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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. DAVID WORLEY, Defendant and Appellant.	B284948 (Los Angeles County Super. Ct. No. MA070760)

APPEAL from a judgment of the Superior Court of Los Angeles County, Christopher G. Estes, Judge. Reversed.

Maura F. Thorpe, 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, Steven D. Matthews and Analee J. Brodie, Deputy Attorneys General, for Plaintiff and Respondent.

A jury convicted David Worley of attempted criminal threats. The prosecution arose from an interaction between Worley and his father, in which Worley ranted to his father for an hour and a half about his delusional belief that his family was dead, and then screamed, while sitting in the street, "I will kill you." Father interpreted the statement to be an expression of frustration, and asked the police to help his son obtain mental health treatment. Instead, Worley was charged with making a criminal threat. The prosecution later added an attempted threat charge, and the court dismissed the original criminal threats charge.

Worley appeals from his conviction of attempted criminal threat, and argues that there was no substantial evidence his words conveyed the requisite "immediate prospect of execution of the threat." (*People v. Toledo* (2001) 26 Cal.4th 221, 228 (*Toledo*).) We agree and reverse.

FACTUAL AND PROCEDURAL BACKGROUND

On or around March 10, 2017, three days before the events that gave rise to the present appeal, Worley went to father's house and banged on the door. He wanted to know if his kids were okay. He encountered his sister, and told her he thought his kids had been killed. Although he initially recognized his sister, he then accused her of being an imposter. He broke down crying, saying " 'I just want to see my kids.' " His older brother then sat and talked with him, before the police arrived. Worley was admitted to the mental ward of a local hospital, and was released the next day.

Three days later, father was at his house with Worley's daughter and son, ages 12 and 11. Worley's sister called father from a few blocks away and said she had just passed Worley

walking toward the house. Worley was screaming, " 'I want my kids. Where are my kids?' " Sister also called the police.

Father walked outside to meet Worley, and told him, "It's okay. Calm down." Worley was confused, and asked father who he "was really," seeming to "doubt" father's identity. Worley wanted to know if his children were okay, and father "kept telling him" that the kids were fine. At one point, Worley's 11-year-old son came out to talk to Worley, but then as Worley started "getting louder," father asked the child to go back inside.

About half an hour into the conversation, Worley got more upset and said he did not know if his children were really his children. He curled up "in a ball" and started crying. Father sat with him. Then Worley started screaming again. In father's words, Worley was "mad at the world . . . because he can't fix any of it, and it's all gone." Worley said he thought his whole family was dead. Father reminded Worley that he had just seen his children at Christmas and at a birthday party, but Worley did not believe him.

Worley then lay down in the street while father stood in the driveway. According to father, Worley was still lying or sitting in the street when he yelled, " 'I will kill you. I will kill all of you' " and " 'you butchered my children.' " During this outburst, Worley looked "all over the place." Father later testified that at that moment Worley's attention was not focused on father, and the statement was not "directed directly at me . . . It's because he - - it just got to a point where the frustration was too much . . . ." Worley "was there laying in the street and just screaming hysterically . . . when [the police officers] pulled around the corner." Worley then stopped screaming, spoke with the police,

and got in the squad car. Father told the police that Worley "needs some help, mental help."

Worley was charged with criminal threats and possession of methamphetamine. Worley pled not guilty to the charges. The prosecution eventually dismissed the possession charge and offered to transfer Worley to an "A.R.C. court"— a court which coordinates mental health services and provides a treatment plan for a defendant on probation—if Worley pled guilty to the criminal threats felony, a strike. He declined the plea deal.

At trial, father testified that he did not feel afraid when Worley was yelling at him, but "was listening to him, and [] couldn't figure out how to help him . . . ." Father "felt sorry for him." After father completed his testimony, the prosecution added a charge of attempted criminal threats. At the close of the prosecution's case, the court granted the defense motion to dismiss the criminal threat charge on the ground there was insufficient evidence that Worley's statement made father afraid for his or his family's safety. The jury convicted Worley of attempted criminal threats.

At sentencing, the prosecution acknowledged that Worley was suffering from a mental illness " 'that significantly reduced culpability for the crime.' " The prosecution argued that the "California Department of Corrections and Rehabilitation has *vast* mental health resources at its disposal," and "urge[d]" the court "to make any necessary orders to ensure that [Worley] is evaluated by mental health professionals in prison so that [his] issues get addressed for perhaps the first time in his life." (Emphasis added.)[1]

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[1] The prosecution's suggestion that prison is the proper place to deal with Worley's mental health problems is at odds with

The defense asked that Worley be placed on probation "with the condition that he cooperate with probation in a plan for mental health counseling or treatment." The court declined to dismiss a prior strike for residential burglary, and sentenced Worley to a prison term of six years, four months. He timely appealed.

