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

THE PEOPLE,

Plaintiff and Respondent,

v.

MAURICIO REYES HERNANDEZ,

Defendant and Appellant.

H040444

(Santa Clara County
Super. Ct. No. F1346544)

A jury convicted defendant and appellant Mauricio Reyes Hernandez of four counts of forcible rape (Pen. Code, § 261, subd. (a)(2), a felony)¹ of his girlfriend; one count of inflicting corporal injury on a cohabitant (§ 273.5, subd. (a), a felony); and one count of making criminal threats (§ 422, a felony). The jury also found the following enhancement allegations true: that defendant personally inflicted great bodily injury on his girlfriend (1) when he committed one of the rapes (§§ 12022.8, 1203, subd. (e)(3)), and (2) when he inflicted corporal injury on her (§§ 12022.7, subd. (a), 1203, subd. (e)(3)). The court sentenced defendant to a total term of 31 years in prison.

On appeal, defendant contends the trial court erred and violated his federal constitutional rights when it excluded impeachment evidence that the complaining witness, who is undocumented, had stolen and unlawfully used his son's social security information. We conclude the court did not abuse its discretion when it excluded this

¹ All further undesignated statutory references are to the Penal Code.

evidence under Evidence Code section 352, and that even if there was error, defendant was not prejudiced. Defendant also contends the court erred when it failed to stay the punishment on the criminal threats conviction under section 654. We hold substantial evidence supports the trial court's decision to sentence defendant separately on the criminal threats count. We will therefore affirm the judgment.

FACTS

Prosecution Case

Blanca Doe, the victim in this case, started dating defendant in the summer of 2010. They were both divorced and had children from prior marriages. In November or December 2010, defendant moved into Blanca's four-bedroom apartment. Defendant paid rent and had his own bedroom. Blanca and her seven-year-old daughter shared a bedroom; Blanca's 14-year-old son had his own room. Another couple and their baby rented the fourth bedroom from Blanca. Defendant worked as a truck driver and typically spent two or three nights a week in Blanca's apartment. Blanca, who was undocumented, worked at a gas station convenience store.

At trial, Blanca described five incidents of violence involving defendant. Two occurred before defendant moved into her apartment; three occurred after he moved in. In four of the five incidents, defendant raped Blanca. After the fifth incident, Blanca called the police.

First Violent Incident

After defendant became Blanca's boyfriend, they had consensual sex on a regular basis. Early in their relationship, Blanca got pregnant, then had a miscarriage. After that, Blanca insisted that defendant wear a condom when they had sex because she did not want another child. Defendant did not like wearing a condom. Blanca testified that defendant wanted to have a child with her and was unhappy that she did not want another child.

Before defendant moved in, Blanca had discovered that defendant had taken nude photos of her without her consent. They argued about the photos after Blanca saw them on defendant's cell phone. Blanca asked defendant to leave and threw the phone at him; the phone landed on the floor and broke. Defendant got upset and grabbed Blanca by the neck. Blanca's son walked in and defendant let her go. (The prosecution did not file any criminal charges arising out of this incident.)

First Three Sexual Assaults

A few days after defendant grabbed Blanca by the neck, he had knee surgery. Blanca let him stay in her son's room while he recuperated. One day, defendant accused Blanca of cheating on him. He said he wanted to have sex, but she said, "no." He pushed her onto the bed, tore her clothes off, and penetrated her vagina with his penis. Blanca testified that even with his knee "bandaged,"² defendant was stronger than she was.

Blanca thought about calling the police after defendant sexually assaulted her, but she decided not to because she feared she might lose her children. Blanca was a victim of domestic violence by her ex-husband, who grabbed her by the neck and choked her in front of their daughter in 2008. As a result of that incident, Blanca's ex-husband was convicted of spousal battery (§§ 242, 243, subd. (e)) in January 2009. Protective services got involved and a social worker told Blanca that if she could not provide a safe environment for her children, the children would be taken away from her. The social worker made weekly visits to Blanca's home for six to eight months.

Blanca had to get up early to go to work and defendant often got home late. After defendant moved in, Blanca cooked for him, but because of the differences in their schedules, they usually did not eat together. They also did not sleep together.

² Blanca testified through a Spanish-language interpreter. Any quoted language attributed to Blanca is the English-language translation of her testimony.

One night in December 2010, after Blanca and her children had gone to bed, Defendant came to her room and asked if they could talk. She went to his room and they “argued over the . . . same old thing.” He wanted to have dinner with her and wanted her to share his bed; she did not want those things. Defendant became angry. She tried to leave, but defendant pushed her on the bed and said she was going to sleep with him. She said, “no,” told him she did not want to have sex, and tried to leave again. He threw her on the bed and said, “ ‘like it or not you’re gonna sleep with me.’ ” He tore her clothes off and put his penis in her mouth, knowing she “didn’t like that.” He also put his penis in her vagina. At some point, he slapped her.

