

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

RAPHAEL ROSHOD RAMEY,

Defendant and Appellant.

D059412

(Super. Ct. No. SCN266226)

APPEAL from a judgment of the Superior Court of San Diego County, Joan P. Weber, Judge. Judgment affirmed as modified.

A jury convicted Raphael Roshod Ramey of first degree murder and found true that the murder involved the infliction of torture and that Ramey personally used a knife in the commission of the crime. The court sentenced Ramey to life without parole plus a consecutive one-year term for the knife use enhancement. Ramey appeals, contending (1) there was insufficient evidence to prove the torture special circumstance, (2) the sentence for the knife use enhancement must be stayed pursuant to Penal Code section 654 (section 654), (3) the trial court erred in imposing a parole revocation fine, and

(4) the abstract of judgment must be corrected to reflect the court's ruling that his liability for restitution was joint and several with his codefendant. We agree with Ramey in regard to the section 654, parole revocation fine and restitution issues and modify the judgment accordingly. In all other respects, we affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

The victim, Charles E. Williams, owned Classic and Luxury Street Concepts, a business in Oceanside that customized and restored classic cars. In June 2009, Ramey, a United States Marine, purchased a 1970 Chevy Impala from Williams. (All further date references are to the year 2009.) Williams kept the car in order to finish repairing and refurbishing it and outsourced some of the work to Eddie's Automotive.

Ramey was expecting to take his predeployment leave in August and drive home to Texas during that time. He called Williams several times and went to Eddie's Automotive to check on the car. During the visits to Eddie's Automotive, Ramey expressed frustration about how long it was taking to finish the repairs and indicated that he needed the car because he was planning on leaving. Ramey said that Williams was "fucking with [his] emotions."

On August 22, Ramey had an appointment to meet with Williams, but canceled it. That same day, Ramey went to Walmart and bought two knives. His frustration had been building up for two months and he had dreams about harming Williams. According to Ramey, Williams was "playing with [his] money" and lying to him every day about the car.

The following day, Ramey and his friend, Xavier Adams, went to Williams's business. Ramey had one of the knives he purchased with him. After Williams told Ramey that he thought he had additional time to finish the car, Ramey asked to use Williams's cell phone, went outside and called himself. Ramey then went back inside to Williams's office and, after a short discussion, pulled out the knife and stabbed Williams.

Ramey pushed Williams's head up against windows in a nearby bathroom and then slammed Williams's head against the toilet. As Williams tried to get to the door, Ramey "stomped on the back of his head," "flipped him over and started stomping him more." Ramey proceeded to stab Williams, delivering "kidney shots." Williams was begging Ramey to stop, but Ramey stated, "You tried to fuck me. You don't, you don't try to fuck me. That is a lot of money I paid you."

Ramey knew Williams was dying and decided to leave. Ramey found the keys to Williams's car, tossed them to Adams and the two men left in the car. Adams drove Ramey to the mall where Ramey bought a change of clothes. Ramey was arrested the next day and admitted to police that he killed Williams with a knife, his fist, and his foot.

Williams had 52 wounds on his body, which consisted of 18 stab wounds and 34 incised wounds. He also had other punctures or "very short cuts." He died from multiple stab wounds and blunt force head and neck trauma. Williams's blunt force injuries were consistent with someone being severely beaten. According to the medical examiner, pain is subjective to the person who experiences it; however, any penetration of the skin by a knife, including shallow cuts, would cause pain.

DISCUSSION

I. *Sufficiency of the Evidence*

Ramey contends there was insufficient evidence to prove he acted with the requisite intent for a torture special circumstance. We disagree.

When faced with a challenge to the sufficiency of the evidence, we "review the whole record in the light most favorable to the judgment below to determine whether it discloses substantial evidence—that is, evidence which is reasonable, credible, and of solid value—such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt." (*People v. Johnson* (1980) 26 Cal.3d 557, 578.) "[I]t is the jury, not the appellate court, which must be convinced of the defendant's guilt beyond a reasonable doubt. [Citation.] Therefore, an appellate court may not substitute its judgment for that of the jury." (*People v. Sanchez* (1998) 62 Cal.App.4th 460, 468, quoting *People v. Ceja* (1993) 4 Cal.4th 1134, 1138–1139.) We will not reverse a conviction on the ground of insufficient evidence unless it is clearly shown that "on no hypothesis whatever is there sufficient substantial evidence to support the verdict . . ." (*People v. Hicks* (1982) 128 Cal.App.3d 423, 429.) This standard applies to testing the sufficiency of the evidence for a torture special circumstance finding. (*People v. Crittenden* (1994) 9 Cal.4th 83, 139 (*Crittenden*).

