

**NOT TO BE PUBLISHED IN THE OFFICIAL
REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF
CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

COREY HUGO OSBOURNE,

Defendant and Appellant.

B277928

(Los Angeles County
Super. Ct. No. TA140067)

APPEAL from a judgment of the Superior Court of Los Angeles County, Kelvin D. Filer, Judge. Affirmed with directions.

Maggie ShROUT, 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, Senior

Assistant Attorney General, Toni R. Johns Estaville and Jonathan M. Kraus, Deputy Attorneys General for Plaintiff and Respondent.

A jury convicted Cory Hugo Osbourne (Osbourne) of attempted second degree robbery against one victim (Pen. Code, § 213, subd. (b)¹) and assault with a deadly weapon (a knife) against a second victim (§ 245, subd. (a)(1)). The trial court sentenced Osbourne to two years in prison on each count, the terms to run concurrently.

On appeal, Osbourne contends principally that the sentence for his assault conviction should have been stayed by the trial court pursuant to section 654 because that offense was committed as part of the same course of conduct as his attempted robbery conviction. We disagree. Section 654 does not apply where, as here, there are multiple victims of a continuing course of conduct.

Osbourne also argues that the minute order from his sentencing hearing and the resulting abstract of judgment contain a clerical error with respect to the assault conviction. Osbourne's argument is well-taken. Both of those documents indicate that the sentence for the assault conviction is to be three years, not two years as the transcript of the hearing plainly indicates. The People

¹ All further statutory references are to the Penal Code unless otherwise indicated.

concede that the two documents at issue contain a clerical error.

Accordingly, because “[r]endition of judgment is an oral pronouncement” (*People v. Mesa* (1975) 14 Cal.3d 466, 471), we direct the trial court to correct the minute order from September 26, 2016, and the abstract of judgment so that those documents conform to the trial court’s oral pronouncement of a two-year sentence with respect to the assault conviction (count 2). (*People v. Mitchell* (2001) 26 Cal.4th 181, 185.) In all other respects, however, the judgment is affirmed.

BACKGROUND

I. The attempted robbery and assault

On May 9, 2016, at approximately 8:15 p.m., Maria Moreno Ramirez (“Maria”) and her two children, Lucia Flores (“Lucia”) and Arturo Flores (“Arturo”),² were selling roses on the corner of Imperial Highway and Central Avenue in Los Angeles as they normally do to support themselves. At that time in the evening, the sun had set and “[i]t already was dark.”

As Maria and her children were counting their remaining flowers, Osbourne approached them and asked them, “What are you looking at?” This was not the first day that Osbourne had approached Maria and her children and had accosted them or “bother[ed]” them by saying “insulting

² We refer to Ms. Ramirez and her children by their first names for the sake of clarity, intending no disrespect.

things.” On this day, however, Osbourne went beyond words.

After Lucia and Arturo told Osbourne that they were not looking at him, he demanded money from them, telling them that “it was his street and he was a gangster in the BVH gang.” When Lucia and Arturo told him that they didn’t have any money, Osbourne took out a knife. Osbourne pointed the knife at Arturo and held it close to his chest. Osbourne told Lucia he was going to kill Arturo. When Lucia told Osbourne that he wasn’t going to do anything to her brother, he pointed the knife at her. Both Arturo and Lucia were frightened. Maria grabbed a stick, brandished it at Osbourne, and told him that “he wasn’t going to do anything” to her children.

At that point, Osbourne walked away toward a gas station, stopped and then came back toward the family waving the knife back and forth across his body and laughing as he walked past. After walking away from the family, Osbourne turned and began walking back toward them, which is when the family called 911. Approximately five minutes later, the police arrived and arrested Osbourne.

II. Trial and sentencing

On June 23, 2016, the People filed a two-count information against Osbourne, alleging that he attempted to rob Lucia and that he assaulted Arturo.

At trial, the People presented the testimony of Maria, Lucia and Arturo. Although Osbourne did not testify in his defense, he presented the testimony of the arresting officer

who searched the area near the crime scene for a knife but did not find one. On September 8, 2016, after less than two hours of deliberation, a jury found Osbourne guilty of both crimes.

On September 26, 2016, the trial court sentenced Osbourne to two years in prison on the attempted robbery conviction, which is the midterm sentence for that crime. With regard to the assault conviction, because “no one was actually stabbed or hit with the knife,” and because there was evidence that Osbourne may not have received the “appropriate treatment” for his mental health problems (“early onset schizophrenia”), the trial court “deviate[d]” from the midterm sentence and imposed the low-term sentence of two years. The trial decided further that the prison terms would run concurrently: “[S]ince both count 1 and count 2 seem to have the same objective [on] the part of the defendant on the date in question, it really was one continuous act by him even though it involved *two separate individuals at the flower stand*. I’m going to run that time concurrent. So [Osbourne’s] total state prison commitment is going to be two years.” (Italics added.) In addition, the trial court requested that the Department of Corrections and Rehabilitation provide Osbourne with “structured treatment” for his mental health problems.

DISCUSSION

Osbourne maintains that the trial court erred by imposing concurrent sentences. “Because—as the trial court recognized—the attempted robbery was committed as part of

the same course of conduct as the assault, the sentence on the assault should have been stayed pursuant to Penal Code section 654 rather than imposed concurrently.” In his reply brief, Osbourne acknowledged that there is a multiple-victim exception to section 654, but argued, nonetheless, that his continuous course of conduct trumps that exception.

