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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.

JAMES EMILIANO DYCUS,

Defendant and Appellant.

B257242

(Los Angeles County  
Super. Ct. No. KA099042)

APPEAL from a judgment of the Superior Court of Los Angeles County. Teri Schwartz, Judge. Affirmed.

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Susan Morrow Maxwell, under appointment by the Court of Appeal, for  
Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Jason Tran and Jonathan M. Krauss, Deputy Attorneys General, for Plaintiff and Respondent.

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An information, filed on November 20, 2012, charged James Emiliano Dycus with assault with a deadly weapon (Pen. Code, § 245, subd. (a)(1))<sup>1</sup> and criminal threats (§ 422, subd. (a)). The information specially alleged a great-bodily-injury enhancement (§ 12022.7, subd. (a)) on the assault with a deadly weapon count and an enhancement for personal use of a deadly or dangerous weapon (§ 12022, subd. (b)(1)) on the criminal threats count. A jury found Dycus not guilty of assault with a deadly weapon but guilty of the lesser offense of assault (§ 240). It also found Dycus guilty of criminal threats and true the special allegation that he personally had used a deadly or dangerous weapon while committing the offense. The trial court sentenced Dycus to a three-year state prison term for criminal threats, consisting of the two-year midterm plus one year for the weapon enhancement. The court imposed a concurrent term in county jail for assault. Dycus appealed, contending that the evidence is insufficient to support the element of sustained fear required for a criminal threats conviction. We disagree and affirm the judgment.

### **FACTUAL BACKGROUND**

Otto Arriaga and his estranged wife have two daughters. The wife, her daughters and her boyfriend, Dycus, lived together. The wife had primary custody of the daughters, and Arriaga had scheduled visitation with them. Arriaga, a former jockey with permanent injuries to his left hand and right shoulder, was 4 feet 11 inches tall and weighed 110 pounds; Dycus stood 6 feet tall and weighed 200 pounds.

On the evening of August 4, 2012, the daughters were staying with Arriaga at his trailer park home. Dycus, who had been drinking earlier in the evening, drove to the trailer park. He parked his car near Arriaga's trailer, exited the car with a knife in his hand and said to Arriaga, "I'm here to pick up my girls." Arriaga told Dycus that the girls were not his and to leave or Arriaga would call the police. Dycus did not leave but instead followed the daughters. Arriaga picked up a hammer and asked his neighbor to

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

call the police. The neighbor thought Arriaga was “really upset . . . like he . . . feared for his life.”

As Arriaga tried to get his daughters inside his trailer, Dycus stabbed him with the knife multiple times in the back. Arriaga tried to hit Dycus with the hammer and “was so worried that [Dycus] was stabbing [him].” Dycus put his fingers in Arriaga’s eyes. According to Arriaga, “[Dycus] wanted to cut [his] throat” and would not let go of the knife. Arriaga saw Dycus bring the knife toward his neck, and Dycus said, “‘Now you’re going to die. Now you’re going to die.’” Arriaga believed Dycus and “thought [he] was dead.” Trying to get Dycus to drop the knife, Arriaga bit off the top of Dycus’s finger. Dycus released the knife, and Arriaga kicked it. Dycus took the hammer from Arriaga and tapped him saying, “‘Now you are really going to die.’” Arriaga’s neighbors saw Dycus on top of Arriaga, “pounding away” on him, and then stop but begin hitting him again. Arriaga thought Dycus was going to kill him. One neighbor told Dycus to stop, which he ultimately did. The older daughter took the hammer from Dycus, and the younger one hit him on the back. The daughters had blood on them, which scared Arriaga, but they had not been stabbed or injured. The struggle lasted two to three minutes. After the incident, Arriaga moved out of the trailer park “because [he] was afraid that [Dycus] would come again to [his] house and kill [him].”

## **DISCUSSION**

In reviewing challenges to the sufficiency of the evidence, we “consider the evidence in a light most favorable to the judgment and presume the existence of every fact the trier could reasonably deduce from the evidence in support of the judgment. The test is whether substantial evidence supports the decision, not whether the evidence proves guilt beyond a reasonable doubt. [Citations.]” (*People v. Mincey* (1992) 2 Cal.4th 408, 432, fn. omitted.) Substantial evidence is that 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. Johnson* (1980) 26 Cal.3d 557, 578.)

Under section 422, subdivision (a), “[a]ny 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.” “‘Sustained fear’ refers to a state of mind. . . . The word fear, of course, describes the emotion the victim experiences.” (*People v. Fierro* (2010) 180 Cal.App.4th 1342, 1349, fn. omitted.) “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.) “Sustained fear occurs over ‘a period of time “that extends beyond what is momentary, fleeting, or transitory.”’ [Citation.]” (*People v. Wilson* (2015) 234 Cal.App.4th 193, 201.)

Dycus contends that the only time Arriaga reasonably could have been in fear was when Dycus brandished the knife, and such time was too short to constitute sustained fear. We disagree. Two to three minutes are sufficient for sustained fear under the circumstances here in which during those minutes Dycus used a knife, stabbed and beat Arriaga, repeatedly told Arriaga he was going to die and had the capacity to make that happen. (*People v. Fierro, supra*, 180 Cal.App.4th at p. 1349 [even accepting defendant's version of events that victim heard the threat and saw the weapon in a period of a minute, evidence sufficient for sustained fear because, “[w]hen one believes he is about to die, a minute is longer than ‘momentary, fleeting, or transitory’”].) Moreover, given these circumstances, Arriaga reasonably continued to fear Dycus after the incident and, as a result, moved because he was afraid that Dycus would return and kill him.

**DISPOSITION**

The judgment is affirmed.

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ROTHSCHILD, P. J.

We concur:

CHANEY, J.

JOHNSON, J.