Filed 1/13/17 P. v. Gao CA2/5

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE, Plaintiff and Respondent, v. XIN GAO, Defendant and Appellant.	B268828 (Los Angeles County Super. Ct. No. GA092000)

Appeal from a judgment of the Superior Court of Los Angeles County, Teri Schwartz, Judge. Affirmed, in part, reversed, in part, and remanded to the trial court with instructions.

Law Offices of James Koester, James Koester, 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, Supervising Deputy

Attorney General, and Michael C. Keller, Deputy Attorney General, for Plaintiff and Respondent.

INTRODUCTION

A jury found defendant and appellant Xin Gao (defendant) guilty of 27 counts of recording false documents against the titles to two properties. On appeal, defendant contends that the prosecution on counts 25, 26, and 27 involving one of the properties was barred under the rule set out in *People v. Kellett* (1966) 63 Cal.2d 822 (*Kellett*) (limiting separate prosecutions of offenses arising from the same act or course of conduct) because defendant had been separately tried and convicted of attempted arson, burglary, and vandalism of that same property. Defendant further contends that the trial court erred when it failed to instruct the jury sua sponte that evidence of charged criminal conduct involving one of the properties could not be used in determining guilt on counts involving the other property. In the alternative, he argues that he received ineffective assistance of counsel because his trial counsel failed to request such a limiting instruction. Finally, defendant claims that one of the consecutive sentences imposed on counts 25 and 26 should have been stayed pursuant to Penal Code section 654.[1]

We hold that the prosecution on counts 25, 26, and 27 was not barred under the rule articulated in *Kellett, supra*, 63 Cal.2d 822 and its progeny; the trial court did not have a sua sponte duty to give a limiting instruction regarding consideration of

---

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

evidence of certain charged criminal conduct in determining guilt on other charged crimes; and we do not find that defendant received ineffective assistance of counsel. We also hold that the trial court was not required to stay one of the sentences imposed on counts 25 and 26. Regarding defendant's sentences on counts 2 through 24, however, we conclude, pursuant to section 115, subdivision (d), that the trial court erred when it applied section 654 and stayed the sentences on those counts. We therefore reverse defendant's sentence and remand the matter to the trial court for resentencing.

BACKGROUND

A. Defendant's Trial for Filing False Documents

In the case before us, defendant was charged with 27 counts of violating section 115, subdivision (a)[2] for filing false records or deeds with the Los Angeles County Recorder (the recorder) concerning two properties: (1) a 12-unit condominium complex in Pasadena (condo complex); and (2) a single-family residence in San Marino (the Los Robles house). A jury convicted defendant of all 27 counts. At trial, the following evidence was adduced regarding the two properties.

---

[2] Section 115, subdivision (a), states: "Every person who knowingly procures or offers any false or forged instrument to be filed, registered, or recorded in any public office within this state, which instrument, if genuine, might be filed, registered, or recorded under any law of this state or of the United States, is guilty of a felony."

1. Condo Complex (*Counts 1-24*)

Lucy Gao[3] was a manager for Liberty Assets Management (Liberty Assets). Between 2008 and 2010, Liberty Assets purchased nonperforming notes from institutional lenders, foreclosed on and took title to the real properties securing those notes, and resold the properties. After 2010, however, the market changed, and Liberty Assets began managing the properties it had in its portfolio and purchasing additional properties through the market. According to Gao, Liberty Assets used limited liability companies to purchase and hold the properties it acquired.

One property acquired by Liberty Assets through the purchase of a nonperforming note and foreclosure was the condo complex—a 12-unit condominium complex located at 650 and 652 South Lake Avenue in Pasadena. Liberty Assets paid in excess of $7 million for the condo complex, which was under construction at the time of the foreclosure and needed to be finished. Liberty Assets used a limited liability company named Liberty Gardens LLC (Liberty Gardens) to acquire title to the condo complex, and Liberty Gardens recorded a trustee's deed upon sale following the foreclosure sale. Liberty Assets thereafter caused Liberty Gardens to transfer title to the condo complex to Gold River Valley, LLC (Gold River) and then dissolved Liberty Gardens.

