Filed 10/17/18 P. v. Lindquist CA2/6

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

JEFFREY MICHAEL LINDQUIST,

Defendant and Appellant.

2d Crim. No. B285182
(Super. Ct. No. 2015009968)
(Ventura County)

Jeffrey Michael Lindquist appeals a judgment following conviction of infliction of corporal injury upon a spouse, dissuading a witness from reporting a crime, and misdemeanor child endangerment, with a finding of personal infliction of great bodily injury. (Pen. Code, §§ 273.5, subd. (a), 136.1, subd. (b)(1), 273a, subd. (b), 12022.7, subd. (e).)[1] We affirm.

FACTUAL AND PROCEDURAL HISTORY

This appeal concerns domestic violence that Lindquist committed against his wife in the presence of her child. In

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

sentencing Lindquist to the upper term, the trial court described the crimes as "savage" and "repugnant." Lindquist now raises juror misconduct, evidentiary, instructional, and sentencing issues. In addition, he raises questions of ineffective assistance of counsel because counsel did not raise many of these points in the trial court.

On March 28, 2015, Lindquist, his wife A.L., and her eight-year-old son lived in Simi Valley. That evening, Lindquist and A.L. attended a gathering at a neighbor's home. Lindquist and A.L. consumed alcohol at the gathering and returned home at midnight.

A.L. went into their bedroom and fell onto the bed, exhausted from her work day and the social event. Lindquist became "agitated" when A.L. did not undress and consent to sexual activity. Lindquist verbally attempted to "get[] his way."

A.L. took her cellular telephone and went into her child's bedroom. She shut the bedroom door and sat on the floor with her back against the door. Lindquist attempted to force open the door after A.L. asked to be left alone. Lindquist forced the door sufficiently to place his hand inside; he then slammed the door on his hand and stated that he would "tell them that [she] did this to [him]." A.L. used her telephone to record this "door-slam" incident so that she would not be blamed for his injuries.

Lindquist then slammed the door aggressively, causing the door to break. A piece of the door hit A.L. in the face and the force of the breaking door caused her foot to break a glass closet door. A.L. began to bleed profusely.

Lindquist entered the bedroom and punched A.L. in the face, head, and shoulders as she attempted to call for police assistance. Lindquist struck A.L. approximately 15 times,

including in her right eye. A.L.'s son awoke and screamed. He informed Lindquist that he was "not supposed to hit a girl." During the assault, A.L. lost her telephone; her son saw Lindquist seize the telephone and "smash[]" it. A.L. had already connected with the police dispatcher, however.

A.L. then ran into another room to use the landline telephone. Lindquist followed and ripped the telephone from the wall. A.L. opened a patio door and screamed for neighbors to "[c]all 911." She then returned to the master bedroom, seized Lindquist's cellular telephone, and called for police assistance. A.L. screamed her address and tossed the telephone under the bed.

Lindquist returned to the child's bedroom and forcibly took him downstairs, bruising the child's left side. The child resisted and demanded to be released. Lindquist took him to the neighbor's home and informed the neighbor that the police would arrive soon. A.L. attempted to follow Lindquist and her son but was blinded from the assault which dislocated her eye.[2] She eventually found her way downstairs and outside.

Simi Valley Police Officer Kevin Wilmott responded to the emergency call and found A.L. and her neighbors in the street. A.L. was crying and had injuries to her leg, shoulder, and right eye. Wilmott recorded an interview with A.L. wherein she described Lindquist's assault as a "pounding" with his closed fist. At trial, the prosecutor played the audio-recorded interview.

Wilmott later entered the Lindquist home and found a broken wooden door with two breakage points. He concluded that

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[2] A.L.'s surgeon testified that an orbital fracture caused the eye to intrude into A.L.'s sinus cavity.

the broken door was consistent with A.L.'s description of the assault.

