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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE, Plaintiff and Respondent, v. JORGE LUIS OLIVARES, Defendant and Appellant.	B236685 (Los Angeles County Super. Ct. No. TA117942)

APPEAL from a judgment of the Superior Court of Los Angeles County, Paul A. Bacigalupo, Judge. Affirmed as modified.

Lenore DeVita, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Paul M. Roadarmel, Jr., Supervising Deputy Attorney General, Nima Razfar, Deputy Attorney General, for Plaintiff and Respondent.

The jury found defendant and appellant Jorge Luis Olivares guilty in count 2 of making a criminal threat (Pen. Code, § 422)[1] and in count 9 of resisting, obstructing, or delaying a peace officer (§ 148, subd. (a)(1)). With respect to count 2, the jury found not true the allegation that defendant personally used a firearm in violation of sections 1203.06, subdivision (a)(1), and 12022.5, subdivision (a). Defendant was found not guilty in counts 1, 3, 4, and 6 of aggravated assault but guilty of the lesser included offense of misdemeanor assault (§ 240).[2]

The trial court sentenced defendant to the middle term of two years in state prison as to count 2, with consecutive county jail terms of six months on counts 3 and 6, and twelve months on count 9. Six-month terms were imposed on counts 1 and 4 but were stayed pursuant to section 654.

Defendant argues that: (1) there is insufficient evidence to support his conviction for making criminal threats; (2) the trial court erred in failing to instruct the jury as to the lesser included offense of attempted criminal threats; (3) the trial court abused its discretion when it refused to reduce his criminal threats conviction from a felony to a misdemeanor; (4) the trial court erroneously imposed consecutive sentences on his misdemeanor convictions because it believed it did not have discretion to impose concurrent sentences; and (5) the abstract of judgment incorrectly states that he was sentenced to four years in state prison. The Attorney General disputes the substantive claims but concedes the abstract of judgment and minute order should be corrected.

We direct the trial court to correct the errors in the abstract of judgment and minute order to conform to the trial court's pronouncement at sentencing but otherwise affirm the judgment.

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[1] Unless otherwise indicated, all statutory references are to the Penal Code.

[2] Defendant was found not guilty in count 7 of dissuading a witness (§ 136.1, subd. (a)(1)), and in count 8 of making a criminal threat. The trial court dismissed the charge in count 5 on defendant's motion.

FACTS

Defendant had a romantic relationship with victim Nancy Romero.[3] The relationship was not stable and the two often quarreled. Neither Nancy's mother, Naomi Alvarez, nor her brother, Edwin, approved of the relationship. After defendant had hit Nancy, Edwin confronted defendant when he saw him in a taxi one day and warned him if he ever hit Nancy again, Edwin would "kick his butt." Defendant responded that Nancy deserved to be hit because of her behavior. Nancy broke off the relationship with defendant. Edwin told defendant to stay away from her.

The first incident from which the charges arise occurred on April 22, 2011. Alvarez testified that she was cleaning up her backyard when defendant appeared and yelled for Nancy to come out of her house. Alvarez told defendant that Nancy did not want anything to do with him and to leave her alone. Defendant told Alvarez he was going to kill Nancy. Defendant left after Alvarez threatened to call the police.

Two days later, on April 24, 2011, Edwin was driving with his 14-year-old son when a car pulled up alongside them at a stop sign. Defendant was in the passenger seat. Defendant asked Edwin if he had been looking for him, and Edwin responded that he had. Edwin did not know what defendant was referring to with the question, but he assumed defendant must have hit Nancy again, so he answered affirmatively. Defendant either told Edwin to leave him alone or not to "fuck with" him and pulled out what appeared to be a handgun.[4] When Edwin saw the gun, he "burned rubber," speeding away in his car. He called 911 to report the incident and told the operator that defendant "just put a gun [to his] head saying he was going to kill me."

