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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 FOUR

THE PEOPLE, Plaintiff and Respondent, v. JAISEN MAURICE LACOUNT, Defendant and Appellant.	B290701 (Los Angeles County Super. Ct. No. BA454506)

APPEAL from a judgment of the Superior Court of Los Angeles County, Eleanor J. Hunter, Judge. Affirmed.

Robert H. Derham, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Scott A. Taryle and Nancy Lii Ladner, Deputy Attorneys General, for Plaintiff and Respondent.

Jaisen Maurice Lacount sexually assaulted a minor, R.M., after ordering her into his truck. He later put her on the street to engage in prostitution. On a different occasion, Lacount sexually assaulted another minor, A.H., and took her belongings at knifepoint. Following his arrest, the police recovered a gun from Lacount's home.

Concerning R.M., a jury convicted Lacount of human trafficking of a minor (count 1, Pen. Code[1], § 236.1, subd. (c)), kidnapping to commit another crime (count 2, § 209, subd. (b)(1)), rape (count 3, § 261, subd. (a)(2)), and forcible oral copulation of a minor (count 4, former § 288a, subd. (c)(2)(C)[2].) Concerning A.H., the same jury convicted Lacount of forcible oral copulation of a minor (count 7) and robbery (count 8, § 211). The jury also convicted Lacount of possession of a firearm by a felon (count 6, § 29800, subd. (a)(1)). The jury found the One Strike sentencing scheme (§ 667.61) applied to counts 3, 4 and 7, and in violation of section 12022, subdivision (b), Lacount had used a deadly weapon (a knife) in the commission of count 8.[3] The trial court sentenced Lacount to an aggregate prison term of 96 years 8 months to life.

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[1] Statutory references are to the Penal Code.

[2] Section 288a has since been renumbered as section 287 without substantive changes.

[3] The jury acquitted Lacount of sexual assault charges and a firearm-possession offense involving a third victim, a minor, (counts 5, 11 through 14). A fourth sexual assault victim named in the amended information, who was also a minor, was never located (counts 9 and 10). The jury also found not true a firearm-use allegation in connection with Lacount's conviction of human trafficking of a minor (count 1).

On appeal, Lacount contends (1) the evidence is insufficient to support his conviction for human trafficking of a minor and (2) the section 12022, subdivision (b)(1) deadly weapon-use enhancement of his second degree robbery conviction should have been stayed pursuant to sections 667.61, subdivision (f) and 654. We affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

I. Summary of Pertinent Trial Evidence

A. Prosecution evidence

1. R.M. – counts 1 through 4

On the evening of February 1, 2017, then seventeen-year-old R.M. was waiting at a bus stop. She felt uncomfortable after noticing Lacount drive his truck past her a few times, and she began to walk away. Lacount pulled in front of her, blocking her path, and ordered her into his truck. R.M. complied.

Lacount said he was a tattoo artist, who dated models. He told R.M. she was beautiful and he wanted to take her out. He also said he belonged to a local street gang and had killed someone. R.M. was frightened. Lacount showed R.M. a pocket knife. At various times, he touched her leg, grabbed her, attempted to pick her up, and kissed her neck.

Lacount drove R.M. around for more than three hours.[4] He took her to a restaurant, where he ordered take-out food.[5] R.M.

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[4] R.M. testified she arrived at the bus stop at "6:00ish or 7:00ish" in the evening. R.M.'s mother testified she received a text and telephone call from her daughter after 10:00 p.m. following the sexual assaults.

[5] Video recordings from security cameras showing R.M. and Lacount at the restaurant were played for the jury.

testified she tried to "play sort of dumb," to remain calm and not to show fear at the restaurant, hoping Lacount would let her go. Lacount then drove to a liquor store and left her in the truck. R.M. testified she was too afraid to run away or to summon help when she was alone, because Lacount was watching her. R.M. repeatedly told Lacount she wanted to go home. At one point, Lacount stopped to talk to a friend and said, "I'mma take this chicken-head home," referring to R.M. R.M. thought this meant Lacount was going to release her.

Lacount drove R.M. to a parking lot and stopped. He grabbed her face and said she belonged to him, he was her "daddy," and anything she did went through him. R.M. continued to insist on going home. Lacount told her not to cry and to take off her sweatpants. He then drove down the street, put on a condom and forced R.M. to orally copulate him. Lacount then vaginally raped her.

