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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
THIRD APPELLATE DISTRICT  
(Sacramento)

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In re T. H., a Person Coming Under the Juvenile  
Court Law.

C069794

THE PEOPLE,

(Super. Ct. No. 133222)

Plaintiff and Respondent,

v.

T. H.,

Defendant and Appellant.

Following a contested jurisdictional hearing, the Sacramento County Juvenile Court sustained charges against T.H. (the minor) of assault with a deadly weapon (Pen. Code, § 245, subd. (a)(1))<sup>1</sup> and making criminal threats (§ 422).<sup>2</sup> The victim in each

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<sup>1</sup> References to undesignated sections are to the Penal Code.

charge was his mother (the mother). The minor was adjudged a ward of the court and committed to home care under the supervision of the probation officer.

On appeal, the minor contends the order sustaining the criminal threats charge must be reversed because the evidence is insufficient to show that the victim's fear was "sustained" and "reasonable" as required by section 422. We conclude the mother's fear was reasonable but that it was not "sustained fear" within the meaning of section 422.

### FACTS

The minor's mother, who was the victim of both charges, was at home with her five children, one of whom was the 15-year-old minor. About 10:00 a.m., the minor, who had been restricted to his bedroom by his mother, came out and sat on the couch. Several times his mother told him to return to the bedroom, but he would not do so. Instead, he went into the kitchen. The mother continued to tell the minor to return to his room; still he refused and became "very belligerent" as the two argued.

The mother's 22-year-old son, Allen, intervened and tried to calm the minor down. Allen and the minor got into a physical altercation, resulting in Allen's restraining him. When the minor got free, he called Allen and his mother names, ran outside, picked up sticks and rocks, and tried to break the windows. The mother called the police. While awaiting the police, the mother went outside at least twice in an effort to keep the minor

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<sup>2</sup> Section 422 provides, in relevant part: "Any person who willfully threatens to commit a crime which will result in death or great bodily injury to another person, with the specific intent that the statement, made verbally, in writing, or by means of an electronic communication device, is to be taken as a threat, even if there is no intent of actually carrying it out, which, on its face and under the circumstances in which it is made, is 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, and thereby causes that person *reasonably to be in sustained fear for his or her own safety or for his or her immediate family's safety*, shall be punished by imprisonment in the county jail not to exceed one year, or by imprisonment in the state prison." (Italics added.)

from breaking the windows. She went back into the house, and the minor went across the street and sat on a fence.

When the police arrived, they spoke to the minor and convinced him to return to his bedroom. As soon as the officers went back to their vehicle, the minor again came out of his bedroom and refused his mother's order that he return. The minor went into the kitchen, and he and his mother continued to argue. The minor refused to return to his bedroom and the argument continued. At one point, the mother said to the minor: "I'm going to tell you something, I can whoop [*sic*] you without leaving any marks on you." The minor refused to go to his room, and the mother got "in his face" and repeated that there was "a way for [her] to whoop [the minor] without showing a mark."

At that point, the minor grabbed a knife from the dishwasher, held it over his head, and said, "Bitch, if you touch me, I'll kill you." Now "scared," the mother, who could see the police car still outside of the residence, ran to the police car without ever looking back. She told the officers that the minor had a knife, he had threatened her, and that he was chasing her.<sup>3</sup> The officers immediately entered the home, found the minor in his bedroom, and handcuffed him. The knife was recovered in the bedroom closet.

### **DISCUSSION**

The minor contends the juvenile court's order sustaining the criminal threat charge must be reversed because the evidence was insufficient to establish section 422's requirement that the victim "reasonably . . . be in sustained fear for his or her own safety." We conclude that while the mother's fear was reasonable, it was not, under the circumstances of this case, sustained as that term is used in section 422.

"The law regarding appellate review of claims challenging the sufficiency of the evidence in the juvenile context is the same as that governing review of sufficiency

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<sup>3</sup> The mother testified that when she ran she did not look back to see "where [the minor] goes," and she "assumed he was behind [her]."

claims generally. [Citation.] In determining the sufficiency of the evidence, ‘the relevant question is 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.’ [Citation.] ‘[T]he court must review the whole record in the light most favorable to the judgment below to determine whether it discloses substantial evidence—that is, evidence which is reasonable, credible, and of solid value—such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt.’ [Citation.]” (*In re Z.A.* (2012) 207 Cal.App.4th 1401, 1424-1425.)

At the time of the argument, the minor was 15 years old, five feet seven inches to five feet eight inches tall, and weighed 120 pounds. According to the evidence, he suddenly grabbed a kitchen knife in the midst of a prolonged and heated argument with his mother, held the knife over his head, and declared, “Bitch, if you touch me, I’ll kill you.” The mother testified that she was “scared” at that point, and her fear was reasonable under the circumstances, given that he was armed with a deadly weapon and of sufficient size to inflict significant harm with it.

