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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.

EDWIN GARCIA,

Defendant and Appellant.

B293144

(Los Angeles County
Super. Ct. No. BA460923)

APPEAL from a judgment of the Superior Court of Los Angeles County, Eleanor J. Hunter, Judge. Affirmed with directions.

Lynette G. Moore, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General of California, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Marc A. Kohm, Deputy Attorney General, Yun K. Lee, Deputy Attorney General, for Plaintiff and Respondent.

A jury convicted Edwin Garcia of stalking a woman. This crime has three elements. The state must prove (1) Garcia followed or harassed the victim; (2) he made a credible threat against her; and (3) he made this threat with the intent to place her in reasonable fear for her safety. (Pen. Code, § 646.9, subd. (a).) On appeal, Garcia argues there was insufficient evidence to satisfy elements two and three. Garcia also argues the trial court erroneously admitted evidence and should have stricken a prior conviction. We affirm, except we strike Garcia's three one-year sentences for prior prison terms on account of a new statute we refer to as SB 136. Unmodified code citations are to the Penal Code.

I

Given the verdict, these are the facts. In 2015, the victim was an extern at the American Civil Liberties Union. She met Garcia while visiting a client in jail. Garcia, an inmate, was handcuffed on the other side of the room. He waved to get her attention and was "very, very, very persistent." The victim spoke to Garcia for less than five minutes. Garcia made her promise to write him. She said she would give his information to the ACLU.

On July 2, 2015, Garcia wrote the victim a letter. He called her "sexy," "beautiful," "sweetie," and "cutie pie." He said her "lips look as soft and sweet as cotton candy" and her "petite frame, with its curves, is as tempting as cake to a fat child." Garcia said he "wanted nothing more than to hold" the victim and feel her next to him so he could stare into her "pretty eyes."

Garcia's letter continued that he had been in prison since June 2011 for possession of a knife and needed "to beat this case" so he could take her out on a date. He was in trial again for making criminal threats in a letter he wrote the judge and his

attorney. According to Garcia, when he said he wanted to write to the victim, she reacted as though “you have to tell someone you have to chop their legs to prevent death or that you ran over their cute-ass puppy” rather than as though she were “receiving a letter from your possible future husband.”

Without awaiting a reply, Garcia wrote a second letter. He said: “I don’t want you thinking I am stalking you because I just sent you a letter, like, six days ago.” He called her “baby” and hoped she did not lie about writing to him. Garcia said he had a year and a half left of his sentence but he “might get out soon.” He stressed his desire to win her over and said it would not be as easy. “But these hard times and trials and tribulations make me think of something I [saw] recently, and it goes, like, ‘The more you crush a rose, the more its fragrance is realized.’”

The victim wrote back, thanking Garcia but saying she could not share her personal information. She “just wanted to be nice” and “didn’t want to continue writing him.”

In March 2017, Garcia sent the victim several messages on Facebook and LinkedIn. The victim did not respond. She blocked Garcia on LinkedIn and deactivated her Facebook account, “hoping [his messages] would go away.”

Days later, Garcia called the victim at work. She told a coworker not to put the call through. The victim was afraid. She did not know how Garcia found her. She learned Garcia “had actually called a lot” to reach her and had spoken to other coworkers on the phone. A supervisor instructed staff not to answer Garcia’s calls.

A week later, Garcia went to the victim’s office. She was terrified and did not go out to see him. The receptionist said the victim was not available. Garcia gave documents to a supervisor.

When another supervisor left the building at the end of the day, she saw Garcia around the corner. She called to warn the victim. A coworker called police.

The victim was distraught. She told police she did not feel safe going to her car. Officers found Garcia outside and put him in the back of a police car. He told the officers he wanted to talk to the victim about a case. The officers told Garcia to leave and told the victim to get a restraining order.

The documents Garcia gave the supervisor included a letter. Garcia wrote: "It's obvious you don't want any dealing with me." He acknowledged he could have scared her by "coming off so strong with my letters" but said the victim was wrong to judge him. He explained he was "drunk and lonely" and "only looking for a friend." He said there "was a higher purpose for our paths crossing." Garcia congratulated the victim for becoming a lawyer and said if he "didn't have such a messed up record" he would commit a misdemeanor just to get the victim to represent him. Garcia also wrote about his time machine. He signed the letter "The Seeker" and "2 Pacs ghost." Other documents contained Garcia's conspiracy theories, policy ideas, and inventions. The victim feared Garcia was delusional and would not stop contacting her.

