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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. JEFFERY FLOYD BEADLE, Defendant and Appellant.	2d Crim. No. B289933 (Super. Ct. No. NA105727) (Los Angeles County)

Jeffery Floyd Beadle appeals after a jury convicted him of unlawful sexual intercourse with a minor causing great bodily injury (Pen. Code,[1] §§ 261.5, subd. (c), 12022.7, subd. (a); count 1), human trafficking of a minor for a commercial sex act (§ 236.1, subd. (c)(1); count 2), pimping a minor 16 years of age or older (§ 266h, subd. (b)(1); count 3), pandering by encouraging a minor over the age of 16 (§ 266i, subd. (b)(1); count 4), and seven counts of dissuading a victim or witness from testifying (§ 136.1, subd.

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

(a)(1); counts 5-11). In a bifurcated proceeding, appellant admitted that he had prior strike and serious felony convictions (§§ 667, subds. (a)(1) & (d), 1170.12, subds. (a) & (b)) and had served a prior prison term (§ 667.5, subd. (b)). The trial court sentenced him to 47 years and four months in state prison, consisting of the upper term of 12 years on count 2, doubled for the strike prior; two years and four months on count 1 (one-third the midterm doubled for the strike prior, plus one year for the great bodily injury allegation); consecutive four-year terms on counts 5 through 8 (the midterm of two years doubled for the strike prior); and five years for the prior serious felony.

Appellant contends his convictions for dissuading a victim or witness from testifying must be reversed for insufficient evidence and instructional error, and that he was sentenced on four of those counts in violation of section 654. He also claims the matter must be remanded for the trial court to consider whether to strike his five-year prior serious felony enhancement under the recently enacted Senate Bill No. 1393. We affirm.

STATEMENT OF FACTS

Counts 1 - 4

Appellant met A.T. in 2014, shortly before she turned 16 years old. A few months later, they began living together in a motor home. Appellant initially thought A.T. was 18, but when he discovered her true age he "didn't care."

A.T. told appellant she had previously been a prostitute. Appellant asked her to start working as a prostitute again and she agreed so they "could have money." Appellant decided when she worked and how many "dates" or "tricks" she saw. A.T. considered appellant to be both her boyfriend and her pimp and eventually had two children with him.

On October 21, 2015, A.T. arranged to meet a "date" at a shopping center. Unbeknownst to her, the "date" was an undercover police officer. When she was arrested she provided a false name to the police, said she was 18 or 19 years old, and claimed that appellant was her uncle. When she was interviewed at the police station, she admitted that she and appellant had been living together for approximately eight months, that she told him she was only 16, and that he had asked her to start working as a prostitute again. She also said appellant solicited for her by posting online advertisements without her knowledge and then told her they needed money for food.

Dissuading a Victim or Witness from Testifying (Counts 5 –11)

Appellant was arrested and charged with human trafficking and pimping and pandering, but he was later released and the charges were dismissed because A.T.'s whereabouts were unknown until July 2016. In November 2016, the police found appellant in New Mexico and arrested him again.

Count 8: On January 27, 2017,[2] appellant called A.T. from jail and told her that the police were "wolves" and she was "the little precious lamb," that the police knew where she was living and were "eventually going to get her," and that she should "move out of that location."

Count 5: On February 16, appellant called A.T., and appellant reprimanded A.T. for speaking to the police and said, "I already tried to make myself clear . . . that . . . the lamb needed to get the fuck gone because . . . all they need is her to be in that courtroom and they're going to do everything they fucking can to catch her." Appellant also told A.T., "[Y]ou're fucking stupid as a

[2] All further date references are to the year 2017.

motherfucker" and ended the call by telling her, "Live your life, bitch."

Count 9: Approximately two hours later, appellant called A.T. again and said, "If you loved me, you would listen to what the fuck I told you from the get-go . . . ." A.T. told appellant she would not be going to court and was "not even going to be around here." Appellant replied, "I don't know, but you better do something." Appellant ended the call by telling A.T., "You better be glad I ain't there. I'd choke the shit out of you and slap the shit out of you and fuck the dog shit out [of] you right now, you know it?"

Count 6: On February 20, appellant called A.T. to discuss her anticipated appearance in court the following day for the preliminary hearing, which the defense was seeking to continue. Appellant told A.T. to tell the judge "I want to speak to you" and "let him know" that law enforcement "told you that . . . you'll get set free and go home to your grandma and all that shit if you lie and tell them . . . what they wanted you to say." Appellant also said, "[Y]ou want to make sure that you get . . . your point across to . . . the judge and the judge only. You know what I'm saying?"

Count 7: On February 21, appellant's motion to continue the preliminary hearing was granted. Later that day, appellant called A.T. and said, "When in the fuck are you going to listen to what I tell you? I sat there and told you exactly everything that was going to take place in the courtroom. And everything that I told you was going to happen in the courtroom, it fuckin' happened and you ignored everything I fuckin' told you. What the fuck is wrong with you?" Appellant also told A.T., "The DA . . . made it out like everything's gonna be all good. Oh we got her now, she's right in the courtroom. She'll be here on preliminary

hearing. . . . And you're just going along with it, allowing them to . . . think that everything's fuckin' good when everything ain't fucking good. . . . Thanks a fuckin' lot, dude." Appellant ended the call by saying, "[T]hanks a fuckin' lot. Fuckin' piece of shit. Fuck you bitch."

