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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THE PEOPLE, Plaintiff and Respondent, v. CARLOS SAENZ, Defendant and Appellant.	B271512 (Los Angeles County Super. Ct. No. TA136126)

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

Murray A. Rosenberg, under appointment by the Court of Appeal, for Defendant and Appellant.

Kathleen A. Kenealy, Acting Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Scott A. Taryle, Supervising Deputy Attorney General, and Timothy L. O'Hair, Deputy Attorney General, for Plaintiff and Respondent.

Julio Velasquez died while receiving care at a drug and alcohol rehabilitation facility. Patients at the facility informed investigators that Velasquez lost consciousness after defendant Carlos Saenz and others had tied his arms and legs behind his back, and placed a gag in his mouth. The county medical examiner concluded that multiple factors had contributed to Velasquez's death, including a pre-existing liver condition and the manner in which he had been restrained. Saenz was subsequently charged with involuntary manslaughter and felony false imprisonment. The jury found him guilty on both counts.

Saenz appeals his judgment of conviction, arguing that: (1) there was insufficient evidence to support the jury's finding that his actions were a substantial factor in causing Velasquez's death; and (2) the trial court should have stayed his sentence for false imprisonment pursuant to Penal Code section 654. We modify Saenz's sentence to stay his sentence for false imprisonment, and affirm the judgment in all other respects.

FACTUAL BACKGROUND

A. Summary of Facts Preceding Trial

1. Velasquez's death

On Saturday, September 13, 2014, Noemi Tovar transported Julio Velasquez[1] to a drug and alcohol rehabilitation facility known as Grupo Un Nuevo (Grupo Nuevo or the facility). When Tovar and Velasquez arrived at the facility, they were met by defendant Carlos Saenz. Saenz asked Tovar a series of

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[1] The parties' briefs refer to the victim as Julio Vasquez. The record, however, indicates his name was Julio Velasquez.

questions about Velasquez's alcohol problem, and informed her that Velasquez would remain in treatment for three months.

On Tuesday, September 16, 2014, Saenz called 9-1-1 and reported that Velasquez was unresponsive and not breathing. The operator instructed Saenz to begin administering chest compressions, and wait for the paramedics to arrive. Shortly thereafter, paramedic Carl Weideman arrived at Grupo Nuevo, checked Velasquez's vital signs and determined he was dead. During his examination of the body, Weideman noticed ligature marks on Velasquez's wrists, suggesting he had been bound at or near the time of his death.

2. Police interrogations

Later that day, Los Angeles Police Department (LAPD) officer Manuel Castaneda interrogated Saenz at the police station. Saenz stated that he had processed Velasquez's intake paperwork two days earlier, and then placed him in a room to "sober up."

Saenz reported that on Monday, he had seen Velasquez "hit[ting] the walls," and yelling that he wanted to leave the facility. Saenz further reported that early Tuesday morning, he had seen Velasquez being told to calm down by the "guards" who were responsible for watching patients. Velasquez then began hitting his head against the wall. According to Saenz, the guards decided to tie Velasquez's "hands and feet so he wouldn't bump [the wall]." Saenz stated that "the cook" at the facility had cut off the restraints shortly before the ambulance arrived. Saenz denied seeing anything in Velasquez's mouth, and stated that he had not participated in the decision to restrain Velasquez. Saenz also stated that during his three months at the facility, he had never seen another patient placed in restraints.

LAPD detective Gerardo Vejar, the lead investigator in the case, conducted a second interview of Saenz later in the day. Saenz told Vejar he was known as the "number one" at the facility, and that he was responsible for answering the phones and filling out paperwork for new patients. Saenz said that at approximately 5:00 a.m. that morning, he had heard Velasquez telling the guards he wanted to leave the facility. Saenz said he instructed the guards to make sure Velasquez did not hit himself or others, and then he went back to sleep. Saenz woke up approximately an hour-and-a-half later, and heard "beating on the wall." At approximately 7:30 a.m., Saenz passed by the room where Velasquez had been put, and saw him on the floor with his hands and ankles tied. Saenz explained that the "sponsors" of the facilities had taught him to "tie up" patients who tried to hurt themselves.

Contrary to his earlier statements to officer Castaneda, Saenz admitted he had previously bound and gagged another patient at the facility. Saenz also admitted he had personally instructed the guards to restrain Velasquez if he attempted to hurt himself, and that he had expected the guards would follow his order. Saenz also said he saw the guards tie Velasquez up, but again denied seeing anything in Velasquez's mouth. Finally, Saenz admitted that patients were generally prohibited from leaving the facility, even if they expressed their desire to leave.

Detective Vejar interviewed other patients who were at the facility when Velasquez died. Josue C. told Vejar he had been in the "detox room" with Velasquez. Josue C. explained that new patients were generally required to spend three days in the "detox room," and that "the guards" forced them to stay there. According to Josue C., at approximately 5:00 a.m. that morning,

Velasquez began "pounding on the walls," and yelling that he needed to "get out." Velasquez repeatedly tried to "run out" out of the detox room, but the guards restrained him.

Josue C. claimed that at some point, he woke up from a nap, and saw Velasquez "tied up . . . and . . . like begging because . . . they put a . . . T-shirt around his mouth." Josue C. stated that Velasquez's hands and legs were tied together behind his back, causing his chest to extend outward. Josue C. asserted that a person known as "the First" was present when Velasquez was tied up.

