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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

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

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN  
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

S.C.,

Defendant and Appellant.

B277594

(Los Angeles County  
Super. Ct. No. DK18406)

APPEAL from an order of the Superior Court of Los Angeles County, Stephen Marpet, Judge. Affirmed.

Patti L. Dikes, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel, and Sarah Vesecky, Deputy County Counsel, for Plaintiff and Respondent.

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## INTRODUCTION

Mother challenges the juvenile court's order sustaining dependency jurisdiction and removing her five-year-old daughter, A.T., from her custody. Mother was arrested for child endangerment after refusing to comply with a police officer's repeated instructions to remove the child from her boyfriend's vehicle during a traffic stop in which officers forcibly disarmed her boyfriend of a loaded handgun. Mother contends the court improperly assumed jurisdiction because there was no evidence that she knew her boyfriend was armed at the time. We disagree and affirm.

## FACTS AND PROCEDURAL BACKGROUND

Consistent with our standard of review, we state the facts in the light most favorable to the juvenile court's finding, drawing all reasonable inferences in favor of the court's order. (*In re Shelley J.* (1998) 68 Cal.App.4th 322, 329; *In re Veronica G.* (2007) 157 Cal.App.4th 179, 185.)

### 1. Detention

In July 2016, the Los Angeles County Department of Children and Family Services (the Department) received a referral that Mother had been arrested and charged with child endangerment. According to the referral, Mother was apprehended after she and the child were stopped in a vehicle with a male companion who was armed with a loaded handgun. The referral also alleged that Mother used the child as a "shield" during an altercation with the arresting officers.

The police report of the incident confirmed that Mother had the child on her lap in the front passenger seat when officers approached the vehicle for a parking violation. The driver admitted he did not have a license and made a "furtive move with

his left hand reaching for his left leg.” Believing the driver was reaching for a weapon or contraband, the officers moved to restrain him, while instructing Mother to exit the vehicle. Mother refused, and the driver resisted the officers’ efforts to remove him from the car. A third passenger, seated in the rear of the vehicle, exited immediately.

The officers advised Mother that the driver’s actions were consistent with someone holding a firearm, and that the officers would be forced to use pepper spray to subdue him. They informed Mother that the spray would injure her child and likely require hospitalization. Despite the warnings, Mother repeatedly refused to remove the child from the vehicle. She exited only after additional police units arrived to provide assistance.

After finally removing the driver and placing him in handcuffs, the officers searched his clothing and found a semi-automatic pistol in the left front pocket of his pants. The gun was loaded with six live rounds.

The officers arrested Mother for child endangerment based on her refusal to remove her daughter from the vehicle during the altercation. The police report noted that Mother and the driver, later identified as Mother’s boyfriend, Victor R., were “self-admitted and documented Hoodlum Family gang member[s].”<sup>1</sup>

On July 20, 2016, the Department filed a dependency petition on behalf of the child. The operative petition alleged Mother exposed the child to a substantial risk of serious physical harm by allowing Victor R. to transport the child in a car with a

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<sup>1</sup> According to the police report, the Hoodlum Family is a criminal street gang. Among other criminal conduct, the gang has engaged in numerous murders, attempted murders, robberies, assaults with deadly weapons, and narcotics violations.

loaded firearm. The petition also alleged that Victor R. had an extensive criminal history, including convictions for child cruelty and firearms violations. The petition asserted Mother's conduct and her association with Victor R. endangered the child. The juvenile court detained the child and placed her with the maternal grandmother pending a full hearing on jurisdiction and disposition.

## 2. *Investigation of Allegations*

The Department interviewed Mother, the maternal grandmother, and a detective with the Los Angeles Police Department's Gangs Unit. Mother refused to answer questions about the incident because it was part of an "on-going investigation." She acknowledged her relationship with Victor R., but said she would "rather not answer" questions about gang involvement.

The maternal grandmother reported that Mother and the child had moved out of her home a couple months prior to the incident and that she did not know with whom they had been staying. She said Mother was "scared" about the incident, but had given her no other details. She denied knowing Mother's boyfriend or of Mother's gang affiliation.

Detective Jessie Audelo reported that Mother was arrested for child endangerment. He said Mother challenged the arresting officers during the incident, had the child on her lap without a safety seat, and had used the child as a "shield" in an attempt to protect her boyfriend. Audelo said the district attorney declined to prosecute the case and the charges against Mother were ultimately dropped. However, he reported that Mother and her boyfriend were known gang members and that Mother went by the moniker "Lazy."