On another occasion, defendant came home during the day and complained that Blanca had not done his laundry. He called her to his room and she agreed to wash his clothes. He closed the door, said he wanted to be with her, pushed her onto the bed, and forced her to have sex. She told him she did not want to have sex with him. Defendant penetrated her vagina with his penis.

During one of the first three rape incidents, defendant grabbed Blanca by the neck or her shirt. Blanca testified that on each of those occasions, defendant forced her to have sex and did not wear a condom. When they had consensual sex, she insisted he wear a condom. After each incident, defendant apologized to Blanca, asked her forgiveness, and promised to change. She believed him when he said he would change.

Fourth Sexual Assault on February 25, 2011

The final rape incident occurred on February 25, 2011. By that time, Blanca had told defendant she wanted to end their relationship and had asked him to leave her apartment. That evening, Blanca went to the local recreation center to exercise. Since she had to get up at 3:00 a.m. to go to work, she arranged for her children to spend the night with a girlfriend. She also made arrangements for defendant to pick up her son

from the recreation center at 10:00 p.m. and to take her son to her friend's house. When Blanca left the recreation center, her daughter was already at her friend's house.

Blanca got home around 9:00 p.m. and took a shower. She had locked the bathroom door, but while she was showering, defendant unlocked the door with a knife and went into the bathroom. Blanca asked him to leave and they started arguing. Defendant did not like it when Blanca went to the recreation center. He yelled at Blanca and accused her of cheating on him. Blanca told him to get out and "let [her] shower in peace." She said they could talk after she finished her shower. Defendant left the bathroom. Blanca lingered in the shower to avoid him.

After her shower, Blanca went into her bedroom to change. She locked the door behind her. Defendant unlocked the door and came in. Defendant told her he did not want to move out of the apartment and they started arguing. He said she probably wanted him to move out because she was seeing someone else. Although she was not seeing anyone else, Blanca angrily said she was seeing someone and told defendant to leave. Defendant grabbed her by the neck with one hand; he squeezed "very hard" and "put" her on the bed. They struggled. Blanca was able to loosen his grip and kicked him. Defendant grabbed her by the feet, pulled her across the bed, and then grabbed her by the throat again. Defendant called Blanca a "whore." He said he was leaving her and would kill her before he left. He said he wanted her to be with him. She asked him to leave her alone and "to break up in peace."

Defendant blocked the door and they continued to struggle inside Blanca's bedroom. He grabbed her by the neck again. They were on the bed and he put his body weight on top of her. She was able to loosen his grip a second time. He tried to grab the hand she was using to defend herself and she scratched him. He punched her on the side of her face, near her mouth. He grabbed her by the throat a third time, "very, very strong[ly]." Blanca thought she was losing consciousness and was afraid she was going to die. She was having trouble breathing and saw darkness. Defendant kept one hand on

her throat. Meanwhile, he unzipped his pants and put his penis in her vagina. He kept choking her as he penetrated her.

Defendant stopped raping Blanca when the telephone rang, but he did not let Blanca answer the phone or let her go. Blanca assumed it was her son calling; moments later, her son called defendant on his cell phone. Defendant answered his cell phone and let Blanca go. After he spoke to Blanca's son, Defendant apologized to Blanca, asked her forgiveness, and promised to change. He then left to pick up Blanca's son.

911 Call and Police Investigation

Blanca called 911 right after defendant left. She reported that her boyfriend had grabbed her by the neck and choked her, and she asked the dispatcher to send the police to her home. She did not report that she had been raped.

The jury heard the 911 recording. Since Blanca spoke Spanish, the dispatcher had to get a translator on the line. The 911 call is somewhat chaotic. While Blanca was on the phone with the 911 dispatcher, defendant returned briefly, stating that he could not find her son. Blanca sent him back to the recreation center.

Police Officer Ray Ramos arrived five minutes after Blanca called 911. Officer Ramos speaks Spanish and was able to communicate directly with Blanca.³ Officer Ramos wore a body camera and recorded what Blanca told him about the assault. The jury heard the recording and read an English-language translation of what was said.

When Officer Ramos arrived, Blanca was in her living room. She was crying, nervous, and looked scared. Officer Ramos observed visible injuries on Blanca: (1) she had red marks on her face and neck, (2) her face, neck, and throat were swollen; and

³ The jury listened to recordings of the 911 call and Blanca's interview with the officer in Spanish, which allowed the jurors to assess Blanca's emotional state shortly after the fourth rape. The evidence included English-language translations of both recordings, which the parties stipulated were accurate.

