Filed 3/1/19 P. v. Singleton CA2/3

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE, Plaintiff and Respondent, v. CLEVELAND SINGLETON, Defendant and Appellant.	B281821 Los Angeles County Super. Ct. No. BA443512

APPEAL from a judgment of the Superior Court of Los Angeles County, Stephen A. Marcus, Judge. Affirmed as modified.

Patrick J. Hoynoski, 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, Shawn McGahey Webb and Blythe J. Leszkay, Deputy Attorneys General, for Plaintiff and Respondent.

A jury convicted defendant and appellant Cleveland Singleton of second degree robbery and felony false imprisonment by violence. On appeal, Singleton urges us to extend the *Daniels*[1] rule applicable to aggravated kidnapping cases to the crime of false imprisonment. Singleton asks us to refuse to follow California cases on this issue in favor of New York law. We decline, and affirm Singleton's conviction.

FACTS AND PROCEDURAL BACKGROUND

1. *The events of January 21, 2016*

Around 11:00 p.m. on January 21, 2016, Andrew Boch was playing poker with four other men in front of a market in the Skid Row area of downtown Los Angeles. One of the men was Singleton. Boch "was losing money so [he] stopped playing" and decided to go home. He had a "stash" of cash in his front pocket—somewhere between $290 and $300. Boch has a wheelchair; sometimes he uses it as a walker and sometimes he sits in it.

Boch went into the market and bought an energy drink. As soon as Boch opened the door of the market to come back out to the street, Singleton "grabbed [him] to the side" and "pinned [him] down on the ground." Singleton "pinned [Boch] down hard" so he couldn't get up. Singleton "put almost his whole weight on [Boch]."

Boch tried to cover his face because Singleton was "about to hit [him]." Singleton told "his buddy to go get [Boch's] money." Two men then "went into [Boch's left] pocket and took out all the money [he] had." Boch's eyeglasses came off at some point and he never found them. Boch recognized the two men who took the

---

1 *People v. Daniels* (1969) 71 Cal.2d 1119 (*Daniels*).

money from his pocket: he had seem them "every day at the park" and he had seen them with Singleton.

Boch went across the street to the police station. He spoke with Los Angeles Police Department Officer Luis Alcala. To Alcala, Boch seemed "scared" and "frightened."

A video camera captured the events outside the market. The prosecutor played the video footage for the jury. We have watched it. Boch can be seen walking from the left into the frame, pushing a wheelchair.[2] A large man wearing a hat approaches Boch and punches him in a hook with his right fist. Boch immediately falls to the ground; the wheelchair rolls away. The large man drags Boch several feet, away from the direction from which Boch emerged (presumably, the exit of the market). The large man continues to bend over Boch—it is difficult to make out if he is hitting Boch, holding him down, or both. Within seconds, two men standing a few feet away approach Boch, one wearing a greenish-gray hoodie, the other wearing a gray hoodie. Both bend over Boch. With the two hoodie-wearing men in the foreground, it is difficult to see what the large man is doing to Boch, but he remains bent over Boch as well. The large man does not look up at the two other men. The man in the gray hoodie then stands, turns toward the camera, and begins to walk away from Boch, holding a roll of something in his hand. The large man also stands and follows the first man. The man in the greenish hoodie walks next to the large man, their shoulders nearly touching. Boch staggers to his feet.

2. *The charges and trial*

The People charged Singleton with kidnapping for robbery, second degree robbery, and false imprisonment by violence. The

---

[2] Boch testified at trial that he recognized himself in the video.

People alleged five prison priors under Penal Code section 667.5, subdivision (b).[3] The court dismissed the kidnapping count on a motion under section 995 and the case proceeded to trial on the two remaining counts.

Singleton testified on his own behalf. According to Singleton, one of "the dudes that [they were] playing cards with told [Boch] that 'I'm going to break your Japanese-looking ass.' "[4] Singleton said Boch got mad and "tossed the cards in the street." Singleton told Boch he had to replace the cards.

