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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.

EDWARD WASHINGTON,

Defendant and Appellant.

E059956

(Super.Ct.No. FVI1001844)

OPINION

APPEAL from the Superior Court of San Bernardino County. Eric M. Nakata, Judge. Affirmed.

Farmani and Tony Faryar Farmani for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Peter Quon, Jr., Parag Acrawal, and Joy N. Utomi, Deputy Attorneys General, for Plaintiff and Respondent.

I

INTRODUCTION

Defendant Edward Tolton Washington appeals from judgment entered following

jury convictions for assault with a deadly weapon (Pen. Code, § 245, subd. (a)(1);¹ count 1); false imprisonment by violence (§ 236; count 3); criminal threats (§ 422; count 5); and unlawful driving or taking of a vehicle (Veh. Code, § 10851, subd. (a); count 6). These crimes concerned the victim, Gail Daniels, and her vehicle. The jury also found true the allegation on count 1 that defendant inflicted great bodily injury (GBI) upon Gail (§ 12022.7, subd. (a)). The jury found defendant not guilty of crimes inflicted against Gail's son, Ricardo Daniels, which included assault with a deadly weapon (§ 245, subd. (a)(1); count 2) and false imprisonment by violence (§ 236; count 4). The trial court sentenced defendant to 20 years in prison.

Defendant contends the trial court's response to the jury's fourth question submitted during jury deliberations (jury question No. 4) was inadequate and violated defendant's constitutional rights to due process, a unanimous jury verdict, and notice of the charges against him. Defendant also asserts that the trial court erred in failing to stay sentencing for his false imprisonment and criminal threats convictions. We conclude the trial court did not commit prejudicial error and affirm the judgment.

II

FACTS

In April 2010, Gail Daniels and her sons, Ricardo, Christian, and Saul Daniels, lived together in a two-story house. Gail testified that defendant, who was a friend of hers, came over to her house during the evening of April 26, 2010. While Gail was

¹ Unless otherwise noted, all statutory references are to the Penal Code.

sitting in her bedroom doing paperwork, she heard a noise in her bathroom and found defendant crying in the bathroom, in the dark. She asked defendant what was wrong. He did not respond. Gail went back to her room and continued doing paperwork.

Defendant came out of the bathroom and kicked and socked Gail on the right side of her face. This surprised Gail. Gail grabbed the phone to try and block defendant. Defendant snatched the phone from her and tore it off the wall. Gail yelled for Ricardo.

Ricardo testified that, while he was downstairs, he heard “two big booms,” and went upstairs to Gail’s room. He heard Gail and defendant arguing. Christian, who was about 10 years old, testified he heard Gail yell, “Stop.” At the time, Christian and his younger brother, Saul, were in their bedroom. They ran to Gail’s bedroom and saw defendant and Gail arguing and fighting over a bat.

Ricardo testified that when he entered Gail’s bedroom, he saw defendant’s foot on Gail’s face while she was laying on her mattress. Gail told Ricardo to call the police but defendant prevented him from doing so by grabbing the upstairs and downstairs phones. Gail told Ricardo to press the alarm panic button but he was unable to do so because defendant slammed the bedroom door shut and grabbed a bat. Ricardo could not leave Gail’s bedroom because defendant stood inside the room, in front of the door, in a “batting stance,” as if he were going to swing the bat.

Gail and defendant struggled over the bat. Gail testified defendant told her, “I’m going to kill you, bitch.” Ricardo told the investigating officer, Deputy David Carpenter, that defendant said, “Get the fuck back. I’m going to kill you bitch. Back up.” When Gail lost hold of the bat, defendant struck her in the head with it. Gail fell on the mattress

or on the floor, next to the mattress, which was on the floor, and passed out. Ricardo testified defendant then hit him in the shoulder with the bat but Christian and Gail testified they did not see defendant hit Ricardo with the bat. Christian also testified Ricardo was not present when defendant hit Gail with the bat. He had left to get help. Defendant went through Gail's purse and took her car keys and various other items in her purse. Ricardo testified defendant left in Gail's car, with the bat. Ricardo then pushed the panic button.

