S273797

No.

In the Supreme Court of the State of California

THE PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff and Respondent,

v.

RAYMOND GREGORY REYNOZA,
Defendant and Appellant.

Sixth Appellate District, Case No. H047594
Santa Clara County Superior Court, Case No. C1775222
The Honorable Charles E. Wilson, Judge

PETITION FOR REVIEW

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March 28, 2022

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COURT RULES

Respondent respectfully petitions for review of the published decision of the Court of Appeal for the Sixth Appellate District. The opinion filed on February 14, 2022, is attached as Exhibit 1 (Opn.). Neither party petitioned for rehearing. This petition is timely. (Cal. Rules of Court, rules 8.366(b)(1), 8.500(e)(1).)

QUESTION PRESENTED

Does Penal Code section 136.1, subdivision (b)(2), encompass attempts to dissuade a witness from "assisting in the prosecution" of a case after a complaint has been filed?

STATEMENT OF THE CASE

Rafael Cornejo, Benjamin Valladares, and Francisco Rosales were arrested together in Gilroy, and an unregistered firearm was located in their vehicle. (7RT 1132.) Valladares considered Cornejo to be his uncle. (9RT 1479; 12RT 1914.) Cornejo, Valladares, and Rosales were charged with misdemeanor possession of a firearm. (7RT 1132.) Valladares was also charged with felony assault with a firearm. (*Ibid.*) The three men made several court appearances together at the Morgan Hill courthouse, including one on June 15, 2017. (7RT 1132-1133.) On that day, Rosales, Cesar Chavez, and Gilbert Chavez came together to the Morgan Hill courthouse. (7RT 1133.) Cesar and Gilbert are brothers, and neither had a required court appearance that day. (*Ibid.*) Appellant and Rosales are brothers. (*Ibid.*)

One week later, on June 22, 2017, Cornejo drove Valladares to Sky Bar. (9RT 1496, 1501.) According to Valladares, the manager of Sky Bar, Nghia Mac, told him there was a group

outside with whom there might be trouble. (9RT 1503, 1514-1515.) Valladares went outside to check. (9RT 1514-1516.) He then went back inside, and at the request of bar staff he told Cornejo to remain there. (9RT 1516.) Cornejo disregarded the advice and went outside. (9RT 1521.)

Ronald Johnson, a bouncer at Sky Bar, was stationed outside the bar on the night of June 22, 2017. (8RT 1363, 1370, 1373.) He tried to diffuse a confrontation between two groups of Hispanic men. (8RT 1379.) According to Mac, the larger group that faced off and confronted Cornejo and Valladares included Guillermo Cervantes, Cesar Chavez, and appellant. (10RT 1627-1628, 1631-1632, 1637.)

Johnson heard a man in the larger group say "Drop the charges." (8RT 1379.) The man also said something to the effect of if the charges were dropped everything would be good. (8RT 1379, 1389.)

Valladares told police officers that the group outside Sky Bar asked him, "[W]here's your bitch ass uncle at?" (Augmented Clerk's Transcript (ACT) 21.) Valladares understood that question to mean the men knew his uncle, Cornejo, was there. (*Ibid.*) A person told Valladares, "[W]e don't fuck with snitches. Boom." (*Ibid.*) Someone then struck Cornejo with one punch, and he fell to the ground. (ACT 22.) At that point Valladares's focus was on getting Cornejo up and getting him home. (*Ibid.*)[1]

[1] A portion of the recording of Valladares's police interview (People's Exhibit 52) was admitted into evidence. (15RT 2196.)

As Johnson approached the groups to separate them, Mac told him to go back to the entrance to check identifications and do patdowns. (8RT 1379-1389.) As he turned to walk back to the entrance, he heard a "smack" that sounded like a single punch and saw a "big dude" fall to the ground. (8RT 1379.) Johnson turned back to the confrontation in time to see the man fall. (*Ibid*.) He and Mac went to the larger group and told them to leave. (8RT 1380.) The men were yelling, but they returned to their cars and left. (*Ibid*.) In viewing surveillance video of the incident, Mac saw Cervantes throw one punch, striking Cornejo who fell to the ground. (10RT 1651, 1653.)

Valladares, Johnson, and Mac tried unsuccessfully to awaken Cornejo, who appeared to be asleep on the ground. (8RT 1409-1410.) Eventually, they loaded his body into the bed of a pickup truck. (9RT 1537; 10RT 1658, 1660-1661, 1669.) When Valladares arrived at Cornejo's house, family members moved the comatose Cornejo into the house. (7RT 1161-1163; 9RT 1551, 1553, 1564.)

The responding paramedic declared Cornejo dead. (6RT 991, 1003, 1006, 1008, 1065; 7RT 1006.) The examining pathologist found the cause of death to be a blunt force injury to the head. (7RT 1216.) He observed the video of the incident, and found the injury was consistent with a person being punched in the head and then hitting his head on the ground when he fell. (7RT 1215-1218.)

