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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.

JEREMY JAMAR WHITE,

Defendant and Appellant.

B282337

(Los Angeles County  
Super. Ct. No. BA448961)

APPEAL from a judgment of the Superior Court of Los Angeles County, Drew E. Edwards, Judge. Affirmed.

David Y. Stanley, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Steven D. Matthews and Roberta L. Davis, Deputy Attorneys General for Plaintiff and Respondent.

Jeremy Jamar White appeals the judgment of conviction after a jury found him guilty of making criminal threats (Pen. Code, § 422, subd. (a))<sup>1</sup> and related offenses. White contends there is no substantial evidence the victim was in sustained fear. We affirm.

## **FACTUAL AND PROCEDURAL BACKGROUND**

### **A. *The Information***

The information charged White with making criminal threats (§ 422, subd. (a); count 1); violation of a domestic violence protective order (§ 166, subd. (c)(4); count 2); misdemeanor contempt of court arising from violation of the protective order (§ 166, subd. (c)(1); count 3); and stalking (§ 646.9, subd. (b); count 4). The information alleged White suffered a prior conviction of robbery, which was a strike within the meaning of the three strikes law (§§ 667, subds. (b)-(j), 1170.12), and had served a prior prison term for the offense (§ 667.5).

White pleaded not guilty and denied the special allegations.

### **B. *The Prosecution Case***

#### **1. *Prior incidents***

White and Ashley W. had a romantic relationship on and off beginning in 2005. They had two children, born in 2008 and 2013. They had planned to marry, but never did. White's behavior changed in 2013 or 2014, when White appeared "more scary" and at times dangerous.

In June 2014 Ashley was waiting at a bus stop when White drove up, got out of his car, and walked toward her. White accused Ashley of cheating on him with another man. He was angry. White

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<sup>1</sup> All statutory references are to the Penal Code.

yelled, cursed, and threatened to hurt Ashley. He threatened, “I’m going to get you,” and put his hand in his pocket as if he were reaching for a gun. He then held his hand to Ashley’s head, pretending it was a gun. Ashley had never seen White with a gun, but he had access to one. Ashley reported the incident to the police.

In July 2014 White and Ashley had an argument in their home. White was really mad. They struggled over her car keys, and he took them from her hands. During the incident White pushed Ashley and grabbed their daughter. He drove off in her car. Ashley filed a police report for a stolen vehicle. White returned with the car later that evening or the next morning. He was mad she had filed a police report. He banged on the door and yelled, “Bitch, open the door.” Because their daughter was home during the incident, a social worker came to Ashley’s home and suggested she obtain a protective order. Ashley went to a civil court, which issued the order.

In December 2014 Ashley asked White to help her remove mice from her apartment. White accused Ashley of cheating on him with other men and hit her multiple times all over her body. She had bruises on her right arm from her wrist to her upper arm. White hit Ashley first, but she hit him back. She ran back into her apartment and reported the incident to the police. She told the police White had hit her before and sent her threatening text messages. Ashley obtained a criminal protective order.

Early one morning in June 2015 White banged on the door to Ashley’s apartment and shouted at her. Ashley called the police, who arrived and saw White near her apartment. Ashley told the police White came to her apartment all the time.

2. *The incident of December 21, 2015*

On the evening of December 21, 2015 Ashley was driving out of the parking lot of her apartment building on her way to work when White approached her car on foot. Ashley's car window was halfway down, and White came within about five feet of the window. He was angry. White screamed at Ashley, "I saw you in the car with him." He yelled, "I saw you, bitch. Caught you, bitch," and then, "I am going to get you." Ashley described the incident as "very scary." White "looked scary," and Ashley "thought he was going to hit [her]." At the time there was a criminal protective order in place prohibiting White from coming within 100 yards of Ashley and her children.

Ashley raised her car window and sped away. She called the police as she drove to work. She worked a 12- to 14-hour shift before returning home. The police suggested she call them after work if she needed protection. She did, and the police escorted her and her children to her apartment upstairs.

Ashley spoke to police officers the next morning. She told them that White "look[ed] like he wanted to kill me or hurt me." He threatened, "Bitch, I'm going to kill you." However, on cross-examination Ashley testified she "didn't believe he was going to kill [her]." But she was afraid he would hurt her even if he did not kill her. Ashley also told the police White sent her numerous text messages after the incident with images of a head with an "X" across it.

On cross-examination, defense counsel asked Ashley about her fear of White:

Defense counsel: "On December 21st of 2016 [sic], as he was approaching, were you scared for that moment?"

Ashley: "Yes."

Defense counsel: "As you continued to drive, then the fear wasn't there anymore?"

Ashley: "I was in my car."

Defense counsel: "As soon as you didn't see him anymore, which was within seconds; right?"

Ashley: "Correct."

Defense counsel: "The fear was not there?"

Ashley: "The fear of him hurting me or being able to touch me was not there. I was shaken up that he would even be in the area, be here. Like, why are you here? Why are you screaming and shouting bitch, bitch this, bitch that, bitch I saw you?"