A.L.'s son was later interviewed in a recorded interview at Safe Harbor, a child advocacy center. He described the beating that his mother suffered, including punches to her eye. He also stated that Lindquist "pulled" him downstairs and "dragged" him in the street.

A.L. suffered a significant orbital fracture of her right eye, necessitating four corrective surgeries. By the time of trial, she continued to experience numbness in her face as well as double vision.

Prior Acts of Domestic Violence
Evidence Code section 1109

A.L. testified that Lindquist once choked her until she began to lose consciousness. On another occasion, he pulled her downstairs. A.L. stated that Lindquist would slam doors against her and that they had replaced 8 to 10 interior doors.

L.L. testified that she was formerly married to Lindquist for many years and that he pushed her and also threatened to kill her and their child. She secretly planned to leave Lindquist ("an emergency escape") and contacted police officers who took her and her child to a women's shelter.

Lindquist's Testimony

Lindquist testified that A.L. was intoxicated when they returned home that evening; he stated that she had consumed three and one-half bottles of wine. Lindquist testified that he awakened A.L. when she fell asleep on the bed, fully dressed, and that she then became enraged. Thereafter, she threw objects at him, cursed him, and pushed and struck him. Lindquist denied striking A.L. and could not explain her seriously damaged eye.

He stated that he took A.L.'s son to the neighbor's house to protect him from A.L.

The trial court permitted the prosecutor to impeach Lindquist's credibility with evidence that he committed misdemeanor battery against his first wife C.L. in 1995 in Michigan. When Lindquist denied any memory of the incident, the prosecutor provided a police report of the incident to refresh Lindquist's recollection. The police report reflected that Lindquist pushed C.L., kicked her, covered her mouth to prevent her from screaming, and threatened to kill her. Lindquist testified that he pleaded nolo contendere to the battery charge.

Police Emergency Calls

At trial, the prosecutor played the telephone calls to the police emergency dispatcher that were placed by A.L. as well as by neighbors. During one call, Lindquist stated, "Gonna hit you again. . . . I can knock your ass out. I will knock you out." A.L. screamed, "No." During other calls, neighbors stated that Lindquist was dragging a child down the street and that A.L. was bleeding.

A.L. later found her cellular telephone in the house. All data, including the video of the door-slamming incident, had been removed from the telephone.

Conviction, Sentencing, and Appeal

The jury convicted Lindquist of infliction of corporal injury upon a spouse (count 1), dissuading a witness from reporting a crime (count 2), and misdemeanor child endangerment (count 3). (§§ 273.5, subd. (a), 136.1, subd. (b)(1), 273a, subd. (b).) It also found that Lindquist personally inflicted great bodily injury regarding count 1. (§ 12022.7, subd. (e).) The trial court sentenced Lindquist to a prison term of 11 years, consisting of a

four-year upper term for count 1, a five-year-upper term for the great bodily injury enhancement, and a consecutive two-year term for count 2. The court also imposed a 180-day sentence for count 3, to be served concurrently. In addition, the court imposed various fines and fees, ordered $66,243.70 in victim restitution, and awarded Lindquist 60 days of presentence custody credit.

Lindquist appeals and contends that: 1) the trial court erred by not removing an allegedly inattentive juror; 2) he received the ineffective assistance of counsel when counsel examined him and A.L. regarding the pending dissolution action; 3) the prosecutor improperly used inadmissible impeachment evidence; 4) the prosecutor improperly impeached him with a police report; 5) CALCRIM No. 852A was overly broad; 6) the prosecutor committed misconduct during summation by referring to the prior acts of domestic violence against C.L.; 7) the prosecutor committed misconduct during summation by referring to prior domestic violence and count 2; 8) the trial court abused its discretion by denying a motion to dismiss retained counsel; 9) section 654 precludes punishment for count 2; and 10) cumulative error requires reversal.

DISCUSSION

I.