The Santa Clara County District Attorney filed an information that, as amended at the close of the prosecution's

case, charged appellant and codefendants Cervantes and Chavez with murder (Pen. Code, § 187) [2] and (2) dissuading or attempting to dissuade a witness (§ 136.1, subd. (b)(2)) with allegations that the dissuasion was committed with use of force upon a person and that the disuassion was in furtherance of a conspiracy (§ 136.1, subd. (c)(1), (2)). (1CT 28-30; 2CT 353, 355; 17RT 2359-2361.)[3]

The jury acquitted all three defendants of murder but found Cervantes guilty of involuntary manslaughter. Chavez was acquitted on all charges. Appellant and Cervantes were convicted of witness dissuasion (§ 136.1, subd. (b)(2)). The jury

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[2] All subsequent statutory references are to the Penal Code.

[3] Section 136.1, subdivision (b) provides: "Except as provided in subdivision (c), every person who attempts to prevent or dissuade another person who has been the victim of a crime or who is witness to a crime from doing any of the following is guilty of a public offense and shall be punished by imprisonment in a county jail for not more than one year or in the state prison:

"(1) Making any report of that victimization to any peace officer or state or local law enforcement officer or probation or parole or correctional officer or prosecuting agency or to any judge.

"(2) Causing a complaint, indictment, information, probation or parole violation to be sought and prosecuted, and assisting in the prosecution thereof.

"(3) Arresting or causing or seeking the arrest of any person in connection with that victimization."

Section 136.1, subdivision (c) provides greater punishment when a person does "any of the acts described in subdivision (a) or (b) knowingly and maliciously" and under certain circumstances.

found true the allegation that appellant acted maliciously and with the intent to assist in a conspiracy to intimidate a witness (§ 136.1, subd. (c)(2)) but found not true the allegation that he used force (§ 136.1, subd. (c)(1)). (2CT 441-444; 19RT 5406-5409.)

Appellant was sentenced to a two-year prison term. (2CT 487, 525, 529; 20RT 5711-5712.)

In a published opinion, the Court of Appeal reversed the conviction, ruling it was not supported by substantial evidence based on its interpretation of the elements of dissuading a witness in violation of section 136.1, subdivision (b)(2) ("136.1(b)(2)"). Disagreeing with the decision in *People v. Velazquez* (2011) 201 Cal.App.4th 219, the Court of Appeal ruled that section 136.1(b)(2) applies only to dissuading a witness prior to the filing of a complaint. Because appellant's conduct occurred after the complaint had been filed, the Court of Appeal held there was insufficient evidence to support an element of the charged offense. (Opn. 1-2, 7-9.)

REASONS FOR GRANTING REVIEW

Review is necessary to settle an important question of law and to secure uniformity of decision. (Cal. Rules of Court, rule 8.500(b)(1).) The Court of Appeal expressly disagreed with the holding of *Velazquez*, *supra*, 201 Cal.App.4th 219. (Opn. 7.) That conflict alone warrants review. Moreover, the Court of Appeal stated that the conduct in this case could be deterred and punished under other statutes. (Opn. 9.) That conclusion does not support the Court of Appeal's statutory construction because the Legislature is free to make conduct punishable under more

than one statue. And even if the facts of this case supported prosecution under other statutes, the Court of Appeal's interpretation of subdivision (b)(2) of section 136.1 unreasonably excludes from its ambit conduct not chargeable under any other statute. Review is necessary to deter and punish conduct that falls within the full scope of the language of subdivision (b)(2).

I. THE COURT OF APPEAL'S DECISION CONFLICTS WITH THE DECISION IN PEOPLE V. VELAZQUEZ, SUPRA, 201 CAL.APP.4TH 219

The decision below expressly rejected the holding of *Velasquez* about the proper construction of section 136.1(b)(2). Review is necessary to resolve that conflict.

Section 136.1(b)(2) prohibits any attempt to prevent or dissuade an individual from "[c]ausing a complaint . . . to be sought and prosecuted, and assisting in the prosecution thereof." The term "prosecution" describes "'every step in an action from its commencement to its final determination.'" (*Melancon v. Superior Court* (1954) 42 Cal.2d 698, 707-708.) Hence, a common sense reading of section 136.1(b)(2) demonstrates that it was intended to criminalize any attempt to prevent or dissuade someone from assisting in the prosecution of a person against whom a complaint has been filed.

Here, the punch that ended Cornejo's life was preceded by the demand to "drop the charges" and the statement that everything would be good if the charges were dropped. (8RT 1379, 1389.) In criminalizing an attempt to deter a victim or witness from "causing a complaint . . . to be sought and prosecuted, and assisting in the prosecution thereof," the statute

is reasonably construed to also prohibit attempting to cause a complaint that has been filed to be withdrawn, i.e. to "drop the charges." This is precisely what the court held in *Velazquez*:

> Subdivision (b)(2) clearly encompasses more than pre-arrest efforts to dissuade, inasmuch as it includes attempts to dissuade a victim from causing a complaint or information to be prosecuted or assisting in that prosecution. The evidence in this case shows that defendant threatened Porter in an attempt to persuade her to drop the charges against his fellow gang members. This is sufficient evidence to support a conviction under section 136.1, subdivision (b)(2), for attempting to dissuade a victim from causing a complaint or information to be prosecuted.

(*People v. Velazquez*, *supra*, 201 Cal.App.4th at p. 233.)