E.D. told Vejar that patients who were admitted to the facility for alcohol treatment were required to stay in the detoxification room for three days. During this detoxification period, patients were allowed to drink tea, but not water or coffee. E.D. confirmed that Velasquez had been "yelling" and "raising a ruckus" because he wanted to leave the facility. At about 7:00 a.m. that morning, E.D. saw Velasquez restrained, with his hands and legs tied behind his body.

3. Autopsy report

On December 3, 2014, Los Angeles County deputy medical examiner Louis Pena issued an autopsy report concluding that Velasquez had "died as a result of complications of chronic alcoholism," and that "[p]hysical and emotional distress associated with restraint and dehydration were contributing factors to his death." Pena's report noted that Velasquez had a "fatty liver," a condition caused by chronic alcohol abuse. The report explained that people suffering from fatty livers have difficulty metabolizing adrenaline, and are more susceptible to "cardiac arrhythmias." Based on the information the LAPD had provided and the physical markings on Velasquez's body, Pena

concluded he had been "put in a hog-tie position," and that significant pressure had been applied to his areas of his neck and lower back. Pena believed the physical restraints and the force applied to Velasquez's back and neck had caused "the release of adrenaline . . . on a compromised fatty liver," resulting in a "cardiac arrhythmia" that ultimately killed him. Pena concluded that the manner of death was "homicide."

After Pena filed his autopsy report, the district attorney for the County of Los Angeles filed an information charging Saenz with one count of involuntary manslaughter (§ 192, subd. (b)), and one count of felony false imprisonment. (§§ 236, 237.)

B. ***Summary of Trial Testimony***

1. Trial testimony regarding the events that occurred at Grupo Nuevo

At trial, Noemi Tovar testified that she had brought Velasquez to Grupo Nuevo on Saturday, September 13, and that Saenz had overseen the intake process. Tovar stated that Velasquez had a serious drinking problem, and was "always drunk." Tovar said she tried to speak with Velasquez on the phone on Sunday, but Saenz told her he was asleep. Tovar called the facility again on Monday, September 15, but nobody answered the phone. The next morning, Detective Vejar contacted Tovar and told her Velasquez had died at the facility.

Vejar and several other officers testified about their role in the investigation. Vejar and Castaneda confirmed they had interviewed several people who were at Grupo Nuevo when Velasquez died, including (among others) Saenz, Josue C. and E.D. The prosecution then played the jury recordings of each of the interrogations.

Several Grupo Nuevo patients were also called as witnesses. Josue C. testified that when he was admitted into the facility, he spent several days in the "detox room" where Velasquez later died. Josue C. said he was not given any water while he was in the detox room because water could cause people who were withdrawing from alcohol to go into shock. Josue C. said that after spending several days in the detox room, he "graduated" to the "living room" area of the facility. According to Josue C., patients at Grupo Nuevo referred to Saenz as "The First," meaning that he "r[a]n the pad." Josue C. also said Saenz possessed the keys to the facility, including a key to the detox room.

On the morning Velasquez died, Josue C. was in the detox room, and heard Velasquez "hitting the walls" and yelling that he wanted to go home. Shortly thereafter, he saw several people run into the room and heard someone saying "let me go." Josue C. denied seeing anyone place restraints on Velasquez, which contradicted the information he had provided during his police interrogation.

Emigdio Hernandez-Ogarrio, a guard at the facility, testified that he was responsible for making sure patients did not "hit themselves" or "leave the [detox] room." Hernandez-Ogarrio stated that patients were only allowed to leave the facility after they had been there for three months.

Hernandez-Ogarrio said that shortly before Velasquez died, he had been hitting himself and yelling that he wanted to leave the facility, and return to his family. Although Velasquez tried to exit the detox room on several occasions, the guards had prohibited him from leaving. Hernandez-Ogarrio stated that Velasquez's hands were initially tied in front of him, but he kept

removing the restraints. At some point, Velasquez's ankles were tied together, causing him to "scream[] a lot." Hernandez-Ogarrio admitted he had previously told investigators that Velasquez's hands were tied behind his back, and that he had a rag in his mouth. He identified Saenz as one of the people who had placed the restraints on Velasquez.

Wendy L., a patient at Grupo Nuevo, testified that Saenz was "in charge of the daily activities at the facility," and was also responsible for "what went on in the center." Wendy L. explained that she had been admitted to the facility about a week before Velasquez, and was receiving treatment for heroin and opioid addiction. Wendy L. claimed she was initially placed in the detox room, and was "physically prevented" from leaving the room for approximately five days. Wendy L. testified that patients being treated for alcohol abuse were not allowed to drink water while in the detox room, but they were allowed to consume tea. Wendy L. stated that the door to the detoxification room was locked, and that Saenz kept the key around his neck. Wendy L. also testified that Saenz had previously threatened her when she tried to leave the facility.

Wendy L. testified that on the day of Velasquez's death, she had been participating in a counseling session in the "main room" of the facility. At some point, she went to the bathroom and saw Velasquez "tied up" in the detoxification room. According to Wendy L., Velasquez "was hog-tied with his hands behind his back, and . . . his ankles and his wrists . . . tied together. So he was on his stomach, and . . . he had . . . duct tape around his mouth as well." Wendy L. explained that before Velasquez was restrained, he had been "yelling" and "trying to fight people." Wendy L. said that after Velasquez stopped making noise, she

asked Saenz what had caused him to become silent. In response, Saenz said: "I have him hog-tied, . . . [like] a pig on thanksgiving with an apple in his mouth.'" At some point, Wendy L. saw two guards "freaking out because [Velasquez] wasn't breathing." Wendy L. said Velasquez was then taken into the main room, where "they . . . tried to give him CPR." Wendy L. estimated that two hours had passed between the time Velasquez stopped making noise and the time she saw people trying to resuscitate him.