After Gail regained consciousness, Ricardo went to the home of a neighbor, Bryan Lirley, and told him what had happened. Lirley called 911. Lirley and his friend, who was an EMT, then went to help Gail. Lirley noticed Gail's SUV was not in her driveway, where it normally was parked. Lirley found Gail in her bedroom. She was groggy and her head was bloody. Contrary to Ricardo's testimony that defendant took the bat, Lirley testified that he saw the bat in Gail's bedroom.

San Bernardino County Sheriff's Deputy David Carpenter testified he was dispatched on April 26, 2010, at approximately 10:07 p.m. to Gail's house to investigate an assault. The panic alarm activated at 9:39 p.m. and at 9:45 p.m., an individual called and reported that "his neighbor's mother had been struck in the head with a bat and her vehicle was possibly stolen." By the time Carpenter arrived at Gail's house at 10:19 p.m., Gail had already been transported to the hospital. Carpenter took Ricardo's statement. Carpenter was unaware Christian and Saul were present during the assault. Gail and Ricardo had not mentioned the boys were present. Carpenter did not recover the bat or see a bat in Gail's bedroom.

Carpenter took Gail's statement at the hospital. She had a bump and laceration on the left side of her head and swelling on the right side of her face and cheek. Gail reported that defendant had threatened her, hit her with a bat, and taken her vehicle without permission. Los Angeles Police Officer Edgar Bacilio stopped defendant in Los Angeles, at approximately 12:15 a.m., on April 27, 2010, because the vehicle he was driving had tinted windows and an expired registration. Defendant was driving Gail's SUV. Defendant told Bacilio he was the husband of Gail, the registered owner. Also, her name was visibly tattooed on defendant's head. The vehicle did not show up as stolen because Carpenter did not enter Gail's vehicle's identification number and plate numbers into the law enforcement stolen system database until a little later, at 1:15 a.m., on April 27, 2010.

Bacilio issued defendant a citation for not having a valid driver's license and impounded the vehicle. Bacilio testified he did not know what had happened to the citation. He acknowledged that 12:15 a.m. was the time he impounded the vehicle, which is normally done after issuing the citation. Bacilio did not become aware the vehicle had been reported stolen until approximately 2:48 a.m. On April 27, 2010, defendant called Gail and said her car was at an impound lot in Los Angeles. He also told her he did not want her "f---ing truck" and called her a "stupid bitch." Gail changed her number because defendant continued calling her.

Defendant testified Gail was his wife. He and Gail had been in an intimate relationship for over five years. Before and after defendant's release from prison in April 2010, he had lived with Gail and her children like family and the children considered him

their father. According to defendant, he and Gail purchased the SUV together. He paid the down payment. He claimed that, although Gail's name was on the registration, Gail and defendant were both owners.

Defendant testified that between 9:00 p.m. and 10:20 p.m., on April 26, 2010, he was pulled over for a traffic violation while driving Gail's SUV in Los Angeles.

Defendant denied assaulting Gail with a bat. He claimed he was in Los Angeles, not at Gail's home on April 26, 2010. Defendant also denied calling Gail after April 26, 2010, and threatening her. According to defendant, he and Gail were still in a relationship together at that time. He returned to Gail's home on April 27, 2010, and they continued living together until June 2010. Defendant testified he was unaware Gail had reported him to the police until July 2010. Defendant further testified Gail lied about the April 26 incident, and had lied and threatened him with a knife at least two times. She also had made two false reports concerning him. Defendant also claimed Ricardo and Christian lied.

III

THE TRIAL COURT'S RESPONSE TO JURY QUESTION NO. 4

Defendant contends the trial court's response to the jury's written inquiry during deliberations (jury question No. 4) was inadequate and violated his constitutional rights to due process, a unanimous jury verdict, and notice of the charges against him. We disagree.

