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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

LEON HICKS,

Defendant and Appellant.

2d Crim. No. B275296
(Super. Ct. No. NA103502-01)
(Los Angeles County)

Leon Hicks appeals a judgment following his conviction for making criminal threats. (Pen. Code, § 422, subd. (a).) We conclude substantial evidence supports the judgment. We affirm.

FACTS

On January 31, 2016, police responded to a domestic violence call. Hicks's brother had held a knife to T.B., the brother's pregnant girlfriend.

Police Officer Daniel Visser spoke with T.B. As he was interviewing her, Hicks approached the area and in a loud voice said, "Where is my brother?"

Police Officer Gabriel Ruiz noticed that Hicks was “looking over intently to the area where [T.B.] and the officers . . . were conducting their investigation [Hicks] looked at her in that direction pretty much the entire time.” Ruiz told Hicks that his brother “was being detained for a domestic violence incident.”

Hicks was “very upset and began to yell and curse.” He was “upset that his brother was being arrested.”

Ruiz asked Hicks to “step back.” Hicks did not comply. Hicks turned around, “faced” T.B., and “continued to stare” at her. He began pounding his fist into the palm of his hand and yelling, “I can’t wait. I can’t wait.” After Hicks said those words and made the hand gesture, T.B. became “very scared,” “visibly shaken up,” and “very emotional.”

Ruiz viewed Hicks’s conduct as an attempt “to intimidate [T.B.] and cause her to become scared.” He arrested Hicks.

Hicks was charged with dissuading a witness by force or fear (§ 136.1, subd. (c)(1)) (count 1) and making criminal threats (§ 422, subd. (a)) (count 2).

At trial Hicks testified that he did not “direct any words towards” T.B. and he did not punch his fist into his hand. He was not angry, he did not give T.B. “angry looks,” and he did not threaten her. He was waiting for the officers to complete their investigation. He added, “I was there really waiting to talk to [T.B.] after they finished talking to her. I was standing right there.”

The jury could not reach a verdict on count 1. It found Hicks guilty on count 2, making criminal threats.

DISCUSSION

Substantial Evidence

Hicks contends there is insufficient evidence to support his conviction for making criminal threats. We disagree.

In reviewing the sufficiency of the evidence, we determine whether after viewing “the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” (*People v. Holt* (1997) 15 Cal.4th 619, 667.) We do not weigh the evidence or decide the credibility of the witnesses. We draw all reasonable inferences in favor of the judgment. “Reversal on this ground is unwarranted unless it appears ‘that upon no hypothesis whatever is there sufficient substantial evidence to support [the conviction].’” (*People v. Bolin* (1998) 18 Cal.4th 297, 331.)

“In order to prove a violation of section 422, the prosecution must establish all of the following: (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 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 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.” (*People v. Toledo* (2001) 26 Cal.4th 221, 227-228, italics added.)

Hicks contends element 3 was not established. He claims his “statements and gestures were too equivocal, ambiguous, and conditional under the circumstances to constitute a criminal threat.” We disagree.

“Even an ambiguous statement may be a basis for a violation of section 422.” (*People v. Butler* (2000) 85 Cal.App.4th 745, 753.) “[T]he meaning of the threat by defendant must be gleaned from the words and all of the surrounding circumstances.” (*Ibid.*) “Thus, it is the circumstances under which the threat is made that give meaning to the actual words used.” (*Ibid.*) “A threat is not insufficient simply because it does ‘not communicate a time or precise manner of execution, section 422 does not require those details to be expressed.” (*Id.*, at p. 752.)

Here the words “I can’t wait. I can’t wait,” the accompanying fist-slamming gestures, and surrounding circumstances were sufficient to support a finding that Hicks made a criminal threat. (*People v. Franz* (2001) 88 Cal.App.4th 1426, 1448 [“defendant’s shushing noise, accompanied by the throat-slashing gesture,” were sufficient to constitute a section 422 threat]; *People v. Mendoza* (1997) 59 Cal.App.4th 1333, 1340-1341 [defendant’s words facially “did not articulate a threat,” but “surrounding circumstances” proved it was a threat].)

Hicks was angry because T.B. was talking to the police who had arrested his brother. He was looking at her as he made the hand gestures. He was yelling at her. A trier of fact could reasonably find that Hicks’s fist slamming into his hand communicated what he intended to do to T.B. Ruiz testified he

viewed Hicks's conduct as an effort "to intimidate our victim and cause her to become scared. That he was going to harm her by using that violent action." The jury could reasonably infer that the combination of Hicks's words and fist-slamming gestures was equivalent to the threatening message that he could not wait to physically attack her.

In *People v. Gonzalez* (2017) 2 Cal.5th 1138, our Supreme Court held a defendant may not be convicted for violating section 422 where the threat is entirely conveyed by using nonverbal hand gestures. The absence of any verbal remark was the missing element in that case. But here, by contrast, Hicks used both hand gestures and words--"I can't wait."

Hicks contends element 4 was not established. He claims there was insufficient evidence that the threat "was actually conveyed to the victim or that she suffered sustained fear as a direct result." (Initial capitalization and underscore omitted.) We disagree.

"[S]ustained" fear "means a period of time that extends beyond what is momentary, fleeting, or transitory." (*People v. Allen* (1995) 33 Cal.App.4th 1149, 1156.) There is "no specific minimum time" required for this element. (*Id.* at p. 1156, fn. 6.) Hicks cites to evidence that he claims supports his position. But the issue is not whether some evidence supports appellant, it is only whether substantial evidence supports the judgment.

Ruiz testified Hicks "walked past" and "continued to stare at the victim." He said, "After [Hicks] got maybe a few feet away, he stopped, turned around, faced her, and then began punching his hand . . . and yelling, 'I can't wait. I can't wait.'" Hicks was looking "right at her" when he made these remarks and nothing obstructed her view of him. Ruiz testified about

T.B.'s "demeanor" after Hicks engaged in this conduct. He said, "She was very scared. She was visibly shaken up. She was very emotional. Her eyes were red, like she had been crying. She spoke nervously." The evidence is sufficient. We have reviewed Hicks's remaining contentions and we conclude he has not shown grounds for reversal.

DISPOSITION

The judgment is affirmed.

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GILBERT, P. J.

We concur:

YEGAN, J.

PERREN, J.

Laura L. Laesecke, Judge
Superior Court County of Los Angeles

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