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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE, Plaintiff and Respondent, v. LESTER LYLE WORTHINGTON, Defendant and Appellant.	D060782 (Super. Ct. No. SCD232096)
In re LESTER LYLE WORTHINGTON on Habeas Corpus.	D061831

APPEAL from a judgment of the Superior Court of San Diego County, and petition for writ of habeas corpus, David M. Gill, Judge. Judgment affirmed as modified; petition denied.

A jury found Lester Lyle Worthington guilty of stalking Joan W. in violation of a court order (count 1), disobeying a court order (counts 2 and 4), stalking Darnell H. (count 5), making criminal threats (counts 6 and 7), assault with a deadly weapon (count 8), solicitation to commit the crime of assault with a deadly weapon (count 9), and solicitation

to commit the crime of arson (count 10). He appeals, contending (1) the trial court erred in joining the trial on the counts involving Joan with those involving Darnell, (2) the trial court erred in admitting evidence of uncharged acts involving Joan's daughter, (3) the trial court erred in admitting evidence of two prior stalking incidents involving Joan without ensuring the jury was informed that he was previously acquitted on those charges, (4) the evidence was insufficient to support his convictions for stalking Joan, one of the criminal threats counts, and both solicitation counts, (5) the cumulative errors warrant reversal, and (6) the trial court erred by failing to stay the sentences on counts 2, 4 and 7 pursuant to Penal Code section 654. (Undesignated statutory references are to the Penal Code.) Finally, in his petition for writ of habeas corpus and in his appeal, Worthington contends his trial counsel provided ineffective representation by failing to present definitive evidence of his acquittals on the two prior stalking incidents involving Joan.

We consider Worthington's petition for writ of habeas corpus and his direct appeal together in this opinion. The Attorney General concedes and we agree that the sentence should be stayed on count 7 for making a criminal threat. We also conclude the sentences must be stayed on counts 2 and 4. In all other respects, we affirm the judgment and deny the petition for writ of habeas corpus.

FACTUAL AND PROCEDURAL BACKGROUND

Incidents Involving Joan

Joan lived next door to Worthington in Santee with her husband and three children. She worked as a school bus driver for the La Mesa/Spring Valley School District transporting special needs children to and from school and therapy in a small bus.

On a morning in 1988, Worthington tried to open the sliding glass door to Joan's bedroom, but ran off when he saw Joan coming toward the door. Thereafter, Worthington started calling Joan's house and following her in his car. During the phone calls, Worthington would say, "I'm watching your ass, Joan. I'm going to get you." He also yelled at Joan when he saw her and threatened her. Joan changed her phone number three times, but Worthington managed to find her new numbers.

Worthington also threatened Joan's children. In 1990, he stood on his balcony, laughed and twirled a gun while Joan's husband and son did yard work. On multiple occasions, Worthington made hand gestures toward Joan's daughter, Jacquelynn, as if he was shooting her. In 1993, Worthington tried to run over Jacquelynn and her friend with his truck as they crossed the street. After the children jumped out of the way, a friend who had seen the incident had the girls get into her car. Worthington then chased the car with his truck. When the group returned to Jacquelynn's house, someone called the police. Police found Worthington hiding in the bushes with a 12-inch hunting knife.

Joan obtained a restraining order against Worthington and filed a civil lawsuit against him. She was awarded a $250,000 judgment. Despite the restraining order and judgment, however, Worthington continued to harass Joan. He was eventually convicted of felony stalking and sentenced to prison.

Joan did not hear from Worthington again for many years. However, in 2006, she was in her school bus and saw him standing on a street corner watching the buses go by. Joan saw Worthington doing the same thing over the next several days and continued to see him on and off.

In 2007, Joan saw Worthington driving a school district gardening truck at a school on her bus route. When Joan learned that Worthington worked for the school district, she spoke to her supervisor about it. The district immediately terminated Worthington's employment.

Thereafter, Joan continued to see Worthington regularly. Between January 2007 and December 2008, she saw him at least a dozen times. Joan's coworkers also saw Worthington around the bus yard. In December 2008, the school district obtained a restraining order against Worthington requiring him to stay away from district property, school buses and Joan. However, on an early morning in March 2009, Joan saw Worthington sitting by a stop sign about a mile from her work place. At another time, Joan was driving her school bus and saw Worthington standing on the side of the freeway under an overpass. He blew her a kiss. Joan was scared and reported the incident to her supervisor. She later learned that Worthington was arrested and convicted for violating the restraining order.

