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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

ANTHONY JOHN DUARTE,

Defendant and Appellant.

B338901

(Los Angeles County  
Super. Ct. No. LA094555)

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

Jared G. Coleman, under appointment by the Court of Appeal, for Defendant and Appellant.

Rob Bonta, Attorney General, Charles C. Ragland, Chief Assistant Attorney General, Susan Sullivan Pithey, Assistant Attorney General, Nicholas J. Webster and Amanda V. Lopez, Deputy Attorneys General, for Plaintiff and Respondent.

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Anthony John Duarte appeals a judgment following conviction of 20 counts of various offenses including, as pertinent to this appeal, kidnapping, burglary, robbery, weapon possession, witness intimidation, and two counts of vandalism. Duarte argues the court imposed separate punishments for an indivisible course of conduct and improperly admitted evidence of prior misconduct. We modify the judgment to stay a one-year sentence imposed for one of the vandalism counts but otherwise affirm.

## **BACKGROUND**

Duarte had a long history of domestic violence against his wife, Kea, and other domestic partners. We relate only the facts pertinent to his contentions on appeal.

### **A. Kidnapping Kea**

Duarte abused Kea on a weekly basis for years. He would threaten, push, hit, kick and strangle her, force her to have sex with him, steal or break her phones, steal her car keys, and control whom she saw. Kea eventually obtained a domestic violence restraining order against him.

Shortly before April 1, 2021, Duarte demanded that Kea give him a handgun she owned. He said, “Just give [the gun] to me. You were supposed to give it to me days ago.”

On April 1, 2021, despite probation conditions prohibiting him from leaving Ventura County or contacting Kea, Duarte followed her from Ventura to her apartment in Los Angeles County. He called her approximately 40 times during the drive, and after arriving at her apartment complex managed to get past the locked security door. Duarte angrily knocked on the door of Kea’s apartment when she and her adult daughters, Ambar and Vanessa, were inside, demanding to be let in. He ultimately kicked in the door against Vanessa’s and Kea’s efforts to bar it, and forced his way inside.

Ambar and Vanessa fled the apartment to call 911 while Duarte searched for Kea's gun. Finding it, Duarte cocked the gun, barred Kea from fleeing the apartment, then forced her to leave with him and drive her car away. When Kea's daughters called, asking for the apartment keys, Kea and Duarte drove toward the apartment but saw that officers had by this time responded to the daughters' 911 call and were at the door of the complex. Duarte said, "Don't stop, Kea. Keep going," and directed her to drive back toward Ventura. While on the road, Duarte controlled Kea's phone and disabled an ankle monitor he wore and threw it out of the window.

They stayed in the car in a hotel parking lot overnight, then drove back to Kea's apartment, where Duarte forced her to get clothing and money. Police later intercepted them in a shopping center and retrieved a loaded gun.

## **B. Trial**

The Los Angeles County District Attorney charged Duarte with possession of a firearm by a felon; three counts of vandalism—Kea's door and two tracking devices; first degree residential burglary with a person present; grand theft of a firearm; kidnapping; two counts of dissuading a witness by force or threat; first degree residential robbery; dissuading a witness while having been convicted of a prior violation; three counts of stalking while a temporary restraining order was in effect; injuring a spouse; four counts of contempt of court; and dissuading a witness while under a restraining order. The information further alleged that Duarte suffered two prior convictions for serious or violent felonies, that he committed the current offenses while on parole following a term of imprisonment for a serious or violent felony, and that several aggravating circumstances existed.

Trial involved eight and a half days of testimony, three and a half of which were occupied with Kea's and Duarte's testimony. Duarte testified that he never abused Kea.

**1. *Evidence of Prior Acts of Domestic Violence***

The court admitted over Duarte's objection evidence that in 1986 and 1987 he stalked and battered Wanda McCoy, whom he had dated for four years, in 1991 and 1992 he battered and kidnapped Dana Clemons, his wife for a brief time, and in 1995 he kidnapped and sexually assaulted Sandra Zepeda, whom he briefly dated. He was sentenced to two years in prison for the incidents with Clemons, committed probation violations by stalking Clemons and McCoy, and served 16 years in prison for kidnapping Clemons.

