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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

FRANCISCO ALEXANDER SANCHEZ, JR.,

Defendant and Appellant.

B271011

(Los Angeles County
Super. Ct. No. KA108793)

APPEAL from a judgment of the Superior Court of Los Angeles County. Juan Carlos Dominguez, Judge. Affirmed in part and remanded with directions.

Athena Shudde, under appointment by the Court of Appeal, for Defendant and Appellant.

Kathleen A. Kenealy, Acting Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Shawn McGahey Webb, Supervising Deputy Attorney General, and Ilana Herscovitz, Deputy Attorney General, for Plaintiff and Respondent.

Francisco Alexander Sanchez, Jr. appeals from the judgment entered following a jury trial in which he was convicted of first degree burglary (Pen. Code,¹ § 459; count 1), false imprisonment by violence (§ 236; count 2), criminal threats (§ 422, subd. (a); count 3), and assault with a firearm (§ 245, subd. (a)(2); count 4). The jury also found true the personal firearm use allegations as to counts 1, 2, and 4. (§ 12022.5, subd. (a).) In bifurcated proceedings, the trial court found true two prior serious felony allegations and one prior prison term allegation, based on appellant's admissions. The court granted appellant's *Romero*² motion as to one of the prior serious felony convictions (a 1994 robbery) and sentenced appellant to an aggregate term of 36 years 8 months in state prison.³

Appellant contends the criminal threats conviction cannot stand because (1) the complaining witness in this case was not the person against whom the criminal threat was made within the meaning of section 422; (2) the trial court improperly instructed the jury based on an erroneous interpretation of the criminal threats statute; and (3) alternatively, substantial evidence does not support the conviction for criminal threats in count 3. We disagree and affirm the judgment of conviction.

Appellant also asserts, and the Attorney General agrees, that the abstract of judgment should be amended to reflect the trial court's imposition of two five-year enhancements under

¹ Undesignated statutory references are to the Penal Code.

² *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497.

³ The sentence included two five-year enhancements for the two prior serious felony convictions. (§ 667, subd. (a)(1).)

section 667, subdivision (a)(1) in accordance with the court's oral pronouncement of sentence. The matter is therefore remanded to the trial court to correct the minutes and abstract of judgment to reflect the court's oral pronouncement.

The Attorney General further contends that an additional one-year enhancement should be imposed pursuant to section 667.5, subdivision (b) for appellant's prior prison term. The trial court had discretion to impose or strike the one-year enhancement, but did neither. Accordingly, on remand the court is ordered to exercise its discretion with regard to the section 667.5, subdivision (b) sentence enhancement. The trial court is further ordered to forward a corrected abstract of judgment to the California Department of Corrections and Rehabilitation.

FACTUAL BACKGROUND

Maria Merito lived with her husband, their three children, two nephews, her husband's brother Guadalupe Villa, and Villa's girlfriend Alicia Parra. As of October 2014, Parra and Villa had been living in the household for three to four years, and Merito referred to Parra as her sister-in-law. Villa had physically abused Parra on many occasions, and on October 19, 2014, Villa was arrested after he and Parra had an argument.

A few days after Villa's arrest, Merito awoke to find appellant outside her front door around 2:00 in the morning. Merito had never before seen appellant. Appellant unsuccessfully attempted to open the front door and left after he could not get it open.

Twelve hours later, around 2:30 that afternoon, appellant returned to the house with a male companion and knocked on the front door. The companion went to the side of the house and spoke with Merito's nephews. When Merito answered the door, she recognized appellant as the person who had tried to open the

front door early that morning. Appellant was not wearing a shirt, and Merito noticed he had two large tattoos, one of which said, “Azusa,” suggesting a gang affiliation to Merito.

Appellant asked for Alicia Parra. He explained that he was friends with Guadalupe Villa, who had told appellant that if Villa were ever arrested, appellant should kill Parra. Appellant had learned that Villa had recently been arrested. Appellant also informed Merito that appellant had recently been released after serving an eight-year prison sentence. Merito told appellant Parra did not live there, but appellant accused her of lying and said he would search the house for Parra and would not leave until he had killed her. Merito was frightened and believed appellant would carry out his threat to kill Parra on behalf of Villa because she knew that Villa associated with Azusa gang members, and appellant’s tattoos indicated an affiliation with the Azusa gang. Merito was also frightened for the safety of her children.