Garcia sent the victim an aggressive message on her reactivated Facebook account. He said, "Things could have gone so bad, with you calling the police. You could have told me to my face to 'F' off." The victim viewed Garcia's criminal history and was "terrified" and "didn't feel safe at all" when she saw his past violent offenses and conviction for unlawful sex with a minor.

Days later, Garcia sent victim another Facebook message. The message was "really aggressive and threatening" and left the

victim feeling afraid and disgusted. Garcia wrote, “Do you know things could have went so bad with the police? [Victim], I’m not like anyone you have ever met.” He also said he fantasized about having sex with her but he was not “a sexual deviant” because he was “in prison, horny all the time.”

Garcia wrote he was upset with the victim “for not being honest and for blowing things out of proportion and calling the cops on me.” He would “still fuck the shit out of you, if you’d let me.” The victim found the letter “super-angry.” Garcia “was not taking no for an answer.”

When a trial court granted the victim a temporary restraining order, Garcia messaged the victim on Facebook to say she “added fuel to the fire” because he was now under surveillance. The court then granted the victim a three-year restraining order prohibiting Garcia from contacting the victim or coming within 100 yards of her.

Garcia violated the restraining order. He tried to contact her by sending emails to her coworker who had represented the victim at the restraining order hearing. He sent flowers to her office with a “Happy Anniversary” card signed by “The Alpha” to commemorate the day they met or the first letter he sent.

Garcia returned to the victim’s workplace, waited for her, and approached her in the lobby. He said, “It didn’t have to be like this” and placed a letter on the counter. The victim was angry and afraid and said “Get the fuck away from me.” Garcia left when she called a coworker for help.

Garcia returned later that day and coworkers called police again. Garcia was pacing near the victim’s office building. A deputy arrested him there.

Garcia had two cell phones and documents containing the victim's information. Inspecting the cell phones revealed Garcia texted the victim's childhood phone number and asked, "Do you know [the victim]?" He also called that phone number and the victim's office number. Garcia watched an online video of the victim giving a commencement address several times. He ran various searches for the victim's workplace and law school, including searching for "porno of [the victim]."

Garcia had conducted another internet search for "females named [victim's name] killed."

The phones contained photos of the victim and her family, the victim's old address, her family members' various addresses and personal information, and the victim's Spotify profile.

The police found Garcia's ceremonial video of him burning the victim's 2015 letter. This video exceeded five minutes. It was set to a song titled "Fuck You Right Back." The video showed Garcia igniting the letter, using it to light a cigarette, and then letting it slowly disintegrate. Garcia's roommate watched in the background.

The jury convicted Garcia of stalking while violating a restraining order. (§ 646.9, subd. (b).) Separately, the trial court found five prior felony conviction allegations to be true and denied Garcia's motion to strike a prior felony.

On account of Garcia's sizable felony history, the court sentenced Garcia to 11 years. It imposed the high term of four years doubled to eight years under the "Three Strikes" law and added three one-year sentences for prior prison terms.

II

Substantial evidence supported Garcia's conviction.

A

The government had to prove three elements. Briefly, these elements are: (1) Garcia “willfully, maliciously, and repeatedly follow[ed] or willfully and maliciously harass[e]d” the victim; (2) he made a credible threat against her, meaning he appeared able to carry out the threat; and (3) he made the threat with the intent to place the victim in reasonable fear for her safety. (§ 646.9, subd. (a).) This shorthand leaves out important details, but gives us a handy overview: (1) “followed or harassed”; (2) made a “credible threat”; and (3) made the threat with the intent required by law.

Garcia does not contest element one on appeal. The controversy instead focuses on elements two and three: whether Garcia threatened the victim within the meaning of element two, and whether he made this threat with the intent element three requires. We take up these two elements in turn.

B

Element two required the government to prove Garcia made a credible threat with the apparent ability to carry out the threat so as to cause the victim reasonably to fear for her safety. (§ 646.9, subd. (g).) This statute explains a credible threat includes one implied by conduct or a combination of verbal, written, or electronically communicated statements and conduct. (The stalker also must make the threat with the intent to place the victim in reasonable fear for her safety. (§ 646.9, subd. (g).) We treat this intent component in the next section as element three.)

