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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE, Plaintiff and Respondent, v. JARED ANTHONY MARKS, Defendant and Appellant.	B278445 (Los Angeles County Super. Ct. No. MA066424)

APPEAL from a judgment of the Superior Court of Los Angeles County. Kathleen Blanchard, Judge. Affirmed.

G. Martin Velez, 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, Senior Assistant Attorney General, Jonathan J. Kline and Nathan Guttman, Deputy Attorneys General, for Plaintiff and Respondent.

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A jury convicted Jared Anthony Marks (defendant) of attempted carjacking and making criminal threats after he tried to get into a college student's car (while the student was still in it), ordered the student to open the car's door, asked the student if he wanted to die, and began punching the car's driver's side window. On appeal, defendant argues that the evidence was insufficient to support his convictions. We disagree and affirm.

FACTS AND PROCEDURAL BACKGROUND

In the late afternoon in July 2015, Oscar Escobar (Escobar) was seated in the driver's seat of his parked 2001 Toyota Celica in a student parking lot at Antelope Valley College. Defendant approached the car from the passenger's side and pulled on the door handle, but it was locked. Defendant then walked around the back of the car to the driver's side and rapped on the driver's side window with a knuckle. Escobar rolled down his window an inch or two to ask defendant, "Can I help you?" Defendant said he was looking for a specific professor (who, as it turned out, does not exist). When Escobar told him he did not know that professor, defendant pulled on the driver's side door handle. Defendant then ordered Escobar to "open the door." Escobar refused. Defendant stood outside the driver's side window for the next 10 seconds, staring "pretty hard" at Escobar before calmly asking, "Do you want to die today?" Defendant then immediately began punching the driver's side window with his fist. Escobar threw his car in reverse and drove away down the aisle of the parking lot. Defendant caught up to Escobar when Escobar stopped at a stop sign in the parking lot and again began to punch the driver's side window. Escobar then "sped" off out of the parking lot.

The People charged defendant with (1) attempted carjacking (Pen. Code, §§ 215, subd. (a) & 664),[1] and (2) making a criminal threat (§ 422, subd. (a)). A jury convicted defendant of both counts. The trial court imposed a sentence of 18 months on the attempted carjacking count and imposed (but stayed under section 654) a 16-month sentence on the criminal threats count.

Defendant filed this timely appeal.

DISCUSSION

Defendant challenges the sufficiency of the evidence underlying both counts. In evaluating such challenges, we ask whether the record contains enough evidence that is reasonable, credible, and of solid value for a reasonable trier of fact to find the defendant guilty beyond a reasonable doubt. (*People v. Brooks* (2017) 2 Cal.5th 674, 729.) In so doing, we look to the entire record, construing it in the light most favorable to the verdicts and "'"accept[ing] [all] logical inferences that the jury might have drawn from the evidence."'" (*People v. Salazar* (2016) 63 Cal.4th 214, 242.)

I. Attempted Carjacking

To convict a defendant of carjacking, the People must prove (1) "the felonious taking of a motor vehicle in the possession of another," (2) "from his or her person or immediate presence . . .," (3) "against his or her will," (4) "with the intent to either permanently or temporarily deprive the person in possession of the motor vehicle of his or her possession," and (5) "accomplished by means of force or fear." (§ 215, subd. (a); *People v. Capistrano* (2014) 59 Cal.4th 830, 886.) To convict a defendant of *attempted*

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[1] All further statutory references are to the Penal Code unless otherwise indicated.

carjacking, the People must prove (1) "'a specific intent to commit [a carjacking],'" and (2) "'a "direct" ineffectual act done towards'" the commission of that crime. (*People v. Morante* (1999) 20 Cal.4th 403, 419.)

Defendant asserts that there is insufficient evidence that he specifically intended to commit a carjacking. We disagree. Defendant approached Escobar's car, tried to get into the car through the passenger's side door and then through the driver's side door, ordered Escobar to "open the door," and then chased the car down after Escobar drove away. From this evidence, a reasonable jury could find that defendant specifically intended to take Escobar's car. Defendant asserts that Escobar testified that he "didn't know" whether defendant wanted his car, wanted to hurt him, or wanted "something" else; defendant also points out that there was no evidence defendant attempted a second carjacking that day. Contrary to what defendant implies, Escobar's subjective view of what defendant wanted is not controlling. It was up to the jury to consider Escobar's view as well as the other evidence surrounding the crime in assessing defendant's specific intent. We decline defendant's invitation to reweigh the evidence (*People v. Prunty* (2015) 62 Cal.4th 59, 89), and we affirm because the jury's weighing is supported by substantial evidence. Further, the absence of a second attempted carjacking does not call into question the sufficiency of the evidence regarding his intent to commit the charged attempted carjacking.

II. Criminal Threat

To convict a defendant of making a criminal threat, the People must prove that (1) "the defendant 'willfully threaten[ed] to commit a crime which will result in death or great bodily

injury to another person,'" (2) "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 out,'" (3) "the threat . . . 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) "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) "the threatened person's fear was 'reasonabl[e]' under the circumstances." (*People v. Toledo* (2001) 26 Cal.4th 221, 227-228; § 422, subd. (a).)

