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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THE PEOPLE,

Plaintiff and Respondent,

v.

GEORGE GOUDA,

Defendant and Appellant.

B267320

(Los Angeles County
Super. Ct. No. MA062594)

APPEAL from a judgment of the Superior Court of
Los Angeles County, Eric P. Harmon, Judge. Affirmed.

Winston Kevin McKesson for Defendant and Appellant.

Kamala D. Harris and Xavier Becerra, Attorneys General,
Gerald A. Engler, Chief Assistant Attorney General, Lance E.
Winters, Senior Assistant Attorney General, Steven D. Matthews
and Shawn McGahey Webb, Deputy Attorneys General, for
Plaintiff and Respondent.

INTRODUCTION

After hearing testimony that George Gouda drove directly at a vehicle carrying his ex-girlfriend and her mother causing it to crash, a jury convicted Gouda of, among other crimes, attempted murder and assault with a deadly weapon. Gouda argues the evidence was insufficient to support those convictions and his trial counsel provided ineffective assistance. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

A. *A Violent Relationship*

On March 24, 2014 Samantha Jameel spent the night with her boyfriend, Gouda, in his bedroom at his parents' house in Lancaster. When Jameel woke the next morning, she tried to wake Gouda so he could take her to the beauty school she attended. Because Gouda was uncooperative, Jameel sent a text message to her mother, Janette Harris, asking her to come pick her up. Meanwhile, angry Jameel had awakened him, Gouda kicked Jameel. A fight ensued in which Gouda got on top of Jameel and hit her several times above the shoulders with a closed fist. After Gouda's mother and sister entered the room, the melee spilled into the hallway, where Gouda punched Jameel and hit her multiple times in the head and back with a piece of a metal bed frame.

Harris arrived a few minutes later and parked to wait for Jameel outside the house, but when Jameel tried to walk out through the front door Gouda grabbed her by the hair and pulled her back inside. Jameel managed to free herself and ran outside to meet Harris who, having seen Jameel "jerk[ed]" back inside,

had gotten out of her car. Gouda followed Jameel outside, punched her in the head multiple times, and pushed her and Harris to the ground. Jameel and Harris eventually made it to Harris's car, and drove directly to the Lancaster sheriff's station.

At the station Jameel and Harris reported what had happened, and a sheriff's deputy photographed bruises and scratches on Jameel's head, neck, back, arms, and hands. Jameel also obtained an emergency protective order against Gouda. Over the next two or three days, however, Gouda attempted to contact Jameel more than 50 times by phone or text message or through social media. Jameel blocked Gouda's calls and did not respond to his messages, which included apologies for what he had done to her, promises to start a life together, threats he would kill himself if she left him, and claims it was "life or death for [her] to call him back." Because of these messages, Jameel was "very, very scared"; she "did not know what [Gouda] was capable of or what he was going to do."

Three days after the incident at Gouda's parents' house, Jameel parked her car in the parking lot at her school, got out, and found Gouda had parked his car behind her, blocking her. As Gouda got out of his car, Jameel screamed he was not supposed to be there and she had a restraining order against him. Jameel jumped back into her car, locked the doors, and phoned the sheriff's department. Gouda walked up to Jameel's car window, asked whether they were "over," and, when she answered yes, he punched the window several times as though to break it. Gouda then got back in his car and moved it about 30 feet away, where Jameel could still see him. There he made a slashing motion across his neck while mouthing the words "I'm going to kill you." Afterward he got out of his car again, walked over to Jameel's

car, punched the side of it, and ripped a plastic bug shield off the hood. When another student came around the corner of the school and saw what was happening, Gouda fled. Later a sheriff's deputy arrived, took Jameel's report of what had happened, and photographed the damage to her car.

B. *A Car Crash*

Two days later, Harris was driving Jameel on a local two-lane road when Jameel suddenly pointed at a brown SUV she recognized belonged to Gouda approaching in the opposite lane. Jameel said, "Mom, it's George!" At that moment the brown SUV, which was now seven to 10 car lengths in front of them, accelerated and moved into their lane. Harris saw Gouda driving the brown SUV. Harris swerved to avoid him; otherwise, he would have hit her car head-on. Harris's vehicle flipped, then rolled three times. The brown SUV drove away without stopping.