Lacount told R.M. she would start on the "easiest track"[6] and the fee to charge for each sex act. He drove her around showing her the motels where prostitution occurred and said he would be watching her. Lacount handed R.M. his card and told her to call him, because he would protect her. Lacount then dropped off R.M. near 98th and Figueroa Streets, a common "track." She was wearing "boy shorts" (underwear), a jacket and shoes. Lacount had taken her sweatpants and backpack. He told R.M. "they" would know she was new because of what she was wearing. R.M. waited until Lacount drove away and telephoned her mother and brother.

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[6] A "track" or a "blade" is an area where street prostitution is common.

2. A.H. – counts 7 and 8

On the afternoon of December 17, 2016, A.H. voluntarily got into Lacount's truck after he contacted her on social media. She had revealed to him that she was 16 years old and transgender. Lacount drove A.H. "around the corner," stopped and kissed her neck. He then grabbed the back of A.H.'s neck, pushed her head down and forced her to orally copulate him. For two to three minutes, A.H. struggled against Lacount, placing her hands against his thigh and trying to push herself up. When Lacount released A.H., he drew a knife, which he placed against her face. He then ordered her out of the truck. Despite her protests, Lacount drove off without allowing A.H. to retrieve her belongings from the truck. When A.H. returned home, she noticed her left ear was cut and bleeding.

B. Defense evidence

Lacount testified in his own defense and acknowledged having met both R.M. and A.H. But, Lacount denied committing any crimes, claiming the two teenagers were angry he had spurned their sexual advances. According to Lacount, R.M. voluntarily got into his truck, and only later told him that she had lied about being 18 years old. When they stopped at a smoke shop, R.M. used the restroom, returned without her sweatpants and subsequently asked if they were going to have sex. He declined with a joke, which angered R.M., and she jumped out of his truck and left.

Lacount testified he agreed to meet with A.H., hoping to promote his tattoo business. After picking her up in his truck, Lacount suggested A.H. could receive referral fees for any friends interested in having a tattoo. A.H. agreed, but asked what else Lacount could do for her. Lacount demurred, knowing A.H. was

transgender. When A.H. placed her hands in his lap, Lacount pushed her out of his truck. He denied using a knife at any time.

C. Sentencing

The trial court imposed a prison sentence of 96 years 8 months to life: The court imposed consecutive determinate terms of five years for the robbery of A.H., one-year for the deadly weapon-use enhancement, and eight months for possession of a firearm by a felon. The court then imposed under the One Strike law consecutive indeterminate terms of 15 years to life for human trafficking of a minor and 25 years to life each for the forcible oral copulation and rape of R.M. and forcible oral copulation of A.H. The court stayed sentencing on count 2, kidnapping to commit another crime, pursuant to section 654.

DISCUSSION

I. Substantial Evidence Supports Lacount's Conviction for Human Trafficking of R.M.

Lacount contends substantial evidence fails to support his conviction for human trafficking of a minor for a sex act. In assessing a challenge to the sufficiency of the evidence, a reviewing court presumes in support of the judgment every fact the trier of fact could reasonably infer from the evidence. (*People v. Penunuri* (2018) 5 Cal.5th 126, 142.) We have examined the record in the light most favorable to the human trafficking conviction and conclude Lacount's claim is meritless.

Section 236.1 defines the crime of human trafficking. Lacount was charged and convicted under subdivision (c)(2) of the statute, which, as pertinent here, prohibits the "attempt[] to cause, induce, or persuade a person who is a minor at the time of the commission of the offense to engage in a commercial sex

act . . .” by “force, fear, fraud, deceit, coercion, violence, duress, menace, or threat of unlawful injury to the victim or to another person.” (§ 236.1, subd. (c)(2).) Section 236.1, subdivision (d) states, “In determining whether a minor was caused, induced, or persuaded to engage in a commercial sex act, the totality of the circumstances, including the age of the victim, [and] his or her relationship to the trafficker . . . , shall be considered.” (§ 236.1, subd. (d).)

Lacount argues there is no evidence he used force, fear or threat of injury in attempting to induce R.M. to engage in prostitution. Lacount maintains her testimony shows “at best, . . . that [Lacount] wanted her to engage in commercial sex acts for his benefit.” Lacount characterizes R.M.’s testimony as “tenuous,” and as “countered by video evidence [she] willingly accompanied [him] to a restaurant and another location where she had the opportunity to leave.”

