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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

PATRICK DEMOND SUTTON,

Defendant and Appellant.

D058404

(Super. Ct. No. SCS220147,
SCS214300)

APPEAL from a judgment of the Superior Court of San Diego County, Leo Valentine, Jr., Judge. Affirmed.

Patrick Demond Sutton was charged in consolidated informations with forcible rape and related crimes involving three different women. A jury convicted Sutton of the offenses against two of the women (M.G. and G.C.). The jury was unable to reach a verdict regarding the third victim, and the court ultimately dismissed those charges.

Sutton appeals, challenging only the sentence imposed on his conviction for false imprisonment (count 7). (Pen. Code,¹ § 236, 237, subd. (a).) Sutton contends his

¹ All further statutory references are to the Penal Code.

concurrent sentence for count 7 violates the proscriptions of section 654 because it was committed in the course of the rape which was charged in count 6.² We reject Sutton's contention and affirm the judgment.

FACTS AND PROCEDURE

Sutton was friends with G.C.'s brother. One night, Sutton approached G.C. at her mother's house where he was visiting. G.C. had consumed about six alcoholic beverages. Sutton asked her if she wanted to accompany him to the store to get some beer, and she agreed. Instead of taking her to the store, Sutton drove her to his apartment. G.C. accompanied him inside, where they talked and she drank two more beers.

After awhile, they went into Sutton's bedroom and continued talking. He started to kiss her but she pushed him away. G.C. asked to go home, but Sutton pushed her onto his bed and said, "Shut the fuck up. I'm gonna beat you." He pulled off her pants and underwear as she yelled at him to stop. He spread her legs apart and told her to touch herself. Sutton told her not to worry because he would not penetrate her. G.C. began touching her vaginal area, but when she tried to stop, Sutton threatened to beat her.

Sutton climbed on top of her and pinned her down with his weight. She told him approximately 10 times to stop, but he penetrated her vaginally, forcibly raping her. He eventually got off of her and let her dress herself. G.C. hit Sutton because she was angry,

² Because Sutton does not appeal the convictions in counts 1 and 2 regarding victim M.G., or the sufficiency of the evidence to support the convictions on counts 6 and 7 regarding victim G.C., we will not discuss the facts regarding the offenses against M.G. Likewise, we will truncate our discussion of the facts regarding the offenses involving victim G.C. in view of the limited issue presented on this appeal.

and he replied that she was to blame because she had flirted with him earlier in the evening. G.C. went to a neighbor's apartment and called police.

With regard to G.C., Sutton was convicted of one count of forcible rape (count 6) as well as kidnap for rape against more than one victim. (§ 261, subd. (a)(2); § 667.61, subds. (b), (c), (e).) Sutton was also convicted of false imprisonment by violence, menace, fraud, or deceit (count 7). (§§ 236/237, subd. (a).) He was sentenced to 15 years to life in state prison for count 6 with a concurrent term of two years for count 7.³

Sutton appeals his count 7 conviction, arguing that the false imprisonment arose out of the same incident and with the same intention as the rape, and therefore he cannot be punished for both the rape and the false imprisonment under section 654.⁴ We disagree and find that the argument lacks merit.

DISCUSSION

Sutton argues that, under the circumstances, his conviction for count 7 should have been stayed pursuant to section 654 because it arose out of the same act or incident as the rape for which he was convicted in count 6. Specifically, he asserts that count 7 was based upon Sutton not permitting G.C. to leave the bedroom and by using his body weight to pin her down. Since this was part and parcel of the rape, he claims it cannot be punished separately under section 654. We disagree.

³ Sutton received a total sentence of 40 years to life for all his convictions.

⁴ "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." (§ 654, subd. (a).)

A defendant cannot be punished multiple times for convictions that arise out of an indivisible transaction and have a single intent and objective. (*People v. Racy* (2007) 148 Cal.App.4th 1327, 1336-1337 (*Racy*)). A trial court's implied finding that a defendant harbored a separate intent and objective for each offense will be upheld on appeal if it is supported by substantial evidence. (*Ibid.*) Under this standard, we review the whole record in the light most favorable to the judgment below to determine whether it discloses substantial evidence--evidence that is reasonable, credible, and of solid value--to support the trial court's determination. (*Id.* at p. 1332.)

The purpose of section 654 is to prevent multiple punishments for a single act or omission, even though the act or omission violates more than one statute and thus constitutes more than one crime. (*People v. Myers* (1997) 59 Cal.App.4th 1523, 1529.) Although the distinct crimes may be charged in separate counts and may result in multiple verdicts of guilt, the trial court may impose sentence for only one offense--the one carrying the highest punishment. (*Ibid.*) Section 654 applies in situations in which a course of conduct violates more than one statute and there is an issue of whether it comprises a divisible transaction which could be punished under more than one statute. (*People v. Rodriguez* (2009) 47 Cal.4th 501, 507.) Whether a course of criminal conduct is divisible depends on the intent and objective of the actor; if all offenses are incident to a single objective, a defendant may be punished for any one of such offenses, but not for more than one. (*Ibid.*)

We find that substantial evidence exists to support the trial court's implied finding that Sutton had a separate intent and objective for counts 6 and 7. (*Racy, supra*, 148 Cal. App. 4th at pp. 1336-1337.) With regard to count 6, evidence establishes that Sutton

imprisoned G.C. after giving her more alcohol, despite the fact that she was already intoxicated, and kept her at his apartment to do drugs and attempt to seduce her. He moved her into the bedroom and attempted to kiss her, but she pushed him away. When his attempt at seduction failed, he forcibly raped her. We find that this supports the trial court's implicit finding that he harbored two separate intents and objectives: falsely imprisoning G.C. for the purpose of seducing her, and forcibly raping her when she would not agree to consensual sex. The crimes were appropriately punished as two separate crimes, and the concurrent two-year sentence for count 7 did not violate section 654.

DISPOSITION

The judgment is affirmed.

HUFFMAN, Acting P. J.

WE CONCUR:

AARON, J.

IRION, J.