Joan next saw Worthington in February 2010 when she was returning her school bus to the bus yard. As she slowed down to stop for a pedestrian to cross the street, she realized it was Worthington. He looked at her and said, "Fuck you," and motioned for her to continue driving. Joan was very afraid, but thought that Worthington's presence at that location might have simply been a coincidence. Later that year, Joan's colleague saw Worthington sitting in bushes near the bus yard. In January 2011, at the same location where Joan saw Worthington a year earlier, he jumped out in front of her car as she drove to work. Worthington made hand gestures as though he was shooting her. Just before that

incident, Joan's coworker had seen Worthington along the side of the road at the same intersection.

Incidents Involving Darnell

Darnell met Worthington in 2008 when both men worked as janitors for Caltrans. During the course of their friendship, Worthington told Darnell about Joan and constantly referred to her as "[t]hat bitch." He blamed Joan for the loss of his mother's house and wanted to get revenge by killing Joan's daughter. Worthington showed Darnell where Joan lived and said that he wanted to burn the house down.

In January 2009, Darnell helped Worthington purchase a laptop computer. Worthington stated that he wanted to use the computer to try to locate Joan's daughter. After some time, Worthington stopped using the computer and decided to sell it to Darnell. As part of the transaction, Darnell owed Worthington $150 to $200. Worthington proposed to forgive the debt if Darnell agreed to throw a brick off a bridge at a bus passing below on the freeway. He took Darnell to the bridge where he showed him a brick and gloves to use. Worthington indicated that he wanted Darnell to hit any bus, but preferred that he hit Joan's bus or a small bus like the one she drove. Worthington repeatedly asked Darnell for a week whether he had dropped the brick on the bus yet. When Darnell stated that he did not want to do it, Worthington called him a "pussy" and said he did not want to be friends anymore.

Around the same time period, Worthington asked Darnell to go with him to set buses on fire after work. Darnell did not want to participate and instead went to a friend's nearby apartment. About 30 to 45 minutes later, Worthington called Darnell and told him to look out the window. Darnell saw smoke coming from the direction of the bus yard.

Worthington stated, "That's how you get shit done." Investigators knew that the fire was started by a person, but they could not determine the precise cause.

About a month later, Worthington started threatening Darnell because Darnell refused to throw any bricks on a bus. Worthington challenged Darnell to a fight and stated that he was going to "kick [his] ass." Worthington also threatened to kill Darnell multiple times and gestured that he was going to shoot Darnell. Darnell was afraid because he knew Worthington had guns and talked about killing.

DISCUSSION

I. *Joinder of Cases*

A. Background

The People originally charged Worthington for his crimes against Joan and Darnell in two separate cases. The prosecutor moved to consolidate the cases. Worthington opposed the motion, arguing that the cases should be tried separately because one case was weaker than the other. The trial court joined the two cases, finding that the crimes were of the same class and factually connected.

B. Analysis

Worthington argues the trial court erred in joining the trial on the counts involving Joan and the counts involving Darnell because evidence in the two cases was not cross-admissible, the charges were likely to inflame the jury, and the "spillover effect" of the evidence caused him to be convicted of the charges against each victim. We reject these arguments.

In reviewing Worthington's challenge, we begin with the premise that "[t]he law prefers consolidation of charges." (*People v. Ochoa* (2001) 26 Cal.4th 398, 423; accord *People v. Thomas* (2011) 52 Cal.4th 336, 349–350.) A defendant seeking severance has the burden to establish a substantial danger of prejudice requiring that the charges be separately tried. (*People v. Catlin* (2001) 26 Cal.4th 81, 110.) Refusal to sever may be an abuse of discretion where (1) evidence of the crimes to be jointly tried would not be cross-admissible in separate trials, (2) certain of the charges are likely to inflame the jury against the defendant, and (3) a weak case has been joined with a strong case so that the "'spillover'" effect of aggregate evidence on several charges might alter the outcome of some or all of the charges. (*Ibid*.) "Even if a trial court abuses its discretion in failing to grant severance, reversal is required only upon a showing that, to a reasonable probability, the defendant would have received a more favorable result in a separate trial." (*People v. Coffman and Marlow* (2004) 34 Cal.4th 1, 41.)

