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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

CAMILLO SALINAS III,

Defendant and Appellant.

H037123

(Santa Clara County

Super. Ct. No. F1137287)

Defendant Camillo Salinas III was convicted after a jury trial of carjacking, two counts of aggravated assault, two counts of making criminal threats, felony false imprisonment, and vehicle theft. The charges arose out of defendant's actions against a single victim, his girlfriend, in incidents occurring on the evening of January 31, 2011, and the next morning. Defendant was sentenced to an aggregate prison term of 11 years.

On appeal, defendant contends that the court erred in imposing sentences for the two aggravated assault and the two criminal threat convictions. He argues that the aggravated assault and criminal threat convictions which arose out of an incident on January 31, 2011 (counts 1 and 3, respectively), formed the basis for the false imprisonment conviction, and that all three offenses arose out of the same conduct and were based on a single objective, thereby requiring that the sentences for the convictions

under counts 1 and 3 be stayed pursuant to Penal Code section 654.¹ Defendant contends similarly that the conduct resulting in the assault and criminal threat convictions which arose out of an incident on February 1, 2011 (counts 5 and 6, respectively), formed the basis for the carjacking conviction, and that all three offenses arose out of the same conduct and were based on a single objective, thereby requiring that the sentences for the convictions under counts 5 and 6 be stayed pursuant to section 654.

We hold that the court erred in failing to stay the sentences for the two criminal threat convictions (counts 3 and 6) pursuant to section 654 and will modify the judgment accordingly. As modified, we will affirm the judgment.

FACTS

On the evening of January 31, 2011, defendant and his girlfriend, Rachel Gonzalez, arrived at her home in Gilroy. She lived there with her parents, brother, and some roommates. Gonzalez entered through the front door and then let defendant in through her bedroom window. (She did not want to let her parents know that defendant was there, because her mother disapproved of her dating him.) They started arguing and defendant accused Gonzalez of cheating on him. Defendant struck her with a closed fist several times in the face, and she cried out. He grabbed a screwdriver, aimed the point toward Gonzalez, and told her that if she “left he was going to use it by sticking [her] and whoever . . . comes to the door” She was afraid that he was going to stab her with the screwdriver if she left the room. Gonzalez was also fearful that defendant might stab anyone who came through her bedroom door. Defendant did not allow her to leave her bedroom; she cried and went to bed.

Early the next morning, February 1, defendant awakened Gonzalez and asked her the reason her bedroom door was open. He accused her of having sex in the room with someone else. (Gonzalez testified that the lock to her bedroom door was broken and the

¹ All further statutory references are to the Penal Code unless otherwise stated.

door would not stay shut.) Defendant yelled and cursed at Gonzalez, struck her repeatedly in the face and head with a closed fist, and threw water and CD's at her. He then grabbed Gonzalez's keys, jumped out the window, and ran to her car. She chased after him to try to retrieve her keys. Defendant got into the driver's seat and started the car. Gonzalez got into the passenger's side and tried to grab the keys "and he kept on socking [her,] telling [her to] get the fuck out of the car." He struck her repeatedly with a closed fist. Gonzalez resisted, and he drove toward his mother's house, driving into an alley and hitting a bush. He then stopped the car, struck Gonzalez again, and ordered her to get out. She did not comply. He drove further and parked next to a field. He again ordered her to get out and said "[I'm going to fuckin' kill you. Get out of the car. I'm going to beat you up. I'm going to kill you. Get the fuck out of the car.]" Gonzalez gathered her belongings in the car and exited. Defendant drove off in her car.

Gonzalez walked home and told her mother what had happened. Her mother told her to call the police and she reluctantly did so. Defendant returned the car to Gonzalez the next day.

PROCEDURAL BACKGROUND

Defendant was charged by information filed March 18, 2011, with eight felonies, namely, assault by means of force likely to produce great bodily injury (§ 245, subd. (a)(1); count 1 [aggravated assault]); assault with a deadly weapon (§ 245, subd. (a)(1); count 2); making criminal threats (§ 422; count 3); felony false imprisonment (§§ 236-237; count 4); aggravated assault (§ 245, subd. (a)(1); count 5); making criminal threats (§ 422; count 6); vehicle theft (Veh. Code, § 10851, subd. (a); count 7); and carjacking (§ 215; count 8). The information also contained the allegation that defendant had one prior felony conviction that resulted in defendant having served a prison term (§ 667.5, subd. (b)).

After a jury trial, on May 17, 2011, defendant was found guilty on counts 1 and 3 through 8, and was acquitted on count 2. In the second phase of the bifurcated trial, after

defendant waived a jury, the court found true the prison prior allegation. The court imposed an upper term sentence of nine years for the carjacking conviction (count 8), a consecutive one-year sentence (one-third of the middle term) for the aggravated assault conviction (count 1), and a one-year consecutive sentence for the prison prior enhancement, for a total prison term of 11 years. Additionally, the court imposed concurrent sentences of three years each for counts 5 and 7, and two years each for counts 3, 4, and 6. It stayed the sentence as to the count 7 conviction pursuant to section 654. Defendant filed a timely notice of appeal.

