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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

MARLIN F. EDWARDS,

Defendant and Appellant.

A128431

(Solano County
Super. Ct. No. VCR204123)

I. INTRODUCTION

Marlin Edwards was convicted of two counts of making criminal threats (Pen. Code, § 422¹), false imprisonment by violence (§ 236), and two counts of simple assault (§ 240). After allegations that Edwards served seven prior prison terms were found true, he was sentenced to a total term of nine years in state prison.

On appeal, Edwards contends that his sentence violates section 654 because the lower court imposed separate sentences for two offenses that Edwards committed during an indivisible course of criminal conduct. We reject this contention and, therefore, affirm the judgment and sentence.

¹ Undesignated statutory references are to the Penal Code.

II. STATEMENT OF FACTS

A. *Background*

In April 2009,² Edwards moved into an apartment with Calveda Daniels and their three-year-old son, C. A few months later, Daniels noticed that Edwards's behavior changed. He would go for days without sleep and then sleep for long periods, and he began to hallucinate. Edwards told Daniels he heard dead people in the walls and began to cut holes in the walls so he could get to them. In July, Edwards began to hit Daniels because she would not admit that strangers had been in the apartment.

B. *Events of July 15*

On the morning of July 15, Edwards and Daniels were at their apartment with C. and Daniels's nine-year-old nephew, M., who had slept over the night before. Edwards was angry because he thought strangers had been in the apartment while he was asleep.

Edwards told M. he knew men had been in the apartment because he saw their footprints. M. told Edwards that men had been there even though that was not true. He testified at trial that he told this lie because Edwards had a gun in his back pocket and was holding a knife and M. was afraid Edwards would hurt him if he said nobody had been there.

When Edwards questioned Daniels about the strangers, she denied that anyone had been there but Edwards accused her of lying. He told Daniels to come into the bathroom with him so they could talk, but then would not let her leave. He made her take off her clothes and sit in a corner near the tub. He had a gun and a knife and he repeatedly threatened to hurt Daniels who was approximately four months pregnant at the time.³ Edwards told Daniels that she could not leave the bathroom because she was lying and that if she did not stop lying, he would cut her throat.

After about an hour, Edwards stepped out of the bathroom and called for M. to bring C. to him. M. testified that when he brought C. to the bathroom, Edwards was

² Unless otherwise noted, all further dates mentioned are in 2009.

³ Three weeks before the trial in this case, Daniels gave birth to her second child with appellant.

holding a knife to Daniels's stomach and looked like he was going to stab her. Edwards took the baby and closed the door. He handed C. to Daniels and then threatened them both for several more hours. He pointed the gun at Daniels' head and said he would hurt her if she did not stop lying. He also threatened to hurt C. and make her watch. Daniels testified that Edwards kept her in the bathroom for five hours or more.

Eventually, Edwards allowed Daniels to get dressed and leave the bathroom so that they could go to an appointment with his parole officer. Before they left, he made M. urinate in a cup or plastic bag, telling him he needed it for a test he had to do. ~(RT 86)~ Edwards took M.'s urine with him to the parole office. During the appointment, Daniels stayed outside with the children. Edwards kept the keys to the car and the apartment with him. Daniels testified that she did not tell the parole officer about the bathroom incident because she did not trust the officer.

C. *Other Incidents*

On July 16, Edwards and Daniels had another argument about strangers being in the apartment. Edwards punched Daniels in the head several times. Daniels testified that her head was swollen for several days after that.

On July 22, Edwards and Daniels had another argument about strangers being in the apartment. When Daniels started to walk away, Edwards grabbed her around the neck and pushed her on the bed. Daniels could not breathe and almost lost consciousness. When Daniels could breathe again, she began to scream for help. Edwards pointed a gun at her and told her that if she screamed again, that would be her last scream.

Two days later, while Edwards was asleep, Daniels finally decided to call the police. Edwards had the phone with him, so Daniels waited until 10:00 a.m. when the apartment manager's office opened. She turned on the kitchen faucet so Edwards would not hear her leave, and then took C. and ran to the manager's office.

Edwards was arrested without incident by Vallejo Police Officer Joshua Caitham. Caitham found a gun laying on top of the bed. When he picked it up, he thought it was real. But, upon closer inspection, Caitham realized it was a pellet or BB gun. Caitham also noticed there were holes in the walls in several rooms.

D. Charges, Verdict and Sentence

Edwards was charged by Information with five felony offenses, as follows: count 1 - making criminal threats on July 15, 2009; count 2 - false imprisonment on July 15; count 3 - assault on July 16; count 4 - assault on July 22; count 5 - making criminal threats on July 22. The Information also charged that Edwards had suffered seven prior felony convictions.

A jury found Edwards guilty of two counts of making criminal threats and of false imprisonment. It found him not guilty of the two felony assault charges but convicted him instead of two counts of simple assault. After a bifurcated court trial on the prior conviction allegations, the court found all seven prior allegations were true.

A sentencing hearing was held on March 10, 2010. Edwards was sentenced to the midterm of two years for the July 15 criminal threats (count 1), a concurrent two-year term for the July 15 false imprisonment (count 2), a concurrent two-year term for the July 22 criminal threats (count 5), a concurrent six-month jail term for each of the assaults (count 3 and 4), and consecutive one-year prison terms for each of the seven prior felony convictions.

