

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.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

THE PEOPLE,

Plaintiff and Respondent,

v.

STEVEN ALEXANDER HARRELL,

Defendant and Appellant.

B265577

(Los Angeles County
Super. Ct. No. MA064567)

APPEAL from a judgment of the Superior Court of
Los Angeles County, Kathleen Blanchard, Judge. Affirmed.

Eric R. Cioffi, 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, Assistant
Attorney General, Paul M. Roadarmel, Jr. and Daniel C. Chang,
Deputy Attorneys General, for Plaintiff and Respondent.

INTRODUCTION

Defendant Steven A. Harrell was convicted by a jury of robbery and false imprisonment after he pinned a woman's arm behind her back, tased her in the neck until she lost consciousness, and stole her purse and cell phone. He argues on appeal that there was insufficient evidence to support the false imprisonment conviction and that the court abused its discretion by denying his motion under *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497 (*Romero*). We disagree and affirm.

BACKGROUND

The Los Angeles County District Attorney (the People) charged defendant by information with second degree robbery (count 1, Pen. Code, § 211,¹ a felony), assault with a deadly weapon (count 2, § 245, subd. (a)(1), a felony), and false imprisonment by violence (count 3, § 236, a felony). The information also alleged that as to counts 1 and 3, defendant personally used a deadly and dangerous weapon, a taser. (§ 12022, subd. (b)(1).) The information alleged that defendant suffered two prior strikes (§§ 667, subds. (b)-(j), 1170.12), one prison prior (§ 667.5, subd. (b)), and one prior serious felony conviction (§ 667, subd. (a)(1)). Count 2 was dismissed prior to trial.

At trial, Alba A. testified that she parked in the parking lot of her apartment building on the evening of August 7, 2014. She was alone, and her purse and cell phone were on the passenger seat of her car.~(2 RT 327, 334-335)~ She thought she might have damaged a tire on her car as she entered the parking lot. She pulled into a parking space and got out of her car, leaving her

¹ All further statutory references are to the Penal Code unless otherwise indicated.

door open, to check her tires. As she leaned over to look at an object near her rear tire, “someone put something” on the back of her neck, near the base of her skull. Then the person “pulled this arm to my back and then I couldn’t move anymore.” She felt “some kind of hit on my head and the very strong pain,” and she heard a buzzing noise, “like the noise of the electricity.” Alba A. fell to the ground and felt a “very strong pain” in the middle of her back. Then, “I lost my sense. All I remember is when I was falling down.” Alba A. did not see who attacked her.

The next thing Alba A. knew, two women helped her up and put her glasses on her. Her purse and her cell phone were missing. She had a burn on the back of her neck and pain in her back after the incident. Police later recovered Alba A.’s phone, debit card, and a check belonging to Alba A.’s daughter, which had been in her purse.

Witness Jessica Kennedy testified that on the evening of the incident, she was sitting on the steps in front of the apartment building with her friend, Lynn Cox. Defendant approached them and tried to speak to them, but the women were not interested in having a conversation. There was an SUV in the parking lot with a “for sale” sign on it with a phone number, and Kennedy thought defendant might have called the number to ask about the SUV. Defendant had a taser in his hand and he kept making it buzz.

Kennedy saw defendant walk over to where Alba A. parked her car. Alba A. “was barely out of the car” when defendant approached her. Kennedy testified that she didn’t see anything, but she heard the taser and “I heard her saying like, ‘No. No. No.’ Like ‘No, not my purse. I have nothing.’” Kennedy said Alba A. was “screaming at the top of her lungs” and then there was a

noise “[l]ike somebody hit the ground real hard.” After they heard footsteps running away, Kennedy and her friend went over to help Alba A. up, and yelled for someone to call 911.

Los Angeles County Deputy Sheriff Daniel Ament testified that he investigated the incident. Because defendant had called about the SUV for sale, Ament contacted the person selling the SUV and was able to get defendant’s phone number. Deputies searched an apartment in the complex where defendant was staying,² and they recovered Alba A.’s phone, debit card, and her daughter’s check. The parties read a stipulation to the jury that defendant was apprehended after a car and foot chase in San Bernardino County. Defendant did not present additional evidence before resting.

Defendant moved under section 1118.1 for an acquittal on count 3, arguing that there was insufficient evidence of false imprisonment. The People argued, “[I]t was obvious from [Alba A.’s] testimony that she did not want to stay there while he was attacking her. And the inference is that he twisted her arm behind her back; took her to the ground and then had some sort of pressure – I assume from his knee – on her back pinning her to the ground until she lost consciousness.” The court said, “Quite frankly, I at first glance, was a bit concerned about count 3 once I heard the testimony. But when I look at the actual elements that are required, I think technically, this does fall into that. And there is sufficient evidence to allow that count to go to the jury. So the 1118.1 motion is respectfully denied.”