DISCUSSION

I. *Whether Convictions Should Have Been Stayed Under Section 654*

A. *Applicable Law*

Section 654, subdivision (a), provides: “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” The statute thus “precludes multiple punishment for a single act or omission, or an indivisible course of conduct. [Citations.]” (*People v. Deloza* (1998) 18 Cal.4th 585, 591.) The purpose of section 654 “is . . . to ensure that punishment is commensurate with a defendant’s criminal culpability. [Citations.]” (*People v. Alvarado* (2001) 87 Cal.App.4th 178, 196.)

As construed by the Supreme Court, “[w]hether a course of criminal conduct is divisible and therefore gives rise to more than one act within the meaning of section 654 depends on the intent and objective of the actor. If all of the offenses were incident to one objective, the defendant may be punished for any one of such offenses but not for more than one.” (*Neal v. State of California* (1960) 55 Cal.2d 11, 19.) And as the high court later emphasized, “[t]he initial inquiry in any section 654 application is to ascertain the defendant’s objective and intent. If he entertained multiple criminal objectives which were independent of and not merely incidental to each other, he may be punished for

independent violations committed in pursuit of each objective even though the violations shared common acts or were parts of an otherwise indivisible course of conduct.”

(*People v. Beamon* (1973) 8 Cal.3d 625, 639.)

In reviewing the propriety of the imposition of multiple punishments for separate convictions under section 654 based upon a finding that the defendant held more than one objective in committing those crimes, we evaluate whether there was substantial evidence to support that determination. (*People v. Osband* (1996) 13 Cal.4th 622, 730-731.) The question of whether the defendant entertained multiple criminal objectives being one of fact for the trial court, we will sustain the court’s findings if there is substantial evidence to support them. (*People v. Liu* (1996) 46 Cal.App.4th 1119, 1135-1136.) The trial court “is vested with broad latitude in making its determination. [Citations.]” (*People v. Jones* (2002) 103 Cal.App.4th 1139, 1143.) Our review of the court’s determination is made “in the light most favorable to the respondent and [we] presume the existence of every fact the trial court could reasonably deduce from the evidence.” (*Ibid.*) Each case is decided in reference to its unique circumstances. (*People v. Hutchins* (2001) 90 Cal.App.4th 1308, 1312.)

B. *Stay of Sentences for Convictions on Counts 1 and 3²*

With respect to the convictions arising out of the January 31, 2011 events, the court imposed a consecutive sentence of one-third of the middle term for the count 1 conviction (aggravated assault). The court also imposed a concurrent sentence of two years each for the count 3 (criminal threat) and count 4 (false imprisonment) convictions.

² At the outset, we note that defendant did not assert a challenge in the trial court to the propriety of the sentence on the convictions of counts 1, 3, 5, and 6. But this did not constitute a forfeiture of defendant’s section 654 arguments on appeal. “ ‘Errors in the applicability of section 654 are corrected on appeal regardless of whether the point was raised by objection in the trial court or assigned as error on appeal.’ [Citation.]” (*People v. Hester* (2000) 22 Cal.4th 290, 295; see also *People v. Lopez* (2004) 119 Cal.App.4th 132, 138.)

Defendant contends that the court committed sentencing error. He asserts that “[b]ecause the assault and the criminal threat created the false imprisonment, the sentences for [counts 1 and 3] should have been stayed, pursuant to section 654.” He argues that because the criminal threat and the assault, combined, “formed the basis for the false imprisonment,” the sentences for the crimes other than the false imprisonment should have been stayed.³ The Attorney General agrees that the court should have stayed the sentence on the criminal threat conviction, but argues that the court properly sentenced defendant on the aggravated assault conviction. We agree that the court committed sentencing error with respect to the criminal threat (count 3) conviction, only.

Felony false imprisonment involves the “unlawful violation of the personal liberty of another” (§ 236) which is “effected by violence, menace, . . .” (§ 237, subd. (a)).⁴ The court instructed the jury, in accordance with CALCRIM No. 1240, that “[m]enace means a verbal or physical threat of harm including the use of a deadly weapon. The threat of harm may be express or implied.” The prosecution argued specifically that the false imprisonment count was based upon defendant’s having brandished the screwdriver and by “telling [Gonzalez] that she couldn’t leave, having the screwdriver in the hand, that if she left he would stab her. . . . [S]he was intentionally restrained by his menace, the threat for her to stay there against her [will].” Accordingly, since it is clear that the conduct underlying the criminal threat and false imprisonment convictions “were incident to one objective” (*Neal v. State of California, supra*, 55 Cal.2d 19), namely, depriving

³ Defendant asserts that defendant was convicted of assault with a deadly weapon (the screwdriver) and that sentencing for this conviction should have been stayed. As the Attorney General notes and as later conceded by defendant in his reply brief, defendant is mistaken; he was acquitted of the assault with a deadly weapon charge (count 2).