2. Testimony regarding cause of death

a. Testimony of Louis Pena

Deputy medical examiner Pena, who was board certified in forensic pathology, testified as to the cause of Velasquez's death. Pena confirmed that he had performed an autopsy on Velasquez on September 17, 2014, and authenticated his autopsy report. Pena explained that medical examiners are generally required to make two factual determinations during an autopsy: (1) "the cause of death," meaning the "specific injury or illness that causes a person to die"; and (2) the "manner of death," meaning "how the death came about." Pena noted that there are five different categories regarding manner of death: "accident, suicide, homicide, natural or could not be determined."

Pena testified that based on the results of the autopsy, he had concluded Velasquez's death was caused by "complications of chronic alcoholism," and additional factors "not related to the chronic alcoholism . . . [including] physical and emotional distress associated with restraining . . . and also . . . signs of dehydration." Pena explained that his physical examination revealed Velasquez was suffering from a "fatty liver," an alcohol-

related condition in which healthy liver cells are replaced by fat cells. Pena further explained that individuals with a fatty liver have difficulty metabolizing various substances, including proteins, fats, sugars and adrenaline, and are more susceptible to bruising. According to Pena, the inability to metabolize adrenaline can become problematic when a person undergoes "any kind of emotional or physical restraint," which would normally cause the release of more adrenaline.

Pena also testified that Velasquez had large, deep bruises on the back of his neck and lower back. Based on their size and severity, Pena believed the bruises were recent, and had been caused by substantial pressure being placed on Velasquez's neck and lower back area. In Pena's experiences, deep bruising in those areas of the body is normally caused by "pressure application from the knee to the neck or knee to the back." Pena did not believe the bruises could have been caused by merely falling down or hitting walls because they were located on "concave" areas of the body where it was "difficult to get injuries." Pena also denied the bruises could have been caused by the administration of CPR. In addition to the bruising, Pena observed "furrow marks" on Velasquez's wrists, indicating that there were "ligature restraint[s]" on him at the time of death. Pena also noted that the toxicology reports showed elevated levels of chemicals that are indicative of dehydration.

When asked to explain how "physical and emotional stress contributed to [Velasquez's] . . . death," Pena stated that adrenaline is secreted into the blood stream in response to "stress factor[s]." The adrenaline travels to the heart, and "makes the heart pump faster, work faster," and then gets metabolized through the liver. According to Pena, however, because a fatty

liver cannot properly metabolize adrenaline, a person suffering from the condition who is put under duress may experience "a sudden cardiac death . . . [which] is what . . . happened . . . in this case." More specifically, Pena explained that he believed "the physical and emotional distress associated with restraint," combined with the pressure that had been applied to Velasquez's back, caused an "adrenaline rush" that Velasquez could not process due to his fatty liver, resulting in "cardiac arrest." Pena further noted that while he believed Velasquez "likely had a cardiac arrest as his cause of death," it was "tie[d]-in together" with his "chronic alcoholism," and other factors including dehydration.

Pena acknowledged that it was possible for a person to die from a fatty liver without any specific triggering event, but clarified that he did not believe that is what had occurred here: "[B]ased on the . . . circumstances and events provided to me from the LAPD investigation, he was . . . in [a] rehab center . . . [and] was retrained at some point . . ., and obviously passed away. So it is temporal to the time and the injuries that I saw. And when he passes away, with the adrenaline occurring, in my opinion causing his heart to go into cardiac arrest – the heart is normal. The heart is fine. That is not the point. It is the overabundance of the adrenaline causing this event."

On cross-examination, Pena admitted detective Vejar was present at the autopsy, but explained that officers regularly attend autopsies to provide background facts, which coroners then use to aid themselves in forming conclusions as to the cause and manner of death. Pena also acknowledged that alcohol withdrawal can cause a wide range of side effects, including shaking, irregular heartbeat, sweating, increased blood pressure,

increased pulse rates and an increase in adrenaline and seizures. Pena further admitted there is no way to measure adrenaline levels during a "post mortem" examination, meaning that he could not scientifically verify whether Velasquez had elevated levels of the chemical in his system at the time of death. Pena nonetheless concluded that Velasquez had suffered a cardiac arrest from elevated levels of adrenaline based on "the totality of the circumstances and the literature information [regarding] . . . fatty liver. And we know about the cardiac effects from a fatty liver, along with the adrenaline. That's in the literature." Pena then identified the specific pathology textbook he had relied on in reaching this conclusion.

Pena also acknowledged that his report indicated Velasquez had one-tenth of a liter of brown liquid in his stomach, which could have been "water fluid." Pena stated that this did not change his conclusion that Velasquez was dehydrated at the time of his death, which was based on toxicology tests showing elevated levels of "creatinine" and "uria nitrogen." Pena explained that elevated levels of those chemicals "together indicate dehydration." Pena noted, however, that the dehydration levels were "high," but not "skyrocket high."

b. Testimony of defense expert Silvia Comparini

Saenz called Silvia Comparini, a trained forensic pathologist, to testify as a medical expert in his defense. Comparini stated that, based on her review of Velasquez's autopsy materials, she believed he had died of natural causes, rather than as a result of "something . . . somebody else" had done to him. In her written report, Comparini concluded Velasquez had died from a combination of several factors, including "self rent/worn out syndrome," fatty liver, "endocrine

disarray" and alcohol withdrawal. She further concluded that Velasquez's "terminal unconsciousness . . . [had] resulted from natural causes of death secondary to terminal alcohol disease."