But the Court of Appeal below rejected the holding in *Velasquez*. In doing so, it failed to consider various indications of legislative intent within the statute, giving dispositive—and erroneous—weight to the word "and." The court reasoned:

> Section 136.1(b)(2) prohibits attempts to dissuade a witness from causing a complaint "to be sought and prosecuted, *and* assisting in the prosecution thereof." (§ 136.1, subd. (b)(2), italics added.) The plain meaning of the words "[c]ausing a complaint . . . to be sought and prosecuted" necessarily includes the filing of a complaint. The *Velasquez* court misconstrued the term "and" to mean "or", thereby eliminating that required filing element. By passing over the drafters' use of the conjunctive rather than the disjunctive, the court ignored the canon of statutory construction that "significance must be given to every word in a statute in pursuing the legislative purpose, and the court should avoid a construction that makes some words surplusage." (*People v. Leiva* (2013) 56 Cal.4th 498, 506.)

(Opn. 7-8.)

However, in trying to avoid making the word "and" surplusage, the Court of Appeal made other words in section 136.1(b)(2) surplusage. If a defendant commits an act that results in a complaint not being "sought," giving meaning to the first and second "and" is problematic. Applying the Court of Appeal's interpretation, one possibility is that if the defendant's acts result in the complaint not being sought then both conjunctions are satisfied because if no complaint was sought then the matter was not prosecuted and the person did not assist in the prosecution of a complaint. However, such a construction would render superfluous the words that follow "sought."

Section 136.1, subdivision (b) is better understood when one considers it from the beginning, rather the middle, as the Court of Appeal did. Setting aside the introductory exception for subdivision (c), section 136.1, subdivision (b) begins, "[E]very person who attempts to prevent or dissuade another person who has been the victim of a crime or who is witness to a crime from doing *any of the following* is guilty of a public offense . . . ." (Italics added.) "'Any' is a term of broad inclusion, meaning 'without limit and no matter what kind.'" (*Lopez v. Sony Electronics, Inc.* (2018) 5 Cal.5th 627, 635.) Thus, "any of the following" means that each of the things that follows is within the ambit of the statute. What follows in subdivision (b) is a variety of present participles: "(1) *Making* any report of that victimization . . . . [¶] (2) *Causing* a complaint, indictment, information, probation or parole violation to be sought and

prosecuted, and *assisting* in the prosecution thereof. [¶] (3) *Arresting* or *causing* or *seeking* the arrest of any person in connection with that victimization." (Italics added.)[4]

Thus, under the structure of the statute, the acts—"any" of which is a public offense—are identified by participle. Section 136.1(b)(2) contains two prohibitions, one in each present participle phrase with the phrases separated by a comma followed by "and." The first phrase makes it illegal to attempt to dissuade a witness from "causing a complaint . . . to be sought and prosecuted." The second phrase makes it illegal to attempt to dissuade a witness from "assisting in the prosecution thereof," with "thereof" referring to the complaint. The Court of Appeal mistakenly rejected *Velazquez*'s holding that attempting to dissuade a person from "assisting in the prosecution" of the complaint is one of the "any" prohibited acts.

That error arose in part because the Court of Appeal did not give effect to the comma before the "and" in section 136.1(b)(2) that separates the "causing . . . to be sought and prosecuted" phrase from the "assisting in the prosecution thereof" phrase. "Punctuation is a permissible indicator of meaning." (Scalia & Garner, Reading Law: The Interpretation of Legal Texts (2012) p. 161 (bold omitted).) The comma separates the two participles in section 136.1(b)(2), thereby emphasizing that each participle is separate from the other.

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[4] For simplicity, this petition generally refers to a complaint, rather than each document identified in section 136.1(b)(2).

The Court of Appeal believed that the "phrase 'sought and prosecuted' might be viewed as ambiguous," so it looked to the legislative history and determined that the phrase was intended "to refer to the filing of a complaint." (Opn. 8.) The Court of Appeal's interpretation fails to explain why, if the statute criminalized only conduct that occurred before the filing of a complaint, the Legislature added a clause referring to "assisting in the prosecution" of the filed complaint.

The Court of Appeal stated that the statute could refer to conduct occurring after the filing of the complaint in two circumstances. First, the court opined that the statute covers conduct intended to deter the filing of a complaint where the defendant is ignorant of the fact that the complaint has already been filed. Second, the court posited that it covers conduct intended to deter an amended complaint from being filed. (Opn. 8-9.) Neither circumstance, however, gives meaning to the phrase "assisting in the prosecution thereof," so it would remain surplusage, a far more egregious failure to give significance to every word (Opn. 7) than *Velazquez*'s treatment of "and." In addition, the filing of an amended complaint is typically based on legal considerations that appear to the prosecutor after the filing of an initial complaint. Thus, it is difficult to conceive of what acts a defendant could commit against a victim or witness that would give rise to a charge under section 136.1(b)(2) for dissuading the filing of an amended complaint.

Reading each "and" in the statute as a mandatory conjunctive, as the Court of Appeal insisted, means that to prove

a violation of section 136.1(b)(2), the prosecution would have to prove that the defendant dissuaded the victim from (1) causing a complaint to be sought *and* (2) prosecuted, *and* (3) from assisting in the prosecution thereof. There are ample reasons for rejecting that construction.