In the summer of 2012, Liberty Assets listed the individual units in the condo complex for sale. While the units were listed, but before they could be sold, Gao discovered the existence of two recorded grant deeds purporting to transfer title (aka wild deeds) to unit one of the condo complex from Liberty Gardens to an

---

[3] Gao's shared surname with defendant is merely a coincidence, as she was not related to him and did not know him.

entity named Gold Venture Capital Group.[4] When Gao discovered these two grant deeds in 2013, title to the condo complex was held by Liberty Assets through Gold River because Liberty Gardens had already been dissolved after transferring title to Gold River. Nonetheless, both of the newly discovered deeds were signed by defendant as the purported authorized agent on behalf of the purported grantor Liberty Gardens.

When Gao discovered these two grant deeds, her assistant contacted the police, and Gao contacted her attorney. Further investigation revealed that two fraudulent grant deeds signed by defendant had been recorded for each of the 12 units in the condo complex, for a total of 24 fraudulently recorded grant deeds.[5] Due to the clouds on the titles to each unit, Liberty Assets could not obtain the necessary approvals from the Department of Real Estate to sell the units. The clouds on the titles also caused a short-term lender that had loaned Liberty Assets $3.95 million to finish the condo complex to begin foreclosure proceedings on that property.

---

[4] The People's title insurance expert explained that a grant deed transfers title to a property from the owner (or grantor) to the acquiring party (or grantee). The expert also explained that a "wild deed" is a grant deed that has been recorded outside the legitimate chain of title. The expert opined that a wild deed recorded against title to a property would make it extremely difficult to sell that property.

[5] According to the title insurance expert, if an instrument, like a grant deed, were presented to the county recorder with a proper notarization, the recorder would record the instrument without independently verifying that the person who signed it had a legitimate ownership interest and was authorized to transfer or encumber the property.

Defendant testified at trial and admitted he recorded the grant deeds to the 12 units of the condo complex. [6] According to defendant, who claimed he earned the equivalent in China of a college degree in business management and master's degree in finance, he became involved in the condo complex property at the end of 2004 or the beginning of 2005, when investors from China became interested in the location, which was a nursery at the time. Defendant claimed he would take the investors to lunch and show them the property.

Defendant further testified that, around 2009, he heard that some sort of fraud was occurring in connection with an ongoing project involving the condo complex property. More specifically, defendant claimed a friend told him that another of defendant's friends had been defrauded in connection with the project. Defendant thus explained that he made further inquiries about the project and was told by a group of investors in the project that several million dollars they had invested was "pretty much all gone."

According to defendant, he then agreed to purchase the investors' interests in the condo complex project by giving them a property he owned in China. Defendant then formed and registered with the state a company named Liberty Gardens, becoming both the general manager and "sales agent" for that entity. Defendant claimed he recorded all the grant deeds to the units of the condo complex because he believed he had a legitimate ownership interest in those units.

---

6 The parties also stipulated that each of the 24 recorded grant deeds was signed by defendant.

2. Los Robles House (*Counts 25-27*)

Tin-jon Syiau was the chief executive officer of R.A.C. Development (R.A.C.), a real estate development company. Founded in 2008, R.A.C. purchased "distressed properties" and either resold or rented them.

Among other properties, R.A.C. purchased at a foreclosure sale the Los Robles house, a single-family residence located at 1873 South Los Robles Street in the City of San Marino. R.A.C. recorded a trustee's deed to the property on April 29, 2013, and thereafter took title to the property through Investment Project 53, an investment trust.

