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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

ROLANDO JAIMEZ,

Defendant and Appellant.

E054117

(Super.Ct.No. RIF10001695)

OPINION

APPEAL from the Superior Court of Riverside County. John Davis, Judge.

Affirmed.

Siri Shetty, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Lilia E. Garcia, and Raquel M. Gonzalez, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant and appellant Rolando Jaimez appeals after he was convicted of kidnapping (Pen. Code, § 207, subd. (a))(count 1), assault with a deadly weapon (Pen. Code, § 245, subd. (a)(1))(counts 2 & 3), and dissuading a witness (Pen. Code, § 136.1, subd. (c)(1))(count 4). The information also alleged that defendant had committed the offenses while on bail (Pen. Code, § 12022.1), that he had inflicted great bodily injury on the victims (Pen. Code, § 12022.7, subd. (b)), and that he had suffered two prior prison term convictions (Pen. Code, § 667.5, subd. (b)) and one strike prior (Pen. Code, §§ 667, subds. (c)-(e)(1), 1170.12, subd. (c)(1)).

Defendant contends first that the evidence was insufficient to support a guilty verdict on count 1, kidnapping, because there was no evidence that he accomplished the movement of the victim by force or fear. He also argues that, if the kidnapping charge is upheld, then the conviction of dissuading a witness should be stayed under Penal Code section 654, as it was the same conduct (removing the victim so she could not report him to authorities) that underlay both convictions. We conclude that defendant's contentions are without merit, and we affirm the judgment.

FACTS AND PROCEDURAL HISTORY

The victim, Linett Padilla, began dating defendant in late 2009. Defendant and Padilla had talked about marriage; although Padilla had not agreed to marry defendant, she did move into the home defendant shared with his sister in January 2010. In February 2010, defendant and Padilla purchased a black Chevy truck together.

Padilla and a friend, Jose Rosales, had known one another since high school. On the evening of March 14, 2010, after Padilla left work, she picked up Rosales in her car, and they went to visit Padilla's sister at a small gathering in Riverside. They were "hanging out" and drinking with friends and family. By midnight, Padilla had fallen asleep, but her sister woke her at 2:00 a.m. to say that defendant had called twice on Padilla's telephone. Padilla decided to take Rosales home before she talked to defendant.

Shortly after Padilla and Rosales had left, Padilla's sister saw defendant's black Chevy pickup truck roar down a nearby street. Padilla telephoned her sister, saying, "He's chasing me, he's chasing me. I don't know what to do. He's hitting my car." Padilla's phone then went dead.

According to Padilla, after she drove away from her sister's house, she saw defendant driving toward her in his truck. Defendant made a U-turn and began following Padilla. Padilla became frightened and sped up to get away from defendant. Defendant gave chase, and he rammed Padilla's car two or three times with his truck. Padilla telephoned her sister, saying that defendant was chasing her. Defendant drew up on the right side of Padilla's car and tried to pull into her lane. Padilla braked and swerved to avoid a collision. She did not remember what happened next.

Rosales only remembered that a truck had hit Padilla's car from behind, and on the driver's side.

At approximately 2:00 a.m., Steven Schmidt was awakened by the sound of a crash. He looked outside and saw a car "wrapped" around a tree. Schmidt told his wife

to call 911, while he went out to investigate. As Schmidt approached the crashed car, a man in a nearby truck called out, ““They crashed. I’m going to get an ambulance.”” The truck then sped away.

The emergency responders came to the scene. Rosales, the only person found with the crashed car, was taken to the hospital.

After Padilla’s car had crashed, defendant stopped his truck; he took Padilla from the wrecked car and put her in the truck. He drove rapidly away, leaving Rosales at the scene. Defendant drove with Padilla to his brother’s house. He woke up his brother by knocking on the bedroom window, and told his brother that Padilla had gotten into an accident.

Defendant carried Padilla into the house. She appeared to be conscious, but in pain. She repeatedly said that she could not feel her legs. Defendant’s brother urged that they should take Padilla to the hospital. Defendant demurred, saying, ““No, because they’ll arrest me.””

Leaving Padilla on a mattress on the living room floor, defendant and his brother drove back to the scene of the crash at approximately 3:00 a.m. Defendant turned around and drove away, however, when he saw the police and emergency vehicles at the scene. Although his brother asked several times what had happened, defendant did not reply. Defendant drove to the home of Padilla’s sister. He told Padilla’s sister that Padilla had had “a little accident,” but that she would be fine, and was resting at his brother’s house. Defendant asked Padilla’s sister whether she wanted Padilla to go to jail, stating that

Padilla had been drinking and “she caused the accident.” Defendant told Padilla’s sister to tell the police that Rosales had been driving.

