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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE, Plaintiff and Respondent, v. LUIS HERNANDEZ DEDIOS, Defendant and Appellant.	2d Crim. No. B288628 (Super. Ct. No. 16F-06074) (San Luis Obispo County)

Luis Hernandez Dedios appeals after a jury convicted him on three counts of inflicting corporal injury on a person with whom he had a dating relationship (Pen. Code,[1] § 273.5, subd. (a)), and one count each of false imprisonment by violence or menace (§ 236) and making criminal threats (§ 422). The trial court sentenced him to a total term of four years eight months in state prison. Appellant contends the evidence is insufficient to support his conviction of making criminal threats, and that he

[1] All statutory references are to the Penal Code.

was sentenced on the false imprisonment count in violation of section 654. We affirm.

STATEMENT OF FACTS

Jane Doe and appellant met at work in 2011 and eventually began dating. Shortly after midnight on June 17, 2016, Doe called 911 to report that appellant had physically abused her. Doe told the dispatcher appellant had grabbed and squeezed her and added "it's not the first time, but I'm not gonna stay quiet anymore."[2]

San Luis Obispo Police Officer Sean Jessen responded to the call and contacted Doe outside of appellant's house. Officer Jessen observed scratch injuries on Doe's chest and wrist. Through a translator, Doe told the officer that she and appellant were dating and that he had caused her injuries.

Later that day, Officer Jessen spoke with Doe again through another translator. Doe told the officer that the incident occurred in appellant's bedroom after she picked up his cell phone. Appellant pushed her onto the bed, got on top of her, and tried to retrieve his phone. He applied pressure to Doe's chest and asked, "Do you want me to kill you?" He also scratched her chest and held tightly onto her hands, injuring her wrist. Doe told appellant she was having trouble breathing, but he persisted until she gave him his phone. Doe was visibly frightened when she spoke to the officer and "conveyed that she was still very scared of [appellant]." Doe requested an emergency protective order because she feared that appellant would come to her house and harm her. She added that there had been multiple incidents

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[2] The conversation between Doe and the 911 dispatcher, which was in Spanish, was played at trial and translated for the jury.

of domestic violence between her and appellant and that he had previously told her "if he were [to] get into trouble, he would find his way back to her and cut her into pieces[.]"

On June 20, 2016, Doe was interviewed by Rosalba Denny, an investigator with the San Luis Obispo County District Attorney's Office. In addition to detailing the June 16th incident, Doe recounted several prior instances of appellant's domestic violence against her. On July 4, 2015, appellant punched Doe in the mouth, grabbed her by the arm, and kicked her in the leg.[3] In January or February 2016, appellant grabbed Doe by the shoulders and shook her so hard that her neck popped and slapped her with such force that she fell onto a bed. During another incident, he kicked her in the leg so hard that the pain caused her to urinate herself.

At trial, appellant's ex-wife testified to multiple incidents in which he had also physically abused her during their 22-year marriage.

On July 14, 2016, Doe returned to the district attorney's office and asked Denny if the case against appellant could be dropped. She said that although she had told Denny the truth about what appellant had done to her, he had begged her to forgive him and she had decided to do so. At trial, Doe denied that appellant had ever assaulted her and claimed she could not recall her prior conversations with law enforcement. An expert on intimate partner battery syndrome testified it is common for victims of domestic violence to recant their reports of abuse.

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[3] Photographs that Doe took of the injuries she suffered as a result of the assault were admitted.

Appellant testified in his own defense. He denied that he abused Doe and claimed he had never been physically abusive toward Doe or his ex-wife.

DISCUSSION

Sufficiency of the Evidence - Criminal Threats

Appellant contends the evidence is insufficient to support his conviction for making criminal threats (§ 422). In reviewing this contention, "'we review the entire record in the light most favorable to the judgment to determine whether it contains substantial evidence—that is, evidence that is reasonable, credible, and of solid value—from which a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt.' [Citation.]" (*People v. Avila* (2009) 46 Cal.4th 680, 701 (*Avila*).) We draw all reasonable inferences in favor of the verdict and presume the existence of every fact the jury could reasonably deduce from the evidence that supports its findings. (*People v. Maciel* (2013) 57 Cal.4th 482, 515.)

To convict appellant of making criminal threats, the jury had to find (1) he willfully threatened to commit a crime causing death or great bodily injury to victim Doe; (2) the threat was made with specific intent that it be taken as a threat; (3) the threat was, on its face and under the circumstances, """so unequivocal, unconditional, immediate, and specific""" as to convey to Doe """a gravity of purpose and an immediate prospect of execution of the threat"""; (4) the threat caused Doe to be in sustained fear for her safety; and (5) the fear was reasonable under the circumstances. (*In re George T.* (2004) 33 Cal.4th 620, 630; see § 422.)

Appellant claims the evidence is insufficient to prove the fourth element of the crime, i.e., that his threat to kill Doe

during the June 16, 2016 incident caused her to be in sustained fear for her safety. "Sustained fear" in this context involves (1) the emotional reaction the victim has to the communication, and (2) the period of time during which the victim experiences that fear. The word "sustained," as used in section 422, refers to "'a period of time that extends beyond what is momentary, fleeting, or transitory.' [Citation.]" (*People v. Fierro* (2010) 180 Cal.App.4th 1342, 1349.)

Appellant concedes that he threatened to kill Doe and that she was afraid of him. He claims, however, that the evidence is insufficient to prove that the charged threat caused Doe to be in sustained fear for her safety. He argues that "[a]t worst, the evidence showed [Doe] experienced fear from a *prior threat*. At best, the evidence showed [Doe] was afraid of [appellant]. Either way, the state failed to proffer *any* evidence that the charged threat actually caused [Doe] to experience sustained fear."