Members of the sheriff's department and the fire department removed Jameel and Harris from their vehicle. Both women were conscious, but dazed. Jameel told a sheriff's detective that "her ex-boyfriend, George Gouda, had just ran them off the road." The detective also spoke with Garret Gutierrez, who had been riding on the same street at the time of the crash. Gutierrez saw a brown SUV traveling toward Harris's vehicle, then "a lot of dust," followed by Harris's vehicle flipping. Sheriff's deputies found Gouda that night and took him into custody.

C. *A Trial*

In connection with the car crash, the People charged Gouda with two counts of attempted willful, deliberate, and

premeditated murder (Pen. Code, §§ 187, subd. (a), 664)¹ and two counts of assault with a deadly weapon (§ 245, subd. (a)(1)). In connection with the events of the days leading up to the crash, the People charged Gouda with making a criminal threat against Jameel (§ 422, subd. (a)), assaulting her by means likely to produce great bodily injury (§ 245, subd. (a)(4)), misdemeanor battery of Harris (§ 242), and misdemeanor vandalism (§ 594, subd. (a)).

Jameel, Harris, and Gutierrez testified at the jury trial, as did two women who dated Gouda before Jameel had. One of the latter two witnesses testified that during their relationship Gouda sent text messages threatening that, if she refused to go out with him, he would “put her through hell” and kill her or her mother. The other woman who previously dated Gouda testified that during an argument he pinned her against a truck with his arms, grabbed her chin, said he would hit her, and threatened, “I know where you live, where you work at.”²

For the defense Gouda’s mother and his sister testified that on the morning of March 25, 2014 they heard Jameel yelling at Gouda to wake up and that, when they entered Gouda’s room, Jameel was on top of him, either scratching him or pulling his shirt, saying she wanted to go to school. According to them, that was the extent of the physical altercation between Jameel and Gouda before Jameel left the house with Harris.

¹ Statutory references are to the Penal Code.

² Gouda does not contend the trial court erred in admitting this evidence. Gouda argues only this evidence showed he “likes to talk, not that he acts on his comments.”

A defense medical expert testified about the effects of various prescription drugs Harris took the day of the car crash, including a muscle relaxant and an anti-anxiety medication. In his opinion those medications, particularly when combined, had a “significant potential, depending on the individual,” to adversely affect one’s ability to drive a motor vehicle, though the expert could not say what effect they had on Harris specifically. The defense also called an accident reconstructionist who opined, based on the police report and other information concerning the car crash, it was a single-vehicle, rollover accident, rather than a collision between two vehicles.

The jury convicted Gouda on all counts, and the trial court sentenced him to state prison for 17 years 2 months. Gouda timely appealed.

DISCUSSION

A. *Substantial Evidence Supports the Convictions for Attempted Willful, Deliberate, and Premeditated Murder and Assault with a Deadly Weapon*

“When considering a challenge to the sufficiency of the evidence to support a conviction, we review the entire record in the light most favorable to the judgment to determine whether it contains substantial evidence—that is, evidence that is reasonable, credible, and of solid value—from which a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. [Citation.] . . . We presume in support of the judgment the existence of every fact the trier of fact reasonably could infer from the evidence. [Citation.] If the circumstances reasonably justify the trier of fact’s findings, reversal of the judgment is not

warranted simply because the circumstances might also reasonably be reconciled with a contrary finding. [Citation.] A reviewing court neither reweighs evidence nor reevaluates a witness's credibility.” (*People v. Covarrubias* (2016) 1 Cal.5th 838, 890; see *People v. Lee* (2011) 51 Cal.4th 620, 632; *People v. Jimenez* (2015) 242 Cal.App.4th 1337, 1353-1354.)