In the late afternoon on May 3, 2011, Nancy and defendant were arguing at a bus stop. A bus driver saw Nancy begging for defendant to leave her alone. He appeared

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[3] Because Nancy, her brother Edwin, and defendant's uncle, Rafael, all share the same last name, we refer to them by their first names throughout the opinion.

[4] Edwin testified that he was unable to remember the exact words defendant used.

very angry. Defendant told Nancy he was "gonna fucking kill [her]" and poked her in her side with an ice pick. Nancy grabbed the ice pick from defendant and walked toward the bus. Defendant blocked her from boarding the bus and grabbed her by the collar. He told her that she was not "fucking going anywhere." Defendant put Nancy in a headlock, knocked her down, and choked her. He strangled her until she felt dizzy. Defendant kicked her in the legs and stomach. She was able to break away for a minute, but defendant caught her by the throat again and pinned her to a fence. He pulled her down and kneed her in the chest. The bus driver honked her horn and gestured for Nancy to get on the bus. Nancy broke loose and got onto the bus. Defendant ran away.

Nancy was crying when she got on the bus. She used the bus driver's phone to call the police. The bus driver took her to the next stop, where the police met Nancy. Nancy's face and arms were bruised, her neck was red, and she looked shaken. She told the officers that her relationship with defendant was over, but defendant would not accept it.

Nancy denied at trial that defendant hit her at the bus stop on May 3. She explained that she fell while crossing the street and hurt herself. She said that defendant had put his hands around her neck to hold her against the wall but did not choke her. She claimed that she found the ice pick on the ground and picked it up.

The day after the incident at the bus stop, defendant entered Nancy's house through an unlocked door. Nancy said she did not want any trouble and asked him to leave, but defendant refused. He grabbed Nancy by the hair and hit her. Nancy's five-year-old daughter witnessed the scene and ran to her grandmother's house yelling that defendant was killing her mother. Alvarez ran to Nancy's house and saw defendant kicking Nancy as she lay on the ground. Alvarez tried unsuccessfully to grab defendant, who stopped kicking Nancy and left. Alvarez called the police.

When the police arrived at Alvarez's house, she told them defendant had beaten Nancy and fled. Nancy was crying. She told police defendant had kicked her in the back and pulled her hair. Nancy was treated for her injuries at the scene.

At trial, Nancy testified that she may have told officers defendant hit her, grabbed her head, and pulled her down during the May 4th incident, but she wasn't threatened by him. Nancy testified she was injured when she tried to hold the door and not when defendant hit her.

Alvarez called Edwin after she called the police. He went directly to defendant's house after hearing what defendant had done to Nancy. Defendant was in the yard, and Edwin jumped the gate and charged at him. Defendant screamed for his mother, who opened the door allowing him to run inside the house. Edwin tried to push the door open but someone held it shut from inside. Defendant told Edwin to leave and said that he had everything under control. Edwin continued to push at the door and briefly saw defendant inside holding a gun. Defendant told Edwin he was going to get him and began to raise his hand. Edwin ran away.

Sometime after Edwin left, the police arrived at defendant's mother's house and found defendant barricaded inside. Defendant refused to leave the house, despite repeated warnings from SWAT officers. After three hours, SWAT officers fired tear gas into the house, and defendant surrendered.

When the police interviewed defendant, he said that he and Nancy had been arguing, and he pulled her hair. He said that Nancy had yelled for help and grabbed his legs and bit him. Defendant hit her in the face because he could not get her to let go of him. He said that Nancy's mother saw them fighting and charged at him. He was able to break loose and ran home. After he got home, Edwin showed up at his house, charged at him, and threatened to kill him.

When asked about the incident at the bus stop, defendant explained that he was trying to talk to Nancy, but she walked away and would not listen to him. Defendant denied using an ice pick or any other sharp object to harm Nancy, but admitted he had grabbed her by the neck and pushed her against the fence. He left after people started looking at them and honking their horns. Defendant admitted he had used an ice pick to scare Nancy on another occasion.