She testified further as to her mental state as she drove away: "I am scared all the time. Let's be clear. But I was definitely scared at that time and scared of when I returned home what may happen so far as is he still going to be there. Will he then come back? I was scared in that sense."

### 3. *Subsequent events*

The day after the incident Ashley discovered that all her car tires had been slashed. White admitted in a text message to Ashley that he slashed her tires because he did not want her to be with other men.

Early in the morning of January 7, 2016 Ashley heard rocks hitting the window of her third floor apartment. She looked out and saw White. He said he loved her and their children. White asked Ashley who was in the apartment with her, so she ended the conversation and called the police.

From January to March 2016, despite the restraining orders, White repeatedly called Ashley on the phone, yelling at her, calling her derogatory names, and threatening her; he sent her text

messages; he threw things at her window; and he banged on her front door.

C. *The Defense Case*

Danielle Rhoden dated White from 2012 through the time of trial, including the time when he was dating Ashley. Rhoden and Ashley had verbal altercations and one physical fight because Ashley was upset White was cheating on her with Rhoden. On January 7, 2016 Rhoden was with White starting sometime in the afternoon. Rhoden did not know where White was the night before or early that morning.

D. *The Verdict and Sentencing*

The jury found White guilty on all counts. White admitted the allegation he had a prior conviction. The trial court sentenced White to an aggregate state prison term of 10 years four months. The court selected count 4 (stalking) as the base term and sentenced White to the upper term of four years, doubled under the three strikes law, plus one year for the prior prison term. The court sentenced White to a consecutive term of eight months on count 1 (one-third the middle term of two years), doubled as a second strike, for an additional one year four months. The court stayed the terms imposed on counts 2 and 3 pursuant to section 654.

## DISCUSSION

A. *Standard of Review*

““[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.”””  
(*People v. Ghobrial* (2018) 5 Cal.5th 250, 277; accord, *People v. Mora and Rangel* (2018) 5 Cal.5th 442, 488 [“Although we assess whether the evidence is inherently credible and of solid value, we must also view the evidence in the light most favorable to the jury verdict and presume the existence of every fact that the jury could reasonably have deduced from that evidence.”].)

“““The standard of review is the same in cases in which the prosecution relies mainly on circumstantial evidence. [Citation.] “Although it is the duty of the [trier of fact] to acquit a defendant if it finds that circumstantial evidence is susceptible of two interpretations, one of which suggests guilt and the other innocence [citations], it is the [trier of fact], not the appellate court[,] which must be convinced of the defendant’s guilt beyond a reasonable doubt. “If the circumstances reasonably justify the trier of fact’s findings, the opinion of the reviewing court that the circumstances might also reasonably be reconciled with a contrary finding does not warrant a reversal of the judgment.””””””” (*People v. Ghobrial, supra*, 5 Cal.5th at pp. 277-278; accord, *People v. Casares* (2016) 62 Cal.4th 808, 823-824.)

B. *Substantial Evidence Supports White’s Conviction of Making Criminal Threats*

1. *Governing law*

To prove the crime of making a criminal threat in violation of section 422, “[t]he prosecution must prove ‘(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 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.” (*In re George T.* (2004) 33 Cal.4th 620, 630; accord, *People v. Orloff* (2016) 2 Cal.App.5th 947, 953.)

White contends the evidence was insufficient to support the fourth element—that Ashley was in sustained fear. Section 422, subdivision (a), requires that the threat cause the victim “reasonably to be in sustained fear for his or her own safety or for his or her immediate family’s safety.” This language “has a subjective and an objective component. A victim must actually be in sustained fear, and the sustained fear must also be reasonable under the circumstances.” (*In re Ricky T.* (2001) 87 Cal.App.4th 1132, 1140.)

Fear is “sustained” within the meaning of section 422 if it lasts for a “period of time that extends beyond what is momentary, fleeting, or transitory.”<sup>2</sup> (*People v. Fierro* (2010) 180 Cal.App.4th

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<sup>2</sup> In his opening brief White also contended the trial court erred by misreading to the jury CALCRIM No. 1300 on making criminal threats, stating that “[s]ustained fear means fear for a period of time that is momentary, fleeting, or transitory.” However, the written jury instruction provided to the jury correctly stated that “[s]ustained fear means fear for a period of time that is *more than* momentary, fleeting, or transitory.” (Italics added.) This argument is included as part of White’s argument on the sufficiency of the evidence. In his reply White clarified that he is not arguing instructional error, instead only providing “a commentary as to how



1342, 1349 [the minute during which the defendant threatened to kill the victim and displayed what appeared to be a gun in his waistband was sufficient to show victim was in sustained fear]; accord, *People v. Culbert* (2013) 218 Cal.App.4th 184, 188, 190 [substantial evidence supported jury's conclusion that defendant's stepson was in sustained fear where for a minute defendant held an unloaded firearm to his head and stated, "[d]on't ever lie to me" and "[d]on't you ever call me that again," causing stepson to scream and "just about poop[] [his] pants."]; *People v. Mendoza* (1997) 59 Cal.App.4th 1333, 1342 [rational juror could find victim was in sustained fear based on defendant's threat to her that because of her testimony he was "going to talk to some guys from Happy Town [gang]," where she feared for her life during the 15 to 30 minutes after she learned the gang was looking for her and during the two hours before the gang members were detained], superseded by statute on other grounds as noted in *People v. Franz* (2001) 88 Cal.App.4th 1426, 1442; *People v. Allen* (1995) 33 Cal.App.4th 1149, 1156 [15 minutes was "more than sufficient" to show sustained fear where the defendant was "armed, mobile, and at large" and had threatened to kill the victim and her daughter]; cf. *In re Ricky T.*, *supra*, 87 Cal.App.4th at p. 1140 [teacher was not

