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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.

GERARD JAMES TORRES,

Defendant and Appellant.

E054964

(Super.Ct.No. FVI1100239)

OPINION

APPEAL from the Superior Court of San Bernardino County. Lorenzo R. Balderrama, Judge. Affirmed.

James R. Bostwick, Jr., 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, A. Natasha Cortina and Ronald A. Jakob, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant and appellant Gerard James Torres was convicted of the offenses of criminal threats (Pen. Code, § 422, count 1),¹ corporal injury to a cohabitant (§ 273.5, subd. (a), count 2), and false imprisonment by violence (§ 236, count 3). The trial court sentenced him to three years for the corporal injury conviction (count 2), and imposed concurrent two-year terms for the criminal threats (count 1) and false imprisonment (count 3) convictions.

The sole issue defendant raises on appeal is that the trial court should have stayed the two-year concurrent terms for counts 1 and 2 under section 654. We disagree and affirm.

FACTS

The victim had moved into defendant's home in Helendale when she was pregnant with their child. She was 21 years old at the time of trial, and defendant was 13 years older than her. Their son was born in July 2010.

On January 24 or 25, 2011, after he returned home from a training assignment, defendant discovered by reading the victim's emails that she had been cheating on him while he had been away. That evening, he ordered the victim to demonstrate the sexual positions she engaged in with the other man, and he would kick her if he did not believe her. She complied, and defendant kicked her in the groin, legs, and sides, insisting that she was lying to him.

¹ Statutory references are to the Penal Code unless otherwise stated.

The victim pleaded with defendant to stop beating her, but he told her to be quiet so no one would hear. Throughout the night, defendant continued to ask her questions about her sexual positions with the other man. At one point, defendant wrapped his arm around the victim's neck, placing her in a choke hold, while hitting her in the abdomen with the other hand. The victim blacked out and her next recollection was that she had collapsed and could not move her lower body. After he released her neck, defendant told the victim, "I would have killed you if I held on for three more seconds. Next time I will have no problem holding on for three more seconds."

Defendant called for an ambulance, and the paramedics transported the victim to the hospital. She apparently told the paramedics that she had blacked out during sexual asphyxiation, although she testified at trial she did not recall making this statement. She said she hit her hip on a counter to explain the bruise on her hip to the hospital personnel. She said she was afraid of defendant and was unsure what would happen if she told the truth.

When they returned home, the victim tried to resume a regular routine but they began to argue again. Defendant told her to put the baby in his crib and he then applied another choke hold on her, grabbed her by the hair, and flipped her over his shoulder. She fell, hitting one side of her body on a box that was on the floor. He beat her until her glasses fell off. To protect herself, she curled into a ball and tried to use her legs to kick him away. Eventually she picked up her son and walked out of the room.

Later, defendant told her that they had appointments, and they caught the bus to Victorville. As they were walking to the bus stop, the victim was staggering and felt like she was going to pass out. A deputy sheriff stopped and asked what the problem was when he saw the victim lying down at the bus stop. He called for an ambulance, and the victim was taken to the same hospital she had been to earlier that day. Defendant took a bus and met her at the hospital. Again, she did not ask for help because she was afraid of defendant.

After receiving fluids for dehydration, the victim was released. She, defendant, and their baby rode the bus back home. Defendant again demanded that the victim demonstrate the sex acts she had performed with the other man. He then forced her to have sex with him, but became angry because he said that she could not pleasure him as she did the other man. She turned her back to defendant and went to sleep. She later woke up because defendant began hitting her on her back. She asked him to stop, curled up into a ball and lay awake the rest of the night because she was afraid to fall asleep again.

The victim does not recall being hit on the third day, but defendant kept possession of her cell phone. She did not try to leave the house because she did not want to make matters worse. If she received a text message, defendant made her read it and her reply to him. He made her stay in the same room with him or within “earshot.”

The morning of the fourth day, defendant still had the victim’s phone. He demanded that she give him her passwords to all her Internet accounts. Defendant was

looking through all of her accounts on the computer when the victim's sister called her. When he was in the room, the victim told her sister everything was fine, but she walked into the laundry room and told her sister to have their mother call the police. Her mother then called; the victim was able to go outside and tell her mother she was terrified. Her mother assured her that the police would be there and that she should tell them everything that happened.

The victim admitted she lied initially when the deputy sheriff asked her about her black eye. She said that defendant had tossed an orange to her and she missed catching it. She explained that she told them this story because she was afraid that if defendant was not arrested, he would be angry with her if she told the police that he had been beating her.