Merito said she had to attend to her children, and she closed and locked the door. Ten minutes later, Merito’s nephews knocked on the door. They were injured and crying. The nephews told Merito that appellant and his companion had hit them. This increased Merito’s fear that appellant would carry out his threat and harm her family.

On October 29, around 10:00 in the morning, Merito was home with her infant daughter and her two nephews when she saw appellant approaching her house with a gun. Merito locked the front door, but one of her nephews let appellant in because appellant had a gun and was knocking hard. Appellant demanded that Merito unlock one of the bedroom doors. After Merito had let appellant into the bedroom, she fled the house

with her daughter and reported all three incidents to the police. Appellant was arrested a few months later.

DISCUSSION

I. The Trial Court's Interpretation of Section 422

The court instructed the jury that it could convict on the charge of criminal threats against Merito on the basis of the threats to harm Parra that appellant communicated to Merito. Appellant contends that section 422 does not apply when the alleged victim of the criminal threat is someone other than the target of the threatened violence. Appellant thus maintains that because his threats targeted Parra and not Merito, he could not be convicted under section 422 for criminal threats against Merito. Appellant's argument depends upon an elaborate misconstruction of the criminal threats law which would render much of the statutory language superfluous.

“Matters of statutory interpretation are questions of law subject to de novo review. [Citation.] “ ‘In construing a statute, our task is to determine the Legislature’s intent and purpose for the enactment. [Citation.] We look first to the plain meaning of the statutory language, giving the words their usual and ordinary meaning. [Citation.] If there is no ambiguity in the statutory language, its plain meaning controls; we presume the Legislature meant what it said. [Citation.] . . .” [Citations.] We examine the statutory language in the context in which it appears, and adopt the construction that best harmonizes the statute internally and with related statutes.’ ” ” (*People v. Walker* (2016) 5 Cal.App.5th 872, 876.)

Section 422, subdivision (a) requires the victim of a criminal threat “to be in sustained fear for his or her own safety *or for his or her immediate family’s safety*” (italics added). Subdivision (b) of section 422 defines “ ‘immediate family’ ” to

include, among others, “any . . . person who regularly resides in the household, or who, within the prior six months, regularly resided in the household.”

Based on the plain language of the statute, the victim of a criminal threat may be anyone whose immediate family is the target of the threatened violence. If the victim of a criminal threat may fear for her family member’s safety rather than merely for her own safety, then it is apparent that the target of the threatened violence may be a family member. As applied to this case, Merito could be the victim of appellant’s criminal threat because the target of the threatened violence was her immediate family member, Parra.⁴

Appellant’s narrow reading of section 422 simply ignores the immediate family definition of subdivision (b), leaving that portion of the criminal threats statute entirely superfluous. “A statutory interpretation that renders related provisions nugatory must be avoided” (*People v. Shabtay* (2006) 138 Cal.App.4th 1184, 1190), and we will not interpret section 422 to exclude immediate family members from its explicit protections.

The trial court properly interpreted section 422 to apply where, as here, the target of the threatened violence is an immediate family member of the person to whom the threat is communicated, making Merito the direct victim of the threat as the person who received it. We therefore conclude that the trial

⁴ Parra plainly falls under the statutory definition of “immediate family” because she had resided in the household for three to four years preceding these events.

court properly instructed the jury on the elements of criminal threats under section 422.⁵

II. Substantial Evidence

Appellant contends that his conviction for criminal threats pursuant to section 422 is unsupported by substantial evidence because the evidence fails to demonstrate the existence of a threat to Merito which caused her to be in sustained fear for her own safety. Not only does appellant’s argument misstate the statutory requirements, but we find substantial evidentiary support for appellant’s criminal threats conviction on the basis of Merito’s fear for the safety of her immediate family.

In assessing appellant’s substantial evidence challenge, “‘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.’” (*People v. Avila* (2009) 46 Cal.4th 680, 701; *People v. Watkins* (2012) 55 Cal.4th 999, 1019–1020.) We draw all reasonable inferences in favor of the verdict and presume “‘the existence of every fact the [jury] could reasonably deduce from the evidence’” that supports its findings. (*People v. Maciel* (2013) 57 Cal.4th 482, 515; *People v. Kraft* (2000) 23 Cal.4th 978, 1053.) “[T]he testimony of a single witness is sufficient for the proof of any fact” (*People v. Richardson* (2008) 43 Cal.4th 959, 1030–1031) and to “uphold a

⁵ In light of our conclusion that the trial court properly instructed the jury, we reject appellant’s alternative claim that his counsel was ineffective for “failing to request a proper instruction on count 3.”

judgment ‘even if it is contradicted by other evidence, inconsistent or false as to other portions.’ ” (*People v. White* (2014) 230 Cal.App.4th 305, 319, fn. 14.)