(3) she had a cut on the inside of her lip. Her voice was raspy and she was coughing. Blanca complained of pain in her neck and on the left side of her face, and stated that her throat was very dry. At one point, Blanca went into the bathroom and vomited.

Officer Ramos asked Blanca several times whether defendant lived with her. Blanca said, multiple times, that he did not live with her. Instead, Blanca told Officer Ramos: (1) they had been dating for five or six months, but they did not live together; (2) they do not live together; (3) she did not know where defendant lived, but sometimes he stays with her; (4) defendant wanted them to live together but she was not ready to live with him; (5) she did not know where he lived, he was renting a room “here,”⁴ but he left; and (6) she was letting him leave “his stuff” in her apartment. Blanca stated that she could not have more people in her apartment because the manager is strict about the number of people that live there.

Later in the interview, Blanca told Officer Ramos she had lied to him and admitted that defendant lived with her. Blanca told the officer that her building manager had told her that if she rents a room to someone who causes trouble with the police she would be in danger of losing her apartment.

Blanca told Officer Ramos defendant had been violent before and this was the fourth time he had forced her to have sex with him. Her testimony at trial was consistent with what she had told Officer Ramos on the night of the incident.

Officer Ramos arranged for Blanca to be examined by paramedics at the scene. After the paramedics cleared Blanca for transport, Officer Ramos took Blanca to the hospital, where a SART (Sexual Assault Response Team) nurse examined Blanca.

⁴ It was not clear whether by using the word “here,” Blanca meant her apartment or her apartment complex. The officer did not clarify the point.

SART Examination and Further Investigation

SART Nurse Sandra Amaral testified at trial. She described Blanca as tearful, somber, and withdrawn during the SART exam. Nurse Amaral noted that Blanca's lips were swollen and that she had an abrasion on the inside of her lip, which was consistent with her history of being hit in the face. Blanca had circular-shaped bruises and redness in three areas on her throat and smaller crescent-shaped abrasions on her neck that appeared to have been caused by fingernails grabbing her throat. Blanca had an impression of a hand on her face, scratches on her right shoulder, and an abrasion on her left chest wall. Blanca also had injuries (redness and abrasions) to her vagina that were consistent with penetration. Here injuries in that area were of the type commonly seen in rape cases. On cross-examination, Nurse Amaral stated that Blanca's vaginal injuries could have occurred with sexual intercourse that is not rape. Defendant's semen was present on a vaginal swab Nurse Amaral obtained from Blanca.

Defendant was examined by a SART nurse at 12:45 a.m. on February 26, 2011. He had a four-centimeter long, scratch-like bruise on his left chest. The nurse swabbed defendant's penis. Blanca's DNA and defendant's semen were on the swab.

Detective Luis Espejo spoke with Blanca at the hospital. He took follow-up photos of Blanca's injuries three days later. At that time, he saw bruising on her ankles. He also saw injuries to her neck and swelling on her left cheek.

In March 2011, Blanca received a letter that was signed by Luis Villalobos. Blanca did not know Villalobos. The letter mentioned Blanca's relationship with defendant, urged her to forgive defendant, and contained personal information regarding her sister's medical condition. The letter said defendant would help pay for her sister's cancer treatment if Blanca dropped the charges against him. The letter advised Blanca that she could not be forced to testify and urged her to refuse to testify against defendant. Blanca gave the letter to Detective Espejo, who recognized the return address as the

county jail. He investigated and determined that Villalobos was housed in the same jail pod as defendant.

Defense Case

In his defense, defendant argued that he had consensual sex with Blanca and that Blanca fabricated the rape allegations to obtain legal resident status through the U-Visa program.

Defendant presented expert testimony from Richard Hobbs, an immigration attorney, regarding the U-Visa program. The U-Visa is a four-year, non-immigrant visa for undocumented persons who meet four requirements. The person must: (1) be a victim of a qualifying crime; (2) prove that he or she assisted in the prosecution or investigation of the crime; (3) show that his or her assistance is likely to be helpful in the prosecution or investigation of the crime; and (4) suffer substantial mental or physical harm. The qualifying offenses are generally serious or violent crimes. They include domestic violence and rape, but not simple battery. The purpose of the U-Visa program is to encourage undocumented crime victims to come forward, so crimes will not go unaccounted for.

The benefits of the program to crime victims are substantial. The moment an application is mailed, the applicant becomes eligible for federal benefits, including CalWorks, food stamps, and Medi-Cal. Upon approval of a four-year work permit, the person becomes a resident, can apply for a driver's license and social security number, and is legally authorized to work for over 26,000 companies that use the e-verify system. After three years, the U-Visa applicant may apply for a green card and be on the path to citizenship. The person's minor children can also apply for derivative U-Visa status.