Deputy Medeiros testified that the victim was shaking and was distraught when he first talked to her. He was skeptical of the story about the orange and asked her about the bruise on her jaw line. When he told her that defendant was going to be arrested anyway for outstanding warrants, her demeanor changed. She started crying and told him about the beatings. She showed Deputy Medeiros the bruises on her body, which he photographed.

DISCUSSION

Defendant contends that the concurrent terms for counts 1 and 3 should have been stayed pursuant to section 654 because the offenses were all committed to accomplish a single criminal objective—to physically punish or harm the victim for her infidelity.

Section 654, subdivision (a), provides in 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.” Section 654 precludes multiple punishment not only for a single act, but also for an indivisible course of conduct. (*People v. Hester* (2000) 22 Cal.4th 290, 294; *People v. Tarris* (2009) 180 Cal.App.4th 612, 626.)

Two tests have been applied to determine whether section 654 has been violated. The first test examines whether the offenses arise out of a single act. (*People v. Gbadebo-Soda* (1989) 215 Cal.App.3d 1371, 1375, citing *Neal v. State of California* (1960) 55 Cal.2d 11, 18, fn. 1.) The other test applies where a course of conduct violates more than one statute and comprises an indivisible transaction. (*Gbadebo-Soda*, at p. 1375.) Whether offenses are “indivisible” for these purposes is determined by the defendant’s intent and objective. (*Neal*, at p. 19.) If all of the offenses were incident to one objective, the defendant may be punished for any one such offense, but not for more than one. (*Ibid.*; see also *People v. Cleveland* (2001) 87 Cal.App.4th 263, 267.)

Whether the defendant harbored more than one objective in committing multiple offenses is a factual question. “The question whether section 654 is factually applicable to a given series of offenses is for the trial court, and the law gives the trial court broad latitude in making this determination. Its findings on this question must be

upheld on appeal if there is any substantial evidence to support them.” (*People v. Hutchins* (2001) 90 Cal.App.4th 1308, 1312.)

It is undisputed that the prolonged corporal abuse of the victim was inflicted as punishment for her infidelity. The People argue that the threat made to her after the choke hold that the “next time” he would hold on for three more seconds evidenced an objective to deter the victim from committing acts of infidelity in the future. This is not an unreasonable interpretation. “ ‘We must “view the evidence in a light most favorable to the respondent and presume in support of the [sentencing] order the existence of every fact the trier could reasonably deduce from the evidence.” ’ ” (*People v. Hutchins, supra*, 90 Cal.App.4th at pp. 1312-1313.)

In addition, we note that the prosecution relied on two other threats to support this charge. It noted that the victim had testified that on at least one occasion defendant told her that he would kill her if she called the police. Yet another threat was that he would find her and the baby and kill her if the victim left him. Either threat was a warning for the victim not to do a specific act in the future and was clearly intended to prevent such conduct, either reporting to the police or leaving defendant. Thus, no matter which act or acts the jury found to constitute the criminal threat(s),² substantial evidence supports the conclusion that the threat was motivated by an objective distinct from the intent to punish the victim for her infidelity.

² We note that the jury was given the unanimity instruction that they all had to agree on the act constituting the offense, and the prosecution reiterated this point in its closing argument.

With respect to the false imprisonment, the People assert that the offense continued well after all the acts of corporal abuse ceased. Defendant disputes this claim. We find that there is substantial evidence that defendant's control over the victim's movements continued on the third and fourth day, and the victim testified that she did not remember that he hit her on those days. In any case, we believe that it can reasonably be inferred from the evidence that both during the period that the abuse took place and afterward defendant had multiple objectives in controlling the victim's movements and communications: to prevent her from contacting the police, from leaving him, and from having further communications with other men.

As noted above, the jury was instructed that they were required to agree unanimously on which act or acts were the bases for finding defendant guilty of each of the charged offenses. Although the jury was not required to make a specific factual finding as to which act or acts constituted either the criminal threats or the false imprisonment, section 654 would not apply to require a stay with respect to any of the possible acts on which the jury could have relied to convict on those counts. Moreover, the concurrent sentences could not have violated constitutional precepts under *Apprendi v. New Jersey* (2000) 530 U.S. 466.

DISPOSITION

In sum, viewing the evidence in the light most favorable to the judgment, we conclude that there was substantial evidence showing defendant had additional and distinct objectives in committing the offenses of criminal threats and false

imprisonment. Accordingly, section 654 did not bar separate concurrent sentences for his conviction on those counts.

The judgment is affirmed.

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KING
J.

We concur:

RAMIREZ
P. J.

RICHLI
J.