No doubt, the Court of Appeal was correct as a general matter that "and" is conjunctive. (Opn. 7.) But it strayed by simplistically asserting that *Velazquez* "misconstrued the term 'and' to mean 'or', thereby eliminating that required filing element" and that "[b]y passing over the drafters' use of the conjunctive rather than the disjunctive, the court ignored the canon of statutory construction that 'significance must be given to every word in a statute in pursuing the legislative purpose, and the court should avoid a construction that makes some words surplusage.'" (Opn. 7-8.)

The Court of Appeal "pass[ed] over" other matters of construction. "*And* joins a conjunctive list, *or* a disjunctive list—but with negatives, plurals, and various specific wordings there are nuances." (Scalia & Garner, Reading Law: The Interpretation of Legal Texts, *supra*, p. 116 (bold omitted).) This rule "covers the vast majority of wordings. But as with so many other interpretative issue, there is a vast array of possible permutations in phrasing." (*Id*. at p. 123.) For example, "[t]he wording of the lead-in may be crucial to the meaning. If the introductory phrase is *any one or more of the following*, then the satisfaction of any one of the elements, or any combination of elements, will suffice." (*Id*. at p. 122.)

Here, the Court of Appeal looked no further than the somewhat incomplete rule that "and" is conjunctive, "or" disjunctive. The court did not give effect to the "permutations in phrasing" that take section 136.1(b)(2) out of a simple "and"—particularly the expansive introductory "any of the following." The broad sweep of "any of the following" read most naturally in light of the use of participles and the separating comma before the "and" makes the particular conjunction far less important than the Court of Appeal thought.

That understanding of section 136.1(b)(2) is reinforced by section 136.2, subdivision (a)(1)(B), which provides that if the court has good cause to believe that intimidation is occurring or is likely to occur, the court can issue an order "that a defendant shall not violate *any provision* of Section 136.1." The fact that 136.2 applies to "any provision" of 136.1 supports the interpretation that a violation of 136.1(b)(2) can occur after the complaint has been filed. Otherwise section 136.1(b)(2) would have been excepted from section 136.2, subdivision (a)(1)(B).

This Court should grant review to resolve the conflict between the decision below and *Velazquez* and ensure that meaning is given to the full text of section 136.1(b)(2).

II. REVIEW IS NECESSARY BECAUSE SECTION 136.1(B)(2) DETERS AND PUNISHES CRIMINAL ACTS NOT COVERED BY ANY OTHER STATUTE

The Court of Appeal stated that the impact of its decision would be minimal because two other statutes deter and punish conduct that occurs after the filing of a complaint. (Opn. 9, citing §§ 136.1, subd. (a)(1), (2) [dissuasion or attempted dissuasion of a

victim or witness from giving testimony or attending trial] & 137 [attempts to influence testimony of a witness or information given to law enforcement].)

The court implied that one or both of those statutes covered appellant's conduct. (Opn. 9 [the holding on the scope of section 136.1(b)(2) "does not mean the state has no power to deter and punish conduct of the kind described *here*" (italics added)].) But the court never explained why either statute applies to telling Cornejo to drop the charges. Neither statute does.

As this case demonstrates, dissuading a person from "assisting in the prosecution" of a filed complaint covers both means of dissuasion and actions by the person that the defendant wishes to dissuade that are not covered by other statutes. Here, one week after a court appearance, the victim was confronted at a bar by a group that included a codefendant's brother and told to "drop the charges." There is no indication the victim was going to testify against appellant's brother or had additional information that appellant wanted the victim to withhold from law enforcement. Nor did appellant threaten force or offer a bribe in his attempt to dissuade Cornejo. Thus, the demand to drop the charges did not fall within the scope of sections 136.1, subdivision (a) or 137, but it was an attempt to dissuade the victim from assisting in the prosecution of the complaint.

That the conduct here—an attempt to undermine the "'legitimate and compelling state interest' in protecting the community from crime" (*Schall v. Martin* (1984) 467 U.S. 253, 264) by interfering with a prosecution—is not be covered by

sections 136.1 or 137 strongly suggests that the Court of Appeal's interpretation of the prohibition on attempting to dissuade a person from "assisting in the prosecution" of a complaint is incorrect.

Notably, section 136.1(b)(2) is the only provision directly addressing dissuading a victim or witness from assisting the prosecution as opposed to testifying as a witness. Assume, for example, that after the filing of the complaint, the defendant, knowing that he sent incriminating texts to a person and that the police are looking for that person to get the texts, threatens to spread information damaging to the person's reputation unless he deletes the incriminating evidence. Under *Velazquez*, but not the opinion below, that conduct would violate section 136.1(b)(2). Yet neither section identified by the Court of Appeal would cover that attempt to dissuade the person from assisting the prosecution. Subdivisions (a) and (b) of section 137 cover circumstances where the defendant employs a bribe, force, or the threat of force to influence testimony or to cause a person to withhold material evidence from law enforcement, but they do not cover the threat of reputational injury, as in the hypothetical. Nor would the conduct be covered by subdivision (a) of section 136.1 because that subdivision only applies to conduct that attempts to dissuade a victim or witness from "attending or giving testimony at any trial, proceeding, or inquiry authorized by law." Finally, subdivision (c) of section 137 covers attempts to induce a person to give false evidence to a law enforcement official or to withhold true evidence from a law enforcement

official, but it does not cover an attempt to induce a witness to "drop the charges" where the witness has no evidence to produce.