Comparini testified that "worn out syndrome" is a condition that causes alcoholics to "kind of lose all the desire of participating, of growing, of doing anything . . . they're worn out." She acknowledged that the "syndrome" was a "recent[ly]" developed theory that was based on the "work" of "one lady." When asked to explain what she meant by the term "endocrine disarray," Comparini explained that she was referring to "disorganization of the entire system . . . based in the liver. . . . The endocrine system depends on the liver. When it's not working, you have what we call alcohol withdrawal."

Comparini stated that all of Velasquez's tissue samples appeared to be normal except his liver, which was in "very poor" condition. Comparini also said she did not believe Velasquez was dehydrated at the time of his death because there was liquid in his stomach, and that the bruising on his back and neck could have been caused by CPR compressions. According to Comparini, the fact Velasquez may have been restrained in a hog-tied position did not affect her opinion. She further asserted that she believed Pena's conclusions regarding the cause of death were the result of police pressuring him to make such a finding.

On cross-examination, Comparini acknowledged she was not board certified in forensic, anatomic or clinical pathology. She explained that although board certification was a requirement for medical examiners and persons who "practice in a hospital," it was not required for her type of practice. She also acknowledged Velasquez was compensating her at a rate of $280 an hour, and $1,200 for each half-day of court testimony.

c. Pena's additional testimony

After Comparini testified, the defense recalled Pena. Saenz's counsel asked Pena whether his statements about Velasquez's dehydration were based solely on the information that the police had provided to him. Pena explained that although the police had indicated Velasquez was denied water in the days prior to his death, the diagnosis of dehydration was based on toxicology reports showing elevated levels of multiple chemicals that were indicative of dehydration. Pena admitted that during the preliminary hearing, he had testified that a person could "have a sudden death from cardiac arrest just because the person is an alcoholic." He also admitted having testified that it was "normal" for a hospital to restrain a person experiencing withdrawals by placing "soft ligatures around his wrists."

Pena reiterated that he did not believe the bruises on Velasquez's neck and back could have been caused by CPR compressions. Pena explained that he had conducted autopsies in "thousands of cases with people's status post CPR," and had never seen any that resulted in bruising to those areas of the body.

Pena also admitted that after his initial review of Comparini's expert report, he had sent an e-mail to the prosecutor stating that Comparini should be "reported to the medical board." Pena identified several "specific problems" he had with Comparini's report. First, he had never heard of "self-rent or a worn-out syndrome," and was unable to find any reference to the syndrome in the professional literature. Second, the cause of death analysis set forth in Comparini's report suggested that she believed Velasquez had stopped breathing as

the result of his "alcohol disease." According to Pena, although over-consumption of alcohol can cause a person to become unconscious, there was no alcohol in Velasquez's system at the time of death, meaning that his alcohol disease could not have been the sole cause of his unconsciousness. Third, Pena noted that Comparini's report had found all of the other injuries on Velasquez's body (bruising, ligatures, etc.) were caused by "standard procedures" that the facility used in responding to patients going through withdrawal. However, she never explained what those standard procedures were, whether they were medically necessary or whether they had contributed to Velasquez's death.

d. Verdict and sentencing

The jury found Saenz guilty on count one, involuntary manslaughter, and count two, felony false imprisonment. The prosecutor recommended a mid-term sentence of three years in prison on count one, and a concurrent term of two years in prison on count two. The defendant, however, requested that the court impose either the "low term or probation."

Prior to selecting a sentence, the trial court inquired whether the sentence imposed on count two should be stayed under Penal Code section 654. The court explained that the evidence at trial suggested the "the false imprisonment . . . led to the involuntary manslaughter. It's the holding, not letting him go. Obviously, it's over days of time, but even the involuntary manslaughter ends up because he's tied up, which goes to the false imprisonment. And being tied up and held down or held there at the location, the victim ultimately passes. So I would think that count [two] . . . would be somewhat 654 to count [one]."

The prosecutor, however, argued that section 654 was inapplicable because the two counts involved "separate and distinct actions." According to the prosecutor, the evidence showed Velasquez had been held in the facility for several days before being placed in the restraints that caused his death: "There was information that the victim was requesting to be released, 'I want to go home.' . . . He wants to be released, was not permitted to leave. . . . [T]hose facts were sufficient for the false imprisonment and a separate act of tying the victim . . . that led to his demise." The trial court ultimately agreed that section 654 was inapplicable, and sentenced Velasquez to the midterm of three years in prison on count one, and a concurrent term of two years in prison on count two.

DISCUSSION

Saenz raises two issues in this appeal. First, he contends there was insufficient evidence to support his conviction for involuntary manslaughter. Second, he argues the trial court should have stayed his sentence for felony false imprisonment pursuant to Penal Code section 654.

A. Substantial Evidence Supports the Jury's Guilty Verdict on the Involuntary Manslaughter Count

1. Standard of review

"The standard of review of a challenge to the sufficiency of the evidence to support a judgment is well established" (*People v. $497,590 United States Currency* (1997) 58 Cal.App.4th 145, 152): "[W]e review the whole record in the light most favorable to the judgment below to determine whether it discloses substantial evidence – that is, evidence that is reasonable, credible and of

solid value – from which a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. [Citations.]" (*People v. Snow* (2003) 30 Cal.4th 43, 66.)