We are not persuaded. Appellant's arguments disregard the standard of review, which requires us to view the evidence in the light most favorable to the judgment and draw all reasonable inferences in favor of the verdict. (*Avila*, *supra*, 46 Cal.4th at p. 701.) Moreover, appellant's prior threats and abusive conduct toward Doe were relevant in establishing that the charged threat caused her to be in sustained fear for her safety. (*People v. Allen* (1995) 33 Cal.App.4th 1149, 1156.)

When Doe was interviewed by Officer Jessen several hours after the incident, she was "[s]cared, visibly, and conveyed that she was still very scared of [appellant.]" Four days later, Doe told Denny what appellant had said and done to her on the night in question and reiterated that she was afraid of appellant.

From this evidence, the jury could reasonably infer that appellant's threat to kill Doe had caused her to be in sustained fear for her safety. It is of no moment that Doe never expressly stated that she feared appellant as a result of the charged threat rather than his prior threats or conduct.

Appellant's citation to *In re Ricky T.* (2001) 87 Cal.App.4th 1132, is unavailing. In that case, the court held that the minor did not violate section 422 when he angrily told his teacher (Heathcote) "I'm going to get you" or "I'm going to kick your ass" immediately after Heathcote opened the classroom door and accidentally hit the minor in the head with the door. (*Ricky T.*, at pp. 1135-1138.) The court reasoned, among other things, that the evidence was insufficient to support a finding that the minor's threat had placed Heathcote in sustained fear for his safety because "[t]here is no evidence that Heathcote felt fear beyond the time of the angry utterances." (*Id.* at p. 1140.) The court further noted the lack of any evidence that the minor and Heathcote had any prior history of contentiousness or that the minor "exhibited a physical show of force, displayed his fists, damaged any property, or attempted to batter Heathcote or anyone else." (*Id.* at p. 1138.)

Here, appellant does not dispute that he climbed on top of Doe, applied pressure to her chest such that she had difficulty breathing, and asked "Do you want me to kill you?" Appellant also has a prior history of domestic violence and threats against Doe. Moreover, Doe still feared appellant long after he had made the threat. From this evidence, the jury reasonably found that appellant's threat caused Doe to be in sustained fear for her safety, as provided in section 422.

Section 654

Appellant's convictions on count 1 (corporal injury), count 2 (false imprisonment), and count 3 (making criminal threats) are all based on the June 16, 2016 incident. In sentencing appellant, the court imposed the low term of two years on count 1, a consecutive eight-month term (one-third the midterm) on count 2, and a stayed six-month county jail term on count 3. Appellant contends that his sentence for false imprisonment on count 2 should have been stayed under section 654 because that offense and the corporal injury for which he was separately sentenced on count 1 were part of an indivisible course of conduct and were committed pursuant to a single intent and objective, i.e., to recover his cell phone from Doe. We disagree.

"Section 654 precludes multiple punishment for a single act or indivisible course of conduct punishable under more than one criminal statute." (*People v. Cleveland* (2001) 87 Cal.App.4th 263, 267.)[4] "Whether a course of conduct is divisible and therefore gives rise to more than one act . . . depends on the 'intent and objective' of the actor." (*Ibid.*) "If . . . the defendant had multiple or simultaneous objectives, independent of . . . each other, the defendant may be punished for each violation committed in pursuit of each objective even though the violations share common acts or were parts of an otherwise indivisible course of conduct." (*Id.* at pp. 267-268.)

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[4] Section 654, subdivision (a), provides in relevant 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."

"A trial court's express or implied determination that two crimes were separate, involving separate objectives, must be upheld on appeal if supported by substantial evidence." (*People v. Brents* (2012) 53 Cal.4th 599, 618.) "We review the trial court's findings 'in a light most favorable to the respondent and presume in support of the order the existence of every fact the trier could reasonably deduce from the evidence. [Citation.]' [Citation.]" (*People v. Green* (1996) 50 Cal.App.4th 1076, 1085.)

In sentencing appellant for both the corporal injury charged in count 1 and the false imprisonment charged in count 2, the court expressly found "that each of these [offenses] were separate incidents and showed separate thinking as he committed each of these offenses." Substantial evidence supports this finding. Appellant falsely imprisoned Doe by pushing her onto the bed, climbing on top of her and impeding her breathing, and restraining her until she relinquished his cell phone. While he was falsely imprisoning her, he committed corporal injury upon her by twisting her wrist and scratching her chest. From this evidence, the court could reasonably find that appellant falsely imprisoned Doe with the intent and objective of retrieving his phone, and that he willfully inflicted injury upon her with the separate intent and objective of physically harming her.

The court could have also reasonably concluded that the injuries appellant inflicted upon Doe's wrist and chest were gratuitous acts of violence separate from the restraint necessary to accomplish the purpose of his false imprisonment, i.e., to recover the cell phone. Section 654 "cannot, and should not, be stretched to cover gratuitous violence or other criminal acts far beyond those reasonably necessary to accomplish the original offense." (*People v. Nguyen* (1988) 204 Cal.App.3d 181, 191.)

Imposing separate punishment for the false imprisonment and corporal injury is thus consistent with the purpose of section 654, which "'is to ensure that a defendant's punishment will be commensurate with his culpability.' [Citation.]" (*People v. Jones* (2012) 54 Cal.4th 350, 367 (conc. opn. of Werdegar, J.).)

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED.

TANGEMAN, J.

We concur:

GILBERT, P. J.

YEGAN, J.

Dodie A. Harman, Judge

Superior Court County of San Luis Obispo

Rudolph J. Alejo, under appointment by the Court of Appeal, for Defendant and Appellant.

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