Defendant told police that during the April 24 incident Edwin threatened to kill him first. Defendant had a BB gun on his lap and pretended to pull it out. Edwin "ran like a bitch" when he saw defendant reaching for the gun. Defendant admitted he had scared Nancy with the BB gun, a screwdriver, and an ice pick on other occasions but did not harm her. He said that he did not own a real gun.

Defendant's sister, Monica Olivares, testified that she drove defendant to Nancy's house on April 22. She saw Alvarez and Nancy in the yard and heard Alvarez tell defendant to leave. Defendant said that he wanted to talk to Nancy to get his clothes back. Alvarez yelled at defendant. Defendant repeated that he wanted his clothes. He did not threaten either of the women.

Defendant's uncle, Rafael, was in defendant's mother's house when Edwin arrived. Rafael heard defendant yell for his mother to open the door and saw Edwin chase defendant, who ran inside. Rafael heard Edwin say he wanted to kill defendant. Defendant did not have a gun of any kind at the time of the incident.

DISCUSSION

Whether There Was Sufficient Evidence to Support the Jury's Finding That Defendant Made Criminal Threats

Defendant argues his conviction for criminal threats against Edwin during the April 24 incident must be reversed because there was insufficient evidence to support the jury's findings that he threatened Edwin and that Edwin was in sustained fear.

The Fifth and Sixth Amendments, which apply to the states through the Fourteenth Amendment, require the prosecution to prove all elements of a crime beyond a reasonable doubt. (*Sullivan v. Louisiana* (1993) 508 U.S. 275, 277-278.) A conviction supported by insufficient evidence violates the Due Process Clause of the Fourteenth Amendment and must be reversed. (*Jackson v. Virginia* (1979) 443 U.S. 307, 319.) "'In reviewing the sufficiency of evidence . . . the question we ask 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."' [Citations.] . . . 'In determining whether a reasonable trier of fact could have found defendant guilty beyond a reasonable doubt, the appellate court "must . . . presume in support of the judgment the existence of every fact the trier could reasonably deduce from the evidence."' [Citation.] The same standard also applies in cases in which the prosecution relies primarily on circumstantial evidence. [Citation.]" (*People v. Young* (2005) 34 Cal.4th 1149, 1175 (*Young*).)

We review the record in the light most favorable to the prosecution to determine whether the challenged conviction is supported by substantial evidence, meaning "evidence which is reasonable, credible, and of solid value." (*People v. Johnson* (1980) 26 Cal.3d 557, 578.) "[M]ere speculation cannot support a conviction. [Citations.]" (*People v. Marshall* (1997) 15 Cal.4th 1, 35.) Nor does a finding that "the circumstances also might reasonably be reconciled with a contrary finding . . . warrant reversal of the judgment." (*People v. Proctor* (1992) 4 Cal.4th 499, 528-529.) The reviewing court does not reweigh the evidence, evaluate the credibility of witnesses, or decide factual conflicts, as these are the province of the trier of fact. (*People v. Culver* (1973) 10 Cal.3d 542, 548; *In re Frederick G*. (1979) 96 Cal.App.3d 353, 367.) "Moreover, unless the testimony is physically impossible or inherently improbable, testimony of a single witness is sufficient to support a conviction. [Citation.]" (*Young, supra,* 34 Cal.4th at p. 1181.)

Pursuant to section 422, "[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 . . . 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."

When determining whether threats are "'"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[,]" . . . '" this court must evaluate the totality of the circumstances as well as the words used. (*People v. Smith* (2009) 178 Cal.App.4th 475, 480.) Such circumstances may include the parties' prior interactions. (*People v. Mosley* (2007) 155 Cal.App.4th 313, 324.) "[T]he reference to an 'unconditional' threat in section 422 is not absolute." (*People v. Bolin* (1998) 18 Cal.4th 297, 339.) "Conditional threats are true threats if their context reasonably conveys to the victim that they are intended . . . ." (*People v. Brooks* (1994) 26 Cal.App.4th 142, 149.) Even where the words used are ambiguous, the surrounding circumstances may be sufficient to establish that a threat is adequately "unequivocal, unconditional, immediate, and specific." (*People v. Mendoza* (1997) 59 Cal.App.4th 1333, 1342.) Later actions taken by a defendant may aid in establishing whether a statement was intended as a threat. (*People v. Martinez* (1997) 53 Cal.App.4th 1212, 1220-1221.)