“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 . . . ,’ (3) that 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) 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.)

Substantial evidence unquestionably satisfies the first three elements, and appellant does not contend otherwise. Appellant willfully threatened to kill Parra. Appellant knew Parra lived with Merito, and accused Merito of lying when she told him otherwise. Appellant entered Merito’s home with a gun, threatening to search until he found and killed Parra, a member of Merito’s “immediate family.”

Substantial evidence also satisfies the fourth and fifth elements: The threat actually caused Merito to be in sustained fear for her immediate family’s safety, and that fear was reasonable under the circumstances. When appellant first communicated the threat to Merito, Merito already knew that appellant had tried to enter her house without permission around

2:00 in the morning. Merito recognized appellant's tattoos as indicating appellant was affiliated with a gang, making it more likely his threat of violence was genuine. Appellant himself told Merito that he had recently been released after serving a lengthy prison sentence, indicating to Merito that he was capable of carrying out his threat.

Merito became more frightened as appellant's actions appeared to back up his threat: Appellant and his companion harmed Merito's nephews outside of her house and then appellant returned to Merito's house with a gun. Finally, appellant forced Merito to allow him access to a bedroom in her home. The nature of appellant's threat and his subsequent conduct leave no doubt that Merito actually and reasonably feared not only for Parra, but also for herself and her children.

On this record, we conclude that each element of appellant's conviction for making criminal threats against Merito finds substantial evidentiary support, and we affirm appellant's conviction on count 3.

III. Minute Orders and Abstract of Judgment

A. The Abstract of Judgment Must Reflect the Oral Pronouncement at Sentencing

At sentencing, the trial court imposed two five-year enhancements for appellant's prior serious felony convictions. (See § 667, subd. (a)(1).) But the minutes incorrectly reflect the court imposed the two five-year enhancements under section 667.5, subdivision (b), and the abstract of judgment incorrectly indicates the imposition of five one-year enhancements on count 1 and five one-year enhancements on count 3 pursuant to section 667.5, subdivision (b).

"In a criminal case, it is the *oral pronouncement of sentence* that constitutes the judgment. [Citation.] To the extent a minute

order diverges from the sentencing proceedings it purports to memorialize, it is presumed to be the product of clerical error. [Citation.] Likewise, the abstract of judgment ‘ “cannot add to or modify the judgment which it purports to digest or summarize.” ’ [Citations.] As with other clerical errors, discrepancies between an abstract and the actual judgment as orally pronounced are subject to correction at any time, and should be corrected by a reviewing court when detected on appeal.” (*People v. Scott* (2012) 203 Cal.App.4th 1303, 1324.)

Because the minutes and abstract of judgment in this case diverge from the court’s oral pronouncement, we presume the variance to be the result of clerical error. We therefore remand the matter to the trial court to correct the minute order and abstract of judgment to accurately reflect the oral pronouncement of sentence.

B. The Trial Court Must Impose or Strike the Third Prior Prison Term Pursuant to Section 667.5, Subdivision (b)

The Attorney General further contends that the trial court’s reference to “prison priors” and the minute order’s and abstract’s reference to section 667.5, subdivision (b) suggest the trial court intended to impose a one-year prior prison term enhancement under that section. However, the oral pronouncement did not reflect any disposition with respect to the prison prior, which was not a serious or violent felony. “Where it is not clear whether a trial court has exercised sentencing discretion, it is appropriate to remand for resentencing.” (*People v. Reeder* (1984) 152 Cal.App.3d 900, 916.) Thus, on remand, the court must exercise its discretion to impose or strike the one-year enhancement under section 667.5, subdivision (b).

DISPOSITION

The judgment of conviction is affirmed. The matter is remanded with directions to exercise discretion to strike or impose the Penal Code section 667.5, subdivision (b) term, to correct the minute order and abstract of judgment to reflect the oral pronouncement at sentencing, and to forward the corrected abstract of judgment to the California Department of Corrections and Rehabilitation. In all other respects, the judgment is affirmed.

NOT TO BE PUBLISHED.

LUI, J.

We concur:

ROTHSCHILD, P. J.

CHANNEY, J.