for insufficient evidence ‘is unwarranted unless it appears “that upon no hypothesis whatever is there sufficient substantial evidence to support” ’ the jury’s verdict.” (*People v. Zamudio* (2008) 43 Cal.4th 327, 357, italics omitted.)

When a criminal suspect instructs his victim to retract her statement to police, it is reasonable to presume he does so in order to spike any prosecution of the crime. Here, the jury could reasonably infer from Brewster’s instructing Kathleen to recant her statement to police that he intended to derail the prosecution against him.

Brewster argues that a criminal suspect who believes his accusing witness has lied about the crime does not interfere with the prosecution by urging her to tell the truth. He argues the evidence here established that he believed Kathleen had lied to police, and he merely urged her to tell the truth, intending not that she stop working with police but that she assist them by being truthful. The argument flatly contradicts the record and would require that we reappraise Brewster’s and Kathleen’s credibility, which we cannot do.

“An assault is an unlawful attempt, coupled with a present ability, to commit a violent injury on the person of another.” (§ 240.)

Kathleen told police that Brewster assaulted her.

The jury found that he assaulted her.

Absent evidence of some kind of fugue state or amnesia, of which there was none, the jury’s finding that Brewster assaulted Kathleen leads ineluctably to the conclusion that when he told her two days later to deny the assault, he knew he was telling her to lie.

DISPOSITION

The judgment is affirmed.
NOT TO BE PUBLISHED.

CHANEY, Acting P. J.

We concur:

BENDIX, J.

CURREY, J.*

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