"In deciding the sufficiency of the evidence, a reviewing court resolves neither credibility issues nor evidentiary conflicts. [Citation.] Resolution of conflicts and inconsistencies in the testimony is the exclusive province of the trier of fact. [Citation.] Moreover, unless the testimony is physically impossible or inherently improbable, testimony of a single witness is sufficient to support a conviction. [Citation.]" (*People v. Young* (2005) 34 Cal.4th 1149, 1181.) This rule applies equally to "the testimony of a single . . . expert." (*People v. Wright* (2016) 4 Cal.App.5th 537, 545 (*Wright*).)

2. Legal principles governing involuntary manslaughter

"Section 192 defines manslaughter as 'the unlawful killing of a human being without malice.' Section 192, subdivision (b) defines involuntary manslaughter in two ways: as a killing in 'the commission of an unlawful act, not amounting to felony' or a killing 'in the commission of a lawful act which might produce death, in an unlawful manner, or without due caution and circumspection.' [Citation.]" (*People v. Mehserle* (2012) 206 Cal.App.4th 1125, 1140.)[2] The "governing mens rea standard" for

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[2] "In addition to these statutorily defined means of committing involuntary manslaughter, the California Supreme Court has defined a nonstatutory form of the offense, based on the predicate act of a noninherently dangerous felony committed without due caution and circumspection." (*People v. Butler* (2010) 187 Cal.App.4th 998, 1007 (*Butler*) [citing *People v. Burroughs* (1984) 35 Cal.3d 824, 835-836, disapproved on other grounds in *People v. Blakeley* (2000) 23 Cal.4th 82, 89].)

involuntary manslaughter is "criminal negligence," which "exists when the defendant engages in conduct that is . . . '"such a departure from what would be the conduct of an ordinarily prudent or careful man under the same circumstances as to be incompatible with a proper regard for human life, or in other words, a disregard of human life or an indifference to consequences.'" [Citation.]" (*Butler*, *supra*, 187 Cal.App.4th at p. 1007 [citing and quoting *People v. Penny* (1955) 44 Cal.2d 861, 869].)

"Involuntary manslaughter, like other forms of homicide, [also] . . . requires a showing that the defendant's conduct proximately caused the victim's death. [Citations.] When there are concurrent causes of death, the defendant is criminally responsible if his or her conduct was a substantial factor contributing to the result. [Citation.]" (*Butler*, *supra*, 187 Cal.App.4th at pp. 1009-1010; see also *People v. Jennings* (2010) 50 Cal.4th 616, 643 (*Jennings*) ['"To be considered the proximate cause of the victim's death, the defendant's act must have been a substantial factor contributing to the result, rather than insignificant or merely theoretical"'].) '"[A]s long as the jury finds that without the criminal act the death would not have occurred when it did, it need not determine which of the concurrent causes was the principal or primary cause of death.'" (*Jennings*, *supra*, 50 Cal.4th at p. 643.) "This is true even if the victim's preexisting physical condition also was a substantial factor in causing death. 'So long as a victim's predisposing physical condition, regardless of its cause, is not the *only* substantial factor bringing about his death, that condition . . . in no way destroys the [defendant's] criminal responsibility for the death." (*People v. Catlin* (2001) 26 Cal.4th 81, 155 [emphasis in the original].)

"A jury's finding of proximate causation will be not disturbed on appeal if there is 'evidence from which it may be reasonably inferred that [the defendant's] act was a substantial factor in producing' the death. [Citation.]" (*Butler*, *supra*, 187 Cal.App.4th at p. 1010.)

3. The medical examiner's testimony was sufficient to support the jury's finding regarding the cause of death

Saenz admits that the prosecution presented "sufficient evidence that he . . . committed a crime or a lawful act in an unlawful manner (the tying up of Velasquez as alleged by the prosecution) with criminal negligence." He contends, however, that the prosecution provided insufficient evidence to prove "the tying up of Velasquez [proximately] caused his death." Accordingly, the sole issue we must review with respect to Saenz's involuntary manslaughter conviction is whether there is substantial evidence that the acts he perpetrated against Velasquez were a substantial factor in causing Velasquez's death.

As Saenz acknowledges in his brief, the prosecution's causation evidence consisted of "the testimony of deputy medical examiner Pena and the autopsy report he authored." At trial, Pena testified that in his expert opinion, Velasquez's death was primarily the result of two concurrent causes: Velasquez's pre-existing fatty liver condition, and the physical and emotional duress Velasquez endured as the result of being physically restrained and gagged in a hog-tied position. More specifically, Pena explained that: (1) persons suffering from a fatty liver have difficulty metabolizing adrenaline that naturally occurs in the body; (2) stress causes the release of adrenaline into the blood stream, which causes the heart to beat faster; (3) heightened

levels of adrenaline in persons with fatty liver may result in cardiac arrest; and (4) the acts perpetrated against Velasquez, which included hog-tying his wrists and ankles together, placing some type of gag over or in his mouth and exerting pressure on his neck and lower back areas with a knee, caused the release of high levels of adrenaline that he could not metabolize because of his fatty liver, ultimately resulting in cardiac arrest. Pena further testified that his theory regarding the cause of death was based on scientific information set forth in a leading pathology textbook.