A. Factual and Procedural Background

At the beginning of the trial, the court clerk read to the jury the information charges, including the count 1 allegations that defendant committed the crime of assault upon Gail, with a deadly weapon, “to wit, [a] ball bat.” After the parties rested, the jury was instructed on the elements of assault with a deadly weapon. The court told the jury it could find defendant guilty of that offense or guilty of the lesser included offense of assault or find defendant not guilty. There was no mention of the need to make a specific finding a bat was used in committing the offense. The count 1 verdict form, entered by the jury, does not include a finding that the deadly weapon was a bat, but does state defendant is guilty as charged in count 1 of the information, and the information states the deadly weapon used in committing the crime was a “Ball Bat.”

The trial court instructed the jury on the elements of the crime of assault with a deadly weapon in relevant part as follows:

“The defendant is charged in Counts 1 and 2 with assault with a deadly weapon other than a firearm in violation of Penal Code section 245(a)(1).

“To prove that the defendant is guilty of this crime, the People must prove that:

“1. The defendant did an act with a deadly weapon other than a firearm that by its nature would directly and probably result in the application of force to a person; [¶] . . .

[¶]

“The touching can be done indirectly by causing an object to touch the other person. [¶] . . . [¶]

“Great bodily injury means significant or substantial physical injury. It is an injury that is greater than minor or moderate harm.

“A deadly weapon other than a firearm is any object, instrument, or weapon that is inherently deadly or dangerous or one that is used in such a way that it is capable of causing and likely to cause death or great bodily injury.” (CALCRIM No. 875.) The trial court also gave the same definition of the term, “great bodily injury,” when giving CALCRIM Nos. 1300 and 3160. The prosecution argued during closing argument that defendant committed the charged offense of assault with a deadly weapon by using a bat.

During jury deliberations, the jury submitted to the trial court a written question (jury question No. 4) regarding count 1, asking, “Could she have been assaulted with something other than a bat and it still be considered an ‘assault with a deadly weapon’” Before responding to the inquiry, the trial judge, defense counsel, and the prosecutor discussed, as follows, what the appropriate response should be.

“THE COURT: [¶] . . . [¶] The simple answer is, Yes, it could be. There’s frankly no evidence of that.

“MR. FIGUEROA: Right.

“MS. HALGRIMSON: Right.

“THE COURT: But it could be.

“MS. HALGRIMSON: Yeah.

“THE COURT: I mean, yeah. It’s kind of a dumb question, frankly.

“MR. FIGUEROA: Right.

“MS. HALGRIMSON: Right.

“THE COURT: Do you have any thoughts?

“MR. FIGUEROA: I think that we can couch the response saying, Yes, it is possible but the evidence — I don’t know.

“THE COURT: It’s up to them to consider what the evidence is.

“MR. FIGUEROA: Right

“MS. HALGRIMSON: Right.

“THE COURT: I always believe in the short and sweet answer, but I’m not sure what they’re — I’m really not sure what they’re asking for here.

“MR. FIGUEROA: Right.

“THE COURT: Because what else — I mean, —

“MR. FIGUEROA: The Information does say baseball bat. It does say the weapon, it specifies the charge. It says assault with a deadly weapon, a baseball bat.

“THE COURT: Yeah, well —

“MR. FIGUEROA: So do they want assault with a deadly weapon, phone, assault with a deadly weapon, beer can?

“THE COURT: How about assault with a deadly weapon foot?

“MR. FIGUEROA: Foot. Yeah.

“THE COURT: There was some evidence that when Ricardo came in —

“MR. FIGUEROA: His foot was on her head. That’s correct.

“THE COURT: The defendant had his foot on her head. I don’t know if that’s what they’re talking about.

“MR. FIGUEROA: I don’t either.

“THE COURT: But I doubt — if they were paying attention, that wasn’t the cause of the injury to the back of the head. It was an injury on the side of her face.

“MS. HALGRIMSON: Right.

“MR. FIGUEROA: Well, should we ask for a clarifying follow-up? Because I mean, I understand what they’re saying, that could it be anything besides the bat, but what would —

“THE COURT: The other answer I can give is, That’s for you to decide.

“MR. FIGUEROA: That’s true. That’s true. Because that would be the best answer, because it tells them we’re not going to be able to clarify anything further and they have to decide what the evidence shows.

“THE COURT: I think that’s the answer.

“MR. FIGUEROA: I would submit on that response.

“THE COURT: Do you have any problem with that?