However, even if there is some statutory overlap between section 136.1(b)(1) and the provisions the Court of Appeal identified, the Court of Appeal did not explain why that overlap should matter in construing a statute. The Legislature may criminalize the same conduct in different ways under different statutes. It has been "long recognized that when an act violates more than one criminal statute, the Government may prosecute under either so long as it does not discriminate against any class of defendants." (*United States v. Batchelder* (1979) 442 U.S. 114, 123-124; accord, *People v. Wilkinson* (2004) 33 Cal.4th 821, 834, 838-839 ["*Batchelder* instructs us that neither the existence of two identical criminal statutes prescribing different levels of punishments, nor the exercise of a prosecutor's discretion in charging under one such statute and not the other, violates equal protection principles]."")

There is no reason to disregard the statutory language of section 136.1(b)(2) even if there is some overlap between it and section 136.1, subdivision (a)(2)'s prohibition on attempting to dissuade trial testimony or section 137's prohibition on influencing testimony of a witness or information given to the police. A concern about an overlap does not warrant deviating from the statute's plain language. If a court construing a statute considers the existence of another statute that covers the same conduct a reason to limit the scope of the first statute, the court puts a thumb on the statutory construction scale unrelated to the

text of the statute and risks interfering with the Legislature's prerogative to define crimes, including by enacting multiple statues that criminalize the same conduct. The Court of Appeal cited no authority for doing so.

Review should be granted to deter and punish the full scope of conduct that can be brought to bear against a victim or witness to dissuade the person from assisting in the prosecution of a complaint.

CONCLUSION

The petition for review should be granted.

Respectfully submitted,

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March 28, 2022

CERTIFICATE OF COMPLIANCE

I certify that the attached **PETITION FOR REVIEW** uses a 13 point Century Schoolbook font and contains 3,977 words.

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March 28, 2022

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ATTACHMENT A

FILED 2.14.2022

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

THE PEOPLE, Plaintiff and Respondent, v. RAYMOND GREGORY REYNOZA, Defendant and Appellant.	H047594 (Santa Clara County Super. Ct. No. C1775222)

A jury found defendant Raymond Gregory Reynoza guilty of dissuading a witness. (Pen. Code, § 136.1, subd. (b)(2), hereafter section 136.1(b)(2).)[1] As relevant here, section 136.1(b)(2) punishes any person who attempts to prevent or dissuade a witness from "[c]ausing a complaint . . . to be sought and prosecuted, and assisting in the prosecution thereof." We consider whether a person can be guilty under section 136.1(b)(2) where a complaint has already been filed in the case involving the witness.

The witness here was Rafael Cornejo. Cornejo and two other men—including Reynoza's brother—had been arrested for misdemeanor firearm possession in Gilroy in February 2017. The alleged dissuasion in *this* case occurred in San Jose in June 2017, after charges had already been filed in Cornejo's case. Reynoza contends he cannot be convicted under section 136.1(b)(2) because a complaint had already been filed in Cornejo's case.

We conclude insufficient evidence supports the conviction. Applying well-established principles of statutory construction, we hold the words "[c]ausing a complaint . . . to be sought" in section 136.1(b)(2) refer to attempts to prevent a complaint from

[1] Subsequent undesignated statutory references are to the Penal Code.

being filed. If the defendant knows a complaint has already been filed and does not attempt to prevent or dissuade the witness from causing any further or amended complaint to be filed, an essential element of the offense is missing. Because the evidence here was insufficient to prove an element of the offense, the prosecution failed to prove Reynoza's conduct fell within the scope of section 136.1(b)(2). We will reverse the judgment.

I. FACTUAL AND PROCEDURAL BACKGROUND

A. Facts of the Offense

1. The Underlying Prosecution in Which Cornejo Was a Witness

Rafael Cornejo was arrested together with Benjamin Valladares and Francisco Rosales (Reynoza's brother) in Gilroy in February 2017. Police found an unregistered firearm in their vehicle. In April 2017, a complaint was filed charging each of them with misdemeanor possession of a firearm. Valladares was also charged with assaulting a person with a firearm and causing a firearm to be carried in a vehicle. The three defendants in that case made several court appearances from April to June 2017. On June 15, 2017, the three defendants made a court appearance. Cesar Chavez and his brother Gilbert also came to the courthouse even though they did not have any required court appearances that day. Valladares pleaded guilty to brandishing a firearm.

2. The Conduct Underlying the Dissuasion Charge in this Case

The charged conduct in this case occurred outside a bar in San Jose on June 22, 2017. Valladares and Cornejo were inside the bar when the manager told Valladares there was a group of men outside, whereupon Valladares went outside to see if everything was alright. Someone asked him, "[W]here's your bitch ass uncle at?" Valladares understood this to be a reference to Cornejo, so Valladares went back into the bar and told Cornejo not to go outside.

Cornejo then exited the bar and walked outside, where Reynoza and two other men—Guillermo Cervantes and Cesar Chavez—approached Cornejo in the parking lot.