Having obtained title to the Los Robles house, R.A.C. began unlawful detainer proceedings to evict defendant and his wife, both of whom were the previous owners and continued to occupy the house. The eviction process took three or four months and, during that time, defendant recorded three documents affecting title to the Los Robles house: (1) a grant deed on May 14, 2013, purporting to transfer title from R.A.C. to defendant as trustee for Investment Project 53; (2) a deed of trust[7] on May 14, 2013; and a certification of trust on June 13, 2013, purporting to transfer title to the Los Robles house from defendant as trustee of Investment Project 53 to defendant.[8] Syiau, as owner of R.A.C., the true trustee of Investment Project 53, did not authorize

---

[7] A deed of trust transfers a security interest in a borrower's property from the borrower (trustor) to a trustee for the benefit of the lender (beneficiary) as security for the loan between them.

[8] The parties stipulated that defendant signed all three documents.

anyone to record documents affecting title to the Los Robles house.

At trial, defendant testified otherwise. Defendant stated that he purchased the Los Robles house in 2004 or 2005 as an investment property. In April 2013, he learned that eviction proceedings had been initiated against him, but defendant claimed he never sold or authorized anyone to sell the Los Robles house. Defendant claimed he thus formed the belief that someone had falsely obtained title to the Los Robles house from him.

Admitting that he recorded the grant deed, the deed of trust, and the certification of trust against the Los Robles house in May and June of 2013, defendant claimed he did so because he believed those documents were a true reflection of his ownership interest in the house.

3. The Jury's Verdict and Defendant's Sentence

After hearing the foregoing, the jury found defendant guilty of all 27 counts of procuring or offering false documents in violation of section 115, subdivision (a). The jury also found true the allegations that: (1) the crimes defendant committed were related felonies, a material element of which was fraud that involved a pattern of related felony conduct, resulting in damage to title to property in excess of $500,000 within the meaning of section 186.11, subdivision (a)(2); and (2) defendant damaged title to property of a value greater than $3,200,000 within the meaning of section 12022.6, subdivision (a)(4).

The trial court then sentenced defendant to an aggregate prison term of 12 years, comprised of the following: on count 1, a high term of three years, plus a consecutive three-year

enhancement pursuant to section 186.11 and an additional four-year enhancement pursuant to section 12022.6; and on counts 25, 26, and 27, consecutive one-third the middle terms of eight months each, for a total of two additional years. The trial court imposed but stayed sentence on counts 2 through 24 pursuant to section 654. The trial court awarded defendant 425 days of presentence custody credit and ordered him to pay certain fines, assessments, and restitution.

B. Defendant's Trial for Attempted Arson, Burglary, and Vandalism[9]

Having lost his home in the foreclosure sale, on August 12, 2013, defendant went to the Los Robles house and vandalized it, spraying red paint on the exterior walls, doors, and windows. Moreover, defendant entered the house without permission and attempted to start a fire. That evening, firefighters responded to the Los Robles house due to a reported smell of gas. They found defendant at the scene and discovered inside the house that the valve on the gas line to the dryer was open, combustible materials were placed around the home, and a lit candle had been placed next to the stove.

Defendant was subsequently charged in Los Angeles Superior Court case number GA090641 with attempted arson,

---

9 Defendant's request that we take judicial notice of Division Eight's unpublished opinion in case number B258441 is granted. The facts concerning the August 12, 2013, vandalism, burglary, and attempted arson incidents are taken from that opinion. We deny defendant's request to take judicial notice of a jury instruction (CALCRIM No. 2900) the trial court gave in that case. Notably, defendant does not rely on that instruction in either his opening or reply brief.

second degree burglary, and misdemeanor vandalism (the property crimes). A jury convicted defendant on all counts, and, in August 2014, defendant was sentenced to three years in prison.

DISCUSSION

A. Denial of *Kellett* Motion

1. Background

In response to the filing of this case, defendant moved the trial court under *Kellett, supra*, 63 Cal.2d 822, for an order dismissing counts 25, 26, and 27, the false document crimes relating to the Los Robles house. Defendant argued that *Kellett* prohibited prosecution of the false document crimes because his property crimes against the Los Robles house were based on the same act or course of conduct as the charged crimes. The trial court denied the motion, reasoning that, although the two criminal cases were "somewhat related," there was no requirement that they be tried together because they involved different types of criminal conduct that occurred on different dates and had different objectives.