U-Visa applicants demonstrate eligibility for the program by obtaining a certification from a law enforcement agency or the district attorney. The certification satisfies the first three requirements for the program. The United States Citizenship and

Immigrations Services adjudicates the fourth requirement (whether the applicant has suffered substantial mental or physical harm). Prosecution and conviction of the offender are not necessary to obtain a U-Visa. Applicants do not have to return to their home countries and do not risk deportation while their applications are pending.

Blanca first became aware of the U-Visa program in late 2008, after her ex-husband was charged with spousal battery. A social worker told her she was eligible to apply since she was the victim of domestic violence. The social worker referred Blanca to Catholic Charities, where she met with an immigration attorney. Blanca did not pursue the U-Visa application at that time because she could not afford the \$2,500 legal fee. When asked on cross-examination whether the attorney had told her the injuries inflicted by her ex-husband were not serious enough to “guarantee” the U-Visa, Blanca initially answered “yes.” Moments later, she testified that the attorney had said her case was “serious” and she had a “great possibility” of obtaining the U-Visa.

After her SART examination in February 2011, a victim witness advocate from Community Solutions contacted Blanca. Two months later, Blanca started receiving counseling at Community Solutions. Blanca’s counselor suggested she apply for a U-Visa based on the sexual assaults in this case. Community Solutions had a U-Visa program with a lower cost (\$300) than Catholic Charities.

Blanca attended two workshops about the U-Visa at Community Solutions. In early 2013, she submitted a U-Visa application. Detective Espejo prepared a U-Visa certification for Blanca at the request of Community Solutions. In his certification, Detective Espejo reported that Blanca was a victim of domestic violence, but did not state that she had been raped.

Blanca’s ex-husband testified on behalf of defendant. In March 2012, he told a defense investigator that Blanca had asked him for money to retain an attorney to “fix” her immigration status. At trial, however, he denied making that statement. He testified that Blanca had asked him to help her financially, but the money was for their children.

He testified that he did not pay child support. Although he did not give Blanca any money, he would occasionally buy things for their children. He also told the investigator Blanca was honest.

PROCEDURAL HISTORY

The prosecution charged defendant with six felonies: (1) four counts of forcible rape (§ 261, subd. (a)(2)); (2) one count of inflicting corporal injury on a cohabitant (§ 273.5, subd. (a)); and (3) one count of making criminal threats (§ 422). The information contained enhancement allegations that defendant personally inflicted great bodily injury on Blanca (1) when he committed one of the rapes (§§ 12022.8, 1203, subd. (e)(3)), and (2) when he inflicted corporal injury on her (§§ 12022.7, subd. (a), 1203, subd. (e)(3)). The prosecution also charged defendant with three counts of forcible rape of L.O., a woman defendant lived with for 10 years before dating Blanca. L.O. refused to testify at trial, even after being held in contempt, so the court dismissed those counts.

The court sentenced defendant to 31 years in prison. The sentence included: (1) six-year consecutive sentences for each of the forcible rape counts, for a total of 24 years; (2) a five-year consecutive sentence for the great bodily injury enhancement on one of the rape counts; and (3) a two-year consecutive sentence on the criminal threats count. The court also imposed, but stayed (§ 654), a six-year sentence on the inflicting corporal injury count.

DISCUSSION

Exclusion of Evidence that Blanca Stole and Unlawfully Used Defendant's Son's Social Security Information

Background

Both parties filed written motions in limine. Defendant argued in limine that he was “entitled to attack [Blanca’s] credibility with all relevant impeaching evidence,”

including Blanca's efforts to obtain "legal immigration status through a U-Visa." Defendant asserted that Blanca had a motive to falsely accuse him of rape to obtain a U-Visa.

The prosecution expected defendant to attempt to impeach Blanca with (1) evidence regarding her U-Visa application; and (2) evidence that she "used false social security information to gain employment." The prosecutor therefore made a motion in limine to exclude both types of evidence. The motion stated that Blanca had "been living in the United States as an undocumented worker for at least a decade," had no criminal record, "had a history of gainful employment," and supported her children. The prosecution argued that "being an illegal immigrant often requires people to engage in some type of subterfuge" to make a living. The prosecution cited a number of California civil cases and cases from other jurisdictions that have held that evidence of a witness's immigration status is not relevant to impugn credibility. The prosecution also argued that such evidence is highly prejudicial.

At the hearing on the motions, defendant asked the court to admit evidence that Blanca had stolen and used defendant's son's social security card.