⁴ Section 237, subdivision (a) also provides that false imprisonment may be accomplished by “fraud or deceit.” Because only violence or menace were potentially applicable here, the court in its instructions deleted the reference to “fraud or deceit.”

Gonzalez of the personal liberty of leaving her bedroom, under section 654, defendant could be punished for only one of the offenses. The court therefore should have stayed sentencing for the count 3 (criminal threat) conviction.

No such error occurred with respect to the aggravated assault conviction. Gonzalez's testimony was that *before* defendant threatened her with the screwdriver or threatened her with physical harm if she were to leave the room, defendant struck her repeatedly in the face with a closed fist after accusing her of having been unfaithful. The prosecutor argued that defendant's acts of repeatedly striking Gonzalez in the face constituted the aggravated assault charged in count 1. He also argued that "[d]omestic violence is about control" and that "[a]n attack on Rachel's face was . . . [defendant's] letting her know that he was in charge." Contrary to defendant's contention, his objective in committing the assault was not undeniably connected with his objective in subsequently depriving Gonzalez of her liberty. It may have been reasonably inferred from the evidence that defendant's objective or objectives in striking the victim were ones other than to prevent her from leaving the bedroom, such as retaliating against her for her perceived infidelity, dominating and controlling her, or some other purpose. There was substantial evidence to support either an express or implied finding by the court that there were multiple objectives in defendant's commission of the acts resulting in the convictions of aggravated assault (count 1) and false imprisonment (count 4). (*People v. Osband, supra*, 13 Cal.4th at pp. 730-731; *People v. Blake* (1998) 68 Cal.App.4th 509, 512 [trial court's implied finding of existence of separate criminal intents will not be disturbed if supported by substantial evidence].) Therefore, the court did not err in failing to stay the sentence on the count 1 conviction.

B. *Stay of Sentences for Convictions on Counts 5 and 6*

We turn to sentencing relating to the convictions arising out of events of February 1, 2011. The court imposed an upper term sentence of nine years for the

carjacking conviction (count 8), and concurrent sentences of three years and two years for the aggravated assault (count 5) and criminal threat (count 6) convictions, respectively.

Defendant contends that the court committed sentencing error. He argues that defendant's "actions in the assault and criminal threat were incidental to the carjacking" and the court should have therefore stayed the sentences for the convictions on counts 5 and 6. Defendant asserts that his striking Gonzalez in the face while they were in her car and threatening to kill her if she did not get out of the car created the force and fear necessary to accomplish the carjacking. The Attorney General agrees that since the criminal threat was the means used to facilitate the carjacking, the court should have stayed the sentence for the count 6 conviction. But she contends that the court did not err in imposing the three-year concurrent sentence for the aggravated assault (count 5) conviction.

" 'Carjacking' is the felonious taking of a motor vehicle in the possession of another, from his or her person or immediate presence . . . against his or her will and with the intent to either permanently or temporarily deprive the person in possession of the motor vehicle of his or her possession, accomplished by means of force or fear." (§ 215, subd. (a).) Here, the prosecutor argued that "[t]he carjacking [was] created by the 422, the criminal threat, because that's where you take the car by fear. . . . She was the passenger in the vehicle . . . [and he was] forcing her out by threats of death" It is plain that the actions underlying the criminal threat and carjacking convictions constituted an indivisible course of conduct and that the court should have stayed sentencing on the count 6 conviction.

Contrary to defendant's assertion, the conduct upon which count 5 was based was not the assault upon Gonzalez while she was in her car. Rather, the aggravated assault charge was founded on evidence that while defendant and Gonzalez were in her bedroom and before he took her keys and left through the window, he struck her repeatedly in the face and head with a closed fist, and threw water and CDs at her. This was the conduct

described by the prosecutor in his argument that formed the basis for the assault charge related to the incidents on February 1. There was substantial evidence supporting the implied finding of the court that defendant's objective in committing the aggravated assault was separate and distinct from his objectives relating to the subsequent conduct that resulted in the carjacking and criminal threat convictions. (*People v. Osband, supra*, 13 Cal.4th at pp. 730-731; *People v. Blake, supra*, 68 Cal.App.4th at p. 512.) Accordingly, the court did not err in imposing a concurrent three-year sentence for the count 5 (aggravated assault) conviction.

DISPOSITION

The judgment is ordered modified to reflect that the two-year concurrent sentences for the criminal threat (§ 422) convictions (counts 3 and 6) are stayed pursuant to section 654. As so modified, the judgment is affirmed. The superior court is ordered to send a certified copy of the corrected abstract of judgment to the Department of Corrections.

Duffy, J.*

WE CONCUR:

Bamattre-Manoukian, Acting P.J.

Mihara, J.

* Retired Associate Justice of the Court of Appeal, Sixth Appellate District, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.