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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION SIX

THE PEOPLE,
Plaintiff and Respondent,

v.

JOSEPH STEVEN BARRON,
Defendant and Appellant.

2d Crim. No. B237776
(Super. Ct. No. 2011019301)
(Ventura County)

Joseph Steven Barron appeals from the judgment following jury trial of his convictions of assault by means of force likely to inflict great bodily injury (Pen. Code, § 245, subd. (a)(1)¹ (assault GBI)), conspiracy to commit assault GBI (§ 182, subd. (a) (conspiracy)), and three counts of battery (§ 242). The jury found the gang benefit allegations true as to the assault GBI and conspiracy (§ 186.22, subd. (b)(1)), and the batteries (*id.*, subd. (d)). The trial court sentenced appellant to five years in prison, including concurrent sentences for assault GBI and conspiracy.² Appellant's sole contention on appeal is that by imposing separate sentences for the conspiracy and assault GBI, the trial court ignored the section 654 prohibition against punishing a defendant for

¹ All statutory references are to the Penal Code.

² Appellant's sentence includes a 3-year middle term for assault GBI, with a consecutive 2-year section 186.22, subdivision (b) enhancement; a concurrent 2-year middle term for conspiracy, with a 3-year concurrent section 186.22, subdivision (b) enhancement; and concurrent terms of 1-year for each of the three battery offenses.

crimes which shared the same objectives. We agree and modify the judgment to stay execution of sentence for conspiracy pursuant to section 654.

FACTUAL BACKGROUND

Sur Town Chiques and Colonia Chiques are rival Oxnard gangs. Appellant is an associate of Sur Town Chiques. Sur Town members call Colonia Chiques "ca-ca boys." According to Oxnard Police Department Detective Alex Arnett, gang members have a duty to protect their territory and initiate fights against their rivals. By fighting rivals, gangs place all the other gangs on notice that they will protect their neighborhood and are not afraid to fight. Such conduct also demonstrates to the entire community that the gang controls its territory, which fosters fear and intimidation. Arnett also described "crim[ing] in," and other means of joining a gang. "Crim[ing] in" involves committing crimes, including assaults upon gang rivals.

On May 28, 2011, Joel Rabadan, his girlfriend, Lorraina, three of their children, and Maria Rabadan were at the Oxnard home of Edelmira Lazaro. They all left to go to the store, and started entering two cars. A green SUV approached, made a U-turn, and stopped near Joel. The front passenger got out, approached Joel and asked where he was from. Someone in the SUV said, "Sur Town," and "fuck ca-ca." The front passenger started hitting Joel. Seconds later, appellant also got out of the SUV and started hitting Joel. One assailant displayed a switchblade. The assailants also hit or pushed Joel's young son, Maria and Edelmira. They left in the SUV, yelling "Sur Town."

The police found the SUV parked in a driveway, and arrested appellant as he approached it. The SUV contained a Sur Town CD, a shank, and a hat like those commonly worn by Sur Town gang members.

Appellant did not testify at trial. He called police witnesses and questioned them about variations in witnesses' descriptions of the assailants. Appellant argued that he was not at the scene of the attack and that he was mistakenly identified as one of the assailants.

DISCUSSION

Appellant was convicted of committing an assault GBI upon Joel, and conspiring to assault him. (§§ 245, subd. (a)(1), 182, subd. (a)(1).) He contends that by imposing separate sentences for assault GBI and conspiracy, the trial court ignored the section 654 prohibition against punishing a defendant for crimes that shared the same objectives. We agree.

Section 654, subdivision (a) provides that "[a]n act or omission that is punishable in different ways by different provisions of law shall be punished under the provision that provides for the longest potential term of imprisonment, but in no case shall the act or omission be punished under more than one provision." The statute prohibits punishment for two crimes arising from a single, indivisible course of conduct. (*People v. Latimer* (1993) 5 Cal.4th 1203, 1208.)

Because of the section 654 prohibition against multiple punishment, a defendant may not be punished for both a conspiracy to commit a crime and the crime itself where the conspiracy and the substantive offense shared the same objectives. (*People v. Briones* (2008) 167 Cal.App.4th 524, 529; *People v. Ramirez* (1987) 189 Cal.App.3d 603, 615; *In re Cruz* (1966) 64 Cal. 2d 178, 180-181.) "Our Supreme Court has recently debated the continuing validity of the traditional section 654 inquiry. [Citations.] But . . . the basic inquiry remains." (*People v. Nunez* (2012) 210 Cal.App.4th 625, 627, fn. 2.)

Citing *People v. Vargas* (2001) 91 Cal.App.4th 506, 517, respondent argues that the trial court properly sentenced appellant separately for conspiracy because he had separate objectives in committing the assault GBI and the conspiracy to do so. *Vargas* is inapposite. The *Vargas* defendant was punished both for a murder and a conspiracy to commit murder and other offenses. (*Id.* at pp. 517-518.) However, there was strong evidence the gang conspired to commit numerous uncharged murders, as well as the offenses of which *Vargas* was convicted. (*Id.* at p. 571.) Further, the *Vargas* defendant did not receive any additional gang enhancements (*id.* at pp. 517-518), unlike appellant, who received gang enhancements for both assault GBI and conspiracy. Contrary to

Vargas, appellant was convicted of a conspiracy to commit one crime, assault GBI, upon one victim. There is no evidence that he had separate objectives in committing the conspiracy and the assault GBI. Section 654 thus precludes the imposition of punishment for both the conspiracy and the assault GBI. (See *People v. Alford* (2010) 180 Cal.App.4th 1463.)

DISPOSITION

We modify the judgment to stay execution of sentence for conspiracy (§ 182, subd. (a)(1)), pursuant to section 654. The trial court is directed to amend the abstract of judgment and forward a copy to the Department of Corrections and Rehabilitation. In all other respects, the judgment is affirmed.

NOT TO BE PUBLISHED.

PERREN, J.

We concur:

GILBERT, P. J.

YEGAN, J.

David M. Hirsch, Judge
Superior Court County of Ventura

Lori Kantor, under appointment by the Court of Appeal, for Defendant and Appellant.

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