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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

DARRYL LA JUAN MILLER,

Defendant and Appellant.

B239706

(Los Angeles County
Super. Ct. No. KA095126)

APPEAL from a judgment of the Superior Court of Los Angeles County, Robert M. Martinez, Judge. Affirmed.

Alan E. Spears, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Michael R. Johnsen and Idan Ivri, Deputy Attorneys General, for Plaintiff and Respondent.

Appellant Darryl La Juan Miller appeals from a jury verdict finding him guilty of making a criminal threat in violation of Penal Code section 422.¹ Appellant contends the evidence was insufficient to satisfy four of the five elements of that offense. We conclude the record contains sufficient evidence for a jury to find each of the elements proven beyond a reasonable doubt. We affirm.

FACTUAL AND PROCEDURAL SUMMARY

On August 7, 2011, appellant was in front of his parents' home working on his motorcycle. After leaving temporarily, he returned to the house very upset because two screws needed for the motorcycle were missing. He accused family members of taking the screws while he was gone. His mother, stepfather, sister, and his sister's children were at the home. He paced through the house, becoming increasingly loud. He threatened to take screws out of everyone else's things. He then approached to within three to four feet of his mother and told her that he would hit her in the head with an iron pipe and kill her. Then, he added that he would hit everyone in the house with an iron pipe and be sure he got the person who took his screws. His sister began to get her children ready so that they could leave the situation. Appellant handed his mother his keys to the house and to his truck and motorcycle. Appellant's mother testified she took the threats seriously because of previous incidents. In the past, he had threatened to tear up his mother's home in Alabama, then carried out the threat using barbells to break all the windows and knock holes in the walls. On another occasion, appellant entered the family home with a weapon and threatened to shoot anyone who moved. She also knew of an incident in which appellant shot at a friend's door because the friend had given his phone number to a girl. There also was an incident in which he punched his stepfather in the mouth, "completely unprovoked."

Appellant's mother said she was fearful that he was "completely out of control," just as he had been during the previous incidents. She also knew that he had been off of his medication for several years and worried that his mental state was "deteriorating."

¹ All further statutory citations are to the Penal Code.

Appellant's mother and sister left with the children in order to get out of "harm's way." A few hours later appellant's mother went to a police station to report the incident. Officers at the station told her they could only arrest appellant if he was at the house. She was not sure whether he was still there so she told police that she would call them later. She returned to the house with the rest of the family later that evening. Appellant arrived later that night, and his mother let him inside. Appellant quickly ate and "hurriedly" walked into the garage. Once there he proceeded to slice the seat of the motorcycle and remove and throw the motorcycle battery into the street in front of the house. At some point, his sister took the children and left. His stepfather walked down to a nearby gas station and telephoned police. Police arrived and arrested appellant.

Charged with making a criminal threat, appellant was convicted by jury trial. He was sentenced to state prison for a term of seven years, eight months. This appeal followed.

DISCUSSION

Appellant contends the evidence presented at trial was insufficient to prove the elements necessary for conviction of the criminal threat crime.

Not all threatening statements are criminal. In order to convict a defendant for the offense of making a criminal threat under section 422, the prosecution must prove five elements: (1) the defendant "willfully threaten[ed] to commit a crime which [would] result in death or great bodily injury"; (2) the defendant made the threat with the "specific intent" that it be taken as such by another; (3) the threat, on its face and under the circumstances in which it was made, was "so unequivocal, unconditional, immediate, and specific as to convey to the person threatened, a gravity of purpose and an immediate prospect of execution"; (4) the threat actually causes the victim to be in "sustained fear" for his or her own safety or that of his or her immediate family; and (5) the victim's fear was reasonable under the circumstances. (§ 422; *In re George T.* (2004) 33 Cal.4th 620, 630.)

In assessing the sufficiency of the evidence, we consider the entire record "in the light most favorable to the judgment below." (*People v. Mendoza* (2011) 52 Cal.4th

1056, 1068.) We must affirm the judgment if there is substantial evidence from which a rational jury could find each of the elements was proven beyond a reasonable doubt. The fact that there is contrary evidence does not warrant reversal. (*Id.* at pp. 1068-1069.)

Appellant concedes the first element is met because his “remark” that he would hit his mother in the head with a lead pipe and kill her is a threat to commit a crime that would result in at least great bodily injury to another person. He contends the evidence fails to support the other four elements.

Appellant’s arguments about the second and third elements are essentially the same, so we discuss them together. A defendant need not intend to carry out the threat, but rather, must intend that his words be taken as a threat. Regarding the gravity of purpose element, the four qualities listed by section 422 (unequivocal, unconditional, immediate, and specific) are not absolutely mandated but are ““simply the factors to be considered in determining whether a threat”” and the surrounding circumstances convey the impression to the victim that there is a gravity of purpose in the threat and an immediate prospect of its execution. (*In re George T.*, *supra*, 33 Cal.4th at p. 635, quoting *People v. Stanfield* (1995) 32 Cal.App.4th 1152, 1158.)