“MS. HALGRIMSON: No.

After this discussion, the trial court provided the jury with the following written response to jury question No. 4: “That is for the Jury to decide.”

Defense counsel did not request any additional instructions, such as a unanimity instruction, or offer clarifying instructions in response to jury question No. 4. At the end of the discussion of the jury instructions, the trial court asked defense counsel:

“THE COURT: Mr. Figueroa, any instructions that the Court is not giving that you’re requesting?

“MR. FIGUEROA [defense counsel]: No, your Honor.

“THE COURT: Any that the Court is giving that you’re objecting to?”

“MR. FIGUEROA: No, your Honor.”

B. Forfeiture

The People argue defendant forfeited his objection to jury question No. 4 by not raising it in the trial court or requesting additional instruction, such as a unanimity instruction, and by agreeing the trial court’s proposed response was the best response.

Generally, “When the trial court responds to a question from a deliberating jury with a generally correct and pertinent statement of the law, a party who believes the court’s response should be modified or clarified must make a contemporaneous request to that effect; failure to object to the trial court’s wording or to request clarification results in forfeiture of the claim on appeal.” (*People v. Dykes* (2009) 46 Cal.4th 731, 802.) “A party may not complain on appeal that an instruction correct in law and responsive to the evidence was too general or incomplete unless the party has requested appropriate clarifying or amplifying language. [Citation.]” (*People v. Lang* (1989) 49 Cal.3d 991, 1024; see *People v. Hardy* (1992) 2 Cal.4th 86, 153.)

If defendant believed the trial court’s proposed response to jury question No. 4 was incomplete or needed elaboration, he was obligated to object and request an additional or clarifying instruction. His failure to do so and his attorney’s agreement the proposed instruction was proper forfeited defendant’s objection on appeal to the response. (*People v. Dennis* (1998) 17 Cal.4th 468, 514 [“If defendant believed the instructions were incomplete or needed elaboration, it was his obligation to request additional or clarifying instructions. [Citation.] His failure to do so waives the claim in

this court.”].) Here, defense counsel not only failed to object to the trial judge’s response or suggest additional clarifying language, defense counsel told the court he agreed the court’s proposed response was “the best answer.”

There are, however, exceptions to the general forfeiture rule whereby certain issues may be raised on appeal despite the defendant’s failure to raise them in the trial court. Section 1259 provides that the appellate court may “review any instruction given, refused or modified, even though no objection was made thereto in the lower court, if the substantial rights of the defendant were affected thereby.” In the instant case, defendant is arguing the trial court’s response to jury question No. 4 violated his fundamental, constitutional rights to due process, a unanimous jury verdict, and notice of the charges against him. We will therefore consider on the merits defendant’s objection to the trial court’s response to jury question No. 4, even though defendant should have raised his objection initially in the trial court.

C. Law Applicable to Reviewing the Trial Court’s Response to the Jury’s Inquiry

The trial court’s primary duty is to assist the jury in understanding legal principles the jury is asked to apply. (*People v. Moore* (1996) 44 Cal.App.4th 1323, 1331 (*Moore*)). Section 1138 “imposes on the trial court a mandatory ‘duty to clear up any instructional confusion expressed by the jury. [Citations.]’” (*Moore*, at p. 1331.) The trial court, however, is not required to elaborate on standard instructions in every instance. (*Ibid.*) “When the original instructions are full and complete, the trial court has discretion to determine what additional explanations are sufficient to satisfy the jury’s request for information. [Citation.] Jury questions can present a court with particularly vexing

challenges. . . . When a question shows the jury has focused on a particular issue, or is leaning in a certain direction, the court must not appear to be an advocate, either endorsing or redirecting the jury's inclination. Although comments diverging from the standard should be embarked on with care, a trial court must do more than figuratively throw up its hands and tell the jury it cannot help. It must consider how it can best aid the jury and decide whether further explanation is desirable, or whether the reiteration of previously given instructions will suffice. [Citation.]” (*Id.* at p. 1331; see *People v. Gonzalez* (1990) 51 Cal.3d 1179, 1212.)