2. Legal Principles

Section 654 prohibits multiple prosecutions under certain circumstances. *Kellett*, *supra*, 63 Cal.2d 822 is the leading case construing section 654's bar against multiple prosecutions. According to the court in *Kellett*, "[w]hen . . . the prosecution is or should be aware of more than one offense in which the same act or course of conduct plays a significant part, all such offenses

must be prosecuted in a single proceeding unless joinder is prohibited or severance permitted for good cause. Failure to unite all such offenses will result in a bar to subsequent prosecution of any offense omitted if the initial proceedings culminate in either acquittal or conviction and sentence." (*Kellett, supra*, 63 Cal.2d at p. 827.)

"Appellate courts have adopted two different tests under *Kellett* to determine whether multiple offenses occurred during the same course of conduct. ([*People v.*] *Valli* [(2010)] 187 Cal.App.4th [786,] 797 [(*Valli*)].) Under one line of cases, multiple prosecutions are not barred if the offenses were committed at separate times and locations. (*People v. Douglas* (1966) 246 Cal.App.2d 594, 599 [54 Cal.Rptr. 777] [no bar to multiple prosecution where each offense had a separate beginning, duration, and end, none of which overlapped]; *People v. Ward* (1973) 30 Cal.App.3d 130, 136 [105 Cal.Rptr. 67] [no bar to multiple prosecution where crimes were committed at different locations, at different times, against different victims, and with different objectives]; *People v. Cuevas* (1996) 51 Cal.App.4th 620, 624 [59 Cal.Rptr.2d 146] [no bar to multiple prosecution for offenses committed at different times and at different places]; cf. *People v. Britt* (2004) 32 Cal.4th 944, 955 [12 Cal.Rptr.3d 66, 87 P.3d 812] [multiple prosecutions barred where registered sex offender moving from one county to another failed to notify both counties of his change in residence].) We will refer to this as the 'time and place test.' [¶] A second version of the test—the 'evidentiary test'—looks to the evidence necessary to prove the offenses. (*People v. Flint* (1975) 51 Cal.App.3d 333 [124 Cal.Rptr. 269] (*Flint*).) '[I]f the evidence needed to prove one offense necessarily supplies proof of the other, . . . the two offenses must

be prosecuted together, in the interests of preventing needless harassment and waste of public funds.' (*People v. Hurtado* (1977) 67 Cal.App.3d 633, 636 [136 Cal.Rptr. 774] (*Hurtado*).) 'The evidentiary test of *Flint* and *Hurtado* requires more than a trivial overlap of the evidence. Simply using facts from the first prosecution in the subsequent prosecution does not trigger application of *Kellett*.' (*Valli, supra*, 187 Cal.App.4th at p. 799.)" (*People v. Ochoa* (2016) 248 Cal.App.4th 15, 28-29.)

Determination of whether a subsequent prosecution should be barred by section 654 is made on a case-by-case basis. (*People v. Ochoa, supra*, 248 Cal.App.4th at pp. 28-29.) On appeal, we review factual determinations under the deferential substantial evidence test, viewing the evidence in the light most favorable to the People. (*Valli, supra*, 187 Cal.App.4th at p. 794.) Whether section 654 applies is a legal question we review de novo. (*Id.*)

3. Analysis

Applying both the time and place test and the evidentiary test, we conclude that the prosecution of the false document crimes involving the Los Robles house was not barred by the prosecution of the attempted arson, burglary, and vandalism crimes.

The time and place test examines whether the crimes in question occurred at different times and different locations than the crimes for which the defendant had previously been prosecuted. Here, the arson, burglary, and vandalism crimes each took place on August 12, 2013, at the Los Robles house. Entirely separate and apart, the false document crimes involving the Los Robles house occurred on different dates (May 14 and June 13, 2013) and at a different location (the recorder's office).