Ruling on these motions, the court agreed that defendant could inquire about Blanca's effort to obtain a U-Visa and present expert testimony about the U-Visa process. But the court concluded, ". . . I don't think specific other instances where she has engaged in behavior . . . to stay in the country, submitting false documents here or doing other sorts of things here that are related to immigration will be helpful to the jury. [¶] The larger issue about whether or not she's fabricated or exaggerated to get a U[-]Visa, which is only valuable if you do not have illegal status [*sic*], are fair issues for the defense to explore, but not sharp shooting her about whether or not she submitted a false social security card at particular dates or times."

In response, defense counsel argued that the theft and use of the social security information was different from submitting false documents to obtain work because there

was an “actual theft” and a “known victim.” The court responded: “I don’t know that I’m prepared to say that every illegal status person that has used documents not their own to maintain employment to support their family is a person of questionable moral turpitude. . . . I don’t think the defendant will be deprived of his most important issue here as to whether or not she’s exaggerating or fabricating in order to . . . remain in the country. [¶] I don’t think the fact that . . . she also did some other things is helpful. It’s all about her wanting to stay in the country, which is a good issue and may provide a defense argument about exaggeration or fabrication. . . . And accordingly, my guidance to you at this point is the U[-]Visa is important but not facts taken about those [other] efforts”

Defense counsel argued that Blanca’s alleged theft of the social security card is “a crime that goes to moral turpitude and to credibility and to her motives and benefits by lying and engaging in theft.” The court repeated its conclusion that the U-Visa is an “important issue and the defense is allowed to inquire [as] to that, but not as to the dozens of things that might otherwise be illegal that every undocumented person does to try to remain in the country until they can attain legal status.”

Governing Legal Principles

“The passage of Proposition 8 in 1982 led to the enactment of article I, section 28 of the California Constitution.” (*People v. Clark* (2011) 52 Cal.4th 856, 931, fn. 20 (*Clark*)). Subdivision (f)(2) of that article provides in pertinent part that “relevant evidence shall not be excluded in any criminal proceeding” Subdivision (f)(4) of that article allows prior felony convictions to “be used without limitation for purposes of impeachment.” (Cal. Const., art. I, § 28, subd. (f)(4).)

“A witness may be impeached with any prior conduct involving moral turpitude whether or not it resulted in a felony conviction, subject to the trial court’s exercise of discretion under Evidence Code section 352. (*People v. Wheeler* (1992) 4 Cal.4th 284,

290-296 . . . [Prop. 8 allows impeachment with conduct amounting to a misdemeanor offense]; see also *People v. Mickle* (1991) 54 Cal.3d 140, 168 [jailhouse informant could be impeached with evidence he had threatened witnesses in his own case].)” (*Clark, supra*, 52 Cal.4th at p. 931.) A trial court has broad discretion in determining whether to admit or exclude evidence under Evidence Code section 352. (*People v. Mullens* (2004) 119 Cal.App.4th 648, 658 (*Mullens*).)

“ ‘[T]he admissibility of any past misconduct for impeachment is limited at the outset by the relevance requirement of moral turpitude. Beyond this, the latitude [Evidence Code] section 352 allows for exclusion of impeachment evidence in individual cases is broad.’ [Citations.] When determining whether to admit a *prior conviction* for impeachment purposes, the court should consider, among other factors, whether it reflects on the witness’s honesty or veracity, whether it is near or remote in time, whether it is for the same or similar conduct as the charged offense, and what effect its admission would have on the defendant’s decision to testify. [Citations.] Additional considerations apply when the proffered impeachment evidence is *misconduct other than a prior conviction*. This is because such misconduct generally is less probative of immoral character or dishonesty and may involve problems involving proof, unfair surprise, and the evaluation of moral turpitude. [Citation.] As [the California Supreme Court has] advised, ‘courts may and should consider with particular care whether the admission of such evidence might involve undue time, confusion, or prejudice which outweighs its probative value.’ [Citation.]” (*Clark, supra*, 52 Cal.4th at pp. 931-932, italics added, quoting *People v. Wheeler, supra*, 4 Cal.4th at pp. 296-297 and other cases.)

Standard of Review

We review a trial court’s rulings regarding the admission or exclusion of evidence on the ground of relevance and under Evidence Code section 352 for an abuse of discretion. (*People v. Cole* (2004) 33 Cal.4th 1158, 1195.) “ ‘[T]he term judicial

discretion “implies absence of arbitrary determination, capricious disposition or whimsical thinking.”’ [Citation.] ‘[D]iscretion is abused whenever the court exceeds the bounds of reason, all of the circumstances being considered.’ [Citation.]” (*Mullens*, 119 Cal.App.4th at p. 658.) “Because the court’s discretion to admit or exclude impeachment evidence ‘is as broad as necessary to deal with the great variety of factual situations in which the issue arises’ [citation], a reviewing court ordinarily will uphold the trial court’s exercise of discretion [citations].” (*Clark, supra*, 52 Cal.4th at p. 932.)

