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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE,

Plaintiff and Respondent,

v.

CHRISTOPHER LEE LAWSON,

Defendant and Appellant.

B265404

(Los Angeles County
Super. Ct. No. VA132593)

APPEAL from a judgment of the Superior Court of Los Angeles County. John J. Cheroske, Judge. Affirmed.

Athena Shudde, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Scott A. Taryle and Tannaz Kouhpainezhad, Deputy Attorneys General, for Plaintiff and Respondent.

Christopher Lee Lawson appeals from a judgment which sentences him to four years in state prison for assaults committed for the benefit of a criminal street gang. We affirm the judgment.

FACTS

Juan Maldonado, Luis Rivas, and Lucy Rivas¹ are siblings. Robert Carrasco is their cousin. On August 24, 2013, at around 10:00 p.m., Lucy, Juan, and Robert were assaulted in front of Luis' home by members of the Orange Street gang, including Lawson and Bernard Navarro, Jr.² In an information dated August 8, 2014, Lawson and Navarro were charged with three counts of assault with a deadly weapon under Penal Code³ section 245, subdivision (a)(1), and two counts of assault by means likely to produce great bodily injury under section 245, subdivision (a)(4). As to each of the counts 1-3, it was further alleged the assault was committed for the benefit of a criminal street gang under section 186.22, subdivision (b)(1)(B), and as to counts 4 and 5, section 186.22, subdivision (b)(1)(A).

At trial, the People presented testimony that Juan and Robert arrived at Luis' home to confront him about why he failed to show up at his niece's birthday party earlier in the day. Juan and Luis' argument led to a shouting match and Luis asked Juan to leave. When Juan stepped outside with Robert, an Orange Street gang member known as "Stranger" warned them to leave.

¹ For ease of reference, we will refer to all parties by their first name.

² Co-defendant Navarro is not a party to this appeal.

³ All further section references are to the Penal Code unless otherwise specified.

Before they could, they were confronted by a group of Orange Street gang members. Lucy and Juan knew at least five of the Orange Street gang members, including Lawson, known as “Blanco,” and Navarro, known as “Mugsy.” Robert was a member of the KWS gang.

Navarro approached Robert and said, “Hey, you disrespecting my varrio.” Several other people yelled, “Orange Street gang, Orange Street varrio.” Lawson then hit Robert in the head with a glass beer bottle, which shattered and fell to the floor. Lucy saw Lawson stab Robert with a screwdriver. Robert tried to protect his face, shouting, “We ain’t got no beef.” Juan ran to help Robert and they began to fist fight with the gang members. During the melee, Juan heard people shouting, “OSL. This is how we do it. This is how we get down. F you, putos.”⁴ At some point, Lucy called to Juan and when he turned towards her, Navarro stabbed him in the back of the head. Lucy believed Navarro hit Juan in the head with a hammer or a knife. Bleeding from the injury to his head, Juan lost consciousness. He fell to the ground while Navarro and other Orange Street members continued to hit and kick him. Lucy ran outside and attempted to drag Juan away.

A gang member Lucy knew as Midget pointed a gun at Juan during the altercation and gestured that he was going to kill Juan. Lucy yelled to Midget, “What are you guys doing?” At Lucy’s words, the gang members scattered. Midget shouted, “Orange Street Varrio Locos” as he ran away. During the altercation, Lucy was hit and kicked. Luis called 911.

⁴ Juan explained “OSL” stood for Orange Street Locos and “F you, putos” meant “Fuck you, punks.”

After the fight, Lucy and Luis observed 20 “crosses” from the Phillips head screwdriver covering Robert’s torso. Some of the indentations were bleeding. Lucy later found the screwdriver and pointed it out to Sheriff’s deputies. At trial, there were some discrepancies in the testimony among Lucy, Juan, and Luis regarding the sequence of events and who assaulted whom. Lucy identified Lawson as the assailant against Robert, but Juan and Luis believed Navarro attacked Robert with the bottle and the screwdriver while Lawson attacked Juan. Robert did not testify.

In counts 1 and 2 of the information, Lawson and Navarro were charged with assault with a deadly weapon, respectively, a beer bottle and a screwdriver, against Robert. In count 3, they were charged with assault with a deadly weapon, a screwdriver, against Juan. In count 4, Lawson alone was charged with assault upon Juan by means likely to produce great bodily injury. In count 5, both Lawson and Navarro were charged with assault upon Lucy by means likely to produce great bodily injury.

The trial court instructed the jury on aiding and abetting as well as the lesser included offense of assault. The jury returned a guilty verdict against Lawson on all five counts for the lesser included offense of assault, a misdemeanor. The jury also found true the gang enhancement allegations as to all five counts. Navarro was found guilty of assault against Robert in counts 1 and 2, assault with a deadly weapon (a screwdriver) against Juan in count 3, and assault in count 5 against Lucy. Lawson was sentenced to a total term of four years in state prison. He timely appealed.