Penal Code section 190.2, subdivision (a)(18), provides for a punishment of death or life without parole if "[t]he murder was intentional and involved the infliction of torture." The intent element for the torture special circumstance is the intent ""to cause cruel pain and suffering for the purpose of revenge, extortion, persuasion or for any other

sadistic purpose.'" (*People v. Raley* (1992) 2 Cal.4th 870, 899 (italics omitted).) "' "[I]t is the state of mind of the torturer—the cold blooded intent to inflict pain for personal gain or satisfaction'" which sets the torture murderer apart from others who kill with malice aforethought and makes murder by torture one of the most reprehensible crimes that may be committed.'" (*Ibid.*)

The circumstances surrounding the killing may be used to support the inference that the defendant had the requisite intent for the torture special circumstance. (*Crittenden, supra*, 9 Cal.4th at p. 141.) Intent is a state of mind, which in the absence of the defendant's own statements, must be established by the circumstances surrounding the commission of the offense. (*People v. Mincey* (1992) 2 Cal.4th 408, 433.) "In determining whether a murder was committed with [an] intent [to torture], the jury may of course consider all the circumstances surrounding the killing. Among those circumstances, in many cases, is the severity of the victim's wounds." (*People v. Steger* (1976) 16 Cal.3d 539, 546.) However, "'undue weight [should not be given] to the severity of the victim's wounds, as horrible wounds may be consistent with a killing in the heat of passion, in an "explosion of violence," as with the intent to inflict cruel suffering.'" (*People v. Cole* (2004) 33 Cal.4th 1158, 1214.)

Here, Ramey maintains the evidence was consistent with a sudden explosion of violence, rather than a calculated intent to cause pain. He concedes that the evidence demonstrated that he "inflicted severe injuries during a vicious attack which produced an extremely bloody crime scene," but argues that is insufficient to constitute torture. While

the severity of the victim's wounds is not determinative, it is certainly a factor that the jury can consider. (*People v. Steger, supra*, 16 Cal.3d at p. 546.)

Ramey inflicted 52 wounds to Williams's body, including a nine-inch incision that crossed the neck, a stab wound on his chest that injured his kidney and diaphragm, and a stab wound below the rib cage that injured the fat surrounding the intestines. Williams also suffered many other puncture wounds, such as a sharp force injury to his lower lip, 21 cuts on his right hand and fingers, a stab wound under the chin that injured his tongue and salivary gland, a stab wound behind the left ear, and a one-inch cut at the top of his head. The independently fatal injuries were stab wounds on the right and left sides of the neck and force that caused cervical vertebra separation and bleeding around the brain. Thus, the vast majority of the 52 wounds were nonlethal and the jury could reasonably infer that they were inflicted to cause cruel pain and suffering. (See *Crittenden, supra*, 9 Cal.4th at p. 141 [finding that numerous superficial injuries that were not intended to be lethal supported torture special circumstance].)

Ramey's intent to torture was also supported by evidence that he wanted to retaliate against or get even with Williams because Williams did not deliver the Impala on time. Ramey admitted that he had dreams about harming Williams and that on the day before the murder, he went to Walmart and bought two knives. During the persistent knife attack, Williams pleaded with Ramey to stop, but Ramey was relentless and proceeded to stomp on Williams, even flipping Williams over at one point so that he could continue his attack. Ramey intentionally delivered "kidney shots," presumably to inflict further pain. As Williams begged, Ramey stated, "You tried to fuck me. You

don't, you don't try to fuck me. That is a lot of money I paid you." According to Ramey, he killed Williams because Williams "play[ed] with [his] money" and lied to him every day about the car.

While the jury could have concluded that Ramey's actions were the result of a sudden explosion of violence, the evidence also supported a finding of torture and we will not substitute our judgment for that of the jury. The excessive nature of the wounds, Ramey's statements during the attack, and his actions, including his calculated acts of flipping Williams over to continue the attack and delivering "kidney shots," supported the jury's finding that Ramey intended to torture Williams. A jury could reasonably infer from the totality of the circumstances that Ramey intended to cause cruel pain and suffering for the purpose of revenge. Thus, we conclude there was sufficient evidence to support the jury's true finding on the torture special circumstance allegation.