Here, the evidence in the two cases was cross-admissible. Evidence that Worthington stalked Joan was admissible in the trial concerning the charges involving Darnell because the evidence was pertinent to explain why Worthington solicited Darnell to commit the crimes of assault and arson. Similarly, evidence of the crimes involving Darnell was relevant to the crimes against Joan because that evidence showed Worthington's acts were calculated rather than a mere coincidence. Where, as here, the evidence is cross-admissible in separate trials, "'"that circumstance normally is sufficient, standing alone, to dispel any prejudice and justify a trial court's refusal to sever the charged offenses." [Citations.]'" (*People v. Scott* (2011) 52 Cal.4th 452, 470.)

Even if the evidence was not cross-admissible, severance was not required because the other factors weighing in favor of severance were absent. (*People v. Scott*, *supra*, 52 Cal.4th at p. 473.) It does not appear that either set of charges was more likely than the other to inflame the jury against Worthington, and it does not appear that one of the cases against Worthington was weaker than the other. To the contrary, there was compelling testimony from the victims and other witnesses in both cases. Similarly, on the record in this case, we find there was no prejudicial "spillover" effect from one case to the other. The trial court instructed the jury that each count was separate and it must consider each count separately. We presume the jury followed the court's instructions. (*People v. Mendoza* (2007) 42 Cal.4th 686, 699.)

Considering the law's preference for joinder of cases, the trial court properly exercised its discretion in granting the prosecution's motion to consolidate the cases. Worthington has not carried his burden to show he was prejudiced by the consolidation.

II. *Uncharged Acts Evidence*

Worthington argues the trial court erred in admitting evidence that he attempted to assault Jacquelynn in 1993 by trying to hit her with his truck because the evidence was cumulative and its prejudicial effect outweighed its probative value. We disagree.

The trial court retains broad discretion in determining the relevancy of evidence (*People v. Scheid* (1997) 16 Cal.4th 1, 14) and we will not reverse an evidentiary ruling unless the appellant demonstrates a manifest abuse of that discretion. (*People v. Rodriguez* (1999) 20 Cal.4th 1, 9–10.) Evidence that the defendant committed prior bad acts is inadmissible when offered solely to prove the defendant's criminal disposition to commit

such an act (Evid. Code, § 1101, subd. (a); *People v. Ewoldt* (1994) 7 Cal.4th 380, 393, 399, superseded by statute on other grounds), but is admissible "when relevant to prove some fact (such as motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake or accident . . .) other than [the defendant's] disposition to commit such an act." (Evid. Code, § 1101, subd. (b).)

For the crime of stalking, the prosecution must prove the defendant made a credible threat with the intent to place another person in fear for his or her safety or the safety of his or her family. (§ 646.9, subd. (a).) Evidence of uncharged acts is admissible in stalking cases to establish the victim's fear. (*People v. Zavala* (2005) 130 Cal.App.4th 758, 770–771; see also *People v. Garrett* (1994) 30 Cal.App.4th 962, 966–967 [prior assaults on victim admissible to show victim's "sustained fear" as required to prove charge of making a criminal threat].)

Here, evidence that Worthington attempted to run over Joan's daughter was relevant to prove that Joan was in reasonable fear for her safety or the safety of her immediate family. (§ 646.9, subd. (a).) The evidence was also relevant to establish Worthington's intent to place Joan in fear. Worthington contends that although the evidence may have been relevant, it should have been excluded because it was cumulative of other evidence regarding Joan's fear. We do not believe the evidence was unduly cumulative of other evidence. While there was other evidence that Joan was afraid, Worthington's continuous attempts to harass Joan and her family established that Joan's fear was reasonable and that Worthington intended to invoke that fear.

Worthington also argues the evidence should have been excluded because the probative value of the evidence was substantially outweighed by the probability of undue prejudice. The fact that evidence is harmful to a particular party does not establish prejudice. (See *People v. Zapien* (1993) 4 Cal.4th 929, 958.) Rather, evidence is unduly prejudicial only if it "'"uniquely tends to evoke an emotional bias against . . . [one party]"'" (*People v. Minifie* (1996) 13 Cal.4th 1055, 1070–1071) or causes the jury to prejudge the issues based on extraneous factors (*People v. Zapien*, *supra*, at p. 958). The evidence that Worthington attempted to harm Joan's daughter was no more inflammatory than the charged crimes and was not of a nature that it would uniquely evoke an emotional bias against Worthington. Accordingly, we conclude the trial court did not abuse its discretion in admitting evidence of Worthington's conduct toward Joan's daughter.