While defendant and his brother were gone, defendant’s niece tended to Padilla. She asked her mother, defendant’s sister-in-law, for pain medication for Padilla. Padilla said that her back hurt, and she could not feel her legs. At first, Padilla could not remember what had happened. Sometime later, however, she said that she was afraid of defendant and that he had chased her and hit her with his truck.

Defendant and his brother returned to the house. Padilla said that she was in pain and wanted to go to the hospital. She also remonstrated with defendant, saying, “You hit me. You hit me. Why did you do that to me?” Defendant told Padilla to “shut up.”

Defendant told his sister-in-law not to call the police. Although the sister-in-law and defendant’s niece denied that defendant had threatened them, defendant’s sister-in-law admitted that she later told a police officer that she did not want her daughter, defendant’s niece, to have to speak in court in front of defendant.

Eventually, defendant’s sister-in-law decided to call an ambulance. Defendant left the house before the ambulance could arrive.

Padilla was taken to the hospital, where it was discovered that she had a fractured dislocation in her thoracic spine, which resulted in paraplegia, or a total loss of bodily function below the level of the injury. Padilla underwent surgery on March 16, 2010. Padilla had also suffered some bleeding from head injury, and possible facial fracture.

Rosales also suffered fractures to bones in his neck, upper back, shoulder, and ribs. He had lacerations on his face and scalp. Rosales required hospitalization for two weeks. He suffered from migraine headaches after the accident.

At some time on March 15, 2010, defendant went to the hospital and turned himself in. At the police station after his arrest, defendant made a telephone call to his sister, Marisol. This telephone call was videotaped. Defendant talked to his sister about Padilla, and wondered “if he could talk with [Padilla] or her family and if they could see it in their heart to forgive him for what he did, that he understood he didn’t deserve it, but if she could talk to them about that.” Defendant also asked his sister to “speak to [Padilla] like a woman, to not make him look so bad, to not sink him.”

After these events, defendant was charged with one count of kidnapping (Pen. Code, § 207, subd. (a)) against Padilla (count 1), assault with a deadly weapon (Pen. Code, § 245, subd. (a)(1)) on Padilla (count 2) and Rosales (count 3), and one count of dissuading a witness (Pen. Code, § 136.1, subd. (c)(1)), Padilla (count 4). The information also alleged that defendant had committed the offenses while he was out on bail (Pen. Code, § 12022.1) and that he had inflicted great bodily injury (GBI) on the victims (Pen. Code, § 12022.7, subd. (b)). The information contained allegations that defendant had two prison term priors, and one strike prior.

The jury returned verdicts finding defendant guilty on all four charges, and finding true the GBI allegations. In a bifurcated proceeding, the trial court found true the bail enhancement, and the prior prison term and strike allegations.

The court sentenced defendant to an aggregate term of 29 years four months in prison: eight years, doubled to 16 years on count 1, as a second strike; two years on count 2; two years on count 3; two years on count 4; one year eight months on each GBI allegation; two years on the bail enhancement; and one year for each prison term prior.

Defendant filed a timely notice of appeal.

ANALYSIS

I. The Evidence Was Sufficient to Support the Kidnapping Conviction

Defendant first contends that the judgment on count 1 should be reversed, because there was insufficient evidence to support a conviction for kidnapping. That is, he argues that there was no showing that he used force or fear in taking Padilla from her car and transporting her to his brother's house.

“In reviewing the sufficiency of the evidence to support a conviction, we determine ““whether from the evidence, including all reasonable inferences to be drawn therefrom, there is any substantial evidence of the existence of each element of the offense charged.” [Citations.]’ [Citation.] Under such standard, we review the facts adduced at trial in full and in the light most favorable to the judgment, drawing all inferences in support of the judgment to determine whether there is substantial direct or circumstantial evidence the defendant committed the charged crime. [Citations.] The test is not whether the evidence proves guilt beyond a reasonable doubt, but whether substantial evidence, of credible and solid value, supports the jury's conclusions. [Citations.]

“In making the determination, we do not reweigh the evidence; the credibility of witnesses and the weight to be accorded to the evidence are matters exclusively within the province of the trier of fact. (Evid. Code, § 312.) We simply consider whether ““any rational trier of fact could have found the essential elements of [the charged offenses] beyond a reasonable doubt.” [Citation.]’ [Citation.] Unless it is clearly shown that ‘on no hypothesis whatever is there sufficient substantial evidence to support the verdict’ the conviction will not be reversed. [Citation.]” (*People v. Dejourney* (2011) 192 Cal.App.4th 1091, 1114.)

Penal Code section 207, subdivision (a) defines kidnapping thusly: “Every person who forcibly, or by any other means of instilling fear, steals or takes, or holds, detains, or arrests any person in this state, and carries the person into another country, state, or county, or into another part of the same county, is guilty of kidnapping.” Here, the prosecution was required to prove that: “1. The defendant took, held, or detained another person by using force or by instilling reasonable fear; [¶] 2. Using that force or fear, the defendant moved the other person [or made the other person move] a substantial distance; [¶] [AND] [¶] 3. The other person did not consent to the movement; [¶] [AND] [¶] [4. The defendant did not actually and reasonably believe that the other person consented to the movement.]” (CALCRIM No. 1215.)

