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

THE PEOPLE,

Plaintiff and Respondent,

v.

ROBERTO MENDOZA,

Defendant and Appellant.

H042130

(Santa Clara County

Super. Ct. No. F1453129)

Defendant Roberto Mendoza was convicted by a jury of one count of felony stalking (Pen. Code § 646.9, subd. (b)),¹ and five counts of misdemeanor contempt of court for violating a restraining order (§ 166, subd. (c)(1)). On appeal, defendant argues that the court violated section 654 when it sentenced him to separate 90-day terms for the contempt of court counts.

STATEMENT OF THE FACTS AND CASE

Defendant met Julia Mendoza in 2008, and has two children with her. The two had a very tumultuous on-and-off relationship through the years. Defendant began to threaten Julia. As a result, Julia obtained a restraining order against defendant in April 2014.

¹ All further statutory references are to the Penal Code.

On September 5, 2014, Julia allowed defendant to visit her and the children. After that, Julia told defendant to leave her alone or she would contact the police. Defendant continued to try to contact Julia by calling her at her parents' house. Defendant threatened to come to her house, kick in the door, and slash her face. Julia was scared by defendant's threats. Julia began to record conversations between herself and defendant when defendant started to threaten her. Julia contacted the police to report the threats.

On September 20, 2014, defendant called Julia at the restaurant where she worked. Julia told defendant to leave her alone and to stop calling her. Julia hung up on defendant. Defendant called Julia four more times.

On September 26, 2014, defendant called Julia at her parents' house. He wanted to know what had happened at a recent family court hearing that he did not attend. Julia told defendant to stop calling her. Defendant threatened to slash Julia's face. Julia hung up on defendant and called the police.

Defendant told Julia that if he had to go to jail, "he would make it worth doing something bad." Julia was afraid because she saw defendant pacing back and forth. Julia called the police again but defendant left before they arrived.

On September 27, 2014, defendant called Julia at work four times. Julia is the only employee who answers the phone during her shift. Julia told defendant to stop stalking her. Defendant was angry and threatened to come to Julia's job and slash her face. He said, "Just [wait] until I see you alone." Julia reported the incident to the police.

On October 16, 2014, defendant called Julia at work. Julia told him to stop calling her. Defendant threatened to slash her face and make her paralyzed. Julia believed that defendant would carry out his threats.

On October 20, 2014, defendant called Julia at her job more than 10 times. Defendant became angry when Julia told him to leave her alone. Julia reported the calls to the police. Julia told defendant that she was willing to testify against him if it came to

that. Defendant responded that that if she testified against him, he would come after her. Defendant told Julia that if she ever left California, she would have to come back for her parents' funeral, and when she did, he would attack her.

In January 2015, defendant was charged by information with one felony count of stalking while a restraining order was in effect (§ 646.9, subd. (b); count 1), three felony counts of threatening to commit a crime resulting in death or great bodily injury (§ 422; counts 2-4), and five misdemeanor counts of violating a restraining order in contempt of court (§ 166, subd. (c)(1); counts 5-9).

Following trial, a jury found defendant guilty of stalking (count 1), and of violating a restraining order in contempt of court (counts 5-9). The jury found defendant not guilty of making criminal threats (counts 2-4).

The trial court denied probation and sentenced defendant to three years for count 1, and 90 days for each of counts 5-9, to run concurrent with the three-year prison commitment.

Two timely notices of appeal were filed in March 2015.

DISCUSSION

Defendant argues that the court erred in sentencing him to separate terms for his crimes of stalking and contempt of court, because the crimes were part of an indivisible course of conduct. Defendant asserts that the misdemeanor terms of 90 days for each of the five counts of contempt of court should have been stayed pursuant to section 654.

Section 654 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 provision." (§ 654, subd. (a).) Section 654 prohibits separate punishment for multiple offenses arising from the same act or from a series of

acts constituting an indivisible course of conduct. (*People v. Rodriguez* (2009) 47 Cal.4th 501, 507.)

“Whether 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, disapproved on other grounds in *People v. Correa* (2012) 54 Cal.4th 333, 334.) On the other hand, if the defendant entertained multiple criminal objectives that were independent and not incidental to each other, he or she “may be punished for each statutory violation committed in pursuit of each objective” even though the violations were otherwise part of an indivisible course of conduct. (*People v. Harrison* (1989) 48 Cal.3d 321, 335.) “ ‘The principal inquiry in each case is whether the defendant’s criminal intent and objective were single or multiple.’ [Citation.] ‘A defendant’s criminal objective is “determined from all the circumstances.” ’ ” (*In re Jose P.* (2003) 106 Cal.App.4th 458, 469.)

The determination of whether a defendant held multiple criminal objectives when committing crimes is a factual issue to be decided by the trial court. (*People v. Hutchins* (2001) 90 Cal.App.4th 1308, 1312.) The trial court’s findings will not be reversed on appeal if there is any substantial evidence to support them. (*Ibid.*) “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.) Here, the trial court made no specific determination about defendant’s criminal objectives when it sentenced defendant. Because the court imposed concurrent terms on the misdemeanor convictions, and did not stay the terms, we presume the court found that defendant had multiple criminal objectives to support its sentence.

Stalking requires a course of conduct, that is, at least two acts be directed at the victim. (§ 646.9, subd. (f).) Here, the conduct that constituted stalking occurred between September 9, 2014 and October 16, 2014. The five misdemeanor counts for contempt occurred on the same dates and during the same time period. Specifically, counts 5-7 allege acts that occurred between the two dates, count 8 alleges that an act occurred on October 16, 2014, and count 9 alleges an act occurred on September 9, 2014. The acts alleged in all of the counts of contempt of court were part of the same course of conduct of defendant repeatedly contacting the victim in violation of the restraining order. Defendant's conviction for stalking cannot stand without the conduct that also serves as the basis for the conviction of contempt of court in counts 5-9. Here, the court's punishment for both stalking and contempt of court violated section 654.

On the record before us, we can discern no separate criminal objective between the stalking and contempt of court counts. Therefore, the separate 90-day terms for each of the contempt of court counts will be stayed pursuant to section 654.

DISPOSITION

The judgment is modified to reflect that that the 90-day terms imposed for the contempt of court counts (counts 5-9) are stayed pursuant to section 654. As modified, the judgment is affirmed.

RUSHING, P.J.

WE CONCUR:

PREMO, J.

GROVER, J.