**a. *Duarte Stalked and Abused McCoy***

McCoy testified that Duarte broke her nose in July 1985 (which she reported in 1986) and someone slashed the tires of her car in March 1987. In 1988, Duarte kicked McCoy's 10-year-old sister, and several times he forced McCoy to drive him to Bakersfield by threatening to harm her mother. In 1994, years after they broke up, Duarte began calling McCoy daily, which she mostly ignored. When she finally answered, Duarte said he wanted her to be "his lady" and again drive him to Bakersfield. At some point, he directed two of his friends to beat her up as he watched, and once surprised McCoy at her mother's house, sitting in his parked car across the street. McCoy told police that Duarte had battered her several times.

**b. *Duarte Kidnapped Clemons***

Clemons was unavailable to testify, and her testimony from preliminary hearings in 1992 and 1995 was read into the record. She testified that Duarte had held her captive and threatened and assaulted her with a pocketknife. When she picked him up at

work in August 1992, Duarte verbally and physically abused her, pulled her hair, slapped her, and cut her arm with a knife. Clemons tried numerous times to get out of the car, but Duarte held her arms, said she could not leave, locked the doors, and threatened her with the knife before forcing her into the back seat so he could drive. Clemons eventually jumped out of the car while it was moving 30 miles an hour.

A similar incident occurred when Clemons arrived home early on the morning of September 16, 1995. Duarte met her as she parked her car, demanded that she open the locked door, and broke a window and climbed into the car, where they struggled. When Clemons tried to exit the car, Duarte held her by the arm and drove them to another location, where he said that “if [she] could make it” before he shot her, she could get out and run. Duarte resumed driving and said he would kill Clemons and himself if the police tried to pull them over. He hit her in the stomach, restrained her from getting out of the car on the freeway, threw her pager out of the window, and said they were going to a bank, where she would withdraw all of her money. Clemons eventually escaped.

c. *Duarte Kidnapped and Sexually Assaulted Zepeda*

Zepeda testified that she and Duarte dated briefly in 2007. They drove to a park and then a motel, where Duarte took her phone and keys so she could not leave. When she tried to take back her keys, he said he would kill her if she tried again. Duarte drove them to a motel in Bakersfield, where he raped and sodomized her in the car, biting her and choking her into unconsciousness.

**2. *Verdict, Sentence and Appeal***

A jury convicted Duarte of all counts and found true that he had suffered prior convictions, was armed and used

a weapon during the offenses, committed them with planning or sophistication, and engaged in violent conduct indicating he was a serious danger to society.

The court sentenced Duarte to three consecutive terms of 25 years to life, plus a determinate term of 14 years. The indeterminate sentence comprised three consecutive terms of 25 years to life for burglary, kidnapping and one count of dissuading a witness, plus concurrent terms of 25 years to life for robbery and three counts of dissuading a witness, with a stayed term for firearm theft. The determinate term comprised the upper term of 8 years for stalking plus consecutive terms totaling 6 years for firearm possession, tracking device vandalism, and injuring a spouse, with concurrent one-year terms for vandalism of Kea's door and contempt of court, and concurrent four-year terms for two stalking counts.

Duarte appealed.

## **DISCUSSION**

### **A. Separate Punishments**

Duarte contends his sentence is illegal and violates his federal due process rights because it imposes separate punishments for kidnapping, robbery, burglary, possession of a firearm, one count of witness intimidation, and vandalism of Kea's door and a GPS monitor, all of which occurred as part of an indivisible course of conduct with the single objective of kidnapping Kea. He argues the court should have imposed punishment for only one of these crimes and stayed punishment on the rest pursuant to Penal Code section 654.<sup>1</sup>

Section 654, subdivision (a), provides in pertinent part, "An act or omission that is punishable in different ways by

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<sup>1</sup> Undesignated statutory references are to the Penal Code.

different provisions of law may be punished under either of such provisions, but in no case shall the act or omission be punished under more than one provision.” Section 654 thus “precludes multiple punishments for a single act or indivisible course of conduct.” (*People v. Hester* (2000) 22 Cal.4th 290, 294.) “If a single action or course of conduct by a defendant violates multiple laws, ‘the distinct crimes may be charged in separate counts and may result in multiple verdicts of guilt, [but] the trial court may impose sentence for only one offense’ ” and must stay the sentence for the others. (*People v. Sek* (2022) 74 Cal.App.5th 657, 673.)

