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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
(Sacramento)

THE PEOPLE,

Plaintiff and Respondent,

v.

MAURICE R. MUHAMMAD,

Defendant and Appellant.

C068493

(Super. Ct. No.
09F03089)

A jury convicted defendant Maurice R. Muhammad of stalking, criminal threats, false imprisonment, robbery, and spousal battery. (Pen. Code, §§ 211, 236, 243, subd. (e)(1), 422, 646.9, subd. (a).) The trial court sentenced defendant to prison for seven years, and defendant timely appealed. On appeal, defendant contends: (1) no substantial evidence supports stalking; (2) no substantial evidence supports criminal threats; (3) the trial court improperly allowed expert testimony on the cycle of violence in domestic abuse cases; and (4) the trial court improperly imposed unstayed prison sentences on some

counts. As we explain, each of these contentions fails to persuade. Accordingly, we shall affirm.

FACTS

The alleged victim was defendant's wife, I.H., and by the time of trial she had tried to have the charges against defendant dropped. The People's case was based largely on pretrial statements made by I.H., eyewitness testimony, and evidence that defendant had abused I.H. in the past.

Witness Testimony

Sergeant Jennifer Garcia testified that on the morning of the charged offenses, I.H. was scared, crying, and had visible spit on her face. I.H. reported that defendant had threatened her by text and telephone messages the night before, and at the parking lot had grabbed her by the hair, spun her around, threatened her, spat on her, and grabbed her purse and ran off. I.H. reported that in the prior messages, defendant called her a "whore and bitch. And then [I.H.] also said that he was going to get her[.]" While defendant had I.H. in a bear hug at the parking lot, he said that if he could not have I.H., nobody would, and he yelled about "kicking her ass right there[.]" I.H. later reported that when her purse was returned, money was missing. *At the police station*, I.H. received texts and phone messages from defendant, which Sergeant Garcia was able to hear or read, and defendant stated I.H. would not get her purse back and that defendant would kill her. I.H. was visibly afraid, complained of neck pain, and showed the officer a tangled clump of hair.

Two witnesses saw I.H. being attacked. One saw a man grab a woman and "head bump her," then saw the man grab something off of the woman's shoulder and run off. The other eyewitness saw the man grab the woman from behind, by the hair, and saw him butt his head "into her forehead."

Detective Dennis Prizmich testified as an expert on intimate partner battering. Based on his training and experience, he described the "cycle of violence" by which tension between intimate partners repeatedly builds up, the aggressor does a physically or verbally violent act, and then there is a "honeymoon stage where they make up." Often the victim will downplay the extent of the abuse or wholly deny that it occurs, recanting prior statements and becoming uncooperative with law enforcement.

A peace officer testified that in 2004, I.H. reported that defendant had punched her in the stomach. Another officer testified that in 2006, I.H. reported that defendant chased her in the family law court parking lot.

I.H.'s Testimony

I.H. testified she was divorcing defendant and no longer lived with him. She worked at the UC Davis Medical Center. On April 17, 2009, she received several texts and voice messages from defendant, but testified she did not recall them or consider them to be threatening. She recalled speaking to Sergeant Garcia on that day, but denied telling the officer defendant threatened her and did not recall saying she had

received 50 texts from defendant.¹ I.H. testified she had not been afraid, and had not told the officer she was afraid.

I.H. denied recalling receiving specific texts, including but not limited to the following texts copied from her phone by a peace officer: (1) "'Slut ass stank bitch. Hate your whore ass. Allah is gonna destroy your ass. I hope you and [your] mismatched children die, slut bitch. Kamelion 8:41 am[;]'" (2) "'San Leandro Bitch hug: Lying cop calling slut! Disrespect breeds disrespect [you] piece of shit sorry whore! Fuck [you] and I appreciate [your] help prostitute. Kamileon 8:49 am[;]'" and (3) "'Die bitch. Die!'"

I.H. admitted that on April 17, 2009, she did not park in her usual parking structure, to prevent defendant from knowing whether she was at work, but denied she had been afraid of him. She saw defendant's vehicle driving toward the parking structure, but "just kept walking" to work. Defendant called out to her, got out of his car, walked fast toward her, pulled her around to face him, and tried to kiss her. I.H. denied telling Sergeant Garcia that she tried to run away, that defendant pulled her by the hair, or that she had been afraid. I.H. conceded that defendant had called her a "bitch" and a "whore" and sprayed her with saliva while he talked, but denied that he purposefully spat at her or that she told Sergeant

¹ I.H. had also spoken to Detective *Mary Garcia* about this case, and it appears she confused which officer she talked to at which time. Because any such discrepancies are not material, we will not attempt to reconcile them.