DISCUSSION

Worley argues there was no substantial evidence his words were "so unequivocal, unconditional, immediate, and specific as to convey to the person threatened, a gravity of purpose and an

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some of the literature in this area. "Thousands of people with mental illness are currently serving terms in California prisons. These individuals receive inadequate medical and psychiatric care, ... The poor treatment of California's mentally ill prisoners burdens the judicial system, drains the state's budget, and causes needless inmate suffering." (W. David Ball, *Mentally Ill Prisoners in the California Department of Corrections and Rehabilitation: Strategies for Improving Treatment and Reducing Recidivism* (2007) 24 J. Contemp. Health L. & Pol'y 1; see also Prison Psychiatry Chief's Report Accuses State of Misleading Court on Mental Health Care, Sacramento Bee (Oct. 10, 2018) [California psychiatry chief accused the California Department of Corrections and Rehabilitation of providing "inaccurate and misleading data" to a federal court and lawyers for prison inmates fighting to improve psychiatric care inside state prisons; the psychiatry chief's report indicated that although the state says its psychiatrists have seen patients 96 percent of the time in some cases, only 20 to 30 percent of those patients were seen].)

immediate prospect of execution of the threat."[2] (*Toledo*, *supra*, 26 Cal.4th at p. 228.) We agree.

Claims challenging the sufficiency of the evidence to uphold a judgment are reviewed under the substantial evidence standard. Under that standard, " 'an appellate court reviews the entire record in the light most favorable to the prosecution to determine whether it contains evidence that is reasonable, credible, and of solid value, from which a rational trier of fact could find [the elements of the crime] beyond a reasonable doubt.' " (*People v. Bolden* (2002) 29 Cal.4th 515, 553.) " 'Substantial evidence . . . is not synonymous with "any" evidence.' Instead, it is ' "substantial" proof of the essentials which the law requires.' [Citations.] The focus is on the quality, rather than the quantity, of the evidence. 'Very little solid evidence may be "substantial," while a lot of extremely weak evidence might be "insubstantial." ' [Citation.] Inferences may constitute substantial evidence, but they must be the product of logic and reason." (*Roddenberry v. Roddenberry* (1996) 44 Cal.App.4th 634, 651.)

The crime of criminal threat (Pen. Code, § 422 (section 422)) consists of five elements: "(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

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[2] Because we reverse on this ground, we do not reach Worley's additional arguments that (1) there was insufficient evidence he intended his words to be a threat or that no reasonable person would have been in fear, and (2) the trial court abused its discretion in declining to reduce the felony conviction to a misdemeanor or strike Worley's prior conviction.

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. [Citation.]" (*Toledo, supra,* 26 Cal.4th at pp. 227–228.)

The elements of attempted criminal threats of which Worley was convicted differ in one respect. A "defendant properly may be found guilty of attempted criminal threat whenever, acting with the specific intent to commit the offense of criminal threat, the defendant performs an act that goes beyond mere preparation and indicates that he or she is putting a plan into action. . . . [I]f a defendant, [] acting with the requisite intent, makes a sufficient threat that is received and understood by the threatened person, but, for whatever reason, the threat does not *actually* cause the threatened person to be in sustained fear for his or her safety even though, under the circumstances, that person reasonably could have been placed in such fear, the defendant properly may be found to have committed the offense of attempted criminal threat." (*Toledo*, *supra*, 26 Cal.4th at p. 231.)

"Section 422 demands that the purported threat be examined 'on its face and under the circumstances in which it was made.' The surrounding circumstances must be examined to determine if the threat is real and genuine, a true threat.

[Citation.] . . . [T]hreats are judged in their context." (*In re Ricky T.* (2001) 87 Cal.App.4th 1132, 1137 [criticizing the practice of relying "too much on judging a threat solely on the words spoken"].) "The circumstances surrounding a communication include such things as the prior relationship of the parties and the manner in which the communication was made. [Citation.]" (*In re Ryan D.* (2002) 100 Cal.App.4th 854, 860.)

"Section 422 was not enacted to punish emotional outbursts, it targets only those who try to instill fear in others. [Citation.]" (*People v. Felix* (2001) 92 Cal.App.4th 905, 913.) The statute "is not violated by mere angry utterances or ranting soliloquies, however violent." (*People v. Teal* (1998) 61 Cal.App.4th 277, 281.)