Even assuming the trial court had abused its discretion in admitting the uncharged acts, the assumed error "does not compel reversal unless a result more favorable to the defendant would have been reasonably probable if such evidence were excluded. [Citations.]" (*People v. Scheer* (1998) 68 Cal.App.4th 1009, 1018–1019.) Given the abundance of evidence supporting Worthington's convictions and especially the testimony from the victims, a more favorable result is not reasonably probable in this case.

III. *Evidence of Acquittals on Prior Stalking Charges*

A. Background

In March 2009, Joan saw Worthington sitting by a stop sign looking at her. Later, Joan was driving her school bus and saw Worthington standing on the side of the freeway under an overpass. As a result of these incidents, Worthington was charged with stalking

and violating the school district's restraining order. He was convicted of being too close to school grounds, but acquitted of stalking Joan.

Prior to trial, the prosecution sought to "[a]dmit evidence of [Worthington's] prior willful acts of harassment, threats, violations of retraining orders, acts of violence and stalking and restraining order convictions against [the] victims . . . ." Worthington objected and moved to exclude evidence of the alleged stalking incidents. His counsel argued that the evidence should be limited because Worthington was previously convicted of being too close to the school grounds, rather than stalking Joan. The court informed counsel that he could bring out this information on cross-examination.

At trial, Worthington's counsel again objected to the admission of evidence regarding the two occasions in 2009 when Joan saw Worthington near her workplace because Worthington was previously charged for those incidents and acquitted. Worthington's counsel explained that the evidence made it appear as though Worthington was convicted of stalking Joan on the prior occasions. While the court found the prior acquittals did not make the evidence inadmissible, it noted Worthington's concerns and stated that they could "work out some sort of limiting instruction or stipulation."

B. Analysis

Worthington argues the trial court erred in admitting evidence of two prior stalking incidents involving Joan without ensuring the jury was informed that he was previously acquitted on those charges. Specifically, he contends the trial court erred because it limited his counsel to presenting evidence of the acquittals through cross-examination. He alternatively contends in his appeal and petition for writ of habeas corpus that his trial

counsel provided ineffective representation by failing to present definitive evidence of his acquittals.

"[C]ompetent and otherwise admissible evidence of another crime is not made inadmissible by reason of the defendant's acquittal of that crime." (*People v. Griffin* (1967) 66 Cal.2d 459, 464.) However, "if a trial court permits the prosecution to present evidence that the defendant committed one or more similar offenses for which he or she is not charged in the current prosecution, the trial court must also allow the defense to present evidence of the defendant's acquittal, if any, of such crimes, and failure to allow such acquittal evidence constitutes error." (*People v. Mullens* (2004) 119 Cal.App.4th 648, 664–665.)

Here, contrary to Worthington's assertion, the trial court did not limit him to introducing evidence of his acquittals only through Joan's cross-examination. Rather, our review of the record reveals that Worthington's counsel argued that evidence concerning his 2009 conviction should specify the conviction was for a "school ground violation" and not that he stalked or harassed Joan. In response, the court stated that Worthington's counsel could bring that information out through cross-examination. The trial court never stated that acquittal evidence could *only* come in through cross-examination or that Worthington could not present other evidence of the prior acquittals. Thus, we reject Worthington's argument that the trial court committed error and consider whether his counsel was ineffective by failing to present definitive evidence that he was acquitted of the prior charges.

To prove ineffective assistance, Worthington must show (1) counsel's representation fell below an objective standard of reasonableness, and (2) the deficiency resulted in

demonstrable prejudice. (*People v. Bolin* (1998) 18 Cal.4th 297, 333.) Counsel's ineffective assistance is prejudicial if it is reasonably probable that a result more favorable to the appealing party would have been reached in the absence of counsel's error. (*Strickland v. Washington* (1984) 466 U.S. 668, 686.) "If the record on appeal sheds no light on why counsel acted or failed to act in the manner challenged, an appellate claim of ineffective assistance of counsel must be rejected unless counsel was asked for an explanation and failed to provide one, or there simply could be no satisfactory explanation. [Citation.] Otherwise, the claim is more appropriately raised in a petition for writ of habeas corpus. [Citation.]" (*People v. Carter* (2003) 30 Cal.4th 1166, 1211.)