On the morning of the jurisdiction and disposition hearing, the Department contacted Victor R.'s mother. She confirmed that Mother was dating Victor R. and that her son lived in her home. She also reported that Mother stayed at her home " 'sometimes' " (and was there getting ready for the hearing), and that she was " 'helping [Mother] get back on her feet.' "

3. *Jurisdiction and Disposition Hearing*

On August 10, 2016, the juvenile court held a combined jurisdiction and disposition hearing. Officer Derrick Boykins, who prepared the police report of Mother's arrest, testified regarding the incident. Boykins and his partner initially approached the vehicle because it was parked in a red zone, at an angle more than two feet from the curb. In addition to the driver, Victor R., they found Mother in the front passenger seat with the child on her lap, and another passenger in the backseat of the car.

When Victor R. made a furtive movement toward the left side of his body, Boykins and his partner immediately moved to restrain him, believing he had contraband or a firearm. Understanding force might be needed to subdue Victor R., Boykins testified that he instructed Mother and the other passenger to exit the vehicle. The other passenger exited immediately but Mother refused. He advised Mother that any use of force could hurt the child, and that she needed to remove the child from the car. Mother cursed at Boykins and told him, "I'm not leaving." Boykins testified that he could not force mother from the vehicle because she was "holding the child in between her and I," and he did not want to harm the child.

Boykins repeated his instruction to exit the vehicle, told Mother he strongly believed Victor R. was concealing a firearm, and advised Mother that he may need to use pepper spray, or worse, return fire if Victor R. attempted to shoot the officers. He explained that a bullet would likely pass through Victor R. and that by keeping the child in the car, Mother was placing her daughter in harm's way. Mother again cursed at Boykins and said she would not leave the vehicle. Boykins testified that he next pulled out his pepper spray, explained to Mother that if he needed to use it, the spray would fill the car, get on the child and hurt her eyes. Mother refused to exit and did not move the child from her lap.

Boykins testified that, in his experience, mothers in similar circumstances usually place themselves between their child and potential harm. He said Mother did the opposite—she turned her body to “position her child between us and her.” Mother exited the vehicle when additional police units arrived, but only after Boykins explained that the other officers were there to force her out of the vehicle.

After subduing Victor R., the officers discovered a loaded handgun in his left front pants pocket. Inside the vehicle, Boykins found several notebooks with Mother's name on them. The notebooks had the gang name, “Hoodlum Family,” and different monikers written in them. Mother admitted the notebooks were hers. The entire encounter lasted five to 10 minutes and required the assistance of 10 to 15 officers.

The juvenile court sustained the petition, finding A.T. to be a dependent child as described in Welfare and Institutions Code section 300, subdivision (b).<sup>2</sup> Addressing Mother's argument that the Department failed to prove she knew Victor R. had a gun, the court responded, "I don't think that's necessary." The court explained that Mother argued with police for 10 minutes, refusing to get out of the car. She placed her child "in between the cop and her," despite warnings that the child could be harmed. It was "this action," the court said, that "put this child at risk." In any event, the court also found that Mother's continuing relationship with Victor R., and the fact that she was living with him at the time of the hearing, supported the inference that she knew he was armed during the encounter with police.

As for disposition, the court found by clear and convincing evidence that A.T. could not be protected without removing her from Mother's custody. However, the court ruled that Mother could return to the maternal grandmother's home, with whom the child would remain placed, and that Mother would be allowed unmonitored visits in the home, so long as she enrolled in a parenting class and individual counseling to address family issues, child protection and gang involvement. The court ordered that any contact between Mother and A.T. outside the maternal grandmother's home was to remain monitored.

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<sup>2</sup> Statutory references are to the Welfare and Institutions Code unless otherwise indicated.

## DISCUSSION

### 1. *Legal Principles and Standard of Review*

The juvenile court assumed jurisdiction under section 300, subdivision (b) based on the risk of harm posed by Mother's conduct during her arrest and her continued relationship with Victor R., a known gang member with a significant criminal history. In reviewing the juvenile court's jurisdictional findings, "we look to see if substantial evidence, contradicted or uncontradicted, supports them. [Citation.] In making this determination, we draw all reasonable inferences from the evidence to support the findings and orders of the dependency court; we review the record in the light most favorable to the court's determinations; and we note that issues of fact and credibility are the province of the trial court.'" (*In re Natalie A.* (2015) 243 Cal.App.4th 178, 184.)