Contrary to defendant’s contention, the evidence was more than sufficient to support his conviction for kidnapping. Defendant repeatedly rammed Padilla’s car, causing her to lose control and crash into the tree. Padilla telephoned her sister in the

middle of the chase, saying, ““He’s chasing me. He’s chasing me. I don’t know what to do. He’s hitting my car.”” This constituted substantial, potentially lethal, force. Padilla was clearly frightened.

Defendant forcibly caused the crash, which resulted in severe injuries to Padilla. Defendant took the opportunity created by his acts of force and fear to physically take Padilla from the car and to transport her to his brother’s house, in a different county. As defendant recognizes, the amount of force required to take a person away is sufficient to constitute kidnapping where the victim is an infant or child (*In re Michele D.* (2002) 29 Cal.4th 600, 606), and the same is true as to an incapacitated adult (*People v. Daniels* (2009) 176 Cal.App.4th 304, 332).

As the court explained in *People v. Daniels, supra*, 176 Cal.App.4th 304 in the case of a child, the Legislature did not intend to reach the conduct of moving a child, with or without the child’s resistance, in the absence of a ““malign or evil purpose.”” (*Id.* at p. 327, citing *People v. Oliver* (1961) 55 Cal.2d 761, 765.) ““On the other hand, the [California Supreme Court] stated that the Legislature did intend to include the very same movement within the crime of kidnapping where the perpetrator harbored ‘an evil and unlawful intent.’” (*Ibid.*) The Supreme Court in *Oliver* had also explained: ““Similar instances as readily suggest themselves in which the intent with which an adult person, who by reason of extreme intoxication, delirium or unconsciousness from injury or illness is unable to give his consent, is forcibly carried by another, should determine whether such forcible carrying is or is not kidnaping within the legislative purpose. If I

forcibly carry a helplessly intoxicated man lying in the middle of the highway to a place of greater safety, if I forcibly take a delirious man or one who is unconscious to a hospital or to a doctor, nobody again could reasonably believe that it was the intention of the Legislature that for any of these acts I could be convicted of kidnaping. But if I forcibly take one of such persons and carry him in the same manner for an evil and unlawful purpose, everybody would again agree that my conviction of kidnaping would fall within the legislative design. [¶] The rule governing the forcible carrying of conscious persons capable of giving consent, which makes a person who forcibly carries such a person and transports him against his will guilty of kidnaping, however good or innocent his motive or intent may otherwise be, can only lead to obvious injustice and a perversion of the legislative purpose if blindly and literally applied where the person who is forcibly transported, because of infancy or mental condition, is incapable of giving his consent.’ [Citation.]” (*People v. Daniels, supra*, 176 Cal.App.4th 304, 328, quoting *People v. Oliver, supra*, 55 Cal.2d 761, 765-766.)

Defendant seizes on this language in *People v. Daniels* to argue that, because the victim here was not mentally incapacitated (as by intoxication or unconsciousness), she could not be considered an incapacitated adult within the reach of the kidnaping statute. We disagree. Defendant had applied potentially lethal force to the victim, causing her to crash her car into a tree. The victim was completely incapacitated, as evidenced by her crushed vertebrae, which resulted in her inability to feel her legs, and ultimately in paraplegia. Defendant had, by force, rendered Padilla utterly incapable of any resistance

to his carrying her away. Although some evidence showed that Padilla was conscious during some of the time she was at defendant's brother's house, there is no evidence whatsoever to show that she was conscious at the time of the crash, or when defendant carried her away from the scene. Even if Padilla had been conscious during the transport, and possibly capable of giving consent, there is utterly no evidence that Padilla consented to the asportation. Rather, Padilla repeatedly stated that she was in pain and wanted to go to the hospital. Defendant's niece also testified that, as defendant carried the injured Padilla into the house, the two were arguing. Although defendant's niece denied at trial that defendant had slapped Padilla, she had told the investigating officer that she was awakened by the sounds of slapping and hitting; all that she could see when she looked out into the yard was defendant carrying Padilla. The officer testified that defendant's niece had told him that defendant slapped Padilla. This evidence is more than sufficient to find that defendant forcibly carried away Padilla, who was incapacitated and unable to resist. Even if Padilla was conscious, and thus may have been theoretically capable of giving consent, there was no evidence whatsoever that she actually did consent to be taken by defendant to his brother's house. Padilla was rendered incapacitated in the first instance by defendant's deliberate application of force, which caused the injuries.