Element two focuses on the *effect* of Garcia’s actions on the victim, while element three focuses on his *intent*.

On element two, the evidence was substantial: Garcia made an implied threat, it was credible, and it caused fear.

The jury had substantial grounds for finding Garcia's words and actions constituted an implied threat. Garcia wrote "The more you crush a rose, the more its fragrance is realized." He wrote that the victim reacted as though "you have to tell someone you have to chop their legs to prevent death or that you ran over their cute-ass puppy." Garcia wrote the victim he wanted to "fuck the shit out of you" There is more. Taken as a whole, Garcia's obsessive and invasive persistence and his ominous imagery supported the finding of an implied threat.

The jury also was entitled to conclude the threat was credible. Garcia had tracked down the victim's work address. He could get to her, on his timetable.

Further, the jury had ample grounds for deciding Garcia's credible threat would have caused a reasonable person to fear for her safety. The record allowed the jury to find the victim's actual fear was reasonable. (Cf. *People v. Lopez* (2015) 240 Cal.App.4th 436, 452–453 [defendant was obsessed with victim and persistently refused to end what he perceived to be their relationship; his conduct amounted to a credible threat notwithstanding absence of overt threats].)

C

We turn to element three, which required Garcia to threaten the victim with the intent to put her in reasonable fear. (§ 646.9, subd. (g).) Garcia acted with the requisite intent. He wrote the victim in March 2017 that "It's obvious you don't want any dealing with me. . . . *It also can be that I scared you by coming off so strong with my letters.*" There is more but we need go no further. (See, e.g., *People v. Falck* (1997) 52 Cal.App.4th

287, 291–294 & 299 [jury could infer intent from persistent contacts despite repeated rejections, a stated desire to engage in sexual acts with victim, and references to their being together for eternity].)

Substantial evidence supported this conviction.

III

The trial court properly allowed the prosecution to question Garcia about threatening letters he wrote his former attorney and a judge. We review for abuse of discretion. (*People v. Scott* (2011) 52 Cal.4th 452, 491 (*Scott*).)

During direct examination, Garcia testified he endured “about a year of having a judge and an attorney lie and claim that I threatened them and almost having 17 years of my life taken away.” He wondered if his life was “going to be taken away from [him], all based off of lies.” During cross-examination, Garcia backtracked and said it was not all lies. Garcia admitted sending letters to a judge and an attorney. He meant to say the judge and attorney “were lying on the stand” about being concerned by what Garcia wrote.

At first, the trial court noted Garcia “obviously cleaned it up, as to what he meant” when Garcia said the judge and the lawyer lied. The trial court did not allow the prosecution to ask about what Garcia wrote in the letters because it was “not really relevant.”

Later, however, Garcia said, “there was no reason for them to be scared” At that point the trial court allowed the prosecution to ask limited questions about the letters’ contents to impeach Garcia “by bringing it out, that, in fact, there might have been some reason for them to be scared.” The court partially sustained defense counsel’s Evidence Code section 352

objection and restricted the prosecution's questions to the letters' contents and to the fact there was a third party who heard Garcia threaten the judge. The court did not admit the letters themselves into evidence.

Garcia argues the trial court erred by admitting the following testimony. Garcia's letter to his attorney said he regretted not breaking that attorney's finger at trial. Garcia also wrote he was going to visit the attorney when Garcia got out of prison and "make his house [Garcia's] courthouse." The letter Garcia wrote the judge said, "What goes around comes around" and "Only God can judge me, and I will see you again. Until then, have a good life." Garcia signed that letter, "Sincerely, God," which stood for "Guardian of Destiny." Garcia also confirmed he "made some threatening comments to a person in prison about the judge."

Garcia first argues the cross-examination presented improper character evidence under Evidence Code sections 1101, subdivision (a) and 1102. He forfeited these claims by not raising them at trial. (See *People v. Doolin* (2009) 45 Cal.4th 390, 437.)

Garcia next argues the trial court erroneously admitted Garcia's testimony about the letters because it did not fall under the prior inconsistent statement exception to hearsay. (Evid. Code, § 1235.) This exception is not pertinent. The trial court properly admitted the evidence to impeach Garcia's statement that the attorney and judge "had no reason to be scared." The court gave a proper limiting instruction. This argument fails.

