

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.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 SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

JAVIER VALLES MURILLO,

Defendant and Appellant.

2d Crim. No. b236974  
(Super. Ct. No. 2011015000)  
(Ventura County)

Javier Valles Murillo appeals from the judgment entered after his conviction by a jury of infliction of corporal injury upon a spouse (count 1 - Pen. Code, § 273.5, subd. (a)),<sup>1</sup> false imprisonment by violence (count 3 - §§ 236, 237, subd. (a)), and two counts of criminal threats (counts 2 and 4 - § 422). Appellant admitted one prior serious felony conviction (§ 667, subd. (a)(1)), two prior prison terms (§ 667.5, subd. (b)), and one prior serious or violent felony conviction within the meaning of California's "Three Strikes" law. (§§ 1170.12, subds. (a)-(d); 667, subds. (b)-(i).) He was sentenced to prison for 14 years, 8 months.

Appellant contends that the trial court erroneously (1) imposed a consecutive prison term for false imprisonment in violation of section 654, and (2) required him to pay restitution on charges that had been dismissed after the jury was unable to reach a verdict. The People concede that the second contention has merit. We modify the judgment to strike the restitution order and affirm the judgment as modified.

---

<sup>1</sup> All statutory references are to the Penal Code unless otherwise stated.

### *Facts*

Appellant and Yvette Murillo (wife) married in April 2011. A week later, they got into an argument inside their apartment. Appellant told wife to leave the apartment. Wife said, "Fine," and started walking toward the front door.

Appellant blocked wife's path to the front door, grabbed her by the hair, "took [her] ass back inside," and ordered her to go to the bedroom. Wife refused, but appellant was adamant. Wife "wasn't gonna fight with him at the door so [she] went back to the [bed]room."

In the bedroom, wife tried to calm down appellant. But his anger escalated. Appellant pushed wife down onto the bed, threatened to kill her, got on top of her, and began to choke her with his hands. Wife was unable to breathe. She hit appellant three or four times in the face and kicked him. Appellant stopped choking wife and got off the bed. Wife stood up but "fell because [she] was so light-headed." She crawled to the bathroom and vomited into the toilet.

Wife stood up and pleaded with appellant to let her leave the apartment. Appellant put his finger in her face and called her a liar. Finally, appellant said that wife could leave, and she walked out of the apartment. Appellant ran after wife and pushed her on the shoulder. He ordered her to return to the apartment and threatened to kill himself if she left. Wife dialed 911 on her cell phone. Appellant "pinned" her between a wall and a truck. When the dispatcher answered the 911 call, appellant "took off and ran back into the [apartment]."

The following day, wife received threatening telephone calls from appellant. He "said that he was going to show up at her business and he was going to shoot whoever he had to, kill her and then kill himself." Wife feared that appellant would carry out his threat.

### *Prosecutor's Closing Argument*

During closing argument, the prosecutor told the jury that the charged offenses were based on the following acts: (1) infliction of corporal injury upon a spouse – appellant's choking of wife; (2) false imprisonment – appellant's use of force to prevent wife from leaving the apartment; (3) two counts of criminal threats – appellant's threats to kill wife before he choked her and on the following day over the telephone.

### Section 654

Appellant contends that the trial court violated section 654 by imposing a consecutive sentence for false imprisonment. "Section 654 prohibits multiple punishment for a single physical act that violates different provisions of law." (*People v. Jones* (2012) 54 Cal.4th 350, 358.) It also "prohibits multiple punishment . . . for two crimes arising from a single indivisible course of conduct in which the defendant had only one criminal intent or objective. [Citation.] Thus: 'If all of the crimes were merely incidental to, or were the means of accomplishing or facilitating one objective, a defendant may be punished only once. [Citation.] If, however, a defendant had several independent criminal objectives, he may be punished for each crime committed in pursuit of each objective, even though the crimes shared common acts or were parts of an otherwise indivisible course of conduct.' [Citation.]" (*People v. Powell* (2011) 194 Cal.App.4th 1268, 1296.) Section 654 bars multiple punishment only for violations of different provisions of law, not violations of the same provision of law. (*People v. Correa* (2012) 54 Cal.4th 331.)

