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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE OF THE STATE
OF CALIFORNIA,

Plaintiff and Respondent,

v.

JULIO CESAR ROCHA,

Defendant and Appellant.

B279256

(Los Angeles County
Super. Ct. No. PA082591)

APPEAL from a judgment of the Superior Court of Los Angeles County, Hilleri G. Merritt, Judge. Affirmed.

Eric E. Reynolds, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Susan Sullivan Pithey and Esther P. Kim, Deputy Attorneys General, for Plaintiff and Respondent.

INTRODUCTION

Defendant Julio Cesar Rocha appeals his convictions for two counts of resisting arrest and one count of assault. Defendant argues that the trial court erred when it failed pursuant to Penal Code section 654 to stay the sentence for one of the resisting arrest convictions.¹ We affirm because defendant had different intents when resisting arrest and committing the assault. Per defendant's request we have independently reviewed the *Pitchess* hearing and find no error.

FACTS AND PROCEDURAL BACKGROUND

1. Defendant Resisted Arrest

At around 7:00 p.m. on December 3, 2014, Los Angeles Police Department Officers Herrera and Ornelas were in a marked patrol vehicle in a residential area of Panorama City. The officers saw defendant seated on a bicycle in front of an apartment complex. Because Officer Herrera was familiar with defendant and knew there was an outstanding warrant for him, she exited the patrol vehicle and called to defendant.

Defendant took off on the bicycle. The officers pursued him in their patrol vehicle. At some point during the chase, they activated their lights and sirens. Officers Paredes and McLaren joined the pursuit in their patrol car to assist Officers Ornelas and Herrera. As defendant made a sharp right turn, Officer McLaren pulled his vehicle in front of defendant, causing him to crash into the rear quarter panel of the patrol car. Defendant landed on the ground.

The four officers attempted to subdue and handcuff defendant. Defendant prevented the officers from grabbing his arms and tried to push the officers off him. When Officer Herrera attempted to hold down defendant's legs, defendant kicked her.

¹ All subsequent statutory references are to the Penal Code.

Officer McLaren applied pressure to defendant's lower chest and abdomen to keep defendant on the ground. Defendant fought back, and Officer McLaren lost his balance, causing one of Officer McLaren's hands to move from defendant's chest to the ground next to defendant's head. Defendant then turned his head toward Officer McLaren's hand and bit his pinky finger. Officer McLaren hit his knee into the right side of defendant's face and tried to get his finger out of defendant's mouth. Defendant continued to bite Officer McLaren until Officer McLaren hit defendant multiple times with his knee and forcefully pulled his finger out of defendant's mouth. Officer McLaren saw that his finger was "dripping blood." Officer McLaren sustained injuries that included a centimeter laceration and numbness in his finger for the next eight months. No stitches were required. The four officers eventually handcuffed and arrested defendant.

When interviewed while in custody, defendant told Officer Conner that he was trying to get away from the officers because he did not want to go back to jail. Defendant also stated that he bit Officer McLaren because McLaren was hurting defendant's wrists. When Officer Conner asked defendant if he wanted to bite McLaren's finger off, he responded "I would have. I just wanted that fool to stop."

2. Trial

Defendant was charged with one count of mayhem, four counts of resisting an executive officer (one for each of the four police officers who tried to subdue defendant), and one count of assault on a peace officer. Prior to trial, Defendant filed a motion for pretrial discovery seeking personnel information regarding Officers Herrera, Ornelas, Paredes, and McLaren, pursuant to *Brady v. Maryland* (1963) 373 U.S. 83, and *Pitchess v. Superior Court* (1974) 11 Cal.3d 531. The People opposed the motion. An

in-camera hearing was held on the motion on March 24, 2015. Four documents were produced.