Singleton testified Boch went to the market and Singleton followed him "to see if he was going to get the cards." Singleton said he waited outside the market for Boch to come out; when Boch did, Singleton asked him where the cards were and Boch called him a "fuckin' nigger."[5] Singleton continued, "I struck him because he called me a racial slur." Singleton said he punched Boch in the face and Boch went down with the first punch. Singleton testified, "While he's down, . . . I'm continuing punching"; "I continued to hit him, and I heard a siren right across the street, and I took off."

When asked why he continued to punch Boch once Boch was down on the ground, Singleton answered, "I guess because I blacked out," "[b]ecause I was angry." Singleton said by

---

[3] Statutory references are to the Penal Code.

[4] Boch testified "one of the guy[s] [he] played poker with" said "something about Asian Chinks and shit" during the poker game. When asked if anyone had called him a " 'stupid Jap' " that night, Boch responded, "Something like that too, also."

[5] No audio can be heard on the surveillance camera videotape.

"blacked out" he meant he "was just really focused on me just teaching him a lesson for just calling me a nigger."

Singleton testified he did not know the men who approached Boch; he denied telling them to check Boch's pockets. Singleton stated, "Once I seen the video, and I seen who the people are, I know I'm not friends with those guys." Singleton admitted having seen in the video that the two men "got down right in front of [Singleton]" and "reach[ed] into [the] pockets" of "the same guy [Singleton was] holding down."

Singleton admitted the large man seen dragging and punching Boch in the videotape was him.

The jury convicted Singleton on both counts. At a post-trial hearing, Singleton admitted his five prison priors. The trial court sentenced Singleton to seven years in the state prison. The court chose the high term of five years on the robbery count (Count 2), plus two one-year prison priors. The court sentenced Singleton to the midterm of two years on the false imprisonment count (Count 3), to be served concurrently with the robbery count. The court struck the remaining prison priors.

DISCUSSION

1. *False imprisonment and robbery*

" 'False imprisonment is the unlawful violation of the personal liberty of another.' " (§ 236.) For the crime of false imprisonment, " '[p]ersonal liberty' " is violated when "the victim is 'compelled to remain where he does not wish to remain, or to go where he does not wish to go.' " (*People v. Von Villas* (1992) 10 Cal.App.4th 201, 255 (*Von Villas*).) It is the restraint of a person's freedom of movement that is at the heart of the offense of false imprisonment embodied in section 236. (*People v. Bamba* (1997) 58 Cal.App.4th 1113, 1120-1121.) " ' " 'The wrong may be committed by acts or by words, or both, and by merely operating

upon the will of the individual or by personal violence, or both.' " ' " (*People v. Fernandez* (1994) 26 Cal.App.4th 710, 717.)

When the false imprisonment is accomplished by "violence" or "menace," it is a felony. (§ 237, subd. (a); accord *People v. Straight* (1991) 230 Cal.App.3d 1372, 1374 (*Straight*).) " 'Violence' . . . means ' "the exercise of physical force used to restrain over and above the force reasonably necessary to effect such restraint." ' " (*People v. Matian* (1995) 35 Cal.App.4th 480, 484 (*Matian*).) "Menace" is defined as " ' "a threat of harm express or implied by word or act." ' " (*Ibid*.)

A defendant may be convicted of both robbery and false imprisonment when he restrains the victim as part of the robbery. In *People v. Reed* (2000) 78 Cal.App.4th 274 (*Reed*), a jury convicted the defendant Reed of the robbery of one victim as well as the false imprisonment of that victim and two additional victims. (*Id*. at p. 277.) Reed—with two accomplices—burst into the victims' apartment. One perpetrator, armed with a handgun, ordered the victims to get on the ground. The gunman put the weapon against one victim's head and hit another victim in the head with it. The perpetrators took food stamps and some coins. (*Id*. at pp. 278-279.)

On appeal, Reed argued the evidence was insufficient to convict her of both robbery and felony false imprisonment because "the restriction of the victims' movement was incidental to, and had no separate purpose apart from, the robbery." (*Reed*, *supra*, 78 Cal.App.4th at p. 279.) The court of appeal rejected that argument.