Whether a course of criminal conduct is divisible depends on the intent and objective of the actor. (*People v. Jackson* (2016) 1 Cal.5th 269, 354.) If a “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. Harrison* (1989) 48 Cal.3d 321, 335.)

Multiple punishments are also permissible where “ ‘the offenses are temporally separated in such a way as to afford the defendant opportunity to reflect and to renew his or her intent before committing the next one, thereby aggravating the violation of public security or policy already undertaken’ ” and creating a “ ‘new risk of harm.’ ” (*People v. Gaynor* (2019) 42 Cal.App.5th 794, 800, 804.)

“The question of whether section 654 is factually applicable to a given series of offenses is for the trial court, and the law gives the trial court broad latitude in making this determination.” (*People v. DeVaughn* (2014) 227 Cal.App.4th 1092, 1113.) We review for substantial evidence the trial court’s express or implied findings regarding the defendant’s intent and objective (*People v.*

*Vasquez* (2020) 44 Cal.App.5th 732, 737) viewing the trial court's determination in the light most favorable to the respondent and presuming the existence of every fact the court could reasonably deduce from the evidence (*People v. Jones* (2002) 103 Cal.App.4th 1139, 1143 (*Jones*)).

Here, Duarte's sentence included consecutive terms for burglary, kidnapping, dissuading a witness, firearm possession and vandalism of a tracking monitor, plus concurrent terms for robbery and vandalism of Kea's door. (The court stayed the sentence for firearm theft.) Respondent concedes that Duarte's sentence for vandalizing the door should be stayed, and we agree.

There was substantial evidence that when Duarte committed burglary by entering Kea's apartment complex, he did so with the intent to harm Kea. He then committed robbery by knocking down her door and stealing her gun. The time between entering the complex and taking the gun was enough for Duarte to reflect on his actions and renew his intent. Moreover, there was substantial evidence that he entered the apartment complex to harm Kea, not to take the gun, and took the gun simply to gain possession of it, not to harm Kea. Duarte thus harbored multiple independent criminal objectives regarding the burglary and robbery.

There was also substantial evidence that the kidnapping was divisible from the robbery. He had indicated he wanted the gun days before the kidnapping, and the evidence of past abuse while unarmed suggested he felt he did not need the firearm to control Kea. That Duarte stole Kea's gun in her presence itself suggests he felt he could overpower her even though unarmed.

Duarte's conviction for dissuading a witness (by forcing Kea to drive away from police) was also based on a separate act. Duarte forced Kea to leave her apartment and walk to and get in her car and drive away with him. After receiving a call from her daughters and making a U-turn, Duarte saw the police at the apartment



complex and forced Kea to keep going. These facts indicate that Duarte forced Kea to drive away for a different reason than kidnapping—to forestall help from police. Moreover, he had ample opportunity before warning Kea away from police to reflect on his actions and change his intent.

Nor did the trial court err in imposing a sentence for the vandalism to Duarte’s ankle monitor. There was substantial evidence that Duarte removed the monitor to avoid arrest for violating parole, and sufficient time elapsed between leaving the apartment complex and driving on the freeway for him to form this intent.

As to gun possession, Duarte stole Kea’s gun on April 1, 2021, and continued to possess it the next day, when he was arrested. The evidence supported that he stole the gun to possess it but kept it within reach for the separate reason of intimidating Kea or resisting arrest. (See *People v. Garfield* (1979) 92 Cal.App.3d 475, 478 [firearm possession by a felon and stealing the gun in a burglary may be punished as separate offenses when the possession is “severable from the burglary not merely in terms of continuity, but in terms of intention as well”].)