Defendant contends that there is insufficient evidence (1) that his threat was sufficiently "unequivocal, unconditional, immediate, and specific" (the third element) because he simply asked a question, "Do you want to die today?" and (2) that Escobar was actually and reasonably in *sustained* fear (the fourth and fifth elements) because the entire crime lasted a matter of minutes. We disagree.

A. Sufficiently Unequivocal and Unconditional Threat

In evaluating whether a defendant's words are "so unequivocal, unconditional, immediate, and specific as to convey . . . a gravity of purpose and an immediate prospect of execution of the threat," we must look at "'all the surrounding circumstances and not just the words alone.' [Citation.]" (*People v. Culbert* (2013) 218 Cal.App.4th 184, 189-190; *In re Ricky T.* (2001) 87 Cal.App.4th 1132, 1137 ["threats are judged in their context"]; *People v. Smith* (2009) 178 Cal.App.4th 475, 480 [requiring examination of the "totality of the circumstances"].)

Defendant, after twice trying to enter Escobar's car and demanding that he "open the door," calmly uttered the words "Do you want to die today?" before immediately beginning to punch the driver's side window. Given the totality of these circumstances, the defendant's words conveyed "a gravity of purpose and an immediate prospect of execution of the threat."

Defendant asserts his words did not, citing (1) the fact that his words were in the form of a question, (2) Escobar did not at first take defendant "seriously," (3) defendant never displayed a weapon, and (4) defendant had no prior history of disagreement with Escobar. The fact that defendant phrased his threat as an interrogative sentence rather than a declarative sentence is of no moment. Given the context of his words, defendant was not posing some existential, philosophical question about the frailty of our mortal coil; instead, he was effectively telling Escobar, "Let me into your car, or I will kill you today." Although Escobar admitted he did not at first take defendant seriously because defendant was acting "weird," Escobar began to take defendant very seriously once defendant starting punching the driver's side window. In the fuller context, which is what we must consider, Escobar took the threat seriously. Lastly, there is no absolute requirement that a threat be accompanied by the display of a weapon or by a prior history of animosity between those involved. To be sure, such factors can be relevant when a threat is more equivocal or is unaccompanied by violence. (E.g., *In re Ricky T.*, *supra*, 87 Cal.App.4th at pp. 1134-1138 [student's threat to teacher, "I'm going to get you," without any show of violence and any prior history of disagreement, does not constitute an actionable threat].) In this case, however, defendant's words

specifically referenced death and were immediately followed by the violent and repeated punching of the car's windows.

B. Sustained Fear

In assessing whether a threat actually and reasonably placed the victim in "sustained fear," we must ask whether the fear lasted for "a period of time that extends beyond what is momentary, fleeting, or transitory." (*People v. Allen* (1995) 33 Cal.App.4th 1149, 1156 (*Allen*); *People v. Fierro* (2010) 180 Cal.App.4th 1342, 1349 (*Fierro*); *People v. Wilson* (2015) 234 Cal.App.4th 193, 201.) Here, Escobar testified that his interaction with defendant caused him to be "scared," caused him to feel he was in danger, and caused his heart to "pound[]" and his "whole body [to] shak[e]."

Defendant does not really dispute the genuineness of Escobar's fear, but argues that the fear was not "sustained" because the entire interaction between himself and Escobar lasted a matter of minutes and was, in Escobar's own words, "fairly quick." This argument seems to rest on the premise that a criminal threat is actionable only if the victim's fear lasts some minimum quantum of time. But no such absolute minimum exists. Courts have held that fear lasting 15 minutes is sufficient. (*Fierro*, *supra*, 180 Cal.App.4th at p. 1349 ["a person who hears someone say, 'I will kill you . . . right now,' coupled with seeing a weapon, is quite justified in remaining 'scared shitless' . . . for 15 minutes"]; *Allen*, *supra*, 33 Cal.App.4th at p. 1156 ["Fifteen minutes of fear of a defendant who is armed, mobile, and at large, and who has threatened to kill the victim and her daughter, is more than sufficient to constitute 'sustained' fear"].) Some courts have even held that a minute may be enough: "When one believes he is about to die, a minute is longer

than 'momentary, fleeting, or transitory.'" (*Fierro*, at p. 1349.) In this case, Escobar's fear lasted from the time defendant issued his threat, during his punching assault on the car, and as he chased Escobar through the parking lot; indeed, Escobar was still scared minutes later when he reported the crime to law enforcement and when defendant was still at large. Escobar's fear, in the face of defendant's words and accompanied by defendant's violent conduct, was actually and reasonably more than "momentary, fleeting, or transitory."

DISPOSITION

The judgment is affirmed.

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_____, J.
HOFFSTADT

We concur:

_____, Acting P. J.
CHAVEZ

_____, J.*
GOODMAN

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