Count 10: Later that same day, appellant called A.T. again and told her to "call and talk to an attorney . . . to get you dismissed off the case." Appellant also told A.T. "[y]ou need to get us married" because "if we're married they can't use your testimony against me."

Count 11: In March, appellant called A.T. and told her, "[I]t would have been a hell of a lot easier if you just never would have showed up to court, but it is what it is. It's already a done deal now, so now we just got to deal with it. Just until you get that marriage license. Once you get that marriage license, everything [is] going to be good."

DISCUSSION

Sufficiency of the Evidence – Instructional Error

Appellant contends his convictions for dissuading a victim or witness from testifying (§ 136.1, subd. (a)(1)) must be reversed for insufficient evidence because it is undisputed that he did not actually prevent or dissuade A.T. from testifying against him. In a related claim, appellant contends the trial court erred "by instructing the jury on the invalid legal theory that A.T. need not be prevented or dissuaded from testifying [for appellant] to be guilty of actually so preventing or dissuading her." Neither contention has merit.

Section 136.1, subdivision (a)(1) provides that any person who "[k]nowingly and maliciously prevents or dissuades any witness or victim from attending or giving testimony at any trial,

proceeding, or inquiry authorized by law" is guilty of a public offense. Contrary to appellant's claim, his convictions of this offense were not contingent upon findings that his efforts to prevent or dissuade A.T. from testifying were successful. Subdivision (d) of the statute makes clear that "[e]very person attempting the commission of any act described in subdivision[] (a) . . . is guilty of the offense attempted without regard to success or failure of the attempt. The fact that no person was . . . in fact intimidated, shall be no defense against any prosecution under this section." The jury here was properly so instructed.[3]

Appellant nevertheless asserts that convictions under subdivision (a)(1) of section 136.1 cannot be based upon mere attempts to prevent or dissuade a victim or witness from testifying because such attempts are separately proscribed under subdivision (a)(2) of the statute. He claims that a contrary conclusion would render subdivision (a)(2) "nothing but surplusage." We are not persuaded. As the People note, "[I]t is entirely possible that the Legislature intended subdivision (a)(2)

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[3] The jury was instructed pursuant to CALCRIM No. 7.14 as follows: "Every person who knowingly and maliciously prevents or dissuades or attempts to prevent or dissuade any witness or victim from: [¶] Attending or giving testimony at any trial, proceeding, or inquiry authorized by law, is guilty of a violation of Penal Code section 136.1, subdivision (a)(1), a crime. [¶] It is immaterial whether an attempt to prevent or dissuade was successful. [¶] In order to prove this crime, each of the following elements must be proved: [¶] 1. [A.T.] was a victim; [¶] 2. Another person, with the specific intent to do so, prevented or dissuaded or attempted to prevent or dissuade [A.T.] from attending or giving testimony at any trial, proceeding, or inquiry authorized by law; [¶] and [¶] 3. That person acted knowingly and maliciously."

to apply to situations where a defendant attempted to communicate with the victim to dissuade him or her from testifying, but the victim never received the communication." (See *People v. Foster* (2007) 155 Cal.App.4th 331, 335 [sufficient evidence supported conviction under subdivision (a)(2) of section 136.1 where the defendant unsuccessfully attempted to convey threatening message to victim through an intermediary].) In any event, subdivision (d) of section 136.1 plainly and unequivocally states that any person who knowingly and maliciously attempts to prevent or dissuade a victim or witness from testifying, as set forth in subdivision (a)(1), is guilty of that offense regardless of whether the attempt was successful. It is thus of no moment that appellant was prosecuted under that subdivision rather than subdivision (a)(2).

Appellant alternatively contends that his convictions on counts 6, 7, 9, 10, and 11 must be reversed for insufficient evidence because they are based on conversations in which he "never suggested that [A.T.] not attend court or refuse to testify." In addressing this claim, "we review the whole record to determine whether *any* rational trier of fact could have found the essential elements of the crime . . . beyond a reasonable doubt." (*People v. Zamudio* (2008) 43 Cal.4th 327, 357, original italics.) "In applying this test, we review the evidence in the light most favorable to the prosecution[,] and presume in support of the judgment the existence of every fact the jury could reasonably have deduced from the evidence." (*Ibid.*) Reversal "'is unwarranted unless it appears "that upon no hypothesis whatever is there sufficient substantial evidence to support"' the jury's verdict. [Citation.]" (*Ibid.*)

The evidence is sufficient to support the challenged convictions. Appellant's arguments to the contrary disregard the deferential standard of review. During the second phone call on February 16 (count 9), appellant alluded to his prior direction that A.T. make herself unavailable to the prosecution and said, "If you loved me, you would listen to what the fuck I told you from the get-go . . . ." When A.T. told appellant she would be leaving the area to avoid testifying, appellant responded, "[Y]ou better do something." During the February 20 call (count 6), appellant urged A.T. to speak to the judge before the preliminary hearing and tell him the police had coerced her to "tell them . . . what they wanted [her] to say." On February 21 (count 7), appellant berated A.T. for not following his directions and accused her of taking the prosecution's side. In appellant's last two calls to A.T. (counts 10 and 11), he told her to find an attorney to help her get "dismissed off the case" and urged her to make the necessary arrangements for them to get married so she could not be compelled to testify against him.