This court applies the abuse of discretion standard of review when determining whether the trial court's response to a jury's inquiry requesting guidance is proper. (*People v. Waidla* (2000) 22 Cal.4th 690, 745-746.) When determining whether the trial court abused its discretion in instructing the jury, this court must first consider the jury instructions as a whole. “We may not judge a single jury instruction in artificial isolation, but must view it in the context of the charge and the entire trial record. [Citation.]” (*People v. Moore, supra*, 44 Cal.App.4th at pp. 1330-1331.)

D. Appropriateness of the Court's Responsive Instruction

Defendant argues that the trial court's response to jury question No. 4 erroneously suggested the jury could find defendant guilty of a new theory of assault with a deadly weapon that did not require use of a bat. The trial court therefore should have either given the jury a unanimity instruction or told the jury defendant could not be convicted of the charged crime of assault with a deadly weapon unless the jury unanimously found he committed the assault with a bat. Defendant complains the trial court did not directly

answer the jury's question of whether it could find defendant guilty of assault with a deadly weapon based on use of a weapon other than a bat. In effect, the trial court failed to assist in answering the question the jury posed. Defendant contends this left the jury with the responsibility of deciding a question of law, which was a violation of the trial court's mandatory duty to help the jury understand the legal principles involved in the case. (*People v. Moore, supra*, 44 Cal.App.4th at p. 1332.)

We conclude the trial court's response to jury question No. 4 was proper. It did not constitute an abuse of discretion or violate defendant's constitutional rights to due process, a unanimous jury verdict, and notice of the charges against him, because defendant received proper notice he was charged with assault with a deadly weapon, to wit a bat, the trial court fully and properly instructed the jury on the crime of assault with a deadly weapon, defendant received a fair trial, and a unanimity instruction, other than the general instruction given, was not required. The trial court instructed the jury that "Your verdict on each count and any special findings must be unanimous. This means that, to return a verdict, all of you must agree to it." This instruction was sufficient as to unanimity, since there was little, if any evidence, the crime of assault with a deadly weapon as to Gail was committed by anything other than a bat, and this was the only theory asserted by the prosecution.

Defendant argues jury question No. 4, "at a minimum, obviously implied that at least one of the jurors had rejected the prosecution's theory that Washington had used a bat to commit the alleged assault." Defendant also asserts that the trial court's response to question No. 4 "allowed the jury to find Washington guilty with a new theory of

culpability after the evidence was already in, after both sides had rested, and after the jury instructions were settled. This denied Washington his basic rights to a unanimous jury verdict and the notice of the charges against him.” We disagree.

“In deciding whether to give [a unanimity] instruction, the trial court must ask whether (1) there is a risk the jury may divide on two discrete crimes and not agree on any particular crime, or (2) the evidence merely presents the possibility the jury may divide, or be uncertain, as to the exact way the defendant is guilty of a single discrete crime. In the first situation, but not the second, it should give the unanimity instruction.” (*People v. Russo* (2001) 25 Cal.4th 1124, 1135.) The evidence in the instant case falls into the second category, and no unanimity instruction was required. The jury’s guilty verdict reflects unanimous agreement that the defendant committed the single crime of assault with a deadly weapon as to Gail. (*People v. Quiroz* (2013) 215 Cal.App.4th 65, 73-74.)

Furthermore, the court properly instructed the jury on the crime of assault with a deadly weapon by instructing on the elements of the crime. The trial court did not abuse its discretion in merely telling the jury, in response to jury question No. 4, that it was for the jury to decide whether defendant could be found guilty of assault with a deadly weapon by use of a weapon other than a bat. The court was not required to instruct regarding the possibility of finding defendant used a deadly weapon other than a bat or giving a unanimity instruction, because such instructions are normally required only if supported by substantial evidence. Instructions on unsupported theories should not be given to the jury. (*People v. Marshall* (1997) 15 Cal.4th 1, 39-40.) The general rule is

that in a criminal case the trial court must instruct on the “principles of law relevant to the issues raised by the evidence [citations] and has the correlative duty “to refrain from instructing on principles of law which not only are irrelevant to the issues raised by the evidence but also have the effect of confusing the jury or relieving it from making findings on relevant issues.” [Citation.]” (*People v. Barker* (2001) 91 Cal.App.4th 1166, 1172; *People v. Saddler* (1979) 24 Cal.3d 671, 681.)