To support his claim of ineffective assistance, Worthington provided a declaration from Attorney G. Anthony Gilham. In that declaration, Gilham states, "The reason [he] did not seek to have admitted evidence of [Worthington's] acquittal in his previous trial in 2009 of the stalking charges involving the victim [Joan], i.e., a certified copy of the verdict, was that [he] believed the court was limiting [him] to cross-examination of [Joan] in order to present the acquittal." Even if counsel's performance was deficient, Worthington has failed to show prejudice sufficient to create a reasonable probability that a different result would have occurred in the absence of the claimed error.

Worthington contends that absent counsel's deficient performance, the jury would have had reasonable doubt regarding whether he stalked Joan. We disagree because overwhelming evidence supported the jury's finding. The evidence showed that Worthington had a long history of tormenting Joan, dating back to 1988. Between January 2007 and December 2008, Joan saw Worthington at least a dozen times, including when he

obtained employment at the school district where she worked. She also saw him on the street in February 2010 when she was returning her bus to the bus yard. He looked at her and said, "Fuck you." Later that year, Joan's colleague saw Worthington sitting in bushes near the bus yard. Shortly after that incident, Worthington jumped out in front of Joan's car as she was driving to work and made a motion as though he was shooting her. This occurred in the same location where Joan had seen Worthington a year earlier. In light of this evidence, it is not reasonably probable that the jury would have acquitted Worthington on the charge of stalking Joan.

In summary, we conclude Worthington has not made a prima facie showing of ineffective assistance of counsel and therefore we will reject his arguments made on appeal and deny the petition for writ of habeas corpus.

IV. *Sufficiency of the Evidence*

A. General Legal Principles

In assessing challenges to the sufficiency of the evidence, we review the whole record in the light most favorable to the judgment to determine whether it contains substantial evidence from which a reasonable trier of fact could find guilt beyond a reasonable doubt. (*People v. Maury* (2003) 30 Cal.4th 342, 396.) It is not our function to reweigh the evidence (*People v. Ochoa* (1993) 6 Cal.4th 1199, 1206) and reversal is not warranted merely because the circumstances might also be reasonably reconciled with a contrary finding. (*People v. Thomas* (1992) 2 Cal.4th 489, 514.) Our sole function is to determine if any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. (*People v. Bolin*, *supra*, 18 Cal.4th at p. 331; *People v.*

Marshall (1997) 15 Cal.4th 1, 34.) Before a conviction can be set aside for insufficiency of the evidence, it must clearly appear that there is insufficient evidence to support it under any hypothesis. (*People v. Johnson* (1980) 26 Cal.3d 557, 575–578.)

B. Analysis

Worthington argues the evidence was insufficient to support his convictions for stalking Joan, making a criminal threat against Darnell, and soliciting Darnell to commit the crimes of assault and arson. We address each count in turn.

1. *Stalking*

In regard to his conviction for stalking Joan, Worthington contends the evidence was insufficient to establish that he repeatedly followed or harassed Joan and made a credible threat.

"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." (§ 646.9, subd. (a).) The term "harass" is defined by the statute as engaging 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." (§ 646.9, subd. (e).) The term "course of conduct" is further defined for the purposes of this section as "two or more acts occurring over a period of time, however short, evidencing a continuity of purpose." (§ 646.9, subd. (f).) A "credible threat" is "a verbal or written threat . . . 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 or the safety of his or her family . . . ." (§ 646.9, subd. (g).)

Here, there was sufficient evidence that Worthington "willfully, maliciously, and repeatedly follow[ed] or willfully and maliciously harasse[d]" Joan. (§ 646.9, subd. (a).) In February 2010, Joan saw Worthington on the street when she was returning to the bus yard. He looked at her and said, "Fuck you." Later that year, Joan's colleague saw Worthington sitting in bushes near the bus yard. In January 2011, Joan saw Worthington again in the same location. This time he jumped out in front of her car and made hand gestures as though he was shooting her.

Worthington makes much of the fact that Joan stated she thought her encounter with him in February 2010 was a "coincidence." Joan's statement does not relieve Worthington of his crime. Based on the abundance of evidence showing that Worthington had a long history of harassing Joan, the jury could reasonably conclude that Worthington willfully waited for Joan to drive by as he stood on the street. This is especially true where there was evidence that Worthington did nearly the same thing a year earlier. Specifically, in March 2009, Joan saw him sitting by a stop sign about a mile from her work place and later saw him on the side of the freeway in an area that was fenced in and she had never seen pedestrians at before. Accordingly, there was sufficient evidence that Worthington engaged in a "course of conduct" to harass Joan. (§ 646.9, subds. (e), (f).)