Lindquist argues that the trial court prejudicially erred by not removing an allegedly inattentive juror, Juror No. 8. He acknowledges that his counsel did not insist upon removal of the juror and therefore contends that he did not receive the effective assistance of counsel.

During trial, Lindquist informed the trial court that Juror No. 8 was "drifting in and out of sleepiness all afternoon." The

court responded that the courtroom temperature had recently been adjusted downward.

Two days later, the prosecutor stated that Juror No. 8 appeared to be asleep at times during the trial and appeared startled when transcripts were distributed. The trial court responded that it had seen the juror with her eyes closed but it appeared that she was listening, not sleeping. The prosecutor suggested that the court inquire of the juror and Lindquist agreed.

The trial court then summoned Juror No. 8 and inquired if she had been asleep. The juror responded, "I wasn't asleep. No. I was listening." The court inquired if the juror had medical issues interfering with her ability to stay alert, and she responded no and that she also was not fatigued. The court inquired if she had missed any of the testimony, and the juror stated: "I haven't missed any of it, no." Lindquist then posed further questions to the juror regarding "dozing off" during trial, which she did not recall. The trial judge then ruled that he would not dismiss the juror, stating, "I'll simply keep a close eye on her as I'm sure counsel will as well."

Following the jury verdicts, Lindquist moved for a new trial and argued that the trial court should have dismissed Juror No. 8. The trial court denied the new trial motion and stated that the juror inquiry satisfied the court that there had been no juror misconduct.

The trial court possesses broad discretion to retain or discharge a juror who becomes ill or otherwise is found to be unable to perform his duties. (§ 1089; *People v. Williams* (2013) 58 Cal.4th 197, 289.) Although juror inattentiveness may constitute misconduct, "courts have exhibited an understandable

reluctance to overturn jury verdicts on the ground of inattentiveness during trial." (*People v. Bradford* (1997) 15 Cal.4th 1229, 1349.) "Perhaps recognizing the soporific effect of many trials when viewed from a layman's perspective, these cases uniformly decline to order a new trial in the absence of convincing proof that the jurors were actually asleep during material portions of the trial." (*Ibid.*)

The trial court did not abuse its discretion by not dismissing Juror No. 8. The court and the parties conducted an inquiry of the juror who stated that she had not been asleep and had not missed any testimony. The court had also watched Juror No. 8 during trial and did not think that she had been asleep. As the prosecutor stated during the new trial motion, Juror No. 8 stated that she had been listening and "that's just how she took in information [with closed eyes]." There was no juror misconduct and counsel was not ineffective for failing to ask that she be dismissed. (*People v. Bonilla* (2007) 41 Cal.4th 313, 351-353 [court did not abuse its discretion by not discharging juror who admitted to nodding off but stated that he did not miss any testimony].)

II.

Lindquist asserts that he received ineffective assistance of counsel when his counsel questioned him and A.L. regarding their pending dissolution. He points out that the prosecutor then impeached him regarding a marital settlement offer made to A.L. based upon an acquittal or a misdemeanor charge in the current prosecution.

During cross-examination of A.L., Lindquist questioned her regarding her "fairly contentious" dissolution and whether she "tried to leverage" the criminal prosecution to obtain a more

favorable financial settlement. On redirect examination, A.L. testified that she had been offered "the house and everything" if she "asked for no jail time or it to be dropped to a misdemeanor." During Lindquist's direct testimony, he stated that A.L.'s dissolution attorney had made "multiple offers" to make the "criminal case go away" in exchange for a better marital settlement. Lindquist denied making a similar offer to A.L. or her attorney. The prosecutor later impeached Lindquist's testimony with a letter from his dissolution attorney, Guy Parvex, to A.L. stating, "There is no settlement unless there's no jail time and the charges are reduced to a misdemeanor" ("Parvex letter").