"[I]t is settled by 'a long line of California decisions' that an expert medical witness is qualified 'to give an opinion of the cause of a particular injury . . . .' [Citation.] Such a diagnosis need not be based on certainty, but may be based on probability; the lack of absolute scientific certainty does not deprive the opinion of evidentiary value." (*People v. Mendibles* (1988) 199 Cal.App.3d 1277, 1294.)

Our courts have applied these principles in numerous homicide cases where, as here, the cause of death was established through expert medical testimony. For example, in *People v. Phillips* (1966) 64 Cal.2d 574 (*Phillips*), overruled on another ground in *People v. Flood* (1998) 18 Cal.4th 470, 490, fn. 12, the victim, an eight-year-old child, died as the result of a "fast-growing form of eye cancer." (*Phillips, supra,* 64 Cal.2d at p. 577.) The evidence at trial showed that although the child had been scheduled to have surgery to remove the affected eye, the defendant, a chiropractic doctor, had convinced the victim's parents that he could cure their daughter without surgery. (*Ibid.*) As a result of these assurances, the parents elected to cancel the surgery, and place their daughter under the

defendant's care. The child died shortly thereafter, and the defendant was charged with murder. (*Ibid.*) At trial, a medical expert testified "with 'reasonable medical certainty' that the performance of the operation on [the originally-scheduled date of] July 21st would have extended [the victim's] life by [at least] two months[,] . . . [and] could have effected a complete cure." (*Id.* at p. 579.) The jury convicted the defendant of second degree murder.

On appeal, the defendant argued that the medical expert's testimony was insufficient to "establish a causal relationship between the absence of surgery on July 21st and any shortening of [the victim's] life[.]" (*Phillips*, *supra*, 64 Cal.2d at p. 578.) In support, the defendant cited cross-examination testimony in which the medical expert had "acknowledged . . . he could not say with certainty whether the course of the disease had become irreversible on July 21st[,] . . . and also testified that he could not state the exact period of time by which surgery on that date would have lengthened [the victim's] life." (*Id.* at p. 579.)

Our Supreme Court affirmed the defendant's murder conviction, explaining that "[n]either aspect of the [medical expert's] cross-examination in any way reduced the force of his earlier testimony that if the girl had received the scheduled operation, her life would have been extended by a substantial period." (*Phillips*, *supra*, 64 Cal.2d at p. 579.) In a footnote, the Court rejected "defendant's contention that the [expert's] testimony failed as a matter of law to sustain the conviction because th[e] testimony was couched in terms of 'reasonable medical certainty' rather than of 'beyond a reasonable doubt.'" (*Id.* at p. 579, fn. 2.) The Court explained that, if accepted, the

defendant's argument "would in substance foreclose the realistic use of medical testimony at criminal trials." (*Ibid.*)

In *People v. Stamp* (1969) 2 Cal.App.3d 203 (*Stamp*), the evidence at trial showed the defendants had robbed several employees of a business at gunpoint. The owner, who had a pre-existing heart condition, died of a heart attack within 20 minutes after the robbery. (*Id.* at pp. 207-208.) Multiple medical experts, including the examiner who had performed the autopsy, testified that "although [the victim] had an advanced case of . . . a progressive and ultimately fatal [heart] disease, there must have been some immediate upset to his system which precipitated the attack. It was their conclusion . . . that but for the robbery there would have been no fatal seizure at that time. The fright induced by the robbery was too much of a shock to [the victim's] system. There was opposing expert testimony to the effect that it could not be said with reasonable medical certainty that fright could ever be fatal." (*Id.* at p. 208.)

On appeal, the court rejected the defendant's contention "that the evidence was insufficient to prove that the robbery factually caused [the victim's] death." (*Stamp*, *supra*, 2 Cal.App.3d at p. 209.) The court found the medical experts' testimony constituted substantial evidence supporting the jury's finding that the robbery had caused the heart attack, and further clarified that it was immaterial that the experts had couched their opinions in terms of a "'medical probability, rather than actual certainty.'" (*Id.* at p. 209 & fn. 2.)

In *Butler*, *supra*, 187 Cal.App.4th 998, the prosecution introduced evidence that the defendant had hit the deceased victim in the head, placed a gag in his mouth and given him cocaine. The medical expert, in turn, identified four cause-of-

death factors that included head injuries, restraint, asphyxiation, and cocaine toxicity. The defendant argued this testimony was insufficient to prove causation because the expert was not able to say which of the four factors was the most prominent in the victim's death. (*Id.* at p. 1010.) The court rejected this claim, explaining that the jury could reasonably infer that the "blows caused head trauma, the [gag] had caused asphyxiation, and the cocaine caused toxicity. These were all factors identified by the prosecution's medical expert as contributing to the victim's death, thus providing substantial evidence to support that defendant's conduct was a substantial factor in causing the death." (*Id.* at p. 1011; see also *People v. Diaz* (1992) 3 Cal.4th 495, 542 [medical expert testimony that victim's life was shortened by lidocaine overdose constituted substantial evidence supporting trier of fact's finding that defendant had caused the victim's death].)