The jury trial commenced in September 2016. Officers Herrera, Paredes, Ornelas, McLaren, and Conner testified. The jury found defendant guilty of resisting Officers McLaren and Herrera and assaulting Officer McLaren. The jury acquitted defendant of mayhem and was unable to reach a verdict on resisting Officers Ornelas and Paredes. The court sentenced defendant to 16 years and 8 months in state prison. This sentence included an 8-year term for assaulting Officer McLaren and a consecutive 16-month term for resisting Officer McLaren.

DISCUSSION

1. Section 654 Did Not Bar Multiple Punishments for Assault and Resisting Arrest

Defendant argues that his consecutive sentences for resisting and assaulting Officer McLaren must be stayed pursuant to section 654 because “both crimes were part of an indivisible course of conduct with the single objective of avoiding arrest.” Section 654 provides that “[a]n 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.” “[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.” (*People v. Perez* (1979) 23 Cal.3d 545, 551 (*Perez*)). The trial court is tasked with determining whether the charges involve an indivisible course of conduct. We “review the court’s explicit or implicit factual resolutions for substantial evidence.” (*People v. McCoy* (2012)

208 Cal.App.4th 1333, 1338; *People v. Hutchins* (2001)

90 Cal.App.4th 1308, 1312-1313.)

In general, “[w]hether a course of criminal conduct is a divisible transaction which could be punished under more than one statute within the meaning of section 654 depends on the intent and objective of the actor.” (*People v. Saffle* (1992) 4 Cal.App.4th 434, 438.) Under the “single intent and objective test” (*Perez, supra*, 23 Cal.3d at p. 553), “[i]f 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” (*id.* at p. 551).

Defendant argues that the assault on Officer McLaren was indivisible from the resisting arrest. He asserts that his objectives in assaulting and resisting Officer McLaren were the same—to avoid being arrested. We disagree.

On this record, there was substantial evidence that although defendant intended to escape the officers and avoid returning to jail, he also wanted to inflict pain on Officer McLaren when he bit him. (See *People v. Ibarra* (2007) 151 Cal.App.4th 1145, 1153 [consecutive sentences for conviction for infliction of corporal punishment on a spouse and attempted murder did not violate section 654 where defendant sought not just to kill victim, but also humiliate and torture her].)

Defendant admitted to the interviewing officer that he resisted arrest because he did not want to go back to jail. Defendant also expressly stated that he bit Officer McLaren because the officer was hurting defendant’s wrists. Defendant disclosed that he would have severed Officer McLaren’s finger if given the opportunity. Substantial evidence supports the court’s conclusion that defendant had two different intents when committing the crimes: avoiding jail on the one hand and inflicting pain on or maiming Officer McLaren on the other, in order to stop Officer

McLaren from hurting defendant. Consecutive sentences for the assault and resisting arrest did not violate section 654.

2. Pitchess Motion

Defendant filed a motion seeking discovery of the law enforcement personnel records of Officers Herrera, Ornelas, Paredes, and McLaren. (See *Pitchess v. Superior Court*, *supra*, 11 Cal.3d 531.) The trial court conducted an in-camera examination of the officers' personnel records.

On appeal, Defendant asks this court to conduct an independent review of the sealed records of the trial court's hearing on his Pitchess motion. (*People v. Mooc* (2001) 26 Cal.4th 1216, 1228-1229; *People v. Rodriguez* (2011) 193 Cal.App.4th 360, 366.) The People do not oppose the request. We will not disturb a trial court's ruling on a *Pitchess* motion absent an abuse of discretion. (*Alford v. Superior Court* (2003) 29 Cal.4th 1033, 1039.)

Having reviewed the *Pitchess* record, we find no procedural or substantive error in the trial court's handling of the motion or in its ruling. (See *People v. Myles* (2012) 53 Cal.4th 1181, 1208-1209.).

DISPOSITION

We affirm the judgment on all grounds.

RUBIN, J.

WE CONCUR:

BIGELOW, P. J.

ROGAN, J.*

* Judge of the Orange Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.