The incident was captured on video camera with no sound. The video shows Cornejo and Cervantes talking and gesturing at each other while Reynoza and Chavez stood next to Cervantes. According to witnesses, one of the men in Reynoza's group said something like, "[D]rop the charges," and someone said, "[W]e don't fuck with snitches." After about a minute, Cervantes punched Cornejo once in the head. Cornejo immediately fell to the ground and his head struck the pavement. Cervantes, Reynoza, and Chavez drove away, and Cornejo died soon thereafter.

B. Procedural History

The prosecution initially charged Reynoza, Cervantes, and Chavez with three counts: count 1—murder (Pen. Code, § 187); count 2—dissuading or attempting to dissuade a witness by use of force or threat of force (§ 136.1, subd. (c)(1)); and count 3—witness dissuasion with an act in furtherance of a conspiracy (§ 136.1, subd. (c)(2)). A jury trial commenced in January 2018. At the close of the prosecution's case, the prosecution dismissed count 3 and amended count 2 to charge witness dissuasion under section 136.1(b)(2) with allegations that the offense was committed with the use of force upon a person (§ 136.1, subd. (c)(1)) and in furtherance of a conspiracy (§ 136.1, subd. (c)(2)).

The jury convicted Cervantes of involuntary manslaughter and witness dissuasion. Chavez was acquitted on all counts. The jury acquitted Reynoza of murder on count 1 and found him guilty of dissuading or attempting to dissuade a witness by use of force or threat of force under section 136.1(b)(2) as charged in count 2. The jury found true the allegation that he committed the act in furtherance of a conspiracy to intimidate a witness (§ 136.1, subd. (c)(2)) but found not true the allegation that he used force (§ 136.1, subd. (c)(1)).

The trial court sentenced Reynoza to an aggregate term of two years in prison.

II. DISCUSSION

Reynoza contends the evidence was insufficient to prove he violated section 136.1(b)(2). He argues he could not have been guilty of attempting to prevent or dissuade Cornejo from causing a complaint to be sought and prosecuted because the complaint had already been filed.[2] The Attorney General argues the evidence supported the conviction because the jury could reasonably infer Reynoza was attempting to dissuade Cornejo from assisting in the prosecution of a crime. As set forth below, based on our interpretation of the statutory language, we conclude the evidence was insufficient to show Reynoza's conduct fell within the scope of section 136.1(b)(2).

A. Legal Principles

As relevant here, section 136.1(b)(2) prohibits "attempts to prevent or dissuade another person . . . who is witness to a crime from . . . [c]ausing a complaint, indictment, information, probation or parole violation to be sought and prosecuted, and assisting in the prosecution thereof." (§ 136.1, subd. (b)(2).)

"To assess the evidence's sufficiency, we review the whole record to determine whether any rational trier of fact could have found the essential elements of the crime or special circumstances beyond a reasonable doubt." (*People v. Zamudio* (2008) 43 Cal.4th 327, 357, citing *People v. Maury* (2003) 30 Cal.4th 342, 403 (*Maury*).) The record must disclose substantial evidence to support the verdict such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. (*Ibid.*) The substantial evidence must be reasonable, credible, and of solid value. (*Ibid.*) We review the evidence "in the light most favorable to the prosecution and presume in support of the judgment the existence of every fact the jury could reasonably have deduced from the evidence." (*Ibid.*) "A reversal for insufficient evidence 'is unwarranted unless it appears that upon no hypothesis whatever is there sufficient substantial evidence to support' the

[2] Reynoza also challenges the sufficiency of the evidence in other respects. We do not reach those claims.

jury's verdict." (*Ibid.*) The standard is the same under both the California Constitution and the federal Constitution. (*People v. Jimenez* (2019) 35 Cal.App.5th 373, 392.)

"Issues of statutory interpretation are questions of law subject to de novo review. [Citation.] 'Our fundamental task in interpreting a statute is to determine the Legislature's intent so as to effectuate the law's purpose. We first examine the statutory language, giving it a plain and commonsense meaning. We do not examine that language in isolation, but in the context of the statutory framework as a whole in order to determine its scope and purpose and to harmonize the various parts of the enactment. If the language is clear, courts must generally follow its plain meaning unless a literal interpretation would result in absurd consequences the Legislature did not intend. If the statutory language permits more than one reasonable interpretation, courts may consider other aids, such as the statute's purpose, legislative history, and public policy. [Citations.]' [Citations.]" (*People v. Simmons* (2012) 210 Cal.App.4th 778, 790.)

B. The Evidence Was Insufficient to Sustain a Conviction Under Penal Code Section 136.1, Subdivision (b)(2)

The legal issue is whether a defendant can be convicted of violating section 136.1(b)(2) under the circumstances presented here. The conduct charged in this case occurred after a complaint had already been filed in the underlying prosecution for misdemeanor firearm possession in Gilroy, and after the defendants in that case had made several court appearances.[3] There was no evidence Reynoza was unaware the complaint had been filed; to the contrary, the evidence tended to show he was aware of the complaint and subsequent court proceedings. Nor was there any evidence he intended to prevent or dissuade the witness from causing an amended complaint or other charging documents to be filed.