Based solely on a time and place analysis, it is clear that section 654 did not bar the subsequent prosecution of defendant for the fraudulent acts in this case. But, one Court of Appeal has counseled that "*Kellett* is not necessarily a simple 'different time/different place' limitation," and we accordingly turn to the evidentiary test to determine further whether the trial court erred. (*Valli*, *supra*, 187 Cal.App.4th at p.798)

Under the evidentiary test, we do not find that the evidence to prove the attempted arson, burglary, and vandalism crimes "necessarily supplies proof" of the recording false documents crimes, or vice versa. (See *Valli, supra*, 187 Cal.App.4th at p. 799.) We recognize, as defendant contends, that there was some overlap of proof between the two prosecutions, namely, that the burglary and vandalism charges required proof that defendant had no possessory or ownership interest in the Los Robles house and that the fraudulent nature of the deeds defendant recorded were supported by that same proof. But, looking at the "totality of the facts," this mere overlap in no way leads us to conclude that there was a singular course of conduct that played a "significant part" with respect to each prosecution. (See *Valli, supra*, 187 Cal.App.4th at p.798, citing *Flint, supra,* 51 Cal.App.3d at p. 336.) In the instant case, defendant fraudulently attempted to acquire or maintain ownership of the Los Robles house by recording false deeds. In the prior prosecution – whether for vengeance, spite, or some unknown reason[10]—defendant defaced and attempted to burn to the

---

10 Citing *Britt, supra,* 32 Cal.4th 944, defendant contends the fraud prosecution was barred under *Kellett, supra,* 63 Cal.2d 822 because defendant's motive in both prosecutions was the same—to destroy R.A.C.'s interest in the Los Robles property. We do not

ground the very property he sought in this case to acquire or keep.

Because the two prosecutions involved two entirely different courses of conduct—separated by both time and place—we find that the instant prosecution was not barred by *Kellett*, *supra*, 63 Cal.2d 822, notwithstanding some overlap in proof as to the true ownership of the Los Robles house. (*Cf. Valli, supra,* 187 Cal.App.4th at p. 800 [separate prosecutions for murder and felony evading permissible where evidence of evading used to show consciousness of guilt for murder]; *People v. Douglas* (1966) 246 Cal.App.2d 594, 599 [separate prosecutions for murder and robbery permissible where People used evidence of the robberies to show motive for the murder].)

B. Sua Sponte Duty to Give Limiting Instruction

Defendant contends that the trial court erred by failing to instruct the jury that it could not consider evidence of defendant's recording fraudulent deeds with respect to one property as proof that defendant recorded fraudulent deeds with respect to the other property. In so doing, defendant asks this court to create a sua sponte duty for a trial court to give a limiting instruction regarding the jury's consideration of evidence of separate crimes that are charged and tried together. Defendant attempts to support his position by relying on a century-old Supreme Court

---

read *Britt* to hold that similarity of motive can alone suffice to bar a subsequent prosecution. Moreover, here, it is not at all clear that either in asserting false claims to the Los Robles house or in attempting to destroy it defendant's motive for so doing was to harm R.A.C.'s property interest.

case, *Boyd v. United States* (1892) 142 U.S. 450 (*Boyd*), and its progeny concerning the dangers of introducing evidence of *uncharged* similar conduct without a limiting instruction.

Defendant's reliance on *Boyd, supra*, 142 U.S. 450 is misplaced. Our Supreme Court has held that, with regard to uncharged similar conduct, there is no such sua sponte duty to give a limiting instruction. (*People v. Collie* (1981) 30 Cal.3d 43 (*Collie*).) "Although the trial court may in an appropriate case instruct *sua sponte* on the limited admissibility of evidence of past criminal conduct, we have consistently held that it is under no duty to do so. [Citations.] . . . [¶] Neither precedent nor policy favors a rule that would saddle the trial court with the duty either to interrupt the testimony *sua sponte* to admonish the jury whenever a witness implicates the defendant in another offense, or to review the entire record at trial's end in search of such testimony. . . . [I]n general, the trial court is under no duty to instruct *sua sponte* on the limited admissibility of evidence of past criminal conduct." (*Id.* at pp. 63-64.) Although the court in *Collie* recognized an exception to the general rule when the "evidence of past offenses is a dominant part of the evidence against the accused, and is both highly prejudicial and minimally relevant to any legitimate purpose," the court limited any such exception to an "extraordinary case." (*Id.* at p. 64.)