We are not persuaded by Osbourne’s argument because it reverses the proper order of things or, put more colloquially, it puts the cart before the horse. As discussed below, section 654 applies where, as here, there is a continuing or indivisible course of conduct *unless*, as here, there are multiple victims.

I. Standard of review

Whether section 654 applies is a question of fact for the trial court, which has “broad latitude” in making its determination. (*People v. DeV Vaughn* (2014) 227 Cal.App.4th 1092, 1113.) We will uphold the trial court’s factual determinations if supported by substantial evidence. (*Ibid.*; (see *People v. Osband* (1996) 13 Cal.4th 622, 730–731.) “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.” ’” (*People v. Hutchins* (2001) 90 Cal.App.4th 1308, 1312.)

II. Section 654 and the multiple-victim exception

Section 654, in pertinent part, 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.” (§ 654, subd. (a).)

The statute’s purpose “is to ensure that a defendant’s punishment will be commensurate with his culpability.” (*People v. Correa* (2012) 54 Cal.4th 331, 341.) Section 654, in other words, “precludes multiple punishments for a single act or indivisible course of conduct.” (*People v. Hester* (2000) 22 Cal.4th 290, 294.) To determine whether a course of conduct is indivisible, courts consider the intent and objective of the defendant. If all of the criminal acts were incident to a single criminal objective, the court may impose punishment only as to one of the offenses. (*People v. Beamon* (1973) 8 Cal.3d 625, 637–638.)

Our Supreme Court, however, has created several extrastatutory exceptions to section 654. One such exception arises “when a defendant ‘ “commits an act of violence with the intent to harm more than one person or by means likely to cause harm to several persons,” his greater culpability precludes application of section 654.’ ” (*People v. McFarland* (1989) 47 Cal.3d 798, 803.) In other words, “despite no explicit reference to victims” in section 654, our highest court has held that “a single act can be punished more than once if it impacts *multiple victims*.” (*People v. Jones* (2012) 54 Cal.4th 350, 362.) For example, if “a defendant, in a single incident, commits vehicular manslaughter as to one victim . . . and drunk driving resulting in injury to a separate victim” (*People v. McFarland, supra*, 47 Cal.3d at

p. 803), he may be properly subjected to multiple punishments for the injuries “that result[] from the same incident.” (*Id.* at p. 804, fn. omitted.)

In *People v. Oates* (2004) 32 Cal.4th 1048, our Supreme Court provided an overview of the multiple-victim exception to section 654’s prohibition against multiple punishment: “We have long held that ‘the limitations of section 654 do not apply to crimes of violence against multiple victims.’ [Citation.] As we have explained: ‘The purpose of the protection against multiple punishment is to insure that the defendant’s punishment will be commensurate with his criminal liability. A defendant who commits an act of violence with the intent to harm more than one person or by a means likely to cause harm to several persons is more culpable than a defendant who harms only one person. For example, a defendant who chooses a means of murder that places a planeload of passengers in danger, or results in injury to many persons, is properly subject to greater punishment than a defendant who chooses a means that harms only a single person. This distinction between an act of violence against the person that violates more than one statute and such an act that harms more than one person is well settled. *Section 654 is not “ . . . applicable where . . . one act has two results each of which is an act of violence against the person of a separate individual.” ’*” (*Id.* at p. 1063, italics added.)

III. Substantial evidence supports the multiple-victim exception

“[W]hether an act of violence has occurred for purposes of section 654 must be considered in light of the statute defining the crime of which the defendant has been convicted” and “by what happened in the commission of the crime.” (*People v. Newman* (2015) 238 Cal.App.4th 103, 116–117.)

Here, the information charged Osbourne with two different crimes against two different victims, Lucia and Arturo. Each of those charged crimes involved an act of violence. (§ 211 [robbery is a crime “accomplished by means of force or fear”]; *People v. Deloza* 19 Cal.4th 585, 595 [§ 654 “does not apply to . . . attempted robbery convictions involving multiple victims”]; § 240 [assault is an “unlawful attempt . . . to commit a violent injury on the person of another”]; *People v. Newman, supra*, 238 Cal.App.4th at p. 117 [assault “unquestionably” involves an act of violence for purposes of § 654].)

At trial, Lucia testified that Osbourne demanded money from her, threatening her at first with his status as a gang member and then, later, pointing a knife at her. Arturo testified that when he told Osbourne that they did not have any money, Osbourne pointed the knife directly at him, held it close to Arturo’s chest, and told him he was going to kill him. Based on this undisputed testimony, the jury quite reasonably (and quite quickly) found Osbourne guilty on both counts.

In light of the foregoing, we find that the trial court's implicit decision to apply the multiple-victim exception to section 654 was supported by substantial evidence.

DISPOSITION

The trial court is directed to correct the minute order from September 26, 2016 and the abstract of the judgment so that those documents conform to the trial court's oral pronouncement of a two-year sentence with respect to the assault conviction (count 2) and to forward a copy to the Department of Corrections and Rehabilitation. In all other respects, the judgment is affirmed.

NOT TO BE PUBLISHED.

JOHNSON, J.

We concur:

ROTHSCHILD, P. J.

LUI, J.