Garcia he had done so. Defendant took her backpack, but I.H. denied reporting that he ripped it off her shoulder. Later that day, a friend returned the backpack, but I.H. denied recalling reporting that money was missing.

While she was at the police station that day, I.H. received a telephone call from defendant, but she denied that he said anything like "'I'm going to kill you, bitch[.]'" She denied telling the police that defendant caused her a headache or neck pain, or showing the police where he had pulled some of her hair out in clumps.

I.H. denied she had applied for a restraining order against defendant that day, but eventually conceded she signed such an application that had been filled out by somebody else. She also conceded she had obtained a prior restraining order against defendant in 2006. In her application for the earlier restraining order, she stated defendant struck her in the face, and she testified he had done so. She denied defendant punched her in the stomach in 2004 and denied recalling that he chased her around the family law court parking lot in 2006. She admitted trying to get the present charges dismissed, and trying to reconcile with defendant in June 2009.

After deliberating for less than half an hour, the jury convicted defendant as charged.

DISCUSSION

I

Sufficiency of Evidence of Stalking

Defendant contends no substantial evidence supports the stalking conviction, because defendant's conduct was "recent and not protracted" and did not cause reasonable fear.

The relevant statute provides in part:

"Any person who willfully, maliciously, and repeatedly follows or willfully and maliciously harasses another person and who makes a credible threat with the intent to place that person in reasonable fear for his or her safety, or the safety of his or her immediate family is guilty of the crime of stalking[.]" (Pen. Code, § 646.9, subd. (a).)²

"Section 646.9 does not require that the defendant actually intend to carry out the threat. It is enough that the threat causes the victim reasonably to fear for her safety or the

² The statute also provides certain definitions, as follows:

"(e) . . . 'harasses' means engages in a knowing and willful course of conduct directed at a specific person that seriously alarms, annoys, torments, or terrorizes the person, and that serves no legitimate purpose. [¶] (f) . . . 'course of conduct' means two or more acts occurring over a period of time, however short, evidencing a continuity of purpose[.] [¶] (g) . . . 'credible threat' means a verbal or written threat, including that performed through the use of an electronic communication device, or a threat implied by a pattern of conduct or a combination of verbal, written, or electronically communicated statements and conduct, made with the intent to place the person that is the target of the threat in reasonable fear for his or her safety . . . and made with the apparent ability to carry out the threat so as to cause the person who is the target of the threat to reasonably fear for his or her safety It is not necessary to prove that the defendant had the intent to actually carry out the threat." (Pen. Code, § 646.9.)

safety of her family, and that the accused makes the threat with the intent to cause the victim to feel that fear. [Citation.] In addition, in determining whether a threat occurred, the entire factual context, including the surrounding events and the reaction of the listeners, must be considered." (*People v. Falck* (1997) 52 Cal.App.4th 287, 297-298 (*Falck*).) Intent is shown from the surrounding facts and circumstances. (*Falck, supra*, 52 Cal.App.4th at p. 299.)

Defendant concedes there is evidence he sent repeated texts to I.H. that morning, and that I.H. altered her normal parking routine to avoid him. He contends his actions were not sufficiently "protracted" because at most they extended back to the previous night. He also contends his conduct would not "seriously" alarm I.H., because he merely wanted to reconcile with her. Finally, he contends there is no evidence he intended to cause I.H. fear.

These contentions might make an appropriate jury argument, but they disregard the appellate standard of review. "'On appeal we review the whole record in the light most favorable to the judgment to determine whether it discloses substantial evidence—that is, evidence that is reasonable, credible, and of solid value—from which a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt.'" (*People v. Abilez* (2007) 41 Cal.4th 472, 504 (*Abilez*).)

Viewing the evidence in the light favorable to the verdict, as we must, there was ample evidence supporting defendant's

stalking conviction. On the day in question, defendant sent many messages to I.H., some containing explicit or implicit threats to kill or hurt her. Defendant's claim that the conduct was not prolonged enough is refuted by the statute, which states the necessary "'course of conduct' means two or more acts occurring over a period of time, *however short*, evidencing a continuity of purpose[.]" (Pen. Code, § 646.9, subd. (f), emphasis added.) Contrary to defendant's claim in the reply brief, there is no requirement that the harassing course of conduct *itself* be repeated. (See *People v. McCray* (1997) 58 Cal.App.4th 159, 168-171.) Although I.H. minimized the effect of the messages, from the fact that she changed her normal parking routine, appeared to be frightened, and had been struck by defendant in the past, the jury could find defendant's threats were credible and that they reasonably caused I.H. to fear him, as required by the statute.