III. DISCUSSION

Edwards contends that the sentencing court violated section 654 by imposing a concurrent two-year sentence for false imprisonment instead of staying the punishment for that offense.

A. Legal Principles

Section 654 states, 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.” (§ 654, subd. (a).)

Section 654 prohibits multiple punishment not only for a “single act or omission” but also for a single, indivisible course of criminal conduct. (*People v. Latimer* (1993) 5 Cal.4th 1203, 1207-1208; *Neal v. State of California* (1960) 55 Cal.2d 11, 19.) “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.]’ [Citation.]” (*People v. Hicks* (1993) 6 Cal.4th 784, 789.) “On the other hand, if the evidence discloses that a defendant entertained multiple criminal objectives which were independent of and not merely incidental to each other, he may be punished for the independent violations committed in pursuit of each objective even though the violations were parts of an otherwise indivisible course of conduct.” (*People v. Perez* (1979) 23 Cal.3d 545, 551.)

“Concurrent sentences for crimes based on one act or indivisible transaction constitute multiple punishment. [Citations.] The appropriate procedure is to eliminate the effect of the judgment as to the lesser offense insofar as the penalty alone is concerned. [Citations.]” (*People v. Lee* (1980) 110 Cal.App.3d 774, 785.) Therefore, when section 654 applies to two offenses, one of the sentences must be stayed. (*Ibid.*)

“The question whether section 654 is factually applicable to a given series of offenses is for the trial court, and the law gives the trial court broad latitude in making this determination. Its findings on this question must be upheld on appeal if there is any substantial evidence to support them. [Citations.] ‘We must “view the evidence in a light most favorable to the respondent and presume in support of the [sentencing] order the existence of every fact the trier could reasonably deduce from the evidence. [Citation.]” [Citation.]’ [Citation.]” (*People v. Hutchins* (2001) 90 Cal.App.4th 1308, 1312-1313.)

B. Analysis

Edwards contends his sentence for false imprisonment should have been stayed because that offense and the criminal threats that formed the basis of the count one conviction were part of an indivisible course of criminal conduct.

Substantial evidence supports the trial court’s implicit finding that the criminal threats and the false imprisonment that Edwards committed during the July 15 incident were two distinct offenses and not part of an indivisible course of criminal conduct.

During that incident, Edwards held Daniels in the bathroom for several hours with the intention of detaining her against her will. During that lengthy ordeal, Edwards also threatened to stab, shoot, kill and otherwise harm Daniels and C. with the intention of making Daniels fear for her life. Thus, although the two offenses were committed during the same incident, evidence that each offense furthered a distinct criminal objective permitted the lower court to impose separate sentences. (See *People v. Latimer*, *supra*, 5 Cal.4th at pp. 1212, 1216 [approving rule that section 654 authorizes separate punishment in cases finding “separate, although sometimes simultaneous objectives under the facts”].)

Edwards maintains that “the criminal threats were part and parcel of appellant’s false imprisonment by use of threats.” By this, Edwards appears to argue that the sole purpose of the threats was to accomplish the false imprisonment. Case law establishes that even when two offenses were committed by separate acts, section 654 precludes separate punishment when the sole purpose for committing one offense was to facilitate commission of the other. (See, e.g., *People v. Latimer*, *supra*, 5 Cal.4th at p. 1216 [objective behind kidnapping was to facilitate rape].) However, in the present case, the evidence does not compel the conclusion that the only reason Edwards threatened Daniels was so that he could falsely imprison her. Rather, there is substantial evidence that Edwards simultaneously committed two distinct criminal offenses, each with its own immediate objective. In other words, Edwards was not content to merely restrain Daniels’s freedom, he also wanted her to fear for her life. Thus, the separate punishments that the trial court imposed do not offend section 654.

Taking a different tack, Edwards contends that “[t]he threats and the false imprisonment were different strategies towards the same goal – getting information by means of threat.” This argument contradicts appellant’s first theory, i.e. that his sole purpose on July 15 was to falsely imprison Daniels. In any event, there is no evidence compelling the conclusion that appellant’s sole objective was to threaten Daniels.

The evidence does suggest that appellant’s ultimate goal during the period he committed all of the charged offenses was to obtain confirmation for his paranoid

delusion. But that goal was not a criminal objective. Rather, on July 15, Edwards attempted to confirm his delusion by committing two distinct crimes, each with its own criminal objective. Thus, he falsely imprisoning Daniels by restraining her freedom. Then, he repeatedly threatening to hurt and kill Daniels. Neither of these crimes was undertaken solely to facilitate the other. Rather both offenses were separate acts evincing separate criminal objectives.

“The purpose behind section 654 is ‘to insure that a defendant’s punishment will be commensurate with his culpability. [Citation.]’ [Citation.]” (*People v. Trotter* (1992) 7 Cal.App.4th 363, 367.) Thus, when, as here, the defendant committed increasingly egregious acts, each of which constitutes a distinct crime and evinces a distinct criminal objective, section 654 does not apply. (*Ibid.*)

IV. DISPOSITION

The judgment and sentence are affirmed.

Haerle, J.

We concur:

Kline, P.J.

Lambden, J.