Defendant's reliance on *People v. Stephenson* (1974) 10 Cal.3d 652, is inapposite. There, the California Supreme Court reversed some convictions of kidnapping where the perpetrator, driving what was ostensibly a taxicab, induced arriving passengers at an airport to enter his car voluntarily. He then transported the passengers to another

location, where he proceeded to rob them. Enticing a victim to accompany the perpetrator voluntarily, under deceit or fraud, is different from the circumstances here. The individuals who voluntarily entered the taxicab did so without force or fear. By contrast, there is no evidence here that Padilla voluntarily entered defendant's truck. To the contrary, the only reason Padilla went with defendant was that he rendered her physically incapable of resistance, and he accomplished that incapacity by direct application of force and fear.

The evidence here was more than sufficient to support the conviction of kidnapping in count 1.

II. The Sentence on Count 4 Need Not Be Stayed

Defendant next contends that, if this court affirms his conviction of kidnapping, then the sentence on count 4, dissuading a witness, should be stayed pursuant to Penal Code section 654. That is, defendant urges that the same acts which constitute the "force or fear" by which he accomplished the kidnapping also comprised the gist of the crime of dissuading a witness. The jury could have found that defendant carried Padilla away from the crash scene to facilitate the crime of dissuading her from reporting it to the police and that the kidnapping and the dissuasion charge shared the same objective.

Penal Code section 654 precludes imposition of multiple punishment for conduct that violates more than one criminal statute, but which constitutes an indivisible course of conduct. (*People v. Vang* (2010) 184 Cal.App.4th 912, 915.) "Whether the provision 'applies in a given case 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.

[Citation.]' [Citation.]" (*Id.* at pp. 915-916.)

Here, substantial evidence, viewed in the light most favorable to the prosecution, supports the trial court's factual determination that defendant's acts with respect to each convicted offense were properly punished separately.

Defendant's conduct did not constitute a single indivisible transaction. After defendant kidnapped Padilla and took her to his brother's house, he and his brother left to see what had happened at the crash scene. Defendant instructed his sister-in-law and his niece not to take Padilla to the hospital, and not to allow Padilla to use the telephone. When he returned later, Padilla begged to be taken to the hospital. Defendant told her to "Shut up," and to "Just be quiet." If she did not, he said, "I'm going to slap you, and you know I will. I don't care." Padilla begged, "I want help." There was a significant time gap between the kidnapping and defendant's additional conduct intended to prevent Padilla from reporting the crime. Defendant had a full and fair opportunity to reflect on his actions before he made additional threats against Padilla.

Defendant relies on *People v. Latimer* (1993) 5 Cal.4th 1203, which involved kidnapping for rape. The defendant kidnapped the victim, drove her into the desert, and raped her. He moved her another short distance, some 50 to 75 yards, and raped her

again. The California Supreme Court held that, even though the rapes and the kidnapping were separate acts, the evidence did not suggest there was any purpose for the kidnapping other than to facilitate the rapes. The defendant could be punished separately for each rape, but the kidnapping sentence should have been stayed. (*Id.* at p. 1216.)

Defendant also cites *People v. Failla* (1966) 64 Cal.2d 560, in which the defendant accosted the victim, had her go into another room (asportation) and exposed himself to her. The California Supreme Court held there that the entire sequence of events constituted an indivisible transaction, because the “technical kidnapping” was incidental to the defendant’s sexual purpose. (*Id.* at p. 570.) The kidnapping and sexual crime were incident to only one objective.

In *People v. Martinez* (1980) 109 Cal.App.3d 851, the defendant dragged his victim under a bridge and attempted to rape her. He stopped and then held her for a few minutes while he tried to dissuade her from reporting him to the police. The defendant was convicted of assault with intent to commit rape, and false imprisonment with force and violence. The court held that the course of conduct constituted the “same criminal event” and that the defendant could therefore be punished only once. (*Id.* at p. 858; but see *People v. Saffle* (1992) 4 Cal.App.4th 434, 440, disagreeing with *People v. Martinez* on the ground that attempted rape and dissuading a witness were separate acts with separate objectives.)

All these cases are distinguishable from defendant’s actions here. Defendant first assaulted Padilla and Rosales with a deadly weapon (his truck), causing a crash and

serious injury to both parties. Then defendant carried Padilla away, leaving the injured Rosales to fend for himself. Even if defendant committed the kidnapping in part to prevent Padilla from reporting the assault to the police, he later committed other distinct acts, designed to dissuade the witness, separate and apart from what was necessary to accomplish the kidnapping. The trial court could reasonably determine that defendant harbored multiple intents and objectives, and that the crimes were not based upon the same act, but upon different acts.

Defendant was properly punished for both convictions.

DISPOSITION

The judgment is affirmed.

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MCKINSTER
Acting P. J.

We concur:

RICHLI
J.

CODRINGTON
J.