DISCUSSION

Lawson's sole claim on appeal is that his sentence on count 4 for assault against Juan should have been stayed pursuant to section 654, rather than imposed as a consecutive sentence. At closing, the prosecutor explained the People's theory on counts 3 and 4 as follows: "count 3 is assault with a deadly weapon on Juan, and that was the screwdriver into his head Count 4 was when Juan was kicked and hit repeatedly in the torso, [and] in the head."

In its sentencing recommendation, the People urged the trial court to impose a total of five years in state prison, comprised of the high term of three years on count 1 plus 1/3 the midterm of two years for each of the remaining counts (8 months per count for counts 3 through 5). The People acknowledged that under section 654, counts 1 and 2 would "merge for purposes of sentencing" but remained silent as to section 654's effect on counts 3 and 4. The trial court selected the midterm of two years on count 1; it stayed the middle term sentence of two years on count 2. The court imposed a total of 24 months on counts 3 through 5, comprised of one-third the middle base term of 8 months on each count. The total sentence was for four years.

On appeal, Lawson contends "one continuous assault occurred" whether the jury found Lawson was the perpetrator of the assault against Juan or merely aided and abetted Navarro. In short, "there was no break in the continuum between the assault on Juan while he was standing and the assault on Juan as and when he fell. As such, there can be no argument that some appreciable time break occurred in which [Lawson] had an opportunity to reflect upon his actions so as to subject him to a separate sentence on count 4." We disagree.

Penal Code 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); *People v. Harrison* (1989) 48 Cal.3d 321, 335 (*Harrison*).) This prohibition against multiple punishment extends to situations in which several offenses are committed during “a course of conduct deemed to be indivisible in time” or in which the defendant had only a single intent and all of the offenses were incidental to that one objective. (*Harrison, supra*, at p. 335.) However, “a course of conduct divisible in time, although directed to one objective, may give rise to multiple violations and punishment.” (*People v. Beamon* (1973) 8 Cal.3d 625, 639, fn. 11.) Courts must consider whether the defendant had an opportunity to reflect upon and renew his intent before committing the next offense and whether each offense created a new risk of harm. (*People v. Gaio* (2000) 81 Cal.App.4th 919, 935; *People v. Kwok* (1998) 63 Cal.App.4th 1236, 1255.)

A trial court is vested with broad latitude to decide if section 654 applies in a given case. Its findings will not be reversed on appeal if there is substantial evidence to support them. (*People v. Jones* (2002) 103 Cal.App.4th 1139, 1143.) We view the evidence in the light most favorable to a respondent and presume in support of the sentence the existence of every fact the trial court reasonably could have deduced from the evidence. (*People v. Tarris* (2009) 180 Cal.App.4th 612, 627.)

In *People v. Nubla* (1999) 74 Cal.App.4th 719, 723, the defendant pushed his wife facedown onto a bed, causing her nose to bleed, put a gun to the back of her head, and then turned her

over and pushed the gun into her mouth, cutting her lip and chipping her tooth. He was prosecuted for assault with a deadly weapon, corporal injury on a spouse, false imprisonment, and possession of methamphetamine. The trial court stayed the sentence on the false imprisonment offense. The defendant claimed the trial court erred by imposing separate sentences for assault with a deadly weapon and corporal injury to a spouse, arguing that both offenses were part of an indivisible course of conduct. The appellate court determined the trial court was entitled to conclude that each act was separate for purposes of section 654, reasoning, “Appellant’s act of pushing his wife onto the bed and placing the gun against her head was not done as a means of pushing the gun into her mouth, did not facilitate that offense and was not incidental to that offense.” (*Id.* at p. 731.)

Here, substantial evidence supports a finding that the offenses consisted of separate acts to which separate punishment applies. (See *People v. Cleveland* (2001) 87 Cal.App.4th 263, 267-268.) First, Juan was stabbed in the head with a screwdriver. Second, when he fell to the ground, he was kicked and hit as he lost consciousness. Although the two incidents occurred in rapid succession, the temporal proximity of the offenses does not mean they were part of one indivisible course of conduct. (*Harrison, supra*, 48 Cal.3d at p. 335.)

Indeed, substantial evidence supports a finding that Navarro’s intent in stabbing Juan in the head (and Lawson’s in aiding and abetting him) was to prevent him from helping Robert. Once he was incapacitated, that intent no longer applied and the second assault on Juan while he was on the ground was done pursuant to a separate purpose. Each of the assaults involved a different weapon, namely a screwdriver and the

assailant's hands and feet. Each offense created a new risk of harm. The act of stabbing Juan in the head was not incidental to hitting and kicking him. Neither was it done as a means to hit and kick him. As in *People v. Nubla*, the trial court was entitled to conclude that each act was separate for purposes of section 654.

We are not persuaded that section 654 applies to count 4 simply because the trial court determined it applied to count 2, which involved the assault with the screwdriver against Robert. Unlike Juan, Robert was not incapacitated from the initial blow to his head. Thus, substantial evidence supports a finding that Lawson's intent was not changed during the two assaults with the beer bottle and the screwdriver against Robert and they were part of one indivisible course of conduct.

DISPOSITION

The judgment is affirmed.

BIGELOW, P.J.

We concur:

RUBIN, J.

GRIMES, J.