Lacount’s argument is unavailing. He fails to consider the totality of the circumstances of his human trafficking offense. The record shows Lacount used significant force and fear throughout his encounter with R.M., up to the moment he left her on the street to prostitute herself: Lacount kidnapped R.M., ignored her repeated requests to go home, referred to her using demeaning language, said he was a gang member and had killed someone, displayed a knife, forced her to orally copulate him and raped her, and told her she belonged to him. Lacount instructed her on what to charge for sex acts, showed her where prostitutes usually worked and left her alone in her underwear on a common track. Lacount was 34 years old, and R.M. was 17 years old and four feet ten inches tall. The jury’s finding Lacount used force,

fear and threat of injury in an attempt to engage her in prostitution is supported by substantial evidence.

In deciding the sufficiency of the evidence, we resolve "neither credibility issues nor evidentiary conflicts." (*People v. Maury* (2003) 30 Cal.4th 342, 403.) Resolution of conflicts and inconsistencies in the testimony is the exclusive province of the jury. (*Ibid.*) To the extent Lacount is asking us to reweigh R.M.'s credibility, we decline the invitation and defer to the jury. (*People v. Culver* (1973) 10 Cal.3d 542, 548.)

II. The Weapon-Use Enhancement for Robbery Should Not Be Stayed

Lacount's sentence included an indeterminate term of 25 years to life for forcible oral copulation of A.H. pursuant to section 667.61, based on the jury's true finding of the alleged One Strike circumstances of multiple victims and use of a deadly weapon. His sentence also included a one-year enhancement under section 12022, subdivision (b)(1) for using a deadly weapon during the robbery of A.H. Lacount contends his "double punishment" for using a deadly weapon was contrary to sections 667.61, subdivision (f) and section 654, and the one-year enhancement should be stayed.

A. Section 667.61, subdivision (f)

Section 667.61, also known as the One Strike law, provides "an alternative, harsher sentencing scheme for certain forcible sex crimes." (*People v. Mancebo* (2002) 27 Cal.4th 735, 738.) "Section 667.61 requires the trial court to impose a life sentence when the defendant is convicted of an enumerated sexual offense [under subdivision (c)] and the People plead and prove one or more of the specified aggravating circumstances. [Citations.]

When the People prove a single circumstance listed under section 667.61, subdivision (d) or at least [two] of the circumstances listed under subdivision (e), the term is 25 years to life; when only a single circumstance under subdivision (e) is proved, the term is 15 years to life." (*People v. DeSimone* (1998) 62 Cal.App.4th 693, 696-697; § 667.61.)

Forcible oral copulation is one of the enumerated sexual offenses under section 667.61, subdivision (c). (See § 667.61, subd. (c)(7).) Because the jury found Lacount had used a deadly weapon and there were multiple victims – two of the circumstances listed under subdivision (e) (see § 667.61, subd. (e)(3) & (4)) – the trial court's sentence of 25 years to life for the forcible oral copulation of A.H. complied with the One Strike law.

Lacount argues the trial court sentenced him in violation of section 667.61, subdivision (f) by also imposing the one-year weapon-use enhancement on the robbery count. Section 667.61, subdivision (f) provides, where, as here, only the minimum number of circumstances necessary for punishment under the One Strike law have been found true, "those circumstances shall be used as the basis for imposing the term provided in subdivision (a) [25 years to life] . . . rather than being used to impose the punishment authorized under any other provision of law, unless another provision of law provides for a greater penalty . . . or [additional punishment]." (§ 667.61, subd. (f).) Lacount construes the language "rather than being used to impose punishment authorized under any other provision of law" as precluding any facts underlying a One Strike circumstance from also being used for separate punishment under other provisions of law. We disagree.

The language cited by Lacount requires that a One Strike law sentence be imposed when it is triggered, rather than a lesser sentence under any other provision of law. Section 667.61, subdivision (f) does not speak to whether the facts underlying the jury's One Strike circumstance finding may also serve as the basis for enhancements on other counts.