"Whether section 654 applies in a given case is a question of fact for the trial court, which is vested with broad latitude in making its determination. [Citations.] Its findings will not be reversed on appeal if there is any substantial evidence to support them. [Citations.] We review the trial court's determination in the light most favorable to the respondent and presume the existence of every fact the trial court could reasonably deduce from the evidence. [Citation.]" (*People v. Jones* (2002) 103 Cal.App.4th 1139, 1143.)

The sentence for false imprisonment ran consecutively to the prison term imposed for infliction of corporal injury upon a spouse, which the court designated as the principal term. Appellant argues that both offenses were "undertaken pursuant to a single objective and course of conduct, corporal punishment against his spouse." Appellant asserts that his "objective in grabbing [wife] and pulling her back into the apartment was immediately demonstrated, when he then pushed her onto the bed, told her he would kill her, and began to choke her."

The trial court reasoned that section 654 did not apply because false imprisonment "requires different elements than those other offenses that were pled and proven." Appellant correctly notes, "This was not the proper legal analysis under section 654." But it does not follow that appellant is entitled to a reversal. " '[A] ruling or decision, itself correct in law,

will not be disturbed on appeal merely because given for a wrong reason. If right upon any theory of the law applicable to the case, it must be sustained regardless of the considerations which may have moved the trial court to its conclusion.' [Citation.]" [Citation.]" [Citation.]" (*People v. Smithey* (1999) 20 Cal.4th 936, 971-972.)

Viewing the evidence in the light most favorable to the People, we conclude that any trial court would have reasonably found that appellant had independent criminal objectives when he falsely imprisoned wife and when he inflicted corporal injury upon her. When he grabbed wife by the hair and refused to let her walk out of the apartment, his objective was to prevent wife from leaving him. When he later choked wife in the bedroom, his objective was to kill her. He threatened to kill wife immediately before choking her. Accordingly, the trial court did not violate section 654.

#### *Restitution*

The People claimed that, when the police tried to contact appellant, he fled in his truck. A high-speed police pursuit ensued. During the pursuit, appellant's truck collided with another vehicle, damaging it. The police decided to break off the pursuit because it was too dangerous.

Based on appellant's alleged conduct, in counts 5 and 6 of the information he was charged with eluding a pursuing peace officer while driving recklessly (Veh. Code, § 2800.2, subd. (a)) and hit and run driving. (*Id.*, § 20002, subd. (a).) The jury was unable to reach a verdict on both counts, and the court declared a mistrial. At the time of sentencing, the court dismissed both counts on the People's motion. Nevertheless, the court ordered appellant to pay restitution of \$3,800 to the owner (Vince Arve) of the vehicle that had been damaged during the police pursuit. The People concede that the restitution order was improper. We accept the concession. "[W]hen a court imposes a prison sentence following trial, section 1202.4 limits the scope of victim restitution to losses caused by the criminal conduct for which the defendant sustained the conviction." (*People v. Woods* (2008) 161 Cal.App.4th 1045, 1050.)

#### *Clerical Error*

The abstract of judgment contains a clerical error. In section 3 (enhancements for prior convictions) on the first page, the abstract states that a five-year enhancement was imposed pursuant to section "667(e)(2) PC." The five-year enhancement was imposed pursuant to section 667, subdivision (a)(1).

*Disposition*

The judgment is modified to strike the trial court's order requiring appellant to pay restitution of \$3,800 to Vince Arve. As modified, the judgment is affirmed. The trial court shall prepare an amended abstract of judgment showing the modification and correcting the clerical error discussed above. The trial court shall transmit a certified copy of the amended abstract to the Department of Corrections and Rehabilitation.

NOT TO BE PUBLISHED.

YEGAN, J.

We concur:

GILBERT, P.J.

PERREN, J.

Jeff Bennett, Judge  
Superior Court County of Ventura

---

Mark R. Feeser , under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Paul M. Roadarmel, Jr., Supervising Deputy Attorney General, Colleen M. Tiedmann, Deputy Attorney General, for Plaintiff and Respondent.