A child is within the jurisdiction of the juvenile court under section 300, subdivision (b) "if he or she 'has suffered, or there is a substantial risk that the child will suffer, serious physical harm' . . . from 'the failure or inability of his or her parent or guardian to adequately supervise or protect the child . . .'" (*In re E.B.* (2010) 184 Cal.App.4th 568, 575.) "The basic question under section 300 is whether circumstances at the time of the hearing subject the minor to the defined risk of harm." (*In re Nicholas B.* (2001) 88 Cal.App.4th 1126, 1134.) Although "evidence of past conduct may be probative of current [risk] conditions" (*In re Rocco M.* (1991) 1 Cal.App.4th 814, 824), "there must be some reason beyond mere speculation to believe [that previous neglectful acts] will reoccur." (*In re Ricardo L.* (2003) 109 Cal.App.4th 552, 565; *In re J.N.* (2010) 181 Cal.App.4th 1010, 1025 (*J.N.*) [same].)



The “nature and circumstances of a single incident of harmful or potentially harmful conduct may be sufficient, in a particular case, to establish current risk depending upon present circumstances.” (*J.N.*, *supra*, 181 Cal.App.4th at p. 1026.) Moreover, “[s]ome risks may be substantial even if they carry a low degree of probability because the magnitude of the harm is potentially great.” (*In re I.J.* (2013) 56 Cal.4th 766, 778 (*I.J.*)) In evaluating risk based upon a single episode of endangering conduct, “a juvenile court should consider the nature of the conduct and all surrounding circumstances. It should also consider the present circumstances, which might include, among other things, evidence of the parent’s current understanding of and attitude toward the past conduct that endangered a child, or participation in educational programs, or other steps taken, by the parent to address the problematic conduct in the interim, and probationary support and supervision already being provided through the criminal courts that would help a parent avoid a recurrence of such an incident.” (*J.N.*, at pp. 1025-1026.)

2.     *Substantial Evidence Supports the Court’s  
Jurisdictional Finding*

Mother contends there was insufficient evidence to support the jurisdictional finding. She argues there was no evidence to prove she knew Victor R. was carrying a firearm and, hence, no basis to sustain the allegation that she endangered A.T. by allowing her daughter to ride in a car with a loaded gun. As for her conduct during the arrest, Mother maintains it was, at most, a “one-time incident of neglect and there was no evidence the neglect would ever happen again.” We disagree.

“Reliance on circumstantial evidence is often inevitable when, as here, the issue is a state of mind such as knowledge.” (*In re Tony C.* (1978) 21 Cal.3d 888, 900.) Although Mother denied that she knew Victor R. possessed a firearm, the circumstantial evidence supported a reasonable inference otherwise. The evidence showed that Mother had been in a relationship with Victor R. for several months, she and Victor R. were members of the same criminal street gang, and members of the gang were known to engage in assaults with deadly weapons. Additionally, when advised by police officers that Victor R.’s conduct indicated he was concealing a firearm, Mother gave no indication that she was surprised by the assertion and she took none of the actions that one would expect from a parent trying to protect her child from an unexpected and serious threat of harm. This evidence was sufficient to support the inference that Mother knew Victor R. possessed a firearm when she allowed her daughter to ride in the vehicle with him. (See, e.g., *People v. Gonzales* (2015) 232 Cal.App.4th 1449, 1463 [under statute making it a misdemeanor for driver to “knowingly . . . permit” another person to bring a firearm into vehicle (Pen. Code, § 26100, subd. (a)), evidence that driver and passenger were fellow members of criminal street gang, and that gang’s activities included “ ‘[c]arrying concealed firearms,’ ” was sufficient to support driver’s conviction].)

Moreover, we agree with the juvenile court’s conclusion that, even without the presence of a firearm, Mother’s conduct during her altercation with police established that A.T. faced a serious risk of physical harm due to parental neglect. (§ 300, subd. (b).) Officer Boykins offered a deeply distressing account of the actions that precipitated Mother’s arrest for child

endangerment. The officer testified that Mother repeatedly refused to remove her five-year-old daughter from the vehicle, even after Boykins pulled out his pepper spray and advised her that, if he were required to use it, the spray would fill the car, harm the child, and likely necessitate her daughter's hospitalization. Even the prospect of gunfire in the vehicle did not compel Mother to remove her child from the escalating altercation. And, despite his warnings, Boykins testified that Mother not only refused to comply with the officers' instructions, but used her daughter as a shield to prevent them from removing her from the vehicle. All of this paints an extraordinarily disturbing picture of Mother's judgment and of her commitment to protecting her child in a dangerous situation created largely by her own misconduct.

