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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

SCOTT BEECHER SMITH,

Defendant and Appellant.

A146046

(Napa County

Super. Ct. Nos. CR171656, CR173319)

Defendant Scott Beecher Smith was charged with various crimes in two different cases and was found guilty of two counts of felony false imprisonment, among other things. Defendant now appeals, arguing the evidence does not support his conviction for felony false imprisonment in one of the cases because he did not use sufficient force to restrain the victim. We disagree and affirm the judgment of conviction. Additionally, we find the trial court imposed an unauthorized sentence when it stayed an enhanced sentence in connection with defendant's prior prison terms.

I. BACKGROUND

In case No. CR173319, defendant was charged by information with corporal injury to a spouse or cohabitant (Pen. Code,¹ § 273.5, subd. (a); count one) and felony false imprisonment (§ 236; count two). It was also alleged defendant committed the first offense while on bail (§ 12022.1). In case No. CR171656, defendant was charged by an amended information with assault by means likely to produce great bodily injury (§ 245,

¹ All statutory references are to the Penal Code.

subd. (a)(4); count one), corporal injury to a spouse or cohabitant (§ 273.5, subd. (a); count two), criminal threats (§ 422; count three), and felony false imprisonment (§ 236; count four). In both cases, it was alleged defendant had been convicted of a prior serious felony and prior strike (§§ 667, subd. (a)(1), 1170.12, subds. (a)–(d)), and he had served four prior prison terms (§ 667.5, subd. (b)). The cases were ordered consolidated for trial.

In case No. CR173319, the jury found defendant guilty on both counts. In case No. CR171656, the jury found defendant guilty of the lesser included offense of assault by means likely to produce great bodily injury on count one, the lesser included offense of domestic battery on count two, the lesser included offense of attempted criminal threats on count three,² and felony false imprisonment on count four. In case No. CR173319, the trial court imposed an eight-year sentence on count one and stayed the sentence on count two. The court also imposed a consecutive one-year four-month term on count four in case No. CR171656, as well as a two-year term for the on-bail enhancement. Finally, the court imposed two one-year terms for two of defendant's prior prison terms pursuant to section 667.5, subdivision (b), and in the interests of justice, stayed defendant's sentence on the two other prior terms. Defendant's total sentence was 13 years 4 months.

The charges in case No. CR173319 concerned defendant's former girlfriend, Nichole.³ The two were engaged to be married from July to September 2014. Defendant lived with Nichole during this period. The couple broke up around October 2014.

On November 4, 2014, Nichole agreed to allow defendant to take a nap in her living room. Nichole testified that when defendant arrived at her house he was "in a weird rage." According to Nichole, defendant started "yelling and saying hurtful things. And his stance and voice were aggressive." Nichole was "really scared" because she

² The trial court subsequently granted defendant's motion to reduce count three to a misdemeanor pursuant to section 17, subdivision (b).

³ Because defendant has not appealed from the judgment in case No. CR171656 we do not recite the facts underlying the charges.

could tell defendant “was spiraling into . . . a rage.” Defendant blocked the doorway and would not let Nichole walk out of the living room. He also looked “right at [Nichole’s] head” like he was getting ready to hit her.

Nichole told defendant to “get out,” but he refused to leave. Nichole picked up defendant’s satchel, thinking that he would leave if she put his things outside. As Nichole walked into the kitchen with defendant’s satchel, defendant “cornered” her, so that her back was against the kitchen sink. Defendant screamed at Nichole to put down his things. Nichole remained cornered for about five minutes. Defendant “got closer and closer” and then punched Nichole’s arm, “bang[ing]” it up against a counter and leaving a bruise.

Nichole tried to distract defendant, telling him she was going to kill herself. She then ran into the bathroom. Defendant followed her and would not let her close the door. Nichole tried to stay calm and went outside to sit. She said defendant “kept talking and talking.” Finally, Nichole went inside and locked the door, and defendant left the house. At trial, Nichole also described other incidents in which defendant was aggressive or violent with her.⁴

II. DISCUSSION

A. *Substantial Evidence Supports the Felony False Imprisonment Conviction*

Defendant contends the evidence does not support his conviction on the felony false imprisonment charge concerning Nichole. According to defendant, he is only guilty

⁴ In March or April 2014, as Nichole attempted to leave defendant’s apartment, defendant picked up a poker and said if she tried to walk past him he would hit her in the head with it. Defendant also said “if he was gonna go back to jail or prison . . . then he might as well hurt [Nichole] really badly to make it worth it.” In September 2014, defendant was pacing back and forth, and he would not let Nichole leave the room, urinate by herself, or drink or eat anything. He cornered Nichole and screamed at her. At one point, defendant was so close to Nichole that he was spitting in her face as he was screaming. In another incident, defendant said he knew Nichole was having sex with someone else, and when he found out who, he would kill both of them. During this altercation, defendant pushed Nichole into the refrigerator. In yet another incident, defendant threatened Nichole with a double-edged sword, telling her if she came near his stuff she was going to get hurt.

of the lesser included offense of misdemeanor false imprisonment because he did not use sufficient force to restrain Nichole. The argument is unavailing.