To establish a claim for ineffective assistance of counsel, defendant must establish that counsel's performance was deficient and that defendant suffered prejudice therefrom. (*Strickland v. Washington* (1984) 466 U.S. 668, 687-692; *People v. Patterson* (2017) 2 Cal.5th 885, 900; *People v. Mickel* (2016) 2 Cal.5th 181, 198.) In demonstrating deficient performance, defendant bears the burden of showing that counsel's performance fell below an objective standard of reasonableness. (*Mickel*, at p. 198; *People v. Orloff* (2016) 2 Cal.App.5th 947, 955.) In demonstrating prejudice, defendant bears the burden of establishing a reasonable probability that, but for counsel's deficient performance, the outcome of the proceeding would have been different. (*Patterson*, at p. 901; *Mickel*, at p. 198.)

We presume that counsel's actions fall within the broad range of reasonableness, and afford great deference to counsel's tactical decisions. (*People v. Mickel*, *supra*, 2 Cal.5th 181, 198.) For this reason, a reviewing court will reverse a conviction based upon the ineffective assistance of counsel on direct appeal only if

there is affirmative evidence that counsel had no rational tactical purpose for an action or omission. (*Ibid.*; *People v. Orloff*, *supra*, 2 Cal.App.5th 947, 955.) Moreover, counsel's failure to make an unmeritorious motion does not constitute ineffective assistance of counsel. (*People v. Jennings* (2010) 50 Cal.4th 616, 667, fn. 19; *People v. Szadziewicz* (2008) 161 Cal.App.4th 823, 836.) Likewise, deciding to object is inherently tactical, and the failure to object will rarely establish ineffective assistance of counsel. (*People v. Romero and Self* (2015) 62 Cal.4th 1, 25.)

Lindquist has not established that he received the ineffective assistance of counsel by his attorney's examinations. Counsel may have made a tactical decision that questions concerning the dissolution would show that A.L.'s testimony was influenced by her desire for a better marital settlement. (*People v. Ervin* (2000) 22 Cal.4th 48, 94 [reviewing courts rarely second-guess counsel's examination tactics, even if seemingly damaging testimony is elicited].) Counsel's failure to introduce documentary evidence supporting Lindquist's testimony may be explained by the absence of such evidence.

In any event, Lindquist has not established that he suffered prejudice. Evidence against Lindquist was compelling, consisting of direct testimony of the victims and recorded police emergency calls. Officer Wilmott saw the broken bedroom door and A.L.'s injuries. A.L.'s surgeon testified regarding her serious eye injury and the necessity for corrective surgeries. In view of this evidence, a different result was not reasonably probable. (*People v. Patterson*, *supra*, 2 Cal.5th 885, 900 [general rule].)

III.

Lindquist argues that the prosecutor improperly used the Parvex letter to impeach his testimony with inadmissible hearsay

evidence. He adds that he received the ineffective assistance of counsel because his attorney did not object to the prosecutor's use of the letter or her summation regarding the letter. Lindquist points out that the trial court was not asked to rule on the admissibility of the letter because his counsel did not object and seek a ruling.

The prosecutor could properly use the letter to impeach Lindquist. The letter was an authorized admission pursuant to Evidence Code section 1222, made by Lindquist's dissolution attorney. (*Volkswagen of America, Inc. v. Superior Court* (2006) 139 Cal.App.4th 1481, 1492-1493 [evidentiary foundation satisfied by attorney acting within scope of client's representation].) Lindquist testified that Parvex was his dissolution attorney and that he was copied on the letter sent to A.L.'s dissolution attorney. Lindquist also reluctantly admitted that the letter stated that there would be no marital settlement unless the criminal prosecution resulted in acquittal or a misdemeanor.

The prosecutor also could properly refer to the Parvex letter during summation as bearing on Lindquist's credibility. (*People v. Peoples* (2016) 62 Cal.4th 718, 797 [counsel may argue that a witness's testimony is unsound, unbelievable, or even a patent lie].)

IV.