Putting aside the illogical reasoning of arguing that the same concerns of prejudice from cases involving *uncharged* similar conduct should lead to the *opposite* rule with respect to cases involving *charged* similar conduct, we agree that the reasoning in *Collie, supra*, 30 Cal.3d 43 for no sua sponte instructional duty should apply to evidence of separate crimes that are charged and tried together. Indeed, we find no

analytical basis to treat charged and uncharged conduct differently for this purpose. Moreover, this case is a particularly poor vehicle to create the sua sponte duty defendant requests because here the jury was instructed with CALCRIM No. 3515, which advised the jury that "[e]ach of the counts charged in this case is a separate crime" and to consider "each count separately and return a separate verdict for each one." That instruction appropriately mitigated the concern that a jury might prejudicially find a defendant guilty of one crime solely on the basis of finding that defendant guilty as to a separately charged crime. (See *People v. Geier* (2007) 41 Cal.4th 555, 578-579 [holding that because the trial court instructed with CALJIC No. 17.02—the analog to CALCRIM No. 3515—proposed sua sponte instruction that jury "could not use evidence of one crime to convict [defendant] of other crimes" would have been cumulative], overruled on other grounds in *Melendez-Diaz v. Massachusetts* (2009) 557 U.S. 305.)

Moreover, and more to the point, our Supreme Court, in *People v. Hawkins* (1995) 10 Cal.4th 920, expressly considered the issue of whether a trial court has a sua sponte duty to limit a jury's consideration of evidence of *charged* crimes in determining a defendant's guilt on a different charged crime. In *Hawkins*, the court explained: "the trial court has no such [sua sponte] duty to provide limiting instructions regarding evidence of past criminal conduct, either of uncharged criminal activity or of prior convictions. [Citation.] Similarly, the trial court does not have the sua sponte duty to furnish a limiting instruction on cross-admissible evidence in a trial of multiple crimes." (*Id.* at p. 942; see also *People v. Maury* (2003) 30 Cal.4th 342, 394 ["The trial court has no sua sponte duty to give a limiting instruction on

cross-admissible evidence in a trial of multiple crimes"].) We agree with and are bound by our Supreme Court's express pronouncement that there is no sua sponte duty to provide a limiting instruction regarding consideration of evidence of other charged conduct and reject defendant's assertions, based on *Boyd, supra*, 142 U.S. 450, to the contrary. (See *Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 455.)

C. Ineffective Assistance of Counsel

Defendant argues that, to the extent we conclude the trial court had no sua sponte duty to give an instruction concerning the limited use of evidence of charged criminal conduct, he received ineffective assistance of counsel because his trial counsel should have requested such a limiting instruction.

"'It is defendant's burden to demonstrate the inadequacy of trial counsel. [Citation.] [The California Supreme Court has] summarized defendant's burden as follows: "'In order to demonstrate ineffective assistance of counsel, a defendant must first show counsel's performance was "deficient" because his "representation fell below an objective standard of reasonableness . . . under prevailing professional norms." [Citations.] . . . [¶] Reviewing courts defer to counsel's reasonable tactical decisions in examining a claim of ineffective assistance of counsel [citation], and there is a "strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance." [Citation.] Defendant's burden is difficult to carry on direct appeal, . . . : "'Reviewing courts will reverse convictions [on direct appeal] on the ground of inadequate counsel only if the record on appeal affirmatively discloses that counsel had no rational tactical purpose for [his or

her] act or omission.'" [Citation.]' [Citation.] If the record on appeal ""sheds no light on why counsel acted or failed to act in the manner challenged[,] . . . unless counsel was asked for an explanation and failed to provide one, or unless there simply could be no satisfactory explanation,' the claim on appeal must be rejected,'" and the 'claim of ineffective assistance in such a case is more appropriately decided in a habeas corpus proceeding.' [Citation.]" (*People v. Vines* (2011) 51 Cal.4th 830, 875-876.)