² The record is not entirely clear about how law enforcement connected defendant to a particular apartment. Ament said he did not know the source of that information.

The court instructed the jury on felony false imprisonment by violence or menace under section 236, and the lesser included misdemeanor false imprisonment. The jury found defendant guilty of counts 1 and 3, and found true the special allegations regarding use of a weapon. Defendant admitted his prior convictions and prison allegations. The court denied defendant's *Romero* motion.

On count 1, the court sentenced defendant to 31 years to life in prison, calculated as 25 years to life, plus a one-year consecutive term under section 12022, subdivision (b)(1) for use of the taser, and a five-year consecutive term under section 667, subdivision (a)(1) for the prior serious felony. The court gave defendant an identical sentence on count 3, and stayed it pursuant to section 654.

Defendant timely appealed.

DISCUSSION

A. False imprisonment

Defendant contends there was insufficient evidence to support his conviction on count 3, false imprisonment by violence. “In reviewing the sufficiency of the evidence to support a criminal conviction, we review the record “in the light most favorable to the judgment to determine whether it discloses substantial evidence—that is, evidence that is reasonable, credible, and of solid value—such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt.” [Citation.]’ (*People v. Stuedemann* (2007) 156 Cal.App.4th 1, 5, [67 Cal.Rptr.3d 13].) We do not reweigh the evidence or revisit credibility issues, but rather presume in support of the judgment the existence of every fact that could reasonably be deduced from the evidence. (*People v. Ochoa* (1993) 6 Cal.4th 1199, 1206, [26 Cal.Rptr.2d 23, 864

P.2d 103].)” (*People v. Pham* (2009) 180 Cal.App.4th 919, 924-925.)

“False imprisonment is the unlawful violation of the personal liberty of another.” (§ 236.) “False imprisonment is a felony if ‘effected by violence, menace, fraud, or deceit. . . .’” (§ 237, subd. (a); *People v. Fernandez* (1994) 26 Cal.App.4th 710, 717, [31 Cal.Rptr.2d 677].)” (*People v. Dominguez* (2010) 180 Cal.App.4th 1351, 1356-1357.) “False imprisonment does not require ‘confinement in some type of enclosed space.’ [Citation.]” (*Id.* at p. 1357.) Rather, a victim’s personal liberty is violated when she is compelled to remain where she does not wish to remain, or go where she does not wish to go. (*People v. Reed* (2000) 78 Cal.App.4th 274, 280 (*Reed*).)

Defendant argues that “the record is bereft of any evidence that Appellant did anything to falsely imprison the victim beyond the conduct committed to effectuate the robbery.” Defendant contends that because he tased Alba A., stole her belongings, and immediately left the area, “the use of the stun gun was both incidental to the robbery and did not amount to the kind of temporal restraint required for sustaining a conviction for false imprisonment.”

We are not persuaded. Restraint of a robbery victim through threats or violence supports a conviction for false imprisonment. For example, in *Reed, supra*, 78 Cal.App.4th 274 the defendant argued that restraint of the victims was incidental to a robbery. (*Id.* at p. 279.) The Court of Appeal disagreed, finding that “the evidence is clearly sufficient to support all three felony false imprisonment convictions” where the victims were directed at gunpoint to get on the floor, the gun was held to two

victims' heads and used to pistol whip another, and two victims believed they would be killed by the defendants. (*Id.* at p. 281.)

Similarly, in *People v. Williams* (2017) 7 Cal.App.5th 644, the Court of Appeal considered evidence supporting false imprisonment allegations based on a series of robberies. First, the court found that sufficient evidence supported a conviction for false imprisonment where the defendant forced the victim to a back room at knifepoint and made her lie on the floor. (*Id.* at p. 672.) The court said, "The use of a weapon escalated the force used to more than was reasonably necessary for the restraint, and constitutes sufficient evidence of felony false imprisonment by violence." (*Ibid.*) For several other robberies, evidence that the defendants forced victims to lie on the floor and threatened to harm them if they did not comply was sufficient to support convictions for false imprisonment. (*Id.* at pp. 673-674.)

