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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

ERNEST YANEZ,

Defendant and Appellant.

B233527

(Los Angeles County
Super. Ct. No. TA114610)

APPEAL from a judgment of the Superior Court of Los Angeles County, Laura R. Walton, Judge. Affirmed as modified.

Randall Conner, 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, Assistant Attorney General, Stephanie A. Miyoshi and Rama R. Maline, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant Ernest Yanez appeals from the judgment entered following his convictions by jury of assault with a semiautomatic firearm (Pen. Code,¹ § 245, subd. (b); count 4) with a firearm use enhancement (§ 12022.5, subd. (a)), and criminal threats (§ 422; count 2). The trial court sentenced him to serve 10 years in state prison, calculated as the midterm of six years on count four and the midterm of four years on the firearm use enhancement, with a concurrent sentence of eight months on count 2.² Defendant's sole contention is that the trial court erred by imposing concurrent sentences for the two convictions in violation of section 654. We affirm the judgment.

STATEMENT OF FACTS³

On April 2, 2010, William Zeledon, a maintenance worker at the Scottsdale Townhouse Housing Community, was, as per his maintenance duties, attempting to repair a house located on the property. At approximately 12:30 p.m., Zeledon walked towards the main office. As he did so, he passed defendant and Sandra Castro, a coworker of Zeledon's who worked in the main office. Minutes later, Zeledon exited the office and again walked by defendant and Castro. After he passed them, he heard rapid footsteps approaching behind him. Zeledon tried walking faster, but the footsteps caught up with him. Zeledon then heard defendant call, "[h]ey, hey." When Zeledon turned around, defendant ran up and struck him on the forehead with a semiautomatic pistol, causing him to bleed from the forehead. Defendant then aimed the pistol directly at Zeledon and yelled, "What are you doing with my mom? I kill you." He repeated, "I'm going to kill

¹ All further statutory references are to the Penal Code.

² Counts 1 and 3 were dismissed by the People prior to jury deliberations.

³ As defendant does not challenge the sufficiency of the evidence, we set forth an abbreviated version of the facts.

you,” three times while continuing to aim the gun directly at Zeledon. Defendant then lowered the pistol and fled the scene.

On September 16, 2010, defendant was arrested after police searched his apartment in Hawthorne and discovered a semiautomatic pistol. At the scene and a few hours later at the police station, defendant admitted that the pistol was his. Zeledon identified the pistol found in defendant’s apartment as the pistol that was pointed at him on April 2, 2010.

DISCUSSION

Defendant contends that count 4, assault with a semiautomatic firearm, and count 2, criminal threats, arose out of the same incident and the same criminal objective. He thus urges that sentencing him for both crimes violates section 654. We disagree.

We review the trial court’s findings “in the light most favorable to the respondent and presume the existence of every fact the trial court could reasonably deduce from the evidence.” (*People v. Jones* (2002) 103 Cal.App.4th 1139, 1143.) Moreover, “[w]hether the defendant entertained multiple criminal objectives is a factual question for the trial court, and its findings on this question will be upheld on appeal if there is any substantial evidence to sustain them.” (*People v. Nubla* (1999) 74 Cal.App.4th 719, 730, citing *People v. Akins* (1997) 56 Cal.App.4th 331, 339.) If a trial court imposes concurrent terms, we presume it found that the defendant had multiple intents or objectives. (*People v. Alford* (2010) 180 Cal.App.4th 1463, 1468, citing *People v. Garcia* (2008) 167 Cal.App.4th 1550, 1564-1565.)

Section 654 provides in relevant part, “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.” (§ 654, subd. (a).) It is well established that section 654 applies where there was a course of conduct that violated more than one statute but nevertheless constituted an indivisible transaction. (See, e.g.,

People v. Perez (1979) 23 Cal.3d 545; *Neal v. State of California* (1960) 55 Cal.2d 11; *People v. Beamon* (1973) 8 Cal.3d 625, overruled on another ground in *People v. Mendoza* (2000) 23 Cal.4th 896, 908.) Whether a course of conduct is indivisible depends upon the intent and objective of the actor. (*Neal v. State of California, supra*, at p. 18.) If all the offenses were incident to one objective, the defendant may be punished for any one of such offenses but not for more than one. (*Ibid.*)

On the other hand, if the evidence discloses that a defendant entertained multiple criminal objectives that were independent and not merely incidental to each other, he or she may be punished for the independent offenses committed in pursuit of each objective, even if the offenses were parts of an otherwise indivisible course of conduct. (*People v. Beamon, supra*, 8 Cal.3d at pp. 638-639; *People v. Nubla, supra*, 74 Cal.App.4th at p. 730.) Section 654 only applies when a defendant commits offenses that are incident to a single criminal objective. (See *People v. Beamon, supra*, at pp. 638-639; *People v. Nubla, supra*, at p. 730.) The statute does not apply where the defendant has multiple criminal objectives.

In the instant case, defendant contends that the assault with a semiautomatic firearm and the criminal threats shared an underlying criminal objective, to instill fear in the victim. While we agree that both offenses instilled fear in the victim, we conclude that instilling fear was not defendant's only criminal objective. Substantial evidence supports the finding that defendant, when committing the assault, also entertained a criminal objective of causing bodily harm to the victim. As a result, we find that he entertained multiple criminal objectives during the incident.

Furthermore, we find that defendant's alleged single criminal objective, to instill fear in the victim, "is too broad and amorphous" to indivisibly link his otherwise divisible criminal offenses together. (See *People v. Perez, supra*, 23 Cal.3d at p. 552.) Instilling fear as a sole intent or criminal objective is akin to other overly broad section 654 claims, e.g., "a desire for wealth as the sole intent and objective in committing a series of separate thefts." (*Ibid.*) To accept such a broad, overarching single intent or objective as sufficient to preclude punishment for otherwise separate offenses would violate section

654's purpose, "to insure that the defendant's punishment will be commensurate with his criminal liability." (*Neal v. State of California, supra*, 55 Cal.2d at p. 20.)

In light of the foregoing considerations, we find that the trial court did not err in sentencing defendant to serve concurrent terms for the assault with a semiautomatic firearm and criminal threats convictions. There is substantial evidence to conclude that defendant entertained multiple criminal objectives when he assaulted and threatened Zeledon, and thus section 654 is not applicable. (See *People v. Nubla, supra*, 74 Cal.App.4th at p. 730, citing *People v. Akins, supra*, 56 Cal.App.4th at pp. 338-339.)

However, the trial court did err in sentencing defendant to eight months in state prison for his count 2 conviction. Under section 1170.1, subdivision (a), a defendant is sentenced to one-third of the midterm sentence for subordinate offenses *only* when the multiple sentences are to be served consecutively. (See *People v. Cantrell* (2009) 175 Cal.App.4th 1161, 1164.) Concurrent sentences are not subject to section 1170.1, subdivision (a), and therefore the trial court was obligated to sentence defendant to either the low, mid, or high term as specified in California Rules of Court, rule 4.420(a). We have the inherent authority to correct an unauthorized sentence, and thus the sentence for count 2 will be modified to a two-year term, to be served concurrently with the 10-year sentence on count 4. (See § 1260; *People v. Mitchell* (2001) 26 Cal.4th 181, 185.)

DISPOSITION

The eight-month concurrent sentence on count 2 is modified to the midterm sentence of two years. The trial court is directed to forward a corrected abstract of

judgment to the Department of Corrections and Rehabilitation. As modified, the judgment is affirmed.

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SUZUKAWA, J.

We concur:

EPSTEIN, P. J.

WILLHITE, J.