Because each of the above offenses was temporally distinct and served an independent objective, separate punishments were appropriate.

We agree with respondent that Duarte broke down Kea’s door as part of the robbery, as he had no separate motive to break it. We will therefor direct that the one-year sentence for vandalism of the door be stayed.

Duarte relies on several cases where kidnapping was undertaken for the purpose of committing another crime and was held to be part of an indivisible course of conduct that merited only one punishment. (See *People v. Corpening* (2016) 2 Cal.5th 307 [kidnapping for theft]; *People v. Latimer* (1993) 5 Cal.4th

1203, 1216 [kidnapping for rape]; *People v. Beamon* (1973) 8 Cal.3d 625, 639–640 [kidnapping for robbery].) He argues that an analysis conducted pursuant to these cases demonstrates his other offenses were committed to facilitate the kidnapping, as “[k]idnapping inherently involves a continuous course of conduct” and is a continuous crime in the sense that, “ ‘[a]s long as the detention continues, the crime continues.’ ” (*People v. Cortez* (1992) 6 Cal.App.4th 1202, 1209.) We disagree.

Our analysis tracks those undertaken in *Corpening*, *Latimer* and *Beamon* but leads to a different result. “Whether section 654 applies in a given case is a question of fact for the trial court, which is vested with broad latitude in making its determination.” (*Jones, supra*, 103 Cal.App.4th at p. 1143.) We will uphold the court’s findings in support of its determination if substantial evidence supports them. (*People v. Osband* (1996) 13 Cal.4th 622, 730–731.) As we discussed above, substantial evidence supports that Duarte committed discrete, divisible crimes.

## **B. The Court Properly Admitted Evidence of Prior Acts of Domestic Violence**

Duarte contends that after failing to engage in a rigorous balancing analysis, the trial court abused its discretion by admitting evidence of his prior acts of domestic violence. He argues these acts were too remote in time, more inflammatory than the charged crimes, and dissimilar to the charged offenses, and presentation of the evidence consumed an undue amount of time. We disagree.

### **1. Relevant Proceedings**

The court held a pretrial hearing addressing the People’s intention to admit evidence of Duarte’s prior acts of domestic violence against Kea, McCoy, Clemons, and Zepeda. The court noted that some of the incidents dated back to 1986, but Duarte was

“habitually involved in criminal activity” before and after that time. He committed acts of domestic violence against McCoy in 1986 and 1987 and Clemons in 1991 and 1992, for the latter of which he was sentenced to two years in prison. He violated probation by stalking Clemons, for which he was sent back to prison, and then again by stalking McCoy. After being released from custody, Duarte kidnapped and abused Clemons in 1995 and was imprisoned until 2007. When released, Duarte strangled, kidnapped, and raped Zepeda in an unreported case, then committed acts in 2011 for which he received a two-year prison term. After his release from that term, Duarte committed unreported assaults on Kea in 2014 and 2015. When Kea tried to get a restraining order in 2015, he was convicted for dissuading a witness and sentenced to 10 years in prison. Duarte committed misdemeanors in between these incidents.

The court observed that Duarte was “prolific with regard to his criminal interactions,” and there were no periods of time in which he was not committing criminal acts. Despite the remoteness of some of the incidents, the court found that because Duarte demonstrated a pattern of behavior that was “very, very similar” to the charged conduct, evidence of that behavior was relevant and not unduly prejudicial.

## **2. *Applicable Law***

“Except as provided in [sections 1101 and 1109], evidence of a person’s character or a trait of his or her character (whether in the form of an opinion, evidence of reputation, or evidence of specific instances of his or her conduct) is inadmissible when offered to prove his or her conduct on a specified occasion.” (Evid. Code, § 1101, subd. (a).) “Evidence Code section 1101, subdivision (a), ‘prohibits admission of evidence of a person’s character, including evidence of character in the form of specific instances of uncharged

misconduct, to prove the conduct of that person on a specified occasion.’ ” (*People v. Washington* (2021) 61 Cal.App.5th 776, 787.)