We review defendant's claim under the familiar substantial evidence standard. Under this test, "we must determine 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 or special circumstance beyond a reasonable doubt. We review the entire record in the light most favorable to the judgment below to determine whether it discloses sufficient evidence—that is, evidence that is reasonable, credible, and of solid value—supporting the decision, and not whether the evidence proves guilt beyond a reasonable doubt. [Citation.] We neither reweigh the evidence nor reevaluate the credibility of witnesses. [Citation.] We presume in support of the judgment the existence of every fact the jury reasonably could deduce from the evidence. [Citation.] If the circumstances reasonably justify the findings made by the trier of fact, reversal of the judgment is not warranted simply because the circumstances might also reasonably be reconciled with a contrary finding." (*People v. Jennings* (2010) 50 Cal.4th 616, 638–639.)

Here, the issue is whether there was sufficient evidence to support a finding defendant committed felony false imprisonment, as opposed to misdemeanor false imprisonment. "False imprisonment is the unlawful violation of the personal liberty of another." (§ 236.) The misdemeanor offense of false imprisonment "requires no force beyond that necessary to restrain the victim. All that is necessary is that 'the individual be restrained of his liberty without any sufficient complaint or authority therefor, and it may be accomplished by words or acts . . . which such individual fears to disregard.'" (*People v. Babich* (1993) 14 Cal.App.4th 801, 806.) False imprisonment becomes a felony when the restraint is effected by violence, menace, fraud, or deceit. (§ 237, subd. (a).) "Menace is a threat of harm express or implied by words or act." (*People v. Dominguez* (2010) 180 Cal.App.4th 1351, 1359.) "An express threat or use of a deadly weapon is not necessary." (*People v. Wardell* (2008) 162 Cal.App.4th 1484, 1491.) It has also been said "[m]isdemeanor false imprisonment becomes a felony only where the

force used is greater than that reasonably necessary to effect the restraint.” (*People v. Hendrix* (1992) 8 Cal.App.4th 1458, 1462.)

We conclude there was ample evidence defendant effected the restraint of Nichole by means of menace. Nichole testified defendant was “in a weird rage” at the time of the restraint. He yelled and said hurtful things, and his voice and stance were aggressive. At first defendant blocked a doorway and would not allow Nichole to get out of the living room. He stared at Nichole as if he intended to hit her. When Nichole tried to carry defendant’s bag out of the house, he backed her against the kitchen sink and cornered her for about five minutes, getting closer and closer as he screamed at her. The restraint ended only after defendant hit Nichole’s arm. During this time, Nichole was “really scared.” (See *People v. Islas* (2012) 210 Cal.App.4th 116, 127 [subjective fear of victim relevant in determining sufficiency of evidence of menace].) Moreover, based on past instances of abuse and intimidation, Nichole had reason to believe defendant would act out against her in a violent manner. Contrary to defendant’s suggestion, the jury need not have found him guilty of only misdemeanor false imprisonment because he did not make physical contact with Nichole to effect the restraint. Menace merely requires an express or implied threat of harm. (*People v. Dominguez, supra*, 180 Cal.App.4th at p. 1359; see *Islas*, at pp. 124–127 [finding evidence supported conviction for felony false imprisonment where there was no touching].)

Defendant argues the force he used was no greater than necessary to effect the restraint. He asserts that, while in the kitchen, he simply walked towards Nichole, insisting she let go of his property, until the kitchen counter prevented any further retreat. But defendant was also screaming at Nichole while he restrained her. And he had just adopted an aggressive stance and looked at Nichole’s head as if he was going to hit her. Based on this evidence, the jury could have reasonably concluded defendant did not merely restrain Nichole but also used menacing behavior to threaten her and place her in fear for her life or safety. This level of menace is sufficient to support a conviction for felony false imprisonment.

B. Trial Court Improperly Stayed Sentence for Prior Prison Terms

Section 667.5, subdivision (b) provides for a sentencing enhancement of one year for each prior separate prison term served for any felony. Here, the trial court found the prosecution had proven four prior prison terms, but stayed the enhancement for two of those terms in the interests of justice. As the Attorney General argues, this was error.

“Once the prior prison term is found true within the meaning of section 667.5[, subdivision] (b), the trial court may not stay the one-year enhancement, which is mandatory unless stricken.” (*People v. Langston* (2004) 33 Cal.4th 1237, 1241.)

Because the stay of the enhancement was unauthorized, we remand for proper sentencing. (See *People v. Amaya* (2015) 239 Cal.App.4th 379, 385 [“ ‘[A]n unauthorized sentence . . . is subject to being set aside judicially and is no bar to the imposition of a proper judgment thereafter, even though it is more severe than the original unauthorized pronouncement.’ ”].)

III. DISPOSITION

The judgment of conviction is affirmed. We remand for the trial court to impose or strike the prior prison terms.

Margulies, Acting P.J.

We concur:

Dondero, J.

Banke, J.

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