Lindquist asserts that the prosecutor improperly impeached him with a hearsay police report to refresh his recollection. The impeachment evidence concerns his 1995 nolo contendere plea to domestic battery against his former wife C.L. Lindquist acknowledges that counsel did not object to most of the prosecutor's questions regarding the conduct underlying this

misdemeanor conviction. He argues that he received the ineffective assistance of counsel for this reason.

The proper procedure for refreshing a witness's recollection involves asking the witness to first review a document, and then asking if it refreshed his recollection. (*People v. Friend* (2009) 47 Cal.4th 1, 40.) A party refreshing a witness's recollection with a document may not treat the writing as evidence, however, by displaying it to the jury. (*People v. Vasquez* (2017) 14 Cal.App.5th 1019, 1038-1039.)

"Misdemeanor convictions themselves are not admissible for impeachment, although evidence of the underlying *conduct* may be admissible subject to the court's exercise of discretion." (*People v. Chatman* (2006) 38 Cal.4th 344, 373.)

Here the prosecutor followed the procedure correctly. Lindquist reviewed the police report but stated that he did not recall the charges, only that he pleaded nolo contendere. The prosecutor then properly asked regarding the conduct underlying Lindquist's 1995 Michigan conviction. (*People v. Chatman*, *supra*, 38 Cal.4th 344, 373 [conduct underlying a misdemeanor conviction is admissible for impeachment purposes].)

Moreover, it is not reasonably probable that Lindquist would have obtained a more favorable result had the prosecutor not questioned him regarding the domestic violence against C.L. Compared to the factual circumstances of the current offense and the prior acts of domestic violence against L.L., the battery against C.L. was remote and less egregious.

Lindquist has also not established the ineffective assistance of counsel by his attorney's failure to object to the prosecutor's questions concerning C.L. Any objection would have been meritless. (*People v. Thomas* (2017) 15 Cal.App.5th 1063, 1076

[statement of general rule].) Counsel's failure to make an unmeritorious motion does not constitute ineffective assistance of counsel. (*People v. Jennings*, *supra*, 50 Cal.4th 616, 667, fn. 19.)

V.

Lindquist argues that CALCRIM No. 852A, concerning the jury's use of evidence of prior acts of domestic violence, was overly broad because it included the 1995 acts against C.L. Lindquist points out that the trial court limited use of the domestic violence against C.L. to impeachment of his credibility should he testify. Lindquist also complains that the instruction did not explain the limited purpose of impeachment evidence. Lindquist acknowledges that he did not object to the instruction nor did he seek clarifying language or modification.

The trial court properly instructed sua sponte with CALCRIM No. 852A, including prior acts of misdemeanor domestic violence against C.L. Evidence Code section 1109, subdivision (e) permits evidence of prior acts of domestic violence older than 10 years "in the interest of justice." Here the trial court impliedly made such a finding having changed its mind regarding its earlier ruling. Counsel was not required to make an unmeritorious objection. (*People v. Jennings*, *supra*, 50 Cal.4th 616, 667, fn. 19.)

Moreover, CALCRIM No. 226 already instructed regarding the use of prior acts as impeachment – i.e., "other conduct that reflects on [a witness's] believability." Thus Lindquist would not have obtained a more favorable result had the trial court modified CALCRIM No. 852A to explain the use of prior acts as impeachment.

In any event, Lindquist has not established that he would have obtained a more favorable result had his attorney requested clarification or modification of the instruction.

VI.

Lindquist contends that the prosecutor committed misconduct during summation by referring to the 1995 domestic violence committed against C.L. as propensity evidence pursuant to Evidence Code section 1109. He points out that the trial court ruled that the prior conduct concerning C.L. could be used only to impeach his credibility if he testified.

During summation, the prosecutor stated: "The defendant is a serial abuser. The defendant has literally been accused of domestic violence by every wife he's ever had." The prosecutor also described the specific acts Lindquist committed against C.L. Lindquist acknowledges that counsel did not object to the prosecutor's arguments concerning C.L.