### **Mother’s Fear was Not Sustained**

Although not defined in section 422, the term “sustained fear” has been defined by case law as “a period of time that extends beyond what is momentary, fleeting, or transitory.” (*People v. Allen* (1995) 33 Cal.App.4th 1149, 1156; this definition adopted by *In re Ricky T.* (2001) 87 Cal.App.4th 1132, 1140, *People v. Fierro* (2010) 180 Cal.App.4th 1342, 1349 (*Fierro*), and CALCRIM No. 1300; see also Webster’s 3d New Internat. Dict. (1981) p. 2304 [“sustained . . . : maintained at length without interruption, weakening, or losing in power or quality: PROLONGED, UNFLAGGING”].)

Here, the minor and his mother had been embroiled in a heated argument for an extended period of time. The mother testified that when the minor was saying “bad things” to her and to Allen, she “wasn’t scared because, you know, because [the minor] is

all talk, you know.” However, that changed when the minor grabbed the knife, held it over his head, and threatened to kill her if she touched him. Now fearful, the mother, who had seen that the police were still outside in their car, immediately “took off” and ran to the police car, “screaming” that the minor had a knife and she thought he was chasing her.

However, once the mother reached the police car, she must have realized the minor was not chasing her and that she was not in immediate danger of being stabbed. As to evidence of continuing fear, there was none. There was no evidence that the minor had indicated any intent to harm his mother at some time in the future. There was no evidence that the minor had touched or attempted to touch his mother in anger in the past. Nor did the mother testify that after she reached the police car she continued to fear the minor. Indeed, when asked if she was “still feeling the excitement or stress of the incident” when she spoke with the police officer, she answered, “Yes, yes,” but she explained that her stress “was way beyond” what the minor had done and that it began “way before” the minor raised the knife.<sup>4</sup>

In sum, while substantial evidence supports the reasonableness of the mother’s fear from the point when the knife was raised until she made it to the police car, that period was likely measured in seconds, not minutes. Fear for such a period of time is more accurately described as “momentary, fleeting, or transitory” than as “sustained.” Consequently, there is not substantial evidence that the mother was in sustained fear.

The People cite to *Fierro, supra*, 180 Cal.App.4th 1342 for the proposition that “even a minute of time” would be sufficient to establish sustained fear under section 422.

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<sup>4</sup> The mother testified that she suffers from anxiety attacks that cause her heart to race, make her feel like she could faint, and give her shakes and a fever. She takes prescription medicine for the attacks but had not taken the medicine that morning. She was experiencing one of attacks during the morning of the confrontation with the minor.

*Fierro* is distinguishable on its facts, and its reference to a minute's being adequate time to meet section 422's sustained fear requirement is dictum. In *Fierro*, the victim got into an argument with the defendant at a service station. The defendant displayed what appeared to be a gun and threatened to kill the victim and his teenaged son. (*Fierro*, at pp. 1344-1346.) The victim, who testified he was "scared to death," drove off and within 15 minutes reported the matter to a 911 operator, telling the operator he was "scared shitless." (*Id.* at p. 1346.) The defendant was convicted of violating section 422. (*Fierro*, at p. 1344.)

On appeal, the defendant contended, inter alia, that the 15-minute period after the victim left the service station, and was therefore safe, should not be counted as part of the victim's sustained fear. (*Fierro, supra*, 180 Cal.App.4th at p. 1348.) The court disagreed. The court noted the victim had been facing a man with a gun who repeatedly threatened to kill him and his son right there. A videotape of the incident showed the threat lasted about 40 seconds. The victim testified that he was in fear for up to 15 minutes after he had driven away. The court found the victim's 15 minutes of continuing fear, which the defendant caused, was reasonable under the circumstances. (*Id.* at pp. 1348-1349.) The court then added: "But even if we accept [the defendant's] argument, we believe that the minute during which [the victim] heard the threat and saw [defendant's] weapon qualifies as 'sustained' under the statute. When one believes he is about to die, a minute is longer than 'momentary, fleeting, or transitory.' [Citation.]" (*Id.* at p. 1349.)

*Fierro* is factually distinguishable because not only did it involve what the victim believed to be a gun, a more lethal weapon than a knife, accompanied by an unconditional rather than a conditional threat of death, but the victim testified to continuing fear for at least 15 minutes. Here, the minor threatened his mother with a knife but conditioned the carrying out of the threat upon her touching him. Additionally,

the mother never testified to any continuing fear of the minor once she reached the police car.

**DISPOSITION**

The Sacramento County Juvenile Court's order sustaining the charge of making criminal threats in violation of section 422 is reversed and dismissed. The court is directed to amend its records accordingly and so notify the parties. In all other respects the judgment is affirmed.

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RAYE, P. J.

We concur:

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BLEASE, J.

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NICHOLSON, J.