Defendant argues there was no evidence that his statement to Edwin was unconditional, because the evidence with respect to the actual words he used is inconsistent. Edwin testified that he did not remember exactly what words defendant said to him—defendant could have told Edwin to leave him alone or not to "fuck with" him. When defendant pulled out what appeared to be a gun directly after making the statement, Edwin took defendant seriously, believed that defendant would use the gun on him, and fled immediately. He said he was especially concerned for his son's safety. In the transcript of the 911 call Edwin made to the police directly following the incident, he stated, "Yes, uh this guy, uh he just put a gun in my head saying he was going to kill me."

Conflicts in testimony are to be resolved by the jury and will not be disturbed by this court. (*People v. Curl* (2009) 46 Cal.4th 339, 342, fn. 3.) Reviewing the judgment in the light most favorable to the prosecution, we conclude substantial evidence supports the conclusion that the statements defendant made to Edwin were criminal threats within the

meaning of section 422. Evidence was presented that defendant and Edwin had a history of animosity, with at least two previous run-ins. Defendant had acted violently toward Edwin's sister and continued to harass her after their romantic relationship ended. He pulled up next to Edwin's car suddenly, let it be known that he did not want Edwin interfering with him, and displayed what appeared to be a handgun. Contrary to defendant's assertions, defendant's display of what was perceived as a handgun cannot be divorced from his words to Edwin. Defendant's display of the gun must be taken into account when assessing the totality of the circumstances, and it is a factor that rational jurors could weigh heavily in determining that defendant's statement was a threat. The jury was entitled to believe whichever version of the statement it found credible, and any of the formulations could reasonably be construed as a criminal threat, given the surrounding circumstances. We therefore conclude that irrespective of which version of the statement the jury deemed true, substantial evidence supports the jury's finding that defendant's statement was a criminal threat.

To establish the "sustained fear" element, "the statute . . . requires proof of a mental element in the victim." (*People v. Allen* (1995) 33 Cal.App.4th 1149, 1156 (*Allen*).) "Sustained fear" is fear that is more than "momentary, fleeting, or transitory." (*Ibid.*)

Defendant argues that because Edwin left the scene quickly and did not show any signs of anxiousness while speaking to the 911 operator, he was not in sustained fear. He contends the prosecution's failure to present evidence that Edwin was fearful when he spoke to the police, coupled with evidence that Edwin was not easily frightened, rebut the assertion that he was in sustained fear. We disagree.

This case is analogous to *People v. Fierro* (2010) 180 Cal.App.4th 1342. In *Fierro,* the victim and his son were threatened by the defendant while in their car at a gas station. (*Id*. at pp. 1344-1346.) While threatening them, the defendant lifted up his shirt

to reveal what the victim and his son believed to be a gun tucked into his waistband.[5] (*Id.* at pp. 1345-1346). The victim left immediately. (*Id.* at p. 1346.) He called 911 from the highway about 15 minutes later when he was "'out of harm's way'. . . and told the operator that he was 'scared shitless.'" (*Ibid.*)

The *Fierro* court found the victim was reasonably in sustained fear for his own and his son's safety. (*Fierro, supra*, 180 Cal.App.4th at pp. 1348-1349.) The *Fierro* court reasoned that the victim was shown a weapon in conjunction with being threatened and therefore had cause to be fearful for the very brief duration of the confrontation and the 15 minutes that passed between the end of the confrontation and the victim's call to the police. (*Id.* at p. 1349.) The *Fierro* court held that "even if we accept appellant's argument [that the victim was not fearful during the 15 minutes before he called the police], we believe that the minute during which [the victim] heard the threat and saw appellant'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.]" (*Ibid.*)

Similarly, in this case, Edwin and his son were in their car when they were threatened by defendant, who displayed what Edwin believed to be a gun. Edwin sped off quickly, and when he contacted the 911 operator, he reported that someone had held a gun to his head and tried to kill him. The confrontation was not prolonged, but, as the *Fierro* court articulated, "[w]hen one believes he is about to die, a minute is longer than 'momentary, fleeting, or transitory.'" (*Fierro, supra*, 180 Cal.App.4th at p. 1349.)