Analysis

The court’s comments reveal that it carefully considered the relevance, probative value, and prejudicial effect of the evidence of Blanca’s alleged theft of the social security information. An analysis of the factors enumerated in *Clark* supports the court’s ruling. The record does not reveal when the alleged theft occurred. But since Blanca had known defendant for less than a year when she called 911, we may infer that the alleged theft was not remote in time. Blanca’s alleged theft was not related to any of the charged offenses and did not have any direct exculpatory value. There is no indication that admission of this evidence would have affected defendant’s decision not to testify. The alleged misconduct did not involve a prior conviction for any crime, either a felony or misdemeanor. As the court stated in *Clark*, evidence of misconduct other than a prior conviction is “generally less probative of immoral character or dishonesty and may involve problems involving proof, unfair surprise, and the evaluation of moral turpitude.” (*Clark, supra*, 52 Cal.4th at pp. 931-932.) Even if we were to conclude that the alleged misconduct reflected on Blanca’s honesty, the other factors enumerated in *Clark* do not support the conclusion that the court erred when it excluded the evidence.

The trial court did not abuse its discretion when it found that the evidence at issue “ ‘might involve undue time, confusion, or prejudice which outweighs its probative value.’ ” (*Clark, supra*, 52 Cal.4th at p. 932.) The “latitude [Evidence Code] section 352

allows for exclusion of impeachment evidence in individual cases is broad. The statute empowers courts to prevent criminal trials from degenerating into nitpicking wars of attrition over collateral credibility issues.” (*Wheeler, supra*, 4 Cal.4th at p. 296.) Defense counsel told the court she was prepared to call defendant’s son as a witness and present “certified documents” that showed that Blanca had used his social security number and “had it fabricated into a false document.” (The record does not indicate whether Blanca disputed the allegations about the social security card.) Thus, defense counsel anticipated conducting a mini-trial on the question whether Blanca “stole” the social security information. Blanca testified that she was undocumented and that she was working. The jury could infer from that testimony that she may have used false papers to obtain employment. Evidence of the precise circumstances under which she obtained a false social security number would not have added much to what the jury already knew.

Even if we were to conclude the court erred in excluding this evidence, defendant was not prejudiced by the court’s ruling. We evaluate alleged error in the exclusion of impeachment evidence under the prejudice standard from *People v. Watson* (1956) 46 Cal.2d 818 and determine whether, after a review of the entire record, “it is reasonably probable that a result more favorable to [defendant] would have been reached in the absence of the error.” (*Id.* at p. 836; *People v. Castro* (1985) 38 Cal.3d 301, 319; *People v. Brown* (1985) 169 Cal.App.3d 800, 807.)

Here, there was ample evidence relating to Blanca’s credibility. When cross-examining Blanca, defense counsel presented evidence that Blanca lied to Officer Ramos at least four times when asked whether defendant lived with her. Defense counsel reinforced this point in the cross-examination of Officer Ramos, and the jury had a transcript of Officer Ramos’s interview of Blanca. The jury heard evidence that Blanca was not forthright with her landlord about the number of people who lived in her apartment. Defendant’s evidence included a copy of Blanca’s lease, which prohibited subleasing. It also included Blanca’s admission on cross-examination that she had not

added others who lived with her to the lease, even though she collected rent from them. The jury knew Blanca was undocumented and worked here illegally.

Defendant was also allowed to present evidence that Blanca had a motive to lie about the rapes to obtain a U-Visa. Blanca admitted she knew about the U-Visa program and its benefits in early 2009, one year before she met defendant. When Blanca called 911, she reported that she had been choked, but did not say she had been raped. In addition, Blanca had been warned by a social worker that she might lose her children if she did not provide a safe environment for them. Knowing this, Blanca permitted defendant to move into her apartment after he grabbed her neck and had already raped her once. And on February 25, 2011, she allowed defendant, who had just choked her violently and raped her, to pick up her son. These facts reflect poorly on Blanca's credibility. Defense counsel presented a vigorous defense and argued each of these points to the jury in her closing argument. In light of this record, we conclude it is not reasonably probable that a result more favorable to defendant would have been reached if the jury had heard the additional evidence about the alleged theft of the social security information. (*Watson, supra*, 46 Cal.2d at p. 836.)