Saenz acknowledges that cases such as *Phillips*, *Stamp* and *Butler* demonstrate that a jury may generally rely on expert medical opinion when deciding whether a defendant's actions were a substantial factor in causing the victim's death. However, he argues that in this particular case, Pena's "opinions as to causation" did not qualify as "substantial evidence" because they were based on "nothing more than suspicions, speculation or guess work." In support, he cites the following admissions Pena made during his cross-examination: (1) it was not scientifically possible to measure what Velasquez's adrenaline levels had been at the time of his death; (2) Pena could not confirm with certainty that Velasquez died of cardiac arrest; and (3) it was possible that an alcoholic with a fatty liver could die from the effects of alcohol withdrawal. Saenz contends that, considered together, these admissions show "Pena's determination [as to the cause of death]

amounted to nothing more than a suspicion or possibility without the necessary evidence, circumstantial or otherwise to support it."

Saenz is correct that "'when an expert bases his or her conclusion on factors that are "speculative, remote or conjectural," or on "assumptions . . . not supported by the record," the expert's opinion "cannot rise to the dignity of substantial evidence."' [Citations.]" (*Wright*, *supra*, 4 Cal.App.5th at p. 545.) The record in this case, however, shows that did not occur here. First, Pena's expert medical opinion was based on facts that were supported by the evidence at trial. It is undisputed that Velasquez had a fatty liver, which Saenz's own expert acknowledged. There was also extensive witness testimony that Velasquez was hog-tied and gagged at the time of, or immediately prior to, his death. Thus, the predicate facts underlying Pena's theory of death–that the victim had a fatty liver and had experienced physical and emotional duress that would normally cause a rise in adrenaline levels–were supported by the record.

Second, Pena's theory that Velasquez experienced cardiac arrest because his fatty liver was unable to metabolize elevated adrenaline levels resulting from physical and emotional duress was based on information he obtained from a leading pathology textbook. Saenz has cited no legal authority, nor are we aware of any, indicating that a medical expert's reliance on a medical textbook is "speculative" or "conjectural." (See generally *Wright*, *supra*, 4 Cal.App.5th at p. 545 ["the matter that the expert relies on [must be] of a type that an expert can reasonably rely on 'in forming an opinion upon the subject to which his testimony relates' . . . . [and] provide a reasonable basis for the particular opinion offered"].)

To the extent Saenz is asserting Pena's testimony was insufficient because he could not conclusively confirm that Velasquez died of cardiac arrest resulting from elevated levels of adrenaline, we reject that assertion. As explained above, a medical diagnosis may be based on "probability," rather than "certainty," and the "lack of absolute scientific certainty does not deprive the opinion of evidentiary value." (*Mendibles*, *supra*, 199 Cal.App.3d at p. 1294.) In this case, Pena repeatedly testified that in his professional medical opinion, Velasquez had likely died of cardiac arrest resulting from elevated levels of adrenaline caused by the physical duress he had experienced. The fact that Pena was unable to definitively state this is what caused Velasquez's death did not preclude the jury from relying on his opinion in forming their own conclusions regarding the cause of death.

B. The Trial Court Erred in Failing to Stay Velasquez's Sentence for False Imprisonment by Violence

Velasquez argues that under section 654, the trial court was required to stay the two-year concurrent sentence imposed on count two, felony false imprisonment.

1. Summary of legal principles

"Section 654 precludes multiple punishment for a single act or omission, or an indivisible course of conduct. [Citations.] If, for example, a defendant suffers two convictions, punishment for one of which is precluded by section 654, that section requires the sentence for one conviction to be imposed, and the other imposed and then stayed. [Citation.] Section 654 does not allow any

multiple punishment, including either concurrent or consecutive sentences." (*People v. Deloza* (1998) 18 Cal.4th 585, 591-592.)

"Although section 654 speaks in terms of an 'act or omission,' it has been judicially interpreted to include situations in which several offenses are committed during a course of conduct deemed indivisible in time. [Citation.] The key inquiry is whether the objective and intent attending more than one crime committed during a continuous course of conduct was the same. [Citation.] '[I]f all of the offenses were merely incident to, or were the means of accomplishing or facilitating one objective, defendant may be found to have harbored a single intent and therefore may be punished only once. [Citation.] [¶] If, on the other hand, defendant harbored "multiple criminal objectives," which were independent of and not merely incidental to each other, he may be punished for each statutory violation committed in pursuit of each objective, "even though the violations shared common acts or were parts of an otherwise indivisible course of conduct."' [Citation.]" (*People v. Meeks* (2004) 123 Cal.App.4th 695, 703-704.)

"However, multiple objectives do not turn a single act into more than one criminal act. A single criminal act, even if committed incident to multiple objectives, may be punished only once." (*People v. Louie* (2012) 203 Cal.App.4th 388, 397.)

2. The trial court erred in failing to stay Saenz's sentence for felony false imprisonment

"Section 236 defines false imprisonment as 'the unlawful violation of the personal liberty of another.' False imprisonment occurs 'when "the victim is 'compelled to remain where he does not wish to remain, or to go where he does not wish to go.'"'

[Citation.] False imprisonment is a felony if, as stated in section 237, subdivision (a), 'false imprisonment [is] effected by violence [or] menace.'[3] Violence is "'"the exercise of physical force used to restrain over and above the force reasonably necessary for such restraint."'" [Citation.] "'Menace'" is defined as "'"a threat of harm express or implied by word or act."'" [Citation.]" (*People v. Williams* (2017) 7 Cal.App.5th 644, 672 (*Williams*); see also *People v. Matian* (1995) 35 Cal.App.4th 480, 484 (*Matian*); *People v. Babich* (1993) 14 Cal.App.4th 801, 806.)