Whether The Trial Court Erred by Failing to Give an Attempted Criminal Threats Instruction

Defendant argues the trial court erred in failing to give an attempted criminal threats instruction. He contends that even if the jury found he made a criminal threat, no

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[5] When defendant was apprehended shortly after the incident, he was found to have only a knife in his possession.

rational trier of fact could conclude that Edwin was in sustained fear. Defendant argues Edwin's fear arose from having seen defendant with what he believed to be a firearm and not from any threat defendant might have made. He additionally argues the trial court had doubts as to whether Edwin was in sustained fear because of Edwin's equivocal testimony and allowed the parties to argue whether Edwin had been the aggressor and had therefore not experienced fear himself, such that the instruction should have been given.

A trial court must instruct the jury on lesser included offenses where such instructions are supported by substantial evidence. (See *People v. Breverman* (1998) 19 Cal.4th 142, 162, 165-169 (*Breverman*); *People v. Barton* (1995) 12 Cal.4th 186, 194 195.) "'Substantial evidence' in this context is '"evidence from which a jury composed of reasonable [persons] could . . . conclude[]"' that the lesser offense, but not the greater, was committed. [Citations.]" (*Breverman*, *supra*, at p. 162.) A claim that the trial court erred by failing to instruct on a lesser included offense is reviewed de novo. (*People v. Waidla* (2000) 22 Cal.4th 690, 733.)

A defendant is guilty of attempted criminal threats if "acting with the requisite intent, [he or she] makes a sufficient threat that is received and understood by the threatened person, but, for whatever reason, the threat does not *actually* cause the threatened person to be in sustained fear for his or her safety even though, under the circumstances, that person reasonably could have been placed in such fear . . . . [In this situation], only a fortuity, not intended by the defendant, has prevented the defendant from perpetrating the completed offense of criminal threat itself." (*People v. Toledo* (2001) 26 Cal.4th 221, 231.)

Attempted criminal threats is a lesser included offense of criminal threats. (*See People v. Jackson* (2009) 178 Cal.App.4th 590, 593; *In re Sylvester C.* (2006) 137 Cal.App.4th 601, 607; see also Judicial Council of Cal. Crim. Jury Instns. (2011-2012) CALCRIM No. 1300 [identifying attempted criminal threats as a lesser included offense].) The trial court, therefore, had a sua sponte obligation to instruct on attempted criminal threats if there was substantial evidence that would have supported a jury

determination defendant was guilty of the attempted criminal threats and not criminal threats. (See *People v. Parson* (2008) 44 Cal.4th 332, 348-349; *People v. Licas* (2007) 41 Cal.4th 362, 366; *Breverman, supra*, 19 Cal.4th at p. 162.)

As we discussed, the evidence at trial was sufficient to support the jury's findings that defendant criminally threatened Edwin, and that defendant's threat actually caused Edwin to be in sustained fear for his safety and that of his son. However, although the evidence was sufficient to support his conviction for criminal threats, the jury, if properly instructed, could have also concluded from the evidence presented that Edwin, who had been the aggressor in at least two previous encounters, had instead approached defendant and threatened him, as defendant stated in his interview with police. It was proper for the jury to evaluate this evidence and to decide whether or not Edwin in fact experienced "sustained fear." The trial court therefore erred in failing to give the appropriate instruction on the lesser included offense of attempted criminal threats.