The court stated, "Appellant erroneously believes she cannot be *convicted* of two offenses based on the same conduct. Section 954 expressly provides otherwise." The court continued, "Examination of the statutory elements of robbery and false imprisonment confirms they are different offenses even though

they may, on occasion, share some elements (i.e., the use of force or fear of harm to commit the offenses)." (*Reed*, *supra*, 78 Cal.App.4th at pp. 281-282.) The court cited *Von Villas*. There, the appellant had sought " 'to equate the right of freedom of movement or mobility with the right to retain personal belongings.' " But, the *Von Villas* court noted, "The assertion that both crimes involve a violation of personal liberty ignores the specific freedoms the two crimes were designed to protect. . . . A robbery *can* be committed without subjecting a person to false imprisonment. . . ." (*Id*. at p. 282, quoting *Von Villas*, 10 Cal.App.4th at p. 256.)

Here, Singleton did not merely hold Boch down while the other two men took all of his money from his pocket. According to Singleton's own testimony, he continued to punch Boch even after Boch was on the ground because he was angry and wanted to teach Boch a lesson. Singleton's use of "almost his whole weight" to pin Boch to the ground, and his repeated punching of Boch, both violated Boch's personal liberty by " 'compell[ing him] to remain where he [did] not wish to remain' " (*Von Villas*, *supra*, 10 Cal.App.4th at p. 255) and made it possible for Singleton's companions to approach and rob the incapacitated Boch. Singleton's pummeling of Boch "escalated the force used to more than was reasonably necessary for the restraint." (*People v. Williams* (2017) 7 Cal.App.5th 644, 672.)

2. *California courts have declined to extend the* Daniels *rule to false imprisonment*

Singleton implicitly concedes that substantial evidence supports his convictions for false imprisonment by violence and robbery under existing California law. But Singleton asks us to make new law by extending the "rationale from *People v. Daniels* to false imprisonment when the restraint or movement of the

victim was merely incidental to the commission of another crime and did not increase the risk of harm."

In that case, a jury had convicted Daniels of aggravated kidnapping for robbery. (*Daniels*, *supra*, 71 Cal.2d 1119.) The California Supreme Court held "some brief movements are necessarily incidental to the crime of armed robbery," and "are not of the scope intended by the Legislature in prescribing the asportation element" of aggravated kidnapping. (*Id*. at p. 1134.) In particular, movement from one room to another within a home or place of business "cannot reasonably be found to be asportation 'into another part of the same county.' " (*Id*. at p. 1140.) Accordingly, to prove kidnapping for robbery, the prosecution must establish that the defendant moved the victim a substantial distance, a distance beyond that merely incidental to the commission of the robbery. "Substantial distance" means "more than a slight or trivial distance," and "[t]he movement must have increased the risk of physical or psychological harm to the person beyond that necessarily present in the robbery." (CALCRIM No. 1203.)

The court of appeal in *Reed*, discussed above, rejected precisely the argument Singleton makes here. There, Reed "relie[d] on our high court's earlier kidnapping cases to advance her contention that movement of a victim done solely to accomplish the robbery cannot support convictions for both robbery and felony false imprisonment." The court of appeal noted Reed "also ask[ed] [the court] to superimpose the substantial movement requirement for simple kidnapping onto the crime of false imprisonment." (*Reed*, *supra*, 78 Cal.App.4th at p. 279.) The court declined Reed's invitation. (*Id*. at p. 282.)