From this evidence, the jury could reasonably infer that each conversation was intended to prevent or dissuade A.T. from appearing in court and/or testifying against appellant. ""There is . . . no talismanic requirement that a defendant must say 'Don't testify' or words tantamount thereto, in order to commit the charged offenses."" (*People v. Pettie* (2017) 16 Cal.App.5th 23, 54.) ""As long as his [or her] words or actions support the inference that he [or she] . . . attempted . . . to induce a person to withhold testimony [citation]"" or forgo reporting a crime, the defendant is properly convicted. (*Ibid.*) The evidence, when viewed in the light most favorable to the judgment, is sufficient to support such inferences here.

Consecutive Sentences (§ 654)

Appellant contends the court violated section 654 by imposing consecutive sentences on counts 5 through 8 (dissuading a victim or witness from testifying). He claims that the sentences on these counts should have been stayed because they were all committed with the same intent and objective, i.e., to prevent A.T. from testifying against him. We disagree.

Section 654 precludes multiple punishments for a single act or an indivisible course of conduct. It is well-settled that "'"a course of conduct divisible in time, although directed to one objective, may give rise to multiple violations and punishment. [Citations.]" [Citations.] This is particularly so where the offenses are temporally separated in such a way as to afford the defendant opportunity to reflect and to renew his or her intent before committing the next one, thereby aggravating the violation of public security or policy already undertaken.'" (*People v. Andra* (2007) 156 Cal.App.4th 638, 640, citing *People v. Gaio* (2000) 81 Cal.App.4th 919, 935; see also *People v. Kwok* (1998) 63 Cal.App.4th 1236, 1253 ["If the offenses were committed on different occasions, they may be punished separately"].)

Counts 5 through 8 are each based on phone calls appellant made to A.T. on different days over the course of three weeks. Each call was separated by at least a day, giving appellant sufficient time "to reflect and to renew his . . . intent before" making the next call. (*People v. Gaio*, *supra*, 81 Cal.App.4th at p. 935.) Separate punishment on each count was thus proper.

Senate Bill No. 1393

At sentencing, the court was required to impose a five-year consecutive term for appellant's prior serious felony conviction (former § 667, subd. (a)). Senate Bill No. 1393 (2017-2018 Reg.

Sess.), which went into effect while this appeal was pending, gives trial courts the discretion to strike or dismiss a prior serious felony enhancement in the interests of justice. The amended law applies retroactively to nonfinal judgments. (*People v. Jones* (2019) 32 Cal.App.5th 267, 272.) Appellant contends we must therefore remand the matter for resentencing.

The People acknowledge that the new law applies retroactively, but argue that a remand is unnecessary because "the record reveals a clear indication that the trial court would not have reduced the sentence even if at the time of sentencing it had the discretion to do so." (*People v. Almanza* (2018) 24 Cal.App.5th 1104, 1110.) We agree with the People.

At sentencing, the court found numerous aggravating factors and imposed the upper term on the principal count. The court also denied appellant's *Romero*[4] motion and exercised its discretion to impose consecutive sentences on four of the section 136.1 counts. After noting that appellant's prior strike and serous felony conviction was for a lewd and lascivious act upon a child under the age of 14 (§ 288, subd. (a))—and that he was on postrelease community supervision for that offense when he initiated a relationship with A.T., who was also "a child"—the court stated: "I see a lot of people who come through my courtroom committing murders, other crimes, and they're dangerous, but in many ways, you are more dangerous to this community because of your mental state that you just don't see it. You don't seem to recognize the type of this crime and the impact that it can have on your victims. [¶] And if it makes any difference down the line for the purposes of any sort of early release or parole, I certainly hope they do not parole you early

[4] *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497.

because I think you will continue to be a danger, and that's the reason that I'm using a much higher term than what you were originally offered."

These comments clearly indicate the court would not have dismissed the serious felony enhancement had it the discretion to do so. A remand for resentencing would thus be futile. (See *People v. Gutierrez* (1996) 48 Cal.App.4th 1894, 1896 [declining to remand for *Romero* hearing where trial court indicated the defendant was "'the kind of individual the law was intended to keep off the street as long as possible'"]; *People v. Jones*, *supra*, 32 Cal.App.5th at p. 275 [comments at sentencing demonstrated court "would not strike the felony prior and its resulting enhancement out of leniency toward defendant"]; *People v. McVey* (2018) 24 Cal.App.5th 405, 419 [no possibility court would strike firearm enhancement where it identified several aggravating factors and imposed the upper term for the enhancement].)

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED.

PERREN, J.

We concur:

GILBERT, P. J.

TANGEMAN, J.

Laura L. Laesecke, Judge

Superior Court County of Los Angeles

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