The trial court's failure to instruct on a lesser included offense generally is subject to harmless error review as articulated in *People v. Watson* (1956) 46 Cal.2d 818 (*Watson*). (*Breverman, supra*, 19 Cal.4th at pp. 176-177.) Under this standard, reversal is required only if it is reasonably probable the jury would have returned a different verdict absent the error or errors committed by the trial court. (*Watson, supra*, at pp. 836-837.)

In this case, it is not reasonably probable that a jury would have returned a different verdict if it had been instructed as to attempted criminal threats. There is strong and compelling evidence in the record supporting the jury's finding that Edwin was in sustained fear for his own and/or his son's safety. The evidence portrayed Edwin as a tough character who admitted to having confronted defendant in the past, yet on this occasion, it is undisputed that he "burned rubber," or as described by defendant, Edwin "ran like a bitch." This action, in stark contrast to his usual behavior, creates the strong inference that he was fearful. At trial, Edwin testified that he was scared by defendant and believed that defendant would use the gun on him. Although defendant argues that Edwin's testimony was equivocal, Edwin never testified that he was not afraid. He

testified that he feared *more* for his son, but a victim's sustained fear for the safety of an immediate family member is also grounds for conviction under section 422. Edwin called the police as soon as he was safely away from defendant, from which it can also be inferred that he was fearful. In light of the evidence, we hold it is not reasonably probable that defendant would have obtained a more favorable verdict had the jury been properly instructed, and thus any error was harmless.

Whether the Trial Court Properly Exercised its Discretion When it Refused to Reduce the Criminal Threats Conviction From a Felony to a Misdemeanor

Defendant argues the trial court abused its discretion by refusing to reduce his conviction for criminal threats against Edwin from a felony to a misdemeanor. He contends that because the jury found defendant guilty of lesser included misdemeanor counts where it had the choice, it would have convicted defendant of misdemeanor and not felony criminal threats if it had been given the option. He additionally asserts the evidence was insufficient for conviction, as discussed above, and therefore the conviction should have been reduced to a misdemeanor. These arguments lack merit.

Section 17, subdivision (b) grants the trial court discretion to reduce a felony "'punishable . . . by imprisonment in the state prison or by fine or imprisonment in the county jail'" to a misdemeanor under certain circumstances. (*People v. Mauch* (2008) 163 Cal.App.4th 669, 674.) The trial court's discretion is "'a broad and elastic one [citation] which we have equated with "the sound judgment of the court, to be exercised according to the rules of law." [Citation.]' [Citation.]" (*People v. Superior Court* (*Alvarez*) (1997) 14 Cal.4th 968, 977.) The party challenging the sentence has the burden to prove that the trial court's decision was irrational or arbitrary. (*Ibid.*) Relevant factors to be considered include "'the nature and circumstances of the offense, the defendant's appreciation of and attitude toward the offense, or his traits of character as evidenced by his behavior and demeanor at the trial.' [Citations.]" (*Id.* at p. 978.)

Taking defendant's arguments in reverse order, we reject the contention that the trial court should have reduced the conviction on the basis that the evidence was insufficient to sustain a conviction under section 422, because, as set forth above, the evidence was sufficient.

With respect to defendant's contention that the conviction should have been reduced because the jury convicted him of misdemeanors rather than felonies when given the option, the trial court explained that, having observed the testimony, it viewed the misdemeanor convictions as resulting from Nancy's testimony, which minimized the events in comparison to the testimony of other witnesses. Whereas the misdemeanor convictions all related to incidents involving Nancy, the criminal threats charge pertained only to Edwin, whose testimony did not diminish gravity of the incidents, and who testified candidly about instances when he, and not defendant, had been the aggressor. We do not discern anything arbitrary or capricious in the trial court's reasoning, and defendant does not offer any basis for viewing it as such.