We conclude the trial court did not abuse its discretion by excluding the proffered testimony under Evidence Code section 352. We also reject defendant's claim that the exclusion of the evidence violated his federal constitutional rights to confront prosecution witnesses and present a complete defense. "[T]rial judges retain wide latitude insofar as the Confrontation Clause is concerned to impose reasonable limits on such cross-examination based on concerns about, among other things, harassment, prejudice, confusion of the issues, the witness' safety, or interrogation that is repetitive or only marginally relevant. And as we [have] observed . . . , 'the Confrontation Clause guarantees an *opportunity* for effective cross-examination, not cross-examination that is effective in whatever way, and to whatever extent, the defense might wish.' " (*Delaware*

v. Van Arsdall (1986) 475 U.S. 673, 679, original italics, quoting *Delaware v. Fensterer* (1985) 474 U.S. 15, 20.)

Failure to Stay the Punishment on the Criminal Threats Count Under Section 654

Defendant was convicted of three crimes that occurred on February 25, 2011: (1) infliction of corporal injury on a cohabitant (§ 273.5); (2) making criminal threats (§ 422); and (3) forcible rape (§ 261, subd. (a)(2)). He was also convicted of forcible rape on three other occasions.

At sentencing, the court imposed the following sentences for the crimes that occurred on February 25, 2011: (1) 11 years for the forcible rape (the six-year middle term, plus five years for the section 12022.8 enhancement); (2) two years for the criminal threats; and (3) six years for the infliction of corporal injury (the three-year middle term, plus three years for the section 12022.7 enhancement). The court then stayed the six-year sentence on the corporal injury count pursuant to section 654. The court also imposed six-year consecutive sentences on each of the other three forcible rape counts, bringing the total term to 31 years.

Defendant contends the court erred when it sentenced him separately for the criminal threats conviction. He argues the “threat was an integral part of the sexual assault” that “served [to] facilitate that crime.” He argues there was no evidence he “harbored an objective other than to accomplish the rape when he issued the threat against Blanca,” and he asserts the punishment on the criminal threats count should also have been stayed pursuant to section 654.

Background

The probation department recommended the court sentence defendant to: (1) five years on the infliction of corporal injury count (the two-year lower term plus three years for the section 12022.7 enhancement), and (2) eight months (one-third the middle term)

concurrent on the criminal threats count, for a total of five years for those two crimes. The probation officer also recommended imposing the lower term on each of the rape counts.

The trial court disagreed, stating: “. . . I’m unable to find this a mitigated case as to any of the counts. [¶] Accordingly, I think under 1170.1, the [criminal threats count] is not a 654 offense. [Defendant] could have easily committed [infliction of corporal injury] and rape without saying the things that he said. It added, enabled him, if you will, enabled him to do some things he couldn’t do. [¶] Accordingly, I have selected the midterm on [the criminal threats count] That’s two years.”

Legal Principles Governing Section 654

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 permits multiple convictions arising out of a single act or omission, or an indivisible course of conduct, but bars multiple punishment for those convictions. (*People v. Mesa* (2012) 54 Cal.4th 191, 195 (*Mesa*); *People v. Deloza* (1998) 18 Cal.4th 585, 591 (*Deloza*)). If a defendant suffers two convictions, punishment for one of which is precluded by section 654, that section requires that the sentences for both convictions be imposed; but execution of sentence for one of the convictions must be stayed. (*Mesa*, at p. 195; *Deloza*, at pp. 591-592.)

“The purpose of section 654 is to ensure that a defendant’s punishment is commensurate with [the defendant’s] culpability and that he [or she] is not punished more than once for what is essentially one criminal act.” (*People v. Kwok* (1998) 63 Cal.App.4th 1236, 1252 (*Kwok*)).

“Although section 654 literally applies only where multiple statutory violations arise out of a single ‘act or omission,’ it has also long been applied to cases where a ‘course of conduct’ violates several statutes. [Citations.] A ‘course of conduct’ may be considered a single act within the meaning of section 654 and therefore be punishable only once, or it may constitute a ‘divisible transaction’ which may be punished under more than one statute.” (*Kwok, supra*, 63 Cal.App.4th at p. 1252.) An examination of the facts is essential to determining whether multiple convictions are based upon a single act or omission or a divisible course of conduct. (*Mesa, supra*, 54 Cal.4th at p. 196.)

“It is defendant’s intent and objective, not the temporal proximity of his offenses, which determine whether the transaction is indivisible. [Citations.] . . . [I]f all of the offenses were merely incidental to, or were the means of accomplishing or facilitating one objective, defendant may be found to have harbored a single intent and therefore may be punished only once. [Citation.] [¶] If, on the other hand, defendant harbored ‘multiple criminal objectives,’ which were independent of and not merely incidental to each other, he may be punished for each statutory violation committed in pursuit of each objective, ‘even though the violations shared common acts or were parts of an otherwise indivisible course of conduct.’ [Citation.]” (*People v. Harrison* (1989) 48 Cal.3d 321, 335 (*Harrison*)). “ ‘The principal inquiry in each case is whether the defendant’s criminal intent and objective were single or multiple.’ ” (*In re Jose P.* (2003) 106 Cal.App.4th 458, 469, overruled on another ground by *People v. Prunty* (2015) 62 Cal.4th 59, 78 & fn. 5.) “ ‘A defendant’s criminal objective is “determined from all the circumstances.” ’ ” (*Ibid.*)