As the People note in their brief, Gouda's challenge to the evidence supporting the convictions related to the car crash goes solely to witness credibility. Specifically, Gouda concedes the testimony of Jameel and Harris was sufficient to support his convictions, but he suggests the jury should have rejected the “self-serving statements from the victims of what they believed happened” and that “the accident did not happen the way the victims claim” because other evidence and inferences supposedly conflicted with Jameel and Harris's account. For example, he argues that, although Harris claimed she saw Gouda driving the brown SUV, it is likely she merely “envision[ed]” it because Jameel first said, “Mom, it's George!” As another example, he notes Gutierrez testified he did not see Gouda's car cause the accident or engage in any improper driving. And having supposedly discredited Jameel and Harris's account of the crash, Gouda argues the evidence of his previous behavior toward other women was insufficient to prove he caused the crash. The jury, however, believed Jameel and Harris's account of the crash, and on appeal “[w]e do not reweigh evidence or reevaluate a witness's credibility.”” (*People v. Prunty* (2015) 62 Cal.4th 59, 89.) Gouda has failed to demonstrate substantial evidence did not support his convictions.

B. *Gouda Has Not Demonstrated His Trial Counsel Was Ineffective*

“To prevail on a claim of ineffective assistance of counsel, a defendant must show both that counsel’s performance was deficient [because] the representation fell below an objective standard of reasonableness under prevailing norms’ and that the deficient performance was prejudicial because ‘there is a reasonable probability that, but for counsel’s errors, the result of the proceeding would have been different.’” (*People v. Arce* (2014) 226 Cal.App.4th 924, 930; see *Strickland v. Washington* (1984) 466 U.S. 668, 687.) If the defendant fails to satisfy one of these requirements, we need not address the other. (*Strickland*, at p. 697.)

Moreover, “[i]t is particularly difficult to prevail on an *appellate* claim of ineffective assistance. On direct appeal, a conviction will be reversed for ineffective assistance only if (1) the record affirmatively discloses counsel had no rational tactical purpose for the challenged act or omission, (2) counsel was asked for a reason and failed to provide one, or (3) there simply could be no satisfactory explanation. All other claims of ineffective assistance are more appropriately resolved in a habeas corpus proceeding.” (*People v. Hung Thanh Mai* (2013) 57 Cal.4th 986, 1009; see *People v. Mickel* (2016) 2 Cal.5th 181, 198-199 [“ineffective assistance of counsel claims are rarely successful on direct appeal because the appellate record will often not sufficiently reveal why defense counsel acted or failed to act on any given occasion”].)

Gouda contends his trial counsel's performance was deficient because his counsel did not discover Harris had previously been in a single-car accident caused by her inattention while driving, did not hire "an accident analysis expert and liability expert to go out to the scene of the crime and determine what happened," and did not "offer any lesser charges." The record, however, does not even establish that Gouda's trial counsel did not do these things, let alone reveal his reasons for supposedly not doing them. In fact, with regard to the first item, Harris's prior single-car accident, the record reflects that at least two months before trial Gouda's trial counsel informed the People that Harris had previously been in an automobile accident and requested her DMV records, which the People provided.

Gouda also complains his trial counsel did not ensure that, before testifying at trial, the defense medical expert spoke with Harris or her doctors and the accident reconstruction expert spoke with someone "involved in the accident," which Gouda maintains weakened the experts' effectiveness. The experts did concede on cross-examination they had not spoken to the people in question. But, again, the record does not disclose what Gouda's trial counsel did or did not do to ensure they did speak to them. Because on this record Gouda cannot establish what actions his trial counsel performed, he has not demonstrated his counsel's performance was deficient. (See *People v. Grimes* (2016) 1 Cal.5th 698, 734-735 [claim of ineffective assistance of counsel failed on direct appeal because, among other reasons, the record did not establish what actions counsel took]; *People v. Williams* (1988) 44 Cal.3d 883, 917 [same].)

DISPOSITION

The judgment is affirmed.

SEGAL, J.

We concur:

ZELON, Acting P. J.

MENETREZ, J.*

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