Mother argues the conduct that led to her arrest was insufficient to establish a persistent risk of harm at the time of the jurisdiction hearing. In support of the contention, she cites the Department's reports that A.T. was in good health and showed no signs of abuse at the time of her detention. While this evidence is consoling, it does not negate all the other evidence indicating a continuing risk of harm to the child. That evidence showed Mother was an admitted member of a criminal street gang.<sup>3</sup> She, as discussed above, took actions in a dangerous and escalating situation that were entirely inconsistent with the judgment and protective instincts that are to be expected of a parent. And, despite having her five-year-old daughter detained

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<sup>3</sup> Mother contends she was unaware of Victor R.'s criminal history. In view of the evidence that she and Victor R. were both members of the same criminal street gang, the juvenile court could make a reasonable inference to the contrary.

from her custody due in part to her association with Victor R., the evidence showed that on the morning of the jurisdiction hearing she was at his residence and had been living there at least some of the time. The juvenile court, “having substantial interests in preventing the consequences caused by a perceived danger[,] is not helpless to act until that danger has matured into certainty.” (*In re Eric B.* (1987) 189 Cal.App.3d 996, 1003.) Mother’s conduct, and her failure to address the principal issues that led to her child’s detention, were sufficient to support the court’s jurisdictional finding. (See *In re John M.* (2012) 212 Cal.App.4th 1117, 1127 [mother’s failure to appreciate danger posed by her past conduct supported finding that child could not safely remain in her custody].)

### 3. *The Disposition Order Was Proper*

Before a dependent child may be taken from the physical custody of a parent, section 361, subdivision (c)(1) requires the juvenile court to find “clear and convincing evidence” of “a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the minor if the minor were returned home, and there are no reasonable means by which the minor’s physical health can be protected without removing the minor from the [parent’s] physical custody.” (§ 361, subd. (c)(1).)

In challenging the juvenile court’s disposition order, Mother relies entirely upon the heightened clear and convincing standard of proof to argue the evidence was insufficient to remove the child from her custody. Mother maintains that standard requires this court to find the evidence was “‘so clear as to leave no substantial doubt . . . [and] sufficiently strong to command the unhesitating assent of every reasonable mind’” about the risk of harm her continued custody posed to A.T. While Mother is

correct about the standard governing the juvenile court's finding, she is mistaken about that standard's applicability to our review of the order on appeal.

Contrary to Mother's premise, the clear and convincing standard specified in section 361, subdivision (c) is "for the edification and guidance of the trial court and not a standard for appellate review. [Citations.] ' "The sufficiency of evidence to establish a given fact, where the law requires proof of the fact to be clear and convincing, is primarily a question for the trial court to determine, and if there is substantial evidence to support its conclusion, the determination is not open to review on appeal." [Citations.]' [Citation.] Thus, on appeal from a judgment required to be based upon clear and convincing evidence, 'the clear and convincing test disappears . . . [and] the usual rule of conflicting evidence is applied, giving full effect to the respondent's evidence, however slight, and disregarding the appellant's evidence, however strong.' " (*Sheila S. v. Superior Court* (2000) 84 Cal.App.4th 872, 880-881; *In re Amos L.* (1981) 124 Cal.App.3d 1031, 1038 [notwithstanding section 361's heightened proof requirement, "on appeal, the substantial evidence test applies to determine the existence of the clear and convincing standard of proof, the same as in other cases"].) Our task is simply to determine whether there was substantial evidence, contradicted or uncontradicted, upon which the juvenile court could have reasonably based its removal order. (*I.J., supra*, 56 Cal.4th at p. 773.) We conclude there was.

As explained above, the juvenile court reasonably based its substantial risk finding on Mother's distressing and endangering conduct in an altercation with police officers that could have resulted in pepper spray or gunfire harming her five-year-old daughter. Further, in view of the evidence that Mother continued to have contact, and even at times resided with Victor R., the court reasonably concluded that releasing the child to her physical custody would pose a substantial danger to A.T.'s health and safety. We also note that the court evaluated whether reasonable measures could be taken to ensure the child's safety without physically separating her from Mother, and allowed Mother to reside in the home of the maternal grandmother, with whom A.T. remained placed, with appropriate controls on outside visitation and reunification services in place to mitigate the risk of future endangering conduct. We find no error in the court's disposition ruling.

### **DISPOSITION**

The jurisdictional finding and disposition order are affirmed.

### **NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

STONE, J.\*

We concur:

EDMON, P. J.

LAVIN, J.

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\* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.