Lacount points to cases in which Section 667.61, subdivision (f) has been interpreted as prohibiting the imposition of a weapon-use enhancement plus a 25-years-to-life One Strike sentence based, in part, on a weapon-use circumstance. (*People v. Mancebo, supra,* 27 Cal.4th at pp. 743-744 [gun-use enhancement barred when that circumstance was necessary to support the 25 years-to-life sentence under the One Strike law]; *People v. Rodriguez* (2012) 207 Cal.App.4th 204. 214-215 [deadly weapon-use enhancement barred when that circumstance was necessary to support the 25 years-to-life sentence under the One Strike law]; (*People v. Perez* (2015) 240 Cal.App.4th 1218, 1224 [same].) However, in each of those cases, the trial court imposed both a One Strike sentence and a weapon-use enhancement on the forcible sexual offense for which the alternative penalty scheme was designed. Lacount's situation would have been comparable had his sentence for forcible oral copulation (count 7) consisted of both the One Strike sentence and a weapon-use enhancement. Instead, the weapon-use enhancement was imposed for robbery, which was not subject to the One Strike law. In sum, we are not persuaded that section 667.61, subdivision (f) precludes imposition of the weapon-use enhancement as urged by Lacount.

B. Section 654

Lacount contends he was improperly sentenced twice, in violation of section 654, for the same conduct of holding a knife to A.H.'s face in the commission of forcible oral copulation and robbery.[7] He argues the one-year weapon use enhancement of section 12022, subdivision (b)(1) must therefore be stayed. Because the trial court made no express findings with respect to the issue Lacount now raises, we must affirm the trial court's determination that section 654 does not apply if substantial evidence supports its implicit factual findings. (*People v. Mejia* (2017) 9 Cal.App.5th 1036, 1045.)

Section 654, subdivision (a) states: "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." "Section 654 precludes multiple punishment for a single act or omission, or an indivisible course of conduct." (*People v. Deloza* (1998) 18 Cal.4th 585, 591.) On the other hand, "[w]hen the criminal acts forming the basis for convictions of multiple substantive offenses are divisible – i.e., reflecting separate intents, objectives or events – then section 654 has been held

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[7] It is undisputed that Lacount used the knife "during the commission" of both crimes, as required by the One Strike law circumstance and section 12022, subdivision (b)(2). (See *People v. Jones* (2001) 25 Cal.4th 98, 109-110 [for weapon-use enhancement, such use "may be deemed to occur 'in the commission of' the offense if it occurred *before, during or after* the technical completion of the felonious . . . act"].)

inapplicable." (*People v. Wooten* (2013) 214 Cal.App.4th 121, 130.)

Section 654 has only recently been applied to limit enhancements, specifically conduct enhancements, or those arising from the circumstances of the substantive offense as opposed to the status of the offender. (*People v. Ahmed* (2011) 53 Cal.4th 156, 160-161.) With respect to conduct enhancements, "if section 654 does not bar punishment for two crimes, then it cannot bar punishment for the same enhancements attached to those separate substantive offenses. This is true even if the same *type* of sentence enhancement is applied to those underlying offenses."[8] (*Wooten, supra*, 214 Cal.App.4th at p. 130.) To be sure, the section 667.61 circumstance of weapon-use is not an enhancement; it is part of the One Strike sentencing scheme or alternative penalty provisions. Nonetheless, the circumstance could be characterized as functionally equivalent to a conduct enhancement for purposes of section 654 analysis, in that it focuses on the manner in which the underlying offense was committed. (See *People v. Kelley* (2016) 245 Cal.App.4th 1119, 1131.)

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[8] We turn to section 654, because the specific enhancement statute, section 12022, subdivision (b)(1), is silent on whether, and if so, to what extent, multiple punishment is permitted for use of a deadly weapon in the commission of a felony, other than to specify it does not apply if "use of a deadly or dangerous weapon is an element of [the underlying felony] offense." (§ 12022, subd. (b)(1); compare with § 12022.53, subd. (e)(2) gun-use enhancement: [criminal street gang enhancement shall not be imposed in addition to gun-use enhancement unless the person personally discharged a firearm in the commission of the offense].)

In this case, substantial evidence supports the trial court's implicit factual findings that Lacount's forcible oral copulation and robbery were separate criminal acts and his deadly-weapon use reflected different aspects of those criminal acts. In committing forcible oral copulation, Lacount grabbed the back of A.H.'s neck, held her down as she vigorously struggled to break free, and placed the knife against her cheek with the intent of maintaining control over his resistant victim. In committing the robbery, he held the knife in pushing her out of the truck to ensure she would leave and not attempt to retrieve her belongings. Section 654 does not preclude the imposition of the one-year enhancement on count 8.

DISPOSITION

The judgment is affirmed.

CURREY, J.

We concur:

MANELLA, P.J.

WILLHITE, J.