II

Sufficiency of Evidence of Criminal Threats

Defendant contends no substantial evidence shows he made a threat to I.H. that could reasonably instill fear in her, but instead the evidence shows "an angry outburst and the rantings of an obviously upset individual."

In making this argument, again, defendant implicitly invites this court to reweigh the evidence, an invitation that we decline. (See *Abilez, supra*, 41 Cal.4th at p. 504.)

Generally, the statute has been summarized as follows:

"In order to find appellant guilty of making a terrorist threat in violation of section 422, evidence to prove the following elements was required: 1) appellant willfully threatened to commit a crime which if committed would result in death or great bodily injury; 2) he made the threat with the specific intent that the statement be taken as a threat; 3) the threatening statement, on its face and under the circumstances in which it was made, was 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 4) the threatening statement caused the other person reasonably to be in sustained fear for his own safety, regardless of whether appellant actually intended to carry out the threat." (*People v. Melhado* (1998) 60 Cal.App.4th 1529, 1536.)³

"[T]he determination whether a defendant intended his words to be taken as a threat, and whether the words were sufficiently unequivocal, unconditional, immediate and specific they conveyed to the victim an immediacy of purpose and immediate prospect of execution of the threat can be based on all the surrounding circumstances and not just on the words alone. The parties' history can also be considered as one of the relevant circumstances." (*People v. Mendoza* (1997) 59 Cal.App.4th 1333, 1340 (*Mendoza*); see *In re Ricky T.* (2001) 87 Cal.App.4th 1132, 1137.)

³ The statute provides in relevant part: "Any 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 . . . shall be punished by imprisonment in the county jail not to exceed one year, or by imprisonment in the state prison." (Pen. Code, § 422, subd. (a).)

"A threat is sufficiently specific where it threatens death or great bodily injury. A threat is not insufficient simply because it does 'not communicate a time or precise manner of execution, section 422 does not require those details to be expressed.'" (*People v. Butler* (2000) 85 Cal.App.4th 745, 752.)

As explained in part I, *ante*, although I.H. minimized defendant's conduct and its effect on her in her testimony, the jury could conclude from her pretrial demeanor, pretrial statements, and past abuse by defendant, that I.H. was reasonably placed in sustained fear by defendant's statements on this occasion, including his explicit statement that he was going to kill her. Two eyewitnesses saw defendant "head butt" I.H., and she complained of neck pain and had said defendant grabbed her by the hair: This conduct showed the immediacy and seriousness of defendant's threats. Viewing all of the evidence in favor of the verdict, there is substantial evidence that defendant made a credible threat that caused the victim to be placed in sustained fear of him.

Defendant's claim (through appellate counsel) that the evidence merely shows he was trying to kiss I.H. is frivolous.

Further, we reject the claim that because defendant did not *actually* kill or seriously injure I.H. when he had the chance to do so his threat was *not* intended "to be taken as a threat," and instead conclude that substantial evidence supported the jury's conclusion that the threat "on its face and under the circumstances in which it [was] made, [was] 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 [caused I.H.] reasonably to be in sustained fear for . . . her own safety[.]” (Pen. Code, § 422, subd. (a).)

III

Expert Testimony on Intimate Partner Battering

Defendant contends the trial court erred by permitting the People to introduce expert testimony on intimate partner battering, because there was insufficient evidence to show that I.H. was a battered woman. We disagree.

Evidence Code section 1107 provides in part:

“(a) In a criminal action, expert testimony is admissible by either the prosecution or the defense regarding intimate partner battering and its effects, including the nature and effect of physical, emotional, or mental abuse on the beliefs, perceptions, or behavior of victims of domestic violence, except when offered against a criminal defendant to prove the occurrence of the act or acts of abuse which form the basis of the criminal charge.

“(b) The foundation shall be sufficient for admission of this expert testimony if the proponent of the evidence establishes its relevancy and the proper qualifications of the expert witness. Expert opinion testimony on intimate partner battering and its effects shall not be considered a new scientific technique whose reliability is unproven.”

Defendant contends as a matter of fact that there “is virtually no evidence, including the two incidents in 2004 and 2006, to indicate that” I.H. was a battered woman, and contends as a matter of law that the court “could not use the current offense or a single instance of violence or abuse to establish the person qualified or suffered from battered women syndrome.” As support for his legal proposition, defendant relies on *People*

v. Gomez (1999) 72 Cal.App.4th 405, though there is contrary authority. (See *People v. Brown* (2004) 33 Cal.4th 892, 895-896, 908 [disapproving *Gomez* in part, and noting conflicting authority, but deciding the evidence was admissible regardless of Evid. Code, § 1107].) In any event, we do not accept his predicate factual assumption.