Worley contends there was insufficient evidence of the immediacy factor in section 422—that his statements conveyed to the person threatened "a gravity of purpose and an immediate prospect of execution of the threat." (*Toledo*, *supra*, 26 Cal.4th at p. 228.) Father testified that he did not feel afraid and Worley had never harmed him. Worley did not make any threatening gestures at the time of the statement (compare *People v. Lepolo* (1997) 55 Cal.App.4th 85, 88–89 [defendant raised a 36-inch machete and waved it at victim while making threat]), or engage in any physical conduct suggesting an immediate prospect of execution of a threat to kill (compare *People v. Butler* (2000) 85 Cal.App.4th 745, 749–750 [defendant and his cohorts surrounded victim and grabbed her arm]). Rather, before and after Worley made the threat, he was just sitting or lying in the street ranting and looking all around him.

Even the prosecutor implied in closing that Worley's words did not convey an immediate prospect of execution because the

unarmed Worley had no ability to kill father. The prosecutor argued to the jury that Worley "doesn't even have to be able to kill" to be convicted of an attempted criminal threat. "*If* he were actually able to kill," the prosecutor argued, the prosecution would have charged him with a more serious crime.[3]

In re Ricky T., supra, 87 Cal.App.4th 1132 is on point. In that case, the defendant was a high school student who became angry at his teacher, and threatened him saying, "I'm going to get you." (*Id.* at p. 1135.) The student was found to have made a criminal threat, and the Court of Appeal reversed, finding insufficient evidence the threat conveyed a gravity of purpose or immediate prospect of execution. (*Ibid.*) The court noted there had been no "physical show of force": the defendant had not "displayed his fists, damaged any property, or attempted to batter [the victim] or anyone else." (*Id.* at p. 1138.) Additionally, "there was no evidence of any circumstances occurring *after* [the defendant's] 'threats' which would further a finding" of a criminal threat—the defendant had gone straight to the "school office" after making the threat. (*Id.* at p. 1139.) The court found that the defendant's statement "was an emotional response to an accident rather than a death threat that induced sustained fear . . . ." (*Id.* at p. 1141.)

Here, as in *Ricky T.*, there was also "no evidence [] that appellant's angry words were accompanied by any show of physical violence—nothing indicating any pushing or shoving or

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[3] The prosecution said attempted murder "would be" that crime, but attempted murder requires a "direct but ineffectual *act* toward accomplishing the intended killing," not simply a statement expressing intent to kill. (*People v. Lee* (2003) 31 Cal.4th 613, 623 (emphasis added).)

other close-up physical confrontation." (*Ricky T.*, *supra*, 87 Cal.App.4th at p. 1138.) Worley did not gesture toward father, make any facial expression, or even look at father when he made the statements. There was also no evidence of circumstances *after* Worley's "threats" showing an intent to convey an immediate execution of the threat. Rather, Worley lay down in the street and continued to rant. Worley's preceding conversation with his father and yelling suggested he was distraught at the thought his family was dead, and was expressing his "frustration" as his father observed, rather than being intent on conveying a death threat to his father to induce sustained fear.

The circumstances present here are markedly different from cases where courts have found sufficient evidence of a threat conveying an imminent prospect of execution. (See *People v. Wilson* (2010) 186 Cal.App.4th 789, 814 [sufficient evidence that threats were made with "a gravity of purpose and an immediate prospect of execution" where an inmate told a correctional officer he would shoot him as soon as he was released from custody in 10 months, said he had killed officers in the past, and simulated pulling a trigger with his fingers]; *People v. Gaut* (2002) 95 Cal.App.4th 1425, 1431–1432 [sufficient evidence that a death threat conveyed an "immediate prospect of execution" when the defendant had a "lengthy history of not only threatening but also physically assaulting [the victim]"]; *People v. Mosley* (2007) 155 Cal.App.4th 313, 324 [sufficient evidence that an inmate's threats to correctional officers satisfied immediacy factor where defendant was found in possession of weapons in his cell, there was evidence he had connections to a criminal gang, and he told officers he was going to tell his gang associates to go to the officers' homes to kill them]; *People v. Franz* (2001)

88 Cal.App.4th 1426, 1448–1449 [sufficient evidence of an immediate prospect of execution where the defendant punched the victim, and then made a "throat-slashing gesture" and said "shhh" while looking directly at the victim when a police officer was present].)

The present case, when the evidence is viewed in the context of the uncontradicted evidence of the circumstances, involves a defendant who suffered a mental breakdown in front of his father and screamed out in frustration. At sentencing, father made clear that he and sister wanted Worley to "get some help" and did not "think prison is an answer for what's going on with him." Because there was insufficient evidence Worley's emotional outburst conveyed an immediate prospect he would attack father, we agree. On these grounds, we reverse.

DISPOSITION

The judgment is reversed.

RUBIN, ACTING P. J.

WE CONCUR:

GRIMES, J.

DUNNING, J.*

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