Moreover, the trial court considered the nature and circumstances of the offense in reaching its conclusion. It reasoned that defendant used what appeared to be a gun to bolster his threat and was convincing enough to cause Edwin, who the trial court noted "was not a wallflower," to be in sustained fear. The court emphasized that Edwin not only backed down from defendant's challenge, which was uncharacteristic of him, but he also fled the scene and immediately called the police for assistance. Finally, the court noted that defendant was on probation for a drug charge at the time of the incident. Because the court appropriately weighed relevant factors in reaching its determination, we hold that it did not abuse its discretion in refusing to reduce the criminal threats conviction to a misdemeanor.

Whether the Trial Court Erroneously Imposed Consecutive Sentences on the Misdemeanor Convictions

Defendant next argues that the trial court erroneously imposed consecutive sentences on the misdemeanor convictions (counts 3, 6, and 9) because it was under the mistaken belief that it lacked discretion to impose concurrent sentences.

The trial court has broad discretion when deciding whether sentences should be imposed concurrently or consecutively. (*People v. Monge* (1997) 16 Cal.4th 826, 850-851.) In making its decision, the court may consider the relationship between the crimes, including whether they involved separate acts of violence or threats of violence, and whether they were committed at different times in different places. (Cal. Rules of Court, rules 4.425(a)(2)-(a)(3).) "The trial court abuses its discretion only when, considering all the circumstances, its determination exceeds the bounds of reason. [Citation.]" (*People v. Lepe* (1987) 195 Cal.App.3d 1347, 1350.)

"Defendants are entitled to sentencing decisions made in the exercise of the 'informed discretion' of the sentencing court. (See *United States v. Tucker* (1972) 404 U.S. 443, 447; *Townsend v. Burke* (1948) 334 U.S. 736, 741.)" (*People v. Belmontes* (1983) 34 Cal.3d 335, 348, fn. 8.) Remand is appropriate where the trial court failed to exercise informed discretion because it misunderstood the scope of its discretionary power. (*Ibid*.) The burden is on the defendant to show that the court abused its discretion. (*Alvarez*, *supra*, 14 Cal.4th at pp. 977-978.)

At sentencing, the trial court stated:

"[T]he . . . [misdemeanor] counts will be consecutive sentenc[es], and your lawyer has asked me not to make it consecutive, rather to make it concurrent.

"But since they are separate incidents and they involve separate victims – granted, Nancy's assault happened on May 3rd and again on May 4th, but they are separate completely isolated incidents – and so I think under the law I am bound to impose the consecutive sentencing."

Defendant cites to the trial court's statement that it was bound to impose consecutive sentences under the law in support of his argument that it misunderstood the scope of its discretion. The court did not make this statement in isolation, however. The record shows that it properly evaluated the relevant factors under California Rules of Court, rules 4.425(a)(2) and 4.425 (a)(3), discussing that the crimes were committed against different persons in isolated incidents. The court's articulation of its reasoning evidences that it understood the relevant considerations and the parameters of its discretion. We therefore conclude that defendant did not meet his burden to establish the court abused its discretion.

Whether the Minute Order and Abstract of Judgment Must be Corrected

Although the trial court sentenced defendant to two years in state prison as to count 2 and terms of six months (counts 3 and 6) and twelve months (count 9) to be served in county jail at the sentencing hearing, the minute order and abstract of judgment state that the court sentenced defendant to a total of four years in state prison. We agree with the parties that the minute order and abstract of judgment do not accurately reflect the court's oral ruling as to sentencing and must be corrected to conform to the court's pronouncement. (*See People v. Sharret* (2011) 191 Cal.App.4th 859, 864 [trial court's oral pronouncement controls where there is a conflict between the pronouncement and the minute order or abstract of judgment].)

DISPOSITION

The trial court is instructed to correct the abstract of judgment and minute order to properly reflect the imposition of a two-year term to be served in a state prison (count 2) and the imposition of sentences totaling two years to be served in county jail (counts 3, 6, and 9). The clerk of the superior court shall send a copy of the corrected abstract of

judgment and minute order to the Department of Corrections and Rehabilitation. In all other respects, the judgment is affirmed.

KRIEGLER, J.

We concur:

TURNER, P. J.

ARMSTRONG, J.