This case is far more egregious than those involving only threats of violence. Defendant twisted Alba A.'s arm behind her back, tased and burned the back of her neck, forced her to the ground, and left her unconscious. Kennedy testified that Alba A. screamed for defendant to stop until she lost consciousness. Had defendant intended only to commit a theft, he could have simply taken Alba A.'s purse. Instead, however, he disabled her, then rendered her unconscious, and then stole her belongings. As defendant acknowledges, "A robbery can be committed without subjecting a person to false imprisonment. . . . [T]here is simply nothing inherent in robbery which necessarily requires the offense of false imprisonment to also be accomplished. Examples of such situations may include victims of 'purse snatchings,' or victims of 'muggings' who immediately surrender their belongings, and therefore are not subject to any physical

constraints.” (*People v. Von Villas* (1992) 10 Cal.App.4th 201, 256.)

Defendant also argues that because Alba A. was restrained for only a short time, the evidence does not support his conviction. There is no temporal requirement for the crime of false imprisonment, however. In *People v. Fernandez* (1994) 26 Cal.App.4th 710, for example, the Court of Appeal found evidence to support false imprisonment after a brief attack where the defendant “restrained [the victim] long enough for [the victim] to suffer over 20 kicks.” (*Id.* at p. 718.) And in *People v. Riddle* (1987) 189 Cal.App.3d 222, the defendant was convicted of false imprisonment after ordering victims out of their home at gunpoint. The Court of Appeal affirmed the convictions, stating, “The personal liberty of each of [the victims] was unlawfully restrained when Riddle accomplished their removal from the trailer home under threat of the firearm. Though the restraint was short in time and distance, the restraint was real.” (*Id.* at p. 230.) Here, defendant’s restraint of Alba A. met all of the requirements of false imprisonment, and there was ample evidence to support the conviction.

B. *Romero* motion

Defendant also argues that the trial court erred in denying his *Romero* motion. Below, defense counsel asked the trial court to strike his prior convictions, and stated that “the request is pretty much based on mercy.” Defense counsel suggested that defendant’s “family situation” should be considered, along with the fact that “[h]e is a young man.”

The court acknowledged that it had discretion under *Romero*, and stated, “I do recognize that the defendant is a young man; unfortunately, in terms of his criminal history, the first

robbery strike that we're talking about, he received a sustained petition in juvenile court. That occurred on July 7th, 2008. [¶] Less than a year later, March 4th, 2009, he picked up the second strike, an adult robbery conviction. [¶] He was paroled on May 5th, 2014; and while on parole, first suffered the arrest for the hit-and-run . . . on June 4th, 2014. And then the current robbery was alleged to have occurred on August 7th, 2014." The court found that defendant's criminal activity did not fall outside the spirit of the Three Strikes law, and denied the motion. Defendant contends this was an abuse of discretion.

"[A] trial court may strike or vacate an allegation or finding under the Three Strikes law [§§ 667, subds. (b)-(i), 1170.12] that a defendant has previously been convicted of a serious and/or violent felony . . . 'in furtherance of justice' pursuant to Penal Code section 1385(a)." (*People v. Williams* (1998) 17 Cal.4th 148, 158 (*Williams*) (citing *Romero, supra*, 13 Cal.4th at p. 504).) In considering whether to do so, a trial court "must consider whether, in light of the nature and circumstances of his present felonies and prior serious and/or violent felony convictions, and the particulars of his background, character, and prospects, the defendant may be deemed outside the . . . spirit [of the Three Strikes law], in whole or in part, and hence should be treated as though he had not previously been convicted of one or more serious and/or violent felonies." (*Williams, supra*, 17 Cal.4th at p. 161.)

We review the trial court's ruling for abuse of discretion. (*Williams, supra*, 17 Cal.4th at p. 152.) Given the "strong presumption that any sentence that conforms to these sentencing norms is both rational and proper," a trial court only abuses its discretion in denying a *Romero* motion under "limited

circumstances,” such as “where the trial court was not ‘aware of its discretion’ to dismiss [citation], or where the court considered impermissible factors in declining to dismiss [citation],” or where the sentence under the Three Strikes law would “‘produce [] an ‘arbitrary, capricious or patently absurd’ result’ under the specific facts of a particular case. [Citation.]” (*People v. Carmony* (2004) 33 Cal.4th 367, 378.)

Defendant asserts that the court did not consider that one of his strike convictions occurred when he was a juvenile, and the court should have taken this into consideration because juveniles make rash, impulsive decisions. To the contrary, the court expressly considered that defendant was a juvenile at the time of his first strike conviction. Defendant also argues that the court did not consider the effect of a 25-years-to-life sentence on defendant, a 25-year-old man with a four-year-old son. The court expressly noted that defendant was young, but held that his history warranted application of the Three Strikes law. The record therefore does not indicate that the court abused its discretion in denying defendant’s *Romero* motion.

DISPOSITION

Affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

COLLINS, J.

We concur:

EPSTEIN, P. J.

MANELLA, J.