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the misreading could have contributed to this jury[] mistakenly convicting . . . White based on insufficient evidence in count 1." In any event, as White acknowledges, the incorrect oral reading of an instruction is typically harmless error where the jury is provided the correct written instruction. (*People v. Grimes* (2016) 1 Cal.5th 698, 729; *People v. Mungia* (2008) 44 Cal.4th 1101, 1132-1133.) Not only did the jury have the written instruction, but also White's counsel correctly read the written instruction to the jury in her closing argument. Under these circumstances, any error was harmless.

in sustained fear where he was not in fear “beyond the moments of the encounter”].)

“The victim’s knowledge of defendant’s prior conduct is relevant in establishing that the victim was in a state of sustained fear.” (*People v. Wilson* (2010) 186 Cal.App.4th 789, 808 [substantial evidence supported inmate’s conviction for making criminal threats where he threatened to kill a correctional officer when he got out on parole 10 months later, and inmate stated he had previously killed officers]; accord, *People v. Gaut* (2002) 95 Cal.App.4th 1425, 1431 [victim’s fear of defendant’s threats from jail was reasonable where defendant had lengthy history of threatening and assaulting victim]; *People v. Allen, supra*, 33 Cal.App.4th at p. 1156 [court properly considered victim’s knowledge that defendant had practice of looking inside her home prior to day of his threat to kill her and her daughter]; see *People v. Snow* (2012) 205 Cal.App.4th 932, 940 [“In domestic violence situations, prior abuse impacts the victim’s state of mind and can result in ongoing fear and intimidation.”].) In addition, “a jury can properly consider a later action taken by a defendant in evaluating whether the crime of making a terrorist threat has been committed.” (*People v. Solis* (2001) 90 Cal.App.4th 1002, 1014 [jury could properly consider that defendant set victim’s house on fire after making threat in concluding victim was in sustained fear].)

2. *There was substantial evidence White’s threat caused Ashley to be in sustained fear*

White contends there is no substantial evidence that his threat to kill Ashley on December 21, 2015 placed her in sustained fear because Ashley’s fear lasted only for the “moments” before she drove away. However, even a short incident in which the defendant threatens to kill the victim can cause the victim to be in sustained

fear. (See, e.g., *People v. Culbert, supra*, 218 Cal.App.4th at p. 190 [less than a minute sufficient]; *People v. Fierro, supra*, 180 Cal.App.4th at p. 1349 [one minute sufficient].)

Moreover, the jury reasonably could have concluded Ashley was in sustained fear based on her continued fear of White after she left the safety of her workplace. She called the police to escort her and her children to the apartment when she returned home from work. Ashley testified, “I am scared all the time. Let’s be clear. But I was definitely scared at that time and scared of when I returned home what may happen so far as is he still going to be there. Will he then come back? I was scared in that sense.”

Just as in *People v. Mendoza*, where the victim was not in fear from the defendant’s threat that he was going to “talk to some guys” from his gang until she learned his gang was looking for her, Ashley’s fear returned once she was out of the safety of her car and workplace and returned home. (See *People v. Mendoza, supra*, 59 Cal.App.4th at p. 1342.)

The jury also could consider the pattern of domestic violence during the one-and-a-half-year period leading up to the incident. (See *People v. Wilson, supra*, 186 Cal.App.4th at p. 808; *People v. Gaut, supra*, 95 Cal.App.4th at p. 1431.) In June 2014, while Ashley waited at a bus stop, White threatened her and held an imaginary gun to her head. The next month he grabbed Ashley’s car keys, pushed her, and grabbed their daughter. He returned that night or the next morning and angrily banged on the door, leading Ashley to obtain a protective order. In December that year White again accused Ashley of cheating on him, and hit her all over her body, causing bruising. White also sent her threatening text messages. Ashley obtained a criminal protective order, yet White continued to return to her apartment. In June 2015 White was there when the police arrived.

Finally, the jury could consider White's conduct after he threatened her. (See *People v. Solis, supra*, 90 Cal.App.4th at p. 1014.) After the incident White sent Ashley text messages with an image of a head with an "X" across it. Then, the day after the threat White slashed Ashley's tires. Despite the protective order, he continued to threaten her on the phone, send her text messages, throw things at her window, and bang on her door.

Based on the totality of the circumstances, substantial evidence supports the jury's implied finding that Ashley was reasonably in sustained fear for her own safety or the safety of her children. (§ 422, subd. (a).)

### **DISPOSITION**

The judgment is affirmed.

FEUER, J.

WE CONCUR:

PERLUSS, P. J.

ZELON, J.