A trial court's ruling that the foundation for admission of evidence has been established is reviewed on appeal under the abuse of discretion standard. (See *People v. Tafoya* (2007) 42 Cal.4th 147, 165.) There was evidence defendant hurt I.H. in both 2004 and 2006. The age of those incidents, relative to the current alleged incident, was a factor for the trial court to consider, but the incidents were not so remote as to negate as a matter of law the fact that I.H. could have properly been classified as a battered spouse.

Before the expert testified, the People moved in limine to introduce the 2004 and 2006 uncharged acts of domestic violence committed by defendant against his wife, including the fact he punched her in 2004. At the hearing on *that* motion, the People informed the court that the alleged victim was expected to recant her statements. The trial court granted the motion to admit the uncharged acts. *Before* the trial court ruled on the Evidence Code section 1107 issue, I.H. had already testified that defendant slapped her in the face in 2006 and shoved her to

the ground (but did not punch her in the stomach) in 2004.⁴ Therefore, the facts known to the trial court at the time of the foundational ruling showed I.H. was, indeed, a "battered woman," although she had not been abused *constantly*, as in some cases.

We reject defendant's implied challenge to Detective Prizmich's expertise. Prizmich had been a peace officer for 21 years and was a detective in the division covering assault and domestic violence cases. He took an "intense" course on domestic violence in 2010, which included instruction on "the cycle of violence" within relationships, and had taken other courses which included information on domestic violence. He had personally handled over a thousand domestic violence cases. He had observed the nature and effect of physical, emotional or mental abuse on the behavior of victims of domestic violence. The trial court ruled that Prizmich met the statutory requirements as an expert. Based on his training and experience, we cannot say the trial court abused its discretion in qualifying Prizmich as an expert for purpose of Evidence Code section 1107.⁵

⁴ In his briefing, defendant concedes there was evidence he hurt I.H. in 2004, but suggests he did not hurt her in the 2006 incident. The evidence, viewed in the light favorable to the trial court's ruling, shows defendant hurt I.H. in both 2004 *and* in 2006.

⁵ We note that during argument, defense counsel emphasized to the jury that Prizmich "doesn't know a darn thing about the case" and that at a hearing on a postverdict motion, defense counsel stated he could not find an expert to negate Prizmich's testimony, as defendant had requested.

IV

Imposition of Consecutive Sentences

The trial court imposed the upper term of five years for the robbery count and imposed consecutive sentences of eight months (one-third the midterm, pursuant to Pen. Code, § 1170.1, subd. (a)) for the stalking, criminal threat, and false imprisonment counts, resulting in an additional two years, for a total aggregate sentence of seven years.⁶

On appeal, defendant contends all subordinate counts should have been stayed under Penal Code section 654 (§ 654), which generally "precludes imposition of multiple punishments for conduct that violates more than one criminal statute but which constitutes an indivisible course of conduct. . . . [S]ection 654 serves to match a defendant's culpability with punishment." (*People v. Vang* (2010) 184 Cal.App.4th 912, 915 (*Vang*).)⁷

The general application of section 654 is as follows:

"It is well-settled that section 654 protects against multiple punishment, not multiple conviction. [Citation.] The statute itself literally applies only where such punishment arises out of multiple statutory violations produced by the 'same act or omission.' [Citation.] However, because the statute is intended to ensure that defendant is punished 'commensurate with his culpability'

⁶ The spousal battery count was a misdemeanor, resulting in a time-served sentence not at issue on appeal.

⁷ Section 654, subdivision (a) provides in relevant part: "An 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."

[citation], its protection has been extended to cases in which there are several offenses committed during 'a course of conduct deemed to be indivisible in time.' [Citation.]

"It is defendant's intent and objective, not the temporal proximity of his offenses, which determine whether the transaction is indivisible. [Citations.] We have traditionally observed that if all of the offenses were merely incidental to, or were the means of accomplishing or facilitating one objective, defendant may be found to have harbored a single intent and therefore may be punished only once. [Citation.]

"If, on the other hand, defendant harbored 'multiple criminal objectives,' which were independent of and not merely incidental to each other, he may be punished for each statutory violation committed in pursuit of each objective, 'even though the violations shared common acts or were parts of an otherwise indivisible course of conduct.' [Citation.] Although the question of whether defendant harbored a 'single intent' within the meaning of section 654 is generally a factual one, the applicability of the statute to conceded facts is a question of law." (*People v. Harrison* (1989) 48 Cal.3d 321, 335.)