“ ‘[M]ultiple crimes are not one transaction where the defendant had a chance to reflect between offenses and each offense created a new risk of harm.’ [Citation.] Under section 654, a course of conduct divisible in time, though directed to one objective, may give rise to multiple convictions and multiple punishment ‘where the offenses are temporally separated in such a way as to afford the defendant opportunity to reflect and

renew his or her intent before committing the next one, thereby aggravating the violation of public security or policy already undertaken.’ ” (*People v. Lopez* (2011) 198 Cal.App.4th 698, 717-718 (*Lopez*).)

Standard of Review

“Whether section 654 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.” (*People v. Jones* (2002) 103 Cal.App.4th 1139, 1143.) Where the trial court makes no specific finding on the issue, a finding that the crimes were divisible is implicit in the judgment and will be upheld if supported by substantial evidence. (*Lopez, supra*, 198 Cal.App.4th at p. 717.)

Analysis

“It is a crime to threaten another with death or great bodily harm. [Citation.] The crime requires ‘a threat so “unequivocal, unconditional, immediate, and specific” that it conveys to the victim an “immediate prospect of execution.” ’ [Citation.] . . . Section 422 therefore requires that the threatening statement be made with the specific intent to be taken as a threat.” (*People v. Felix* (2001) 92 Cal.App.4th 905, 911 (*Felix*).) “Section 422 was not enacted to punish emotional outbursts, it targets only those who try to instill fear in others. [Citation.]” (*Id.* at p. 913.)

Rape is an act of sexual intercourse with a person without that person’s effective consent, including, as in this case, when it “is accomplished against a person’s will by means of force, violence, duress, menace or fear of immediate and unlawful bodily injury to the person.” (§ 261, subd. (a)(2).) “The essential guilt of rape consists in the outrage

to the person and feelings of the victim of the rape. Any sexual penetration, however slight, is sufficient to complete the crime.” (§ 263.)

Substantial evidence supports the trial court’s conclusion that defendant harbored multiple criminal intents and objectives that were independent of one another. Defendant harbored: (1) the objective of instilling fear in Blanca to dissuade her from ending their relationship; and (2) the objective to have sexual intercourse with her, by force and violence, if necessary. Defendant’s threat to kill Blanca was part of a sequence of acts that culminated in rape. By February 25, 2011, Blanca had suffered multiple acts of violence at defendant’s hands and had asked him to move out. When he came into her room that day, he grabbed her by the neck and forced her onto the bed. She was able to loosen his grip and kicked him. He grabbed her feet and dragged her across the bed. He grabbed her throat again, called her a “whore,” and said he was going to leave her, but first he was going to kill her. He then said he wanted her to be with him. After he threatened to kill her, he grabbed her by the throat a third time. When she loosened his grip, he punched her in the face. He grabbed her by the throat again and choked her harder. As she started to lose consciousness, he raped her.

During this sequence of events, Blanca was able to escape defendant’s grasp three times. Each time she got away from him, including after he threatened to kill her, defendant had an opportunity to reflect. After she escaped his grasp a third time—which was after he threatened to kill her—he punched her in the face and had another opportunity to reflect. Instead of stopping, he grabbed her throat again, choked her, and then raped her.

Harrison, supra, 48 Cal.3d 321 is instructive. The defendant in *Harrison* “broke into the victim’s home and committed three separate acts of digital penetration. After each penetration the victim was able to pull away. Twice the defendant was able to overpower her and penetrate her again. After the third assault she was able to retreat to a bathroom and lock the door. The entire episode lasted seven to 10 minutes.” (*People v.*

Correa (2012) 54 Cal.4th 331, 341-342, citing *Harrison*, at pp. 325-326.) The *Harrison* court concluded that section 654 did not bar multiple punishment for the three sexual assaults, reasoning that a defendant who commits three assaults is more culpable than a defendant who commits a single sexual assault. (*Harrison*, at p. 336.) Similarly, here, a defendant who chokes his victim, threatens to kill her, punches her, and then rapes her is more culpable than a defendant who commits only rape.

On this record, we conclude substantial evidence supports the trial court's finding that defendant harbored separate and distinct objectives and intents when he threatened, then assaulted, and then raped Blanca.

DISPOSITION

The judgment is affirmed.

Márquez, J.

WE CONCUR:

Bamattre-Manoukian, Acting P. J.

Mihara, J.