[3] As stated above, one of the defendants in that case was also charged with felonies, but he pleaded guilty before the charged conduct at issue here.

Reynoza relies on *People v. Fernandez* (2003) 106 Cal.App.4th 943 (*Fernandez*). The *Fernandez* court reversed a conviction under section 136.1(b)(1), which prohibits attempts to dissuade a victim or witness from reporting a crime.[4] After Fernandez was charged with forging a friend's disability check, Fernandez tried to persuade the friend not to testify truthfully at the preliminary hearing. (*Id.* at pp. 945-946.) Fernandez was then charged with and convicted of witness dissuasion under section 136.1(b)(1). On appeal, he argued subdivision (b)(1) of section 136.1 did not punish attempts to influence or prevent a witness's testimony. The court of appeal analyzed the overall statutory scheme governing dissuasion, and concluded, "[S]ection 136.1, subdivision (b) punishes a defendant's *pre-arrest* efforts to prevent a crime from being reported to the authorities." (*Id.* at p. 950, italics added.) Because Fernandez's attempted dissuasion occurred after the crime had already been reported, the court concluded this conduct was not prohibited under section 136.1(b)(1), but that the conduct violated section 137, subdivision (c) instead. (*Id.* at p. 951.) In so holding, the court adopted the statutory analysis set forth in *People v. Hallock* (1989) 208 Cal.App.3d 595, 605-607 (*Hallock*) which distinguished between subdivision (a) and subdivision (b) of Penal Code section 136.1 on the ground that the latter subdivision prohibits pre-arrest conduct.

Another court of appeal reached a similar conclusion in *People v. Brown* (2016) 6 Cal.App.5th 1074 (*Brown*). Brown was convicted under section 136.1(c)(1), which applies to any violation of subdivision (a) or subdivision (b) committed under certain circumstances—e.g., where the act was accompanied by force or committed in furtherance of a conspiracy, among other things. The court of appeal analyzed the overall statutory scheme and held, "[U]nder section 136.1, subdivision (b)(2), the perpetrator must attempt to prevent a person from causing a charging document to be sought and

[4] We use "section 136.1(b)(1)" to refer to subdivision (b)(1) of Penal Code section 136.1, "section 136.1(b)" to refer to subdivision (b), and so forth.

prosecuted and from assisting in the prosecution. Thus, the prevention must occur before the relevant charging document has been filed." (*Brown,* at p. 1082, fn. omitted.)

The Attorney General argues that the language in *Brown* pertaining to section 136.1(b)(2) constitutes dictum because *Brown* concerned a conviction under subdivision (c)(1) of section 136.1, not subdivision (b)(2). The Attorney General relies instead on *People v. Velazquez* (2011) 201 Cal.App.4th 219 (*Velazquez*). In *Velazquez*, the court of appeal considered a conviction for dissuasion under section 136.1(b)(2) where the defendant threatened a witness to drop charges against the defendant's fellow gang members. Immediately after Velazquez's fellow gang members had been arraigned in another case, he called the witness and told her that if she dropped the charges, nothing would happen to her. (*Velazquez*, at pp. 223-224.) On appeal, Velazquez argued he could not have been convicted under section 136.1(b)(2) because the charged conduct occurred post-arrest. The court of appeal rejected this claim. The court disagreed with the analysis of section 136.1 set forth in *Fernandez* and characterized that opinion's statements about subdivision (b)(2) as dicta. The *Velazquez* court held, "Subdivision (b)(2) clearly encompasses more than pre-arrest efforts to dissuade, inasmuch as it includes attempts to dissuade a victim from causing a complaint or information to be prosecuted *or* assisting in that prosecution." (*Velazquez*, at pp. 232-233, italics added.) The court therefore left the dissuasion conviction intact even though it was based solely on conduct that occurred after the filing of charges in the underlying prosecution.

We respectfully disagree with *Velazquez*. We are persuaded instead by the construction of the statute adopted in *Hallock*, *Brown* and *Fernandez*.
Section 136.1(b)(2) prohibits attempts to dissuade a witness from causing a complaint "to be sought and prosecuted, *and* assisting in the prosecution thereof." (§ 136.1, subd. (b)(2), italics added.) The plain meaning of the words "[c]ausing a complaint . . . to be sought and prosecuted" necessarily includes the filing of a complaint. The *Velazquez* court misconstrued the term "and" to mean "or", thereby eliminating that required filing

element. By passing over the drafters' use of the conjunctive rather than the disjunctive, the court ignored the canon of statutory construction that "significance must be given to every word in a statute in pursuing the legislative purpose, and the court should avoid a construction that makes some words surplusage." (*People v. Leiva* (2013) 56 Cal.4th 498, 506.)

Although the phrase "sought and prosecuted" might be viewed as ambiguous, the legislative history makes clear that legislators understood this to refer to the filing of a complaint. The bill analysis generated by the Assembly Committee on Criminal Justice described this subdivision as "covering the prevention or dissuasion or attempts from doing any of the following acts: [¶] b. Causing an accusatory pleading to be filed, or parole or probation report sought[.]" (Assem. Com. on Criminal Justice, Analysis of Assem. Bill No. 2909 (1979-1980 Reg. Sess.) as introduced Mar. 6, 1980, p. 1.) Similarly, the report of the Senate Committee on Judiciary described the subdivision as making it a crime "to dissuade or attempt to dissuade a person from: [¶] (b) Causing an accusatory pleading to be filed[.]" (Sen. Com. on Judiciary, com. on Assem. Bill No. 2909 (1979-1980 Reg. Sess.) as amended April 16, 1980, at p. 3.)