Likewise, there was sufficient evidence that Worthington made a "credible threat with the intent to place [Joan] in reasonable fear for . . . her safety." (§ 646.9, subd. (a).) Worthington repeatedly threatened Joan and her family, continued to harass Joan despite a

restraining order, constantly appeared near her workplace, and made gestures toward Joan to demonstrate he was shooting her. The jury could reasonably imply from Worthington's pattern of conduct and statements that he wanted Joan to fear for her safety.

In sum, there was sufficient evidence to support the jury's verdict that Worthington stalked Joan.

2. *Making a Criminal Threat*

A conviction for making a criminal threat requires (1) that the defendant willfully threatened to commit a crime resulting in death or great bodily injury to another person, (2) that the defendant made the threat with the specific intent that it be taken as a threat, (3) that the threat was unequivocal, unconditional, immediate, and specific such as to convey to the person threatened the gravity of the purpose and immediate prospect of execution of a threat, (4) that the threat actually caused the person threatened to be in sustained fear of his or her own safety or that of his or her family, and (5) that the threatened person's fear was reasonable under the circumstances. (*In re Sylvester C*. (2006) 137 Cal.App.4th 601, 605.) The threats must be evaluated in light of all surrounding circumstances and not just the words alone. (*People v. Mendoza* (1997) 59 Cal.App.4th 1333, 1340.)

Worthington argues that he merely threatened to fight Darnell, rather than threatening to commit a crime that would result in death or great bodily injury. He further contends his statement to Darnell that he was going to "kick [Darnell's] ass" was not an unequivocal, unconditional, immediate and specific threat. We are not convinced. In addition to stating that he was going to "kick [Darnell's] ass," Worthington threatened to kill Darnell. Worthington made a "bling, bling" noise as he "shot" Darnell with his hand. Darnell was

afraid because Worthington had guns and previously talked about killing. Based on the surrounding circumstances, a reasonable jury could conclude that Worthington was guilty of making a criminal threat.

3. *Solicitation to Commit Assault with a Deadly Weapon and Arson*

Section 653f, subdivision (a), makes it unlawful to ask another person to commit a specified crime, including arson and assault with a deadly weapon, with the intent that the crime be committed. The crime of solicitation must "be proven by the testimony of two witnesses, or of one witness and corroborating circumstances." (§ 653f, subd. (f).) This requirement "guard[s] against convictions for solicitation based on the testimony of one person who may have suspect motives." (*People v. Phillips* (1985) 41 Cal.3d 29, 76.)

"Corroborative evidence need not be strong nor even sufficient in itself, without the aid of other evidence, to establish the fact." (*People v. Baskins* (1946) 72 Cal.App.2d 728, 731.) It can "'"be slight and entitled to little consideration when standing alone."'" (*People v. Sanders* (1995) 11 Cal.4th 475, 535.) Corroborative evidence is sufficient "if it tends to connect the defendant with the commission of the crime in such a way as may reasonably satisfy the trier of fact that the witness who must be corroborated is telling the truth." (*People v. Rissman* (1957) 154 Cal.App.2d 265, 277.)

Worthington argues the evidence was insufficient to convict him of soliciting Darnell to commit the crimes of arson and assault with a deadly weapon because Darnell's testimony was not corroborated. We disagree.

Darnell testified that Worthington asked him to throw a brick off a freeway overpass at a bus passing below. Worthington took Darnell to a bridge in Spring Valley and showed

him a brick and gloves to use. Worthington also specified that he preferred for Darnell to hit Joan's bus or a "little bus" like the one Joan drove. Darnell had never met Joan or been to the Spring Valley area where Worthington took him. His testimony was corroborated by Joan's testimony that she worked for the La Mesa/Spring Valley School District driving a small bus that had only six seats. Although this evidence had little significance on its own, it was sufficient to corroborate Darnell's testimony in that it could reasonably satisfy the jury that Darnell was telling the truth.

Similarly, there was sufficient evidence to corroborate Darnell's testimony that Worthington solicited him to commit the crime of arson. Darnell testified that he worked as a janitor with Worthington and generally got off of work around 11:30 p.m. On January 29, 2009, after the two men got off of work, Worthington asked Darnell to break into the bus yard with him to set a bus on fire. Darnell refused and shortly thereafter Worthington called him and told him to look out the window. Darnell saw smoke coming from the direction of the bus yard. His testimony was corroborated by evidence that just after midnight on that night, a bus was set on fire in the bus yard. This evidence was sufficient to corroborate Darnell's testimony.