The *Reed* court discussed several cases, including *Cotton v. Superior Court, in and for Imperial County* (1961) 56 Cal.2d 459, the precursor to *Daniels*; *Daniels* itself; *People v. Stanworth*

(1974) 11 Cal.3d 588, 596-601 (*Stanworth*), holding that *Daniels* does not apply to simple (as opposed to aggravated) kidnapping; and *People v. Martinez* (1999) 20 Cal.4th 225, 237, holding that the fact finder may consider the totality of the circumstances in determining whether the movement of the victim was incidental to the commission of an associated offense. The *Reed* court concluded,

> "What appellant has completely overlooked in advancing her claim is that our high court has considered the incidental nature of the victim's movement *only* as it pertains to the asportation element of *kidnapping*. While the definition of that element has changed considerably over time, the above referenced cases show that kidnapping, be it simple or aggravated, requires a degree of asportation not found in the definition of false imprisonment. Indeed, false imprisonment can occur with *any* movement or *no* movement at all. Accordingly, the reasoning employed in the high court's kidnapping cases has no application here."

(*Reed*, *supra*, 78 Cal.App.4th at p. 284.) The court added, "While appellant's argument holds some appeal, it is not for us to add elements to a statutorily defined crime. That task is best left to the Legislature." (*Ibid.*)

Division One of this court cited *Reed* with approval in *People v. Williams*, *supra*, 7 Cal.App.5th at pp. 666-674 [reversing convictions for kidnapping to commit robbery and simple kidnapping because moving victims to back of stores did not result in increased risk of harm and was merely incidental to robbery, but affirming convictions for felony false imprisonment because defendants used threats constituting menace to make

victims go to back room and stay face down on the floor while robberies took place].

Singleton contends the *Reed* court's "rationale in refusing to apply *Daniels* to false imprisonment is misguided." Singleton relies on dictum in a 48-year-old California appellate court case, *People v. Moreland* (1970) 5 Cal.App.3d 588 (*Moreland*), and on a 53-year-old New York case applying New York law, *People v. Levy* (1965) 15 N.Y.2d 159 (*Levy*).

In the California case, the defendant Moreland was charged with two counts of kidnapping for robbery as well as heroin possession. (*Moreland*, *supra*, 5 Cal.App.3d at p. 590.) Moreland and another man had approached the victims—who were in a driveway—with guns and ordered them to go into the adjacent house and to lie down on the floor and a bed. While Moreland's fellow perpetrator held a gun on the victims, Moreland went through the house looking for money. (*Id*. at p. 591.) At their court trial, the defendants claimed one of the victims was a heroin dealer and they had gone to demand he leave "a lady friend of theirs who was an addict" alone. (*Id*. at p. 592.) The trial court concluded the defendants had gone to the house to steal heroin but the court thought (erroneously) that contraband could not be the subject of theft. (*Id*. at pp. 592-593.) The trial court therefore found the defendants guilty only of the lesser crime of simple kidnapping. (*Ibid*.)

The court of appeal "examine[d] the effect" of the then-recent decision in *Daniels*, issued after Moreland's trial. (*Moreland*, *supra*, 5 Cal.App.3d at p. 593.) The court reversed the kidnapping convictions for retrial, stating, "[W]e feel uneasy about affirming these convictions on a rationale never tested in the trial court. The question whether under particular circumstances the forcible movement of the victim substantially

increases the risk of harm otherwise present, is primarily a factual one." (*Id*. at p. 594.)

The court continued,

> "It is suggested that even if the movement of the victims was not kidnapping in the *Daniels* sense it certainly was false imprisonment, in that their personal liberty was unlawfully violated. . . . [¶] There are, however, several problems with the suggestion. First, much of the reasoning which supports *Daniels*, would also negat[e] the possibility that a false imprisonment which is merely incidental to some other crime, is a separate offense. Second, we doubt that the People wish to settle for a misdemeanor conviction at this time . . . ."

(*Moreland*, *supra*, 5 Cal.App.3d at pp. 594-595.)

The *Moreland* court did not say who made the "suggestion" it discussed. We do not share Singleton's view of this dictum. The court seemed to assume *Daniels* would apply to simple kidnapping (the crime of which Moreland was convicted). But in *Stanworth*, *supra*, 11 Cal.3d at p. 588, "our Supreme Court held that the rule announced in *Daniels* had no application to section 207 convictions for simple kidnapping." (*Reed*, *supra*, 78 Cal.App.4th at p. 283.)