Lindquist has not established ineffective assistance of counsel because it is not reasonably probable that he would have obtained a more favorable result absent the prosecutor's summation regarding C.L. The prosecutor was entitled to argue prior domestic abuse pursuant to Evidence Code section 1109 regarding A.L. and L.L. She also could argue that Lindquist was not credible given the conduct against C.L. underlying his Michigan misdemeanor battery conviction. Thus, the evidence regarding C.L. was just as damaging to Lindquist but lawfully admitted by other means.

VII.

Lindquist argues that the prosecutor committed misconduct during summation by arguing evidence of prior acts of domestic violence regarding count 2, dissuading a witness. He

points to the prosecutor's summation arguing that Lindquist threatened his previous wives "and that is a pattern of his intent." Lindquist adds that the trial court instructed that evidence of prior acts of domestic violence related to count 1 only.

The prosecutor did not commit misconduct because Evidence Code section 1109, subdivision (a)(1) permits evidence of prior acts of domestic violence "in a criminal action in which the defendant is accused of an offense involving domestic violence." An action embraces every count and allegation charged. (*People v. Dallas* (2008) 165 Cal.App.4th 940, 958.) Here, the prior domestic violence evidence was logically relevant to counts 1 and 2, and the trial court's instruction otherwise was incorrect and too narrow. Although Lindquist did not object to the prosecutor's summation on this point, counsel is not ineffective for failing to make unmeritorious objections. (*People v. Jennings*, *supra*, 50 Cal.4th 616, 667, fn. 19.) In any event, Lindquist's acts of smashing A.L.'s telephone and yanking the landline telephone from the wall implies the obvious - that he intended to preclude A.L. from reporting his assault.

VIII.

Lindquist contends that the trial court abused its discretion by denying his post-verdict motion to replace his retained attorney. He asserts that the error violated his constitutional rights to due process of law and the right to counsel pursuant to the United States and California Constitutions.

Following the jury verdicts, Lindquist filed a motion for new trial asserting several grounds therefor. On the day of sentencing, Lindquist sought to replace his retained attorney with retained attorney Peter Horton. Both attorneys were present. Horton requested a 60-day continuance for sentencing

and to prepare another new trial motion. The prosecutor objected, stating that she had not received notice of the substitution motion and that the victims were present for the sentencing hearing. Horton responded that he had been recently retained and that a court clerk advised him to appear and request a continuance. The trial court denied the motion to substitute counsel because it was not "appropriate or timely." Lindquist's current attorney then argued the new trial motion, as well as possible sentencing choices.

The right to retained counsel of choice is guaranteed by the Sixth Amendment to the Constitution, but that right is subject to reasonable limitations. (*People v. O'Malley* (2016) 62 Cal.4th 944, 1004.) The right to discharge retained counsel, moreover, is not absolute. (*Ibid.*) The trial court has the discretion to deny a motion to discharge retained counsel if the discharge will result in significant prejudice to the defendant or if an untimely motion will "disrupt[] . . . the orderly processes of justice." (*People v. Verdugo* (2010) 50 Cal.4th 263, 311 [statement of general rule].)

The trial court acted well within its discretion by denying Lindquist's motion to relieve retained counsel and substitute new counsel. The court impliedly found that Lindquist's motion made at sentencing would disrupt the orderly process of justice. The prosecutor had not been informed of Lindquist's motion, and Lindquist's victims had driven from another county to attend sentencing. Moreover, the jury verdicts had occurred nearly a month before and Lindquist had retained Horton several days prior to sentencing. Lindquist filed no written motion to relieve counsel nor had he informed the prosecutor in advance.