Here, the record shows the trial court and counsel gave jury question No. 4 serious consideration and reasonably agreed that, instead of risking inappropriately influencing the jury’s factual findings, it would be best for the trial court to tell the jury that it was for the jury to decide whether defendant could be found guilty of assault with a deadly weapon by using something other than a bat. The response was not misleading, unresponsive, or legally incorrect. (*United States v. Frega* (9th Cir. 1999) 179 F.3d 793, 810.) The jury instructions as a whole provided the jury with sufficient direction on deciding count 1 and additional instruction was not necessary. The trial court was not required to respond to jury question No. 4 by telling the jury it was limited to considering only a bat as the deadly weapon, particularly when the evidence and argument made clear that this was the prosecution’s sole theory, and there was no evidence supporting a finding anything other than a bat was used as the deadly weapon during the assault.

Furthermore, although the prosecution’s sole theory was that the crime was committed with a bat, it would have been misleading and incorrect to tell the jury it could not find defendant committed the crime of assault with a deadly weapon unless the jury found the assault was committed with a bat. It was not for the trial court to tell the jury

there was no evidence defendant committed the crime with anything other than a deadly weapon. Section 1138 limits the trial court's duty to clear up any instructional confusion expressed by the jury regarding questions of law, but not questions of fact. Any further instruction, would have risked misinforming or misleading the jury as to how to construe the facts, which would have been inappropriate.

Where, here, the original instructions were full and complete, the court had discretion under section 1138 to determine what additional explanations were sufficient to satisfy the jury's request for information. (See *People v. Rigney* (1961) 55 Cal.2d 236, 246.) The trial court properly fulfilled that duty. (*People v. Gonzalez, supra*, 51 Cal.3d at p. 1213.)

E. Harmless Error

Even assuming, without deciding, the trial court abused its discretion in giving its response to jury question No. 4, such error was harmless. A violation of section 1138 does not warrant reversal unless prejudice is shown. (*People v. Beardslee* (1991) 53 Cal.3d 68, 97; *Moore, supra*, 44 Cal.App.4th at pp. 1331-1332.) Such prejudice requires a finding there was a miscarriage of justice. "An appellate court cannot set aside a judgment on the basis of instructional error unless, after an examination of the entire record, the court concludes that the error has resulted in a miscarriage of justice. (Cal. Const., art. VI, § 13.) A miscarriage of justice occurs only when it is reasonably probable that the jury would have reached a result more favorable to the appellant absent the error. [Citations.]" (*Moore*, at p. 1331.)

Here, defendant has not shown a miscarriage of justice. There is overwhelming evidence (1) establishing the elements of assault with a deadly weapon, namely a baseball bat, and (2) refuting defendant's defense that he was not present during the alleged assault. Such evidence included the testimony of percipient witnesses, Ricardo, Christian, and Gail, and the testimony of investigating officer, Carpenter. Ricardo, Christian, and Gail all testified defendant struck Gail in the head with a bat, causing her to lose consciousness. Carpenter testified that when he interviewed Gail at the hospital, she told him defendant hit her with a bat. In addition, there was evidence that Lirley called 911 and reported that "his neighbor's mother [Gail] had been struck in the head with a bat and her vehicle was possibly stolen. On the other hand, there was no evidence Gail's head injury, which resulted in unconsciousness, was caused by anything other than a bat.

Defendant also fails to provide any evidence supporting his alibi defense that he was in Los Angeles at the time of the charged crime. Officer Bacilio's testimony indicated that either his traffic stop and citation of defendant occurred shortly after midnight or the impoundment notification occurred shortly after midnight. Either way, such evidence did not preclude the likelihood defendant was present at the crime scene in Victorville before he received the citation in Los Angeles. Furthermore, there was overwhelming evidence establishing that defendant was present at the crime scene at the time of the crimes. Such evidence includes the testimony of Gail, Ricardo, and Christian. In addition, defendant's other convictions for false imprisonment by violence and

criminal threats, committed at about the same time as the assault offense, demonstrate that the jury rejected defendant's alibi defense.