Indeed, the Sixth District Court of Appeal rejected the *Moreland* dictum, citing *Stanworth*. In *Straight*, *supra*, 230 Cal.App.3d 1372, a jury convicted the defendant Straight of assault with intent to commit rape and felony false imprisonment. On appeal, Straight—citing *Daniels*—argued "he was improperly convicted of false imprisonment because the confinement was incidental to and did not significantly increase

the risk of harm to the victim over and above the assault." (*Straight*, at p. 1373.)

The court of appeal found *Moreland* "not persuasive." The court stated, "[*Moreland*'s] comment concerning *Daniels* was dictum and made before *People v. Stanworth* . . ., clarified that the *Daniels* rule did not apply to simple kidnapping." The court "decline[d] to extend the *Daniels* rule to felony false imprisonment," which—like simple kidnapping—can occur in the absence of any other crime. (*Straight*, *supra*, 230 Cal.App.3d at p. 1375; see also 1 Witkin and Epstein, Cal. Criminal Law (4th ed. 2012) Crimes Against the Person, § 275.)

In any event, as discussed above, Singleton's false imprisonment of Boch was not "merely incidental to" the robbery. In continuing to pummel Boch while holding him down "hard," Singleton " ' "exercise[d] physical force . . . to restrain [Boch] over and above [both] the force reasonably necessary to effect [that] restraint" ' " (*People v. Matian*, *supra*, 35 Cal.App.4th at p. 484) and the force necessary for Singleton's colleagues to take Boch's cash.

Singleton's reliance on the 1965 New York case of *Levy*, *supra*, 15 N.Y.2d 159, is misplaced. There, two men, both armed, got into the victims' car and drove it around New York City while they took jewelry from the female victim and cash from her husband. Levy had "planned the crime in concert with the actual perpetrators." (*Id*. at p. 162.) The Court of Appeals of New York held Levy was guilty only of robbery, not of kidnapping. The court noted "the New York statute [defining kidnapping] ha[d] been drafted in very broad terms." The court concluded it was "unlikely" the New York Legislature intended all crimes that involved some "restraint" of a victim to constitute kidnapping. (*Id*. at p. 164.)

Levy does not mention—much less discuss—false imprisonment. We find *Reed* to be on point and correct.

Finally, in his reply brief Singleton argues we should apply the *Daniels* rule because Singleton's "restraint [of Boch] lasted just twenty-six seconds." But there is no temporal requirement for the crime of false imprisonment. In *People v. Fernandez*, *supra*, 26 Cal.App.4th 710, our colleagues in Division Six affirmed a conviction for false imprisonment by violence where the defendant had restrained the victim long enough for him "to suffer over 20 kicks." The court stated the defendant's restraint of the victim, though " 'short in time,' " " 'was real.' " (*Id*. at p. 718.) That language comes from *People v. Riddle* (1987) 189 Cal.App.3d 222. There, the defendant entered a trailer home, pointed a gun at the occupants, and ordered them out of the home. The victims "promptly complied." Affirming Riddle's conviction for false imprisonment, the court said, "Though the restraint was short in time and distance, the restraint was real." (*Id*. at pp. 228-230.)

3. *The parties agree the sentence on the false imprisonment count must be stayed under section 654*

Singleton asserts—and the Attorney General concedes—that his sentence for false imprisonment in Count 3 should be stayed because it is based on the same conduct underlying the robbery in Count 2. We agree. Accordingly, we modify Singleton's sentence to stay the concurrent term imposed on Count 3. (See *People v. Alvarez* (2009) 178 Cal.App.4th 999, 1007.)

DISPOSITION

We affirm Cleveland Singleton's conviction. We modify the judgment to stay the sentence on Count 3 under Penal Code section 654. The superior court is directed to prepare an amended abstract of judgment reflecting the modification and to forward a copy to the Department of Corrections and Rehabilitation.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

EGERTON, J.

We concur:

EDMON, P. J.

DHANIDINA, J.