Similarly, the trial court properly denied the motion for a continuance. "There are no mechanical tests for deciding when a

denial of a continuance is so arbitrary as to violate due process." (*Ungar v. Sarafite* (1964) 376 U.S. 575, 589.) The party challenging a ruling regarding a continuance bears the burden of establishing an abuse of discretion. (*People v. Hajek and Vo* (2014) 58 Cal.4th 1144, 1181, overruled on other grounds by *People v. Rangel* (2016) 62 Cal.4th 1192, 1216.) An order denying a continuance is seldom successfully attacked. (*Ibid.*)

Here Lindquist waited approximately one month following the jury verdicts, after the new trial motion had been filed, and until the day of sentencing, to dismiss retained counsel. Lindquist's victims were in the courtroom awaiting his sentencing, having driven from Orange County for the proceeding. The trial court did not abuse its discretion by denying Lindquist's last-minute motion for a continuance.

IX.

Lindquist argues that section 654 precludes punishment for count 2, dissuading a witness from reporting a crime. (§ 136.1, subd. (b)(1).) He asserts that his objective in dissuading A.L. from summoning police assistance was to allow the domestic violence to continue unabated. He adds that his attempt to dissuade A.L. from reporting a crime was ultimately unsuccessful.

Section 654, subdivision (a) 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." Analysis of a section 654 claim rests upon well-settled principles. (*People v. Corpening* (2016) 2 Cal.5th 307, 311, fn. 2.) The statutory reference to "act or omission" may include not only a

discrete physical act but also a course of conduct encompassing several acts pursued with a single objective. (*Id.* at p. 311.) Where the facts are undisputed, application of section 654 raises a question of law that we review de novo. (*Id.* at p. 312.)

Whether a course of criminal conduct is divisible giving rise to more than one act within the meaning of section 654 depends upon the actor's intent and objective. (*People v. Jackson* (2016) 1 Cal.5th 269, 354.) If all the offenses were incident to one objective, the defendant may be punished for any of the offenses but not for more than one. (*Ibid.*) "Intent and objective are factual questions for the trial court, which must find evidence to support the existence of a separate intent and objective for each sentenced offense." (*Ibid.*) Moreover, the "temporal proximity" of the offenses is insufficient by itself to establish the finding of a single objective. (*Ibid.*)

Section 654 does not preclude separate punishment for count 2. Lindquist's act in preventing A.L. from calling for police assistance by taking and smashing her telephone was separate from beating her and dislocating her eye. Sufficient evidence supports the trial court's implied finding that Lindquist harbored multiple intents; an intent to inflict serious injury on A.L., and an intent to prevent her from reporting his criminal acts, including videotaping the door-slam incident. (*People v. Nichols* (1994) 29 Cal.App.4th 1651, 1657-1658 [defendant had separate objectives in kidnapping and robbing a victim and dissuading and intimidating him from reporting the crime].) Temporal proximity of Lindquist's acts matters not under these circumstances. Pursuant to our de novo review, the trial court's sentence was proper.

X.

Lindquist argues that the cumulative effect of prejudice arising from his assertions of error compel reversal. We have either concluded that there was no error or that any error was harmless. (*People v. O'Malley*, *supra*, 62 Cal.4th 944, 1017 [general rule regarding cumulative error].)

Lindquist was entitled to a fair trial, not a perfect one. (*People v. Anzalone* (2013) 56 Cal.4th 545, 556.) "[G]iven the myriad safeguards provided to assure a fair trial, and taking into account the reality of the human fallibility of the participants, there can be no such thing as an error-free, perfect trial, and . . . the Constitution does not guarantee such a trial." (*United States v. Hasting* (1983) 461 U.S. 499, 508-509.)

Moreover, we accord great deference to counsel's tactical decisions and presume that counsel acted within the professional range of competence. (*People v. Mickel*, *supra*, 2 Cal.5th 181, 198.)

The judgment is affirmed.

NOT TO BE PUBLISHED.

GILBERT, P. J.

We concur:

YEGAN, J.

PERREN, J.

Michael S. Lief, Judge

Superior Court County of Ventura

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