Given the extremely strong evidence that defendant struck Gail's head with a bat, causing unconsciousness, and there being no evidence that the crime was committed by using anything other than a bat, it is not reasonably probable the jury would have reached a more favorable outcome for defendant had the response to jury question No. 4 not been given or had additional instruction been given, such as limiting the deadly weapon to a bat or giving a unanimity instruction. (*Chapman v. California* (1967) 386 U.S. 18; *People v. Watson* (1956) 46 Cal.2d 818, 835-836.)

IV

STAYING SENTENCING UNDER SECTION 654

Defendant contends the trial court erred in failing to stay his sentences for false imprisonment (count 3) and making criminal threats (count 5). The trial court imposed consecutive sentences for counts 1, 3, and 5, with count 1 (assault with a deadly weapon) serving as the principal term. The court found that the "crimes and their objectives were predominately independent of each other, and the crimes were committed at different times and places." Defendant argues the trial court erred in making this finding. He asserts that the crimes were part of an indivisible course of conduct with a single objective, thereby precluding separate punishment under section 654.

Section 654 provides in relevant 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.” (§ 654, subd. (a).) “[I]t is well settled that section 654 applies not only where there was but one act in the ordinary sense, but also where there was a course of conduct which violated more than one statute but nevertheless constituted an indivisible transaction. [Citation.] Whether a course of conduct is indivisible depends upon the intent and objective of the actor. [Citation.] If all the offenses were incident to one objective, the defendant may be punished for any one of such offenses but not for more than one. [Citation.]” (*People v. Perez* (1979) 23 Cal.3d 545, 551.) “It is defendant’s intent and objective, not the temporal proximity of his offenses, which determine whether the transaction is indivisible. [Citations.]” (*People v. Harrison* (1989) 48 Cal.3d 321, 335.) “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. [Citation.]” (*People v. Blake* (1998) 68 Cal.App.4th 509, 512.)

Defendant argues the assault with a deadly weapon on Gail was part of the same course of conduct as defendant’s criminal threat against Gail. After coming out of the bathroom, defendant told Gail, “I’m going to kill you, bitch,” and kicked and socked Gail on the right side of her face. Defendant asserts this threat was made during, and to facilitate, the assault, as part of a single objective to assault Gail. Defendant argues the false imprisonment offense was also committed during a continuous course of conduct, for the purpose of preventing Gail from leaving so that defendant could assault her undetected by others in Gail’s home.

There was more than sufficient evidence to support the trial court's findings that the three crimes and their objectives were predominately independent of each other. The evidence shows that after defendant kicked and socked Gail in the face, he attempted to confine her in her bedroom to prevent her from fleeing and contacting the police. Evidence of this objective includes testimony that defendant slammed the bedroom door and stood in front of it when Gail yelled for Ricardo to push the panic button and grabbed the phone away from Gail and tore it off the wall.

After committing false imprisonment of Gail, defendant committed the separate criminal threat crime. The evidence shows defendant told Gail, "I'm going to kill you, bitch," as a threat separate and subsequent to the act of committing false imprisonment. The threat was made while defendant and Gail were struggling over the bat and defendant was attempting to stop Gail from grabbing it. The evidence supported a finding defendant made the threat to force Gail to comply with his demands and stop resisting.

The third, separate crime of assault with a deadly weapon occurred after defendant freed the bat from Gail's grip and then struck her in the back of the head. The evidence supported the trial court's finding that defendant committed the assault with the separate objective and intent of physically harming Gail, establishing his dominance over her, and punishing her for fighting with him. Substantial evidence supports the trial court's finding that each of the three crimes was committed with multiple, independent objectives and intents, rather than as crimes that were merely incidental to each other or part of an indivisible course of conduct. The trial court therefore did not err under section 654 in imposing consecutive sentencing on counts 1, 2, and 3.

V

DISPOSITION

The judgment is affirmed.

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CODRINGTON
J.

We concur:

RAMIREZ
P. J.

HOLLENHORST
J.