Saenz was charged with (and convicted of) felony false imprisonment, meaning that the prosecution had to prove the violation of Velasquez's physical liberty was effected either by violence or menace. During closing argument, the prosecution emphasized the difference between misdemeanor and felony false imprisonment, and argued that the fact Velasquez had been physically bound demonstrated the false imprisonment in this case was effected "by violence": "Just so you can understand the difference [between misdemeanor and felony false imprisonment], if someone were to be put in [a] cage and the door were to be locked, they . . . could be falsely imprisoned. But it would not, however, be by violence. As you can imagine, it's a different type of crime. When you lock someone in a room, that's false imprisonment. The violence here was the fact that he was hog-tied and tied up."

At the sentencing hearing, however, the prosecution changed its theory as to what acts supported the felony false

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3 Section 237 also makes false imprisonment a felony if it is effected by fraud or deceit. In this case, however, the prosecution did not rely on either of those theories, and the jury's instructions on the false imprisonment charge did not reference them.

imprisonment charge, asserting section 654 was inapplicable because there was evidence that, the day before Velasquez was bound, Saenz had forced him to remain in the detoxification room. According to the prosecution, those facts "were sufficient for the false imprisonment and a separate act of tying the victim . . . that led to his demise." The trial court agreed with the prosecutor, concluding section 654 did not apply because there was evidence Velasquez was initially "held inside the facility . . . against his will. . . . And he was not released. And that the tying . . . the placing the article in the victim's mouth occurred on the second day. And, therefore, the People's [argument] that it is two complete crimes that have been proven [is correct]."

The Attorney General's appellate brief re-asserts these same arguments, contending section 654 is inapplicable to count two because the evidence at trial showed Saenz "detained Velasquez in the detox room," and that "the detention became non-consensual at some point," and then "continued . . . for at least a day." According to the Attorney General, the intent of the initial "illegal detention was to ensure [Velasquez] withdrew from alcohol, and to monitor his intake of food and liquids during the withdrawal." Although Velasquez was subsequently hog-tied during the course of his detention, this act "had a different objective[:] . . . [to] ensure [Velasquez] did not injure himself or others in the detox room. . . ." Thus, in the Attorney General's view, "the hog-tying and gagging was a detention within a detention that served a special need that was initially unnecessary: protect [Velasquez] and others from physical harm. Accordingly, the trial court stayed within its broad latitude in finding that the two counts were based on separate acts with separate objectives."

This argument would be more persuasive if Velasquez had been convicted of misdemeanor false imprisonment, which only requires the prosecution to prove the victim was unlawfully forced "'"to remain where he does not wish to remain."'" [Citation.]" (*Williams*, *supra*, 7 Cal.App.5th at p. 644.) Velasquez, however, was convicted of felony false imprisonment (see § 237), a fact the Attorney General does not acknowledge in the analysis of the section 654 issue.[4] As discussed above, to establish felony false imprisonment, the prosecution was required to prove Velasquez's illegal restraint was perpetrated either by the exertion of "'"physical force over and above the force reasonably necessary for such restraint"'" (*Williams*, *supra*, 7 Cal.App.5th at p. 672 [defining "by violence"), or by "'"a threat of harm."'" [Citation.]" (*Babich*, *supra*, 14 Cal.App.4th at p. 806 [defining "by menace"].)

The Attorney General has cited no evidence showing that the initial detention of Velasquez, which occurred prior to the hog-tying incident, was accomplished by violence or by menace. Instead, the cited evidence shows only that Saenz prohibited Velasquez from leaving the detoxification room. Likewise, in making its section 654 ruling, the trial court relied solely on evidence showing Velasquez had been "held inside the facility by not being allowed to leave." However, the fact that Saenz

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[4] The portion of the Attorney General's brief regarding the section 654 issue lists the elements of misdemeanor false imprisonment, and argues that those elements were satisfied by evidence showing Saenz prevented Velasquez from leaving the detoxification room. The Attorney General does not address the additional element required for felony false imprisonment, namely, that the victim's restraint must have been effected by violence or by menace.

prevented Velasquez from leaving the detoxification room (or the facility) would not, standing alone, be sufficient to support a guilty verdict for *felony* false imprisonment. (See, e.g., *People v. Newman* (2015) 238 Cal.App.4th 103, 108 ["'Violence'. . . . means the exercise of physical force 'greater than that reasonably necessary to effect the restraint'"]; *Matian*, *supra*, 35 Cal.App.4th at p. 484 [evidence showing defendant "grabbed [the victim's] arm and yelled at her not to go" insufficient to prove "violence" or "menace" within the meaning of section 237].) The prosecution acknowledged as much during closing argument, explaining to the jury that Velasquez's detention only became felony false imprisonment once he was hog-tied.

Based on the evidence and arguments presented at trial, it is clear that the jury's guilty verdict on the felony false imprisonment count was based on the "same act" (§ 654) as its guilty verdict on the involuntary manslaughter count: physically binding Velasquez. Because both counts were based on the same act, the trial court should have stayed the sentence on count two. (*Louie*, *supra*, 203 Cal.App.4th at p. 397 [under section 654, "[a] single criminal act . . . may be punished only once"].)

DISPOSITION

The judgment is modified to stay sentencing on count two (felony false imprisonment) pursuant to section 654. The clerk of the superior court is ordered to prepare an amended abstract of judgment and to send it to the Department of Corrections. As modified, the judgment is affirmed.

ZELON, Acting P. J.

We concur:

SEGAL, J.

MENETREZ, J.*

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* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.