In sum, we reject Worthington's argument that the evidence was insufficient to convict him of soliciting Darnell to commit the crimes of arson and assault with a deadly weapon.

V. *Cumulative Error*

Worthington argues the cumulative effect of the trial court's errors in refusing to sever the cases, admitting evidence of uncharged acts involving Joan's daughter, and not

allowing the jury to hear evidence of his prior acquittals warrants reversal. As we have discussed, the trial court did not err on these matters. Even if there were errors, however, they were harmless individually and cumulatively.

VI. *Section 654*

Worthington argues the trial court erred by failing to stay the sentences pursuant to section 654 on his convictions for one count of making a criminal threat (count 7) and both counts of disobeying a court order (counts 2 and 4). The Attorney General concedes on count 7, but argues the sentences should not be stayed on counts 2 and 4 because of the multiple victim exception to section 654. We agree with Worthington and the Attorney General as to count 7 and, as we shall explain, also conclude that the sentences must be stayed on counts 2 and 4.

When a defendant is convicted of multiple offenses that are part of an indivisible course of conduct, the defendant may be punished for only one count; the sentences on the remaining counts must be stayed. (§ 654, subd. (a); *People v. Deloza* (1998) 18 Cal.4th 585, 591–592.) The purpose of section 654 is to ensure that a defendant's punishment is commensurate with his or her culpability. (*People v. Oates* (2004) 32 Cal.4th 1048, 1063.) Whether a course of criminal conduct is divisible so as to allow multiple punishment under section 654 depends on whether the defendant had a separate objective for each offense. (*People v. Britt* (2004) 32 Cal.4th 944, 951–952.) However, "'the limitations of section 654 do not apply to crimes of violence against multiple victims.'" (*People v. Oates*, *supra*, at p. 1063.) Even if the defendant has the same objective when committing a crime of violence against multiple victims, multiple punishment is warranted because a defendant who

commits an act of violence "'by a means likely to cause harm to several persons is more culpable than a defendant who harms only one person.'" (*Ibid*.)

Here, the parties do not dispute that the same underlying conduct resulted in convictions on counts 1, 2 and 4. Specifically, in February 2010, Joan saw Worthington on the street when she was returning her bus to the bus yard. Worthington looked at her and said, "Fuck you," and motioned for her to continue driving. In January 2011, at the same location, Worthington jumped out in front of Joan's car as she was driving to work. This time, Worthington made a gesture with his hands as though he was shooting her. These two encounters formed the basis of count 1 for stalking Joan in violation of a court order. Additionally, the February 2010 incident was the basis of count 2 for disobeying a court order, and the January 2011 incident was the basis for count 4 for disobeying a court order.

Worthington argues the sentences on counts 2 and 4 for violating the court's restraining order should be stayed because the conduct underlying those offenses was indivisible from the conduct that resulted in his conviction for stalking Joan in count 1. The Attorney General asserts that while the underlying conduct may have been the same, the multiple victim exception to section 654 applies because Joan was the exclusive victim in count 1 while Joan, the school district and the San Diego Superior Court were all victims in counts 2 and 4.

Even assuming these are crimes of violence to which the multiple victim exception applies, we reject the Attorney General's argument because the prosecution never asserted at trial that there were multiple victims. Instead, the prosecutor specifically identified Joan as the victim in all three counts, even stating, "[T]he stalking of Joan consists of the restraining

order violations" and the "restraining order violations constitute [Worthington's] stalking." Moreover, we find that Worthington did not have multiple criminal objectives in committing the crimes. The evidence in this case reveals that Worthington's objective during the February 2010 and January 2011 incidents was to torment Joan and had very little or nothing to do with the school district or Superior Court. In these circumstances, multiple punishment is barred by section 654.

DISPOSITION

The judgment is modified to stay imposition of sentence on counts 2, 4 and 7. As so modified, the judgment is affirmed. The trial court is directed to amend the abstract of judgment to reflect the modification and to forward a copy to the Department of Corrections and Rehabilitation. The petition for writ of habeas corpus is denied.

McINTYRE, J.

WE CONCUR:

NARES, Acting P. J.

HALLER, J.