In concluding that section 654 did not apply, the trial court found the numerous text messages supported the stalking count, the "phone message"--presumably the threat by defendant to kill I.H. that was overheard by a peace officer at the station--supported the criminal threat count, and the "false imprisonment and battery on the spouse, these are all separate[.]" "On each of these, I'm going to find there was an independent intent of [defendant] in stalking, in the threats, in the false imprisonment and the robbery, and in the battery of the spouse, for that matter, that although they may have been towards the same goal that in each of these he intended to do the conduct that comprised the crime."

Whether section 654 applies "is a question of fact for the trial court, which is vested with broad latitude in making its determination. [Citations.] Its findings will not be reversed on appeal if there is any substantial evidence to support them. [Citations.] We review the trial court's determination in the light most favorable to the respondent and presume the existence of every fact the trial court could reasonably deduce from the evidence.'" (*Vang, supra*, 184 Cal.App.4th at pp. 915-916, quoting *People v. Jones* (2002) 103 Cal.App.4th 1139, 1143; see *People v. Coleman* (1989) 48 Cal.3d 112, 162.)⁸

First, the trial court could conclude the robbery was committed to acquire money, an objective separate from all other offenses. (See *People v. Racy* (2007) 148 Cal.App.4th 1327, 1337; *People v. Porter* (1987) 194 Cal.App.3d 34, 38-39.) It appears defendant does not argue otherwise.

The trial court could also find the stalking count was committed by the many text messages sent *before* the parking lot attack, and the criminal threat was conveyed by a telephone message overheard by a peace officer at the police station *after* the attack. *During* the attack, defendant physically grabbed

⁸ In argument to the jury, the prosecutor posited a continuous course of conduct including all the text and phone messages and the act of showing up at I.H.'s workplace, and invited the jury to choose which messages supported the stalking count and which supported the criminal threat count. Defendant does not argue that the trial court was bound by the prosecutor's view of the facts, and explicitly accepts that for section 654 purposes, we must view the facts in the light favorable to the sentencing court's determination.

I.H., preventing her from fleeing, supporting the false imprisonment count. Thus, each of these three additional crimes was committed by separate acts of violence or threatened violence, with time for defendant to reflect in between.

Separate acts of violence against the same victim, with time for reflection in between, can be punished separately without trenching on the text or spirit of section 654, because the actor in such cases merits greater punishment. (See *People v. Solis* (2001) 90 Cal.App.4th 1002, 1021-1022 (*Solis*) [*Solis* left threatening messages, then burned apartment after victims fled, multiple punishment for arson and threats upheld]; *People v. Surdi* (1995) 35 Cal.App.4th 685, 688-690 [offenses "separated by considerable periods of time during which reflection was possible"]; *People v. Trotter* (1992) 7 Cal.App.4th 363, 367-368 [Trotter should "not be rewarded where, instead of taking advantage of an opportunity to walk away from the victim, he voluntarily resumed his . . . assaultive behavior"]; see *People v. Latimer* (1993) 5 Cal.4th 1203, 1211-1212, 1216.)

Taking a global view, defendant's goal may have been to reclaim and control I.H. But the trial court could find that in aid of that goal, he committed separate acts each meriting punishment. For example, in *People v. Felix* (2001) 92 Cal.App.4th 905, the court upheld separate punishment for two threats made on the same day, observing: "Felix contends these crimes were part of a pattern of anger against Luckhart. But Felix had time to reflect before making the second threat. The trial court could reasonably infer that because of his anger he

intended the second threat to cause new emotional harm to Luckhart." (*Felix, supra*, 92 Cal.App.4th at pp. 915-916.) So, too, here.⁹

Accordingly, we conclude defendant has not demonstrated any sentencing error by the trial court.

DISPOSITION

The judgment is affirmed.

DUARTE, J.

We concur:

RAYE, P. J.

BLEASE, J.

⁹ Defendant relies in part on *Mendoza, supra*, 59 Cal.App.4th 1333. *Mendoza* made a threat *in order* to dissuade a witness from testifying, therefore the *same act* formed the basis of his convictions for dissuading a witness and making a threat: "The method he employed to reach his objective was his implied threat of death or great bodily injury. Thus, his terrorist threat can only be considered incidental to his primary objective of dissuading [the victim] from testifying at his brother's upcoming trial." (*Mendoza, supra*, at p. 1346.) In this case, as explained, defendant committed multiple acts. (See *Solis, supra*, 90 Cal.App.4th at p. 1022 [distinguishing *Mendoza*].)