II. *Knife Use Enhancement*

Ramey argues the trial court erred in failing to stay execution of the sentence on the knife use enhancement pursuant to section 654 because the torture special circumstance finding punished him for using the knife. We agree.

"[Section 654] prohibits the imposition of punishment for more than one violation arising out of an 'act or omission' which is made punishable in different ways by different statutory provisions." (*People v. Beamon* (1973) 8 Cal.3d 625, 636.) Section 654 applies ""not only where there was but one 'act' in the ordinary sense . . . but also where a course of conduct violated more than one statute . . . within the meaning of section 654."" (*Id.* at p. 637; *People v. Rodriguez* (2009) 47 Cal.4th 501, 507.) "Whether a course of

criminal conduct is divisible and therefore gives rise to more than one act within the meaning of section 654 depends on the intent and objective of the actor. If all of the offenses were incident to one objective, the defendant may be punished for any one of such offenses but not for more than one." (*Neal v. State of California* (1960) 55 Cal.2d 11, 19; *People v. Rodriguez*, at p. 507; *People v. Wynn* (2010) 184 Cal.App.4th 1210, 1214–1215 (*Wynn*)). "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.'" (*People v. Harrison* (1989) 48 Cal.3d 321, 335; *Wynn*, at p. 1215.) We will uphold a trial court's finding that a defendant had a separate objective for each offense if the finding is supported by substantial evidence. (*Wynn*, at p. 1215; *People v. Racy* (2007) 148 Cal.App.4th 1327, 1336–1337.)

Here, although there was evidence that Ramey inflicted pain using his fists and feet, it appears that the torture special circumstance was substantially based on the numerous stab wounds to Williams's body. Thus, the knife use was the primary means of torture and we must determine whether Ramey had multiple criminal objectives in committing the crimes.

The People contend that Ramey's initial objective was to get the car or his money back and then his objective turned to revenge. While there may be two objectives, we find they cannot support imposition of multiple sentences. The evidence in this case showed that Ramey went to Williams's business because he was frustrated with the

delays associated with his car. While Ramey may have initially intended to get his car or his money back, the evidence does not show that he used the knife in that regard. Rather, Ramey pulled out the knife after Williams told him the car was not ready. Ramey did not ask for his money back and arguably wanted to get even with Williams and punish him for the delay. He fulfilled this objective by using a knife to torture Williams. In these circumstances, multiple punishment is barred by section 654. (See *Neal v. State of California, supra*, 55 Cal.2d at p. 20 [holding that defendant who threw gasoline into a bedroom and ignited it could not be punished for both attempted murder and arson because the arson was the means used to commit the crime of attempted murder].) Thus, we conclude the court erred in failing to stay the sentence on the knife use enhancement.

III. *Parole Revocation Fine and Restitution*

A. Parole Revocation Fine

Ramey contends and the People concede that the trial court erred when it imposed a parole revocation fine of \$10,000 under Penal Code section 1202.45. We agree that such a fine is not applicable in cases where, as here, the defendant's sentence includes a term of life without the possibility of parole. (*People v. Oganasyan* (1999) 70 Cal.App.4th 1178, 1185.)

B. Restitution

The trial court ordered Ramey to pay victim restitution in the total amount of \$32,228.86 and stated that his liability for that amount was joint and several with Adams. The abstract of judgment, however, does not reflect the joint and several liability.

Ramey contends and the People concede that the abstract of judgment should be amended to accurately reflect the court's ruling. Based on our review of the record, we agree that the trial court intended to impose joint and several liability for victim restitution and thus, the abstract of judgment must be corrected.

DISPOSITION

The judgment is modified to (1) stay the one-year sentence imposed for the knife use enhancement, (2) strike the parole revocation fine under Penal Code section 1202.45, and (3) reflect that Ramey's liability for victim restitution is joint and several with his codefendant. As so modified, the judgment is affirmed. The trial court is directed to amend the abstract of judgment to reflect these modifications and to forward a copy to the Department of Corrections and Rehabilitation.

MCINTYRE, Acting P. J.

WE CONCUR:

O'ROURKE, J.

IRION, J.