Finally, Garcia argues the trial court should have excluded the testimony under Evidence Code section 352. The trial court's discretion to admit impeachment evidence is broad. (*People v.*

Clark (2011) 52 Cal.4th 856, 932.) The trial court exercised sound discretion. There was no error.

IV

The trial court properly denied Garcia’s motion to strike his prior conviction under the Three Strikes law. (§§ 667, subds. (b)–(i), 1170.12, subds. (a)–(d), 1385, subd. (a).) Garcia argues the trial court should have stricken his 2008 conviction for assault on a peace officer (§ 245, subd. (c)) because (1) this strike was remote in time, and (2) the current offense, stalking, involved no use of force. Both arguments fail.

We consider whether Garcia was outside the Three Strikes law’s spirit and therefore should be treated as though he was not previously convicted of a serious or violent felony. (*People v. Williams* (1998) 17 Cal.4th 148, 161.)

The trial court properly considered Garcia’s current and past convictions, background, character, and prospects. (*People v. Williams, supra*, 17 Cal.4th at p. 161.) Although Garcia only had one strike conviction—for assault on a peace officer—other convictions included unlawful sex with a minor more than three years younger, battery on a peace officer, resisting an executive officer, attempted firearm removal from a police officer, battery by gassing, indecent exposure, disorderly conduct in soliciting lewd acts, and carrying a dirk or dagger. Garcia has been continuously in custody from 2005 to the present, except for brief periods in 2011 and 2017.

Garcia’s trial counsel argued the court should strike the 2008 prior strike conviction in the interest of justice because Garcia never threatened or acted violently towards the victim, “had a very difficult upbringing,” and conducted himself “very respectfully” during trial. However, after the verdict in this case

Garcia told a jail psychiatrist that, after “serving my time, I’m going to take [the victim] out.” The next day Garcia told a sheriff’s deputy “Yeah, when I get out after my term, I’m going to kill her.” The trial court also found Garcia said “chilling” things at trial and believed Garcia was a threat to the victim.

Garcia now argues the prior strike conviction occurred nine years ago and should be stricken. The Three Strikes law’s primary purpose is to protect society by deterring repeat felony offenders. (See *Ewing v. California* (2003) 538 U.S. 11, 26–27.) Garcia’s continuous criminal history, which includes violent felonies, shows no break in his criminal conduct. Garcia’s recidivism places him within the spirit of the Three Strikes law.

It is irrelevant Garcia’s current stalking offense involved no actual force and only the threat of force.

A repeat criminal falls outside the Three Strikes law’s spirit only in extraordinary circumstances. (*People v. Carmony* (2004) 33 Cal.4th 367, 378.) The trial court’s decision was not so arbitrary or irrational that no reasonable person could possibly agree. (*Id.* at p. 377.) There was no abuse of discretion.

V

In supplemental briefing, the parties observe SB 136 amends section 667.5 to eliminate sentences for so-called prison priors in many cases. The Governor signed SB 136 on October 8, 2019. The trial court added three one-year sentences for prison priors to Garcia’s eight-year term, to produce a total sentence of 11 years. The parties agree we should strike three years off this 11-year total so Garcia’s total prison term is now eight years.

SB 136 does not apply if a previous prison sentence arose from a sexually violent offense. The parties agree Garcia’s record does not include this kind of crime.

There is an issue about timing. SB 136's effective date is January 1, 2020. Garcia's conviction will not be final on that date, nor will the remittitur have issued. We therefore order that Garcia's three one-year sentences for his prison priors be stricken effective January 1, 2020.

We will not remand this case to the trial court for resentencing, because the trial court already imposed the maximum possible prison term for this crime.

We direct the trial court to amend the abstract of judgment to reflect a maximum prison term of eight and not 11 years.

DISPOSITION

The judgment is affirmed. The three one-year sentences for prison priors are stricken from Garcia's sentence effective January 1, 2020, so his total prison sentence is eight rather than 11 years. The trial court must correct the abstract of judgment to reflect this change forthwith but need summon neither attorneys nor parties to court for this purpose.

WILEY, J.

We concur:

BIGELOW, P. J.

STRATTON, J.