Defendant's claim that his trial counsel provided ineffective assistance by failing to request a limiting instruction is meritless. Under the authorities cited above, we must reject a claim of ineffective assistance if the record on appeal does not affirmatively disclose that counsel had no rational tactical purpose for his act or omission. Here, defendant's trial counsel may have had a rational tactical purpose for his failure to request a limiting instruction, such as, for example, avoiding the risk that such a limiting instruction would suggest to the jury that the evidence of the charged crimes subject to the limitation was relatively strong. (See *People v. Maury, supra*, 30 Cal.4th at p. 394.) Therefore, because trial counsel's failure to request a limiting instruction could have been the result of a rational tactical choice, we cannot conclude that counsel's performance fell outside the range of reasonable professional assistance.

D. Applicability of Section 654 to Defendant's Sentence

In his opening brief, defendant argued that, under section 654, the trial court should have stayed punishment on either count 25 or 26 for the violation of section 115. He claims the consecutive sentences on each count violated section 654's

prohibition against multiple punishments for acts that are part of the same course of criminal conduct and have the same criminal objective.

Section 115, subdivision (d), however, states explicitly that "[f]or purposes of prosecution under this section, each act of procurement or of offering a false or forged instrument to be filed, registered, or recorded shall be considered a separately punishable offense." In *People v. Gangemi* (1993) 13 Cal.App.4th 1790, the court explained that the "language [of subdivision (d)] demonstrates *an express legislative intent to exclude section 115 from the penalty limitations of section 654*. Thus, the Legislature has unmistakably authorized the imposition of separate penalties for each prohibited act even though they may be part of a continuous course of conduct and have the same objective. [Citation.] We conclude that each false filing is separately punishable." (*Id*. at p. 1800, italics added.)

Given the express language of section 115, subdivision (d), which mandates separate punishments for each violation of that provision, there is no merit to defendant's contention concerning his consecutive sentences on counts 25 and 26. Indeed, defendant concedes in his reply brief that section 115, subdivision (d) required the trial court to impose and execute separate punishments on counts 25 and 26. Accordingly, we conclude that section 654's prohibition against multiple punishments did not apply to those sentences and that the trial court was correct to impose sentence on those counts as it did.

In light of our conclusion regarding the application of section 115, subdivision (d) to defendant's sentences for violation of section 115, subdivision (a), we raised with the parties the question of whether the trial court erred when it stayed the

sentences for the section 115, subdivision (a) convictions on counts 2 through 24. Having considered the parties' arguments and additional letter briefs on that issue, we conclude that section 115, subdivision (d) required the trial court to punish defendant separately for every violation of section 115, subdivision (a), including counts 2 through 24.

We therefore reverse defendant's sentence and remand the matter to the trial court for resentencing in a manner consistent with our conclusion that each violation of section 115, subdivision (a) must be punished separately. (§ 1260; see *People v. Grimble* (1981) 116 Cal.App.3d 678, 685 ["When the sentence imposed is in excess of the court's jurisdiction, the court has jurisdiction to impose a legally correct sentence at a later time. . . . When an illegal sentence is vacated, the court may substitute a proper sentence, even though it is more severe than the sentence imposed originally"]; and *People v. Hill* (1986) 185 Cal.App.3d 831, 834 ["When a case is remanded for resentencing by an appellate court, the trial court is entitled to consider the entire sentencing scheme. Not limited to merely striking illegal portions, the trial court may reconsider all sentencing choices"].)

DISPOSITION

Defendant's sentence is reversed and the matter is remanded to the trial court for resentencing, considering all sentencing choices. In all other respects, the judgment of conviction is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

KIN, J.*

We concur:

TURNER, P. J.

BAKER, J.

---

* Judge of the Superior Court of the County of Los Angeles, appointed by the Chief Justice pursuant to article VI, section 6 of the California Constitution.