There are still some circumstances under which a person can violate section 136.1(b)(2) even if the charged conduct occurs entirely after the filing of a charging document. As the *Brown* court observed, the statute prohibits *attempts* at dissuasion. "Because preventing prosecution can be committed by a mere attempt to prevent prosecution, presumably it could be committed after the charging document was filed, as long as the defendant did not *know* the charging document had been filed and still intended to prevent it from being filed." (*Brown*, *supra*, 6 Cal.App.5th at p. 1082, fn. 3.) In this case, however, the prosecution presented no evidence from a which a jury could infer any such lack of knowledge. To the contrary, Chavez and his brother were present in court for one of Cornejo's post-complaint court appearances in the gun possession case. This evidence demonstrates the defendants in this case were aware a complaint had

already been filed in the underlying prosecution. Furthermore, nothing in the plain language of the statute limits it to the initial filing of a complaint; it nonspecifically references "*a* complaint." (§ 136.1, subd. (b)(2), italics added.) A person could violate section 136.1(b)(2) by attempting to dissuade a witness or victim from causing an *amended* complaint or some other subsequent charging document to be filed. Again, however, the prosecution presented no evidence from which the jury could infer an amended complaint was forthcoming or that Reynoza intended to dissuade Cornejo from causing one to be filed.

For the reasons above, we hold section 136.1(b)(2) requires proof that, among other things, the defendant attempted to prevent or dissuade another person from causing a complaint, indictment, information, probation or parole violation to be filed. If the defendant was aware the relevant charging document had already been filed, and the defendant did not attempt to prevent or dissuade the filing of any amended or subsequent charging document, the defendant has not violated section 136.1(b)(2).[5] This does not mean the state has no power to deter and punish conduct of the kind described here. Other statutory provisions prohibit attempts to dissuade victims or witnesses where charges have already been filed. (See generally *Fernandez*, *supra*, 106 Cal.App.4th at pp. 949-951 [analyzing the various statutory provisions prohibiting dissuasion]; § 136.1, subds. (a)(1) & (a)(2) [prohibiting dissuasion or attempted dissuasion of a victim or witness from giving testimony or attending trial]; § 137 [applying to attempts to influence testimony or information given to law enforcement].)

Absent substantial evidence proving an essential element of the offense, the conviction under section 136.1(b)(2) must be reversed.

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[5] Because the statute also refers to probation and parole violations, we use the phrase "charging document" to include the filing of such reports.

III. DISPOSITION

The judgment is reversed.

_____
Greenwood, P. J.

WE CONCUR:

_____
Bamattre-Manoukian, J.

_____
Lie, J.

People v. Reynoza
H047594

Trial Court:	Santa Clara County Superior Court Superior Court No.: C1775222
Trial Judges:	The Honorable Charles S. Wilson The Honorable Eric S. Geffon
Attorney for Defendant and Appellant Raymond Gregory Reynoza:	Nancy Susan Brandt under appointment by the Court of Appeal for Appellant
Attorneys for Plaintiff and Respondent The People:	Rob Bonta, Attorney General of California Lance E. Winters Chief Assistant Attorney General Jeffrey M. Laurence Senior Assistant Attorney General Catherine A. Rivlin Supervising Deputy Attorney General Bruce M. Slavin Deputy Attorney General

DECLARATION OF ELECTRONIC SERVICE AND SERVICE BY U.S. MAIL

Case Name: ***People v. Reynoza*** No.: **H047594**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collecting and processing electronic and physical correspondence. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business. Correspondence that is submitted electronically is transmitted using the TrueFiling electronic filing system. Participants who are registered with TrueFiling will be served electronically. Participants in this case who are not registered with TrueFiling will receive hard copies of said correspondence through the mail via the United States Postal Service or a commercial carrier.

On March 28, 2022, I electronically served the attached **PETITION FOR REVIEW WITH ATTACHMENT A** by transmitting a true copy via this Court's TrueFiling system. Because one or more of the participants in this case have not registered with the Court's TrueFiling system or are unable to receive electronic correspondence, on March 28, 2022, I placed a true copy thereof enclosed in a sealed envelope in the internal mail collection system at the Office of the Attorney General at 455 Golden Gate Avenue, Suite 11000, San Francisco, CA 94102-7004, addressed as follows:

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Superior Court of California
County of Santa Clara
Criminal Division - Hall of Justice
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[Via U.S. Mail]

Sixth District Appellate Program
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[Via TrueFiling]

I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on March 28, 2022, at San Francisco, California.

M Campos	*/s/ M Campos*
Declarant	Signature

SF2019202717/43146634.docx

STATE OF CALIFORNIA
Supreme Court of California

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

3/28/2022
Date

/s/Bruce Slavin
Signature

Slavin, Bruce (115192)
Last Name, First Name (PNum)

California Dept of Justice, Office of the Attorney General

Law Firm