Appellant contends the statements made before and after the threat as well as the overall context in which they were made, and the emotionally-charged state he was in, indicate that he only wanted to get his family’s attention. He argues this made it clear his words were not to be taken as a threat and that a gravity of purpose was not conveyed. The evidence belies this claim.

Appellant entered the house “completely out of control.” His mother tried to ignore him out of fear that engaging him would only further incite him. However, he continued to get louder and louder. He then told his mother that he would kill her with a lead pipe. Appellant claims that his statement just before this threat, “Oh, so you’re just going to ignore me, huh?” means the threat was only conditional, and that this conditional nature, in light of his motive to get attention and his emotionally-charged state, leads “inescapably to the conclusion” that he lacked gravity of purpose. Our Supreme Court has explicitly held that a prosecution under section 422 does not require an unconditional

threat. (*People v. Bolin* (1998) 18 Cal.4th 297, 337-339; cf. *Tuberville v. Savage* (1669) 1 Mod. Rep. 3, 86 Eng.Rep. 684.) The second element of section 422 goes to whether the utterer intended his or her statement to be taken as a threat, not the ultimate motive for threatening the victim. (See *People v. Gudger* (1994) 29 Cal.App.4th 310, 322 [“regardless of the particular objective” the pertinent question is whether the means used was intended as a threat].) The fact that appellant was seeking the attention of his family, even were that the case, does not preclude a jury from finding that he intended his words to be taken as a threat by his mother.

Appellant also claims his threat to live elsewhere, the handing over of his keys after the threat was made, and the fiery state he was in, are dispositive on the question of whether he conveyed a gravity of purpose to his mother. We fail to see how this leads only to the conclusion that he lacked the requisite criminal purpose. In fact, a defendant’s “disgruntled and agitated state at the time of the threats” can be used as evidence that the defendant did indeed intend the words to be taken as true threats. (*People v. Gudger, supra*, 29 Cal.App.4th at p. 321.) We find substantial evidence to support a jury conclusion that appellant intended his words to be taken as a threat and that his threat, on its face and under the circumstances, conveyed a gravity of purpose to his mother.

Finally, appellant argues there is insufficient evidence to support a finding that his mother was in sustained fear which was reasonable under the circumstances, and hence that the fourth and fifth elements of the crime were not proven.

In order to violate section 422, a threat must cause the victim to reasonably be in “sustained fear for his or her own safety or for his or her immediate family’s safety.” (§ 422.) “Sustained fear” refers to a period of fear beyond that which is momentary or fleeting. (*People v. Fierro* (2010) 180 Cal.App.4th 1342, 1348-1349.)

Appellant argues his mother’s actions indicate she was not in sustained fear. He points to her failure to immediately leave after the threat, her decision to wait a few hours before going to the police to report the incident and then telling police to wait until she called them before trying to arrest him, and allowing him to reenter the house later that

day. He further claims a consideration of all the circumstances shows any fear she experienced was unreasonable. Appellant argues his mother's knowledge of his past violence was irrelevant.

The fourth element requires the victim be in actual fear. Appellant's mother testified that she took his threats to kill her and her family seriously. People experience and react to emotions in unique ways and the question whether appellant's mother was actually in fear is a question of fact, a credibility issue for the jury to decide. The fact that appellant's mother waited for her daughter and grandchildren is not necessarily inconsistent with her experiencing fear; a rational juror could conclude she wanted to make sure they *all* got out of "harm's way" together. She testified that she told police to wait until she called because she was not sure whether appellant would be home, since police had told her it would be "fruitless" if they went to the house and he was not there.

Additionally, we disagree with appellant's claim that his past violence is irrelevant. "'The victim's knowledge of defendant's prior conduct is relevant in establishing that the victim was in a state of sustained fear. [Citation.]'" (*People v. Wilson* (2010) 186 Cal.App.4th 789, 808, quoting *People v. Allen* (1995) 33 Cal.App.4th 1149, 1156.) Appellant's mother testified that she took the threats seriously because she has "known him to say things before and he followed through." Appellant had come into the house with a weapon in the past and threatened to shoot the entire family. He had once threatened to tear up his mother's house, then followed through with the threat. He shot at a friend's door over a trivial matter. He hit his own stepfather in the mouth "completely unprovoked." Appellant's mother stated that all of these incidents caused her to take appellant seriously when he made the threat. This evidence of appellant's past conduct is highly relevant on the issue of whether appellant's mother was reasonably in sustained fear. It provides additional support for the jury's conclusion.

We conclude the record provides substantial evidence that each of the five elements of section 422 were proven, supporting the guilty verdict.

DISPOSITION

The judgment is affirmed.

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EPSTEIN, P. J.

We concur:

WILLHITE, J.

SUZUKAWA, J.