This rule, however, does not “prohibit[ ] the admission of evidence that a person committed a crime, civil wrong, or other act when relevant to prove some fact (such as motive, opportunity, intent, preparation, plan, knowledge, identity, [or] absence of mistake . . . ) other than his or her disposition to commit such an act.” (Evid. Code, § 1101, subd. (b).) In other words, evidence of prior uncharged conduct is admissible for purposes other than to prove the defendant has a disposition to commit similar acts. (*People v. Merchant* (2019) 40 Cal.App.5th 1179, 1191 (*Merchant*) [“specific acts of prior misconduct may be offered for a noncharacter purpose”].)

Additionally, the Legislature has created a statutory exception to the prohibition on propensity evidence for defendants charged with an offense involving domestic violence. (Evid. Code, § 1109, subd. (a)(1).) In such cases, the prosecution is permitted to introduce evidence of the defendant’s commission of other acts of domestic violence. (*Ibid.*; see *People v. Fruits* (2016) 247 Cal.App.4th 188, 202.) The exception “reflects the Legislature’s determination that in domestic violence cases, similar prior offenses are uniquely probative of a defendant’s guilt on a later occasion.” (*Merchant, supra*, 40 Cal.App.5th at p. 1192.)

Admission under Evidence Code sections 1101 and 1109 is limited by Evidence Code section 352, under which the trial court “may exclude evidence if its probative value is substantially outweighed by the probability that its admission will (a) necessitate undue consumption of time or (b) create substantial danger of undue prejudice, of confusing the issues, or of misleading the jury.”

We review the admission of domestic violence evidence for abuse of discretion. (*People v. Poplar* (1999) 70 Cal.App.4th 1129, 1138.)

### 3. *Application*

Duarte forfeited his argument that the trial court conducted no rigorous balancing analysis because he failed to object on that ground below. (Evid. Code, § 353, subd. (a); *People v. Ramos* (1997) 15 Cal.4th 1133, 1171.) In any event, we conclude the trial court adequately balanced the probative value of the prior domestic abuse evidence against its unduly prejudicial effect and potential to consume an undue amount of time.

#### a. *Probative Value*

The court reasonably concluded that the probative value of the evidence of domestic violence was strong because Duarte's prior acts were of the same general character as the charged offenses, demonstrating a pattern of harassment, violence, and control. Duarte stalked McCoy as well as Kea. He kidnapped and assaulted Zepeda and Clemons and held them in their cars against their will, much like he did Kea. He held Clemons and Kea captive in other settings and threatened them with a gun, took his victims' keys to restrict their movements, and strangled both Kea and Zepeda. The evidence demonstrated the abusive dynamics of Duarte's domestic relationships, explained why Kea was afraid to defy him, and was probative on both Kea's and Duarte's credibility. (*People v. Falsetta* (1999) 21 Cal.4th 903, 911 [use of domestic violence evidence is proper "to assure that the trier of fact would be made aware of the defendant's [commission of other domestic violence] in evaluating the victim's and the defendant's credibility"].)

#### b. *Remoteness*

The court reasonably concluded that the probity of the evidence of prior domestic violence was undiluted by the remoteness of some of the incidents because it showed a pattern of continuous conduct. Since 1986, and considering the years Duarte was

incarcerated, he apparently never went more than five years without abusing a domestic partner.

c. *Inflammatory Effect*

The court reasonably concluded that the evidence, including evidence of the Zepeda attack, was not unduly prejudicial because it was no more inflammatory than evidence of the current offenses. (See *People v. Rucker* (2005) 126 Cal.App.4th 1107, 1119 [relevant factors in determining undue prejudice include whether the prior domestic violence was more inflammatory than the charged conduct].) The charged conduct was grave. In a campaign lasting overnight, Duarte violated probation and a restraining order to follow Kea from a different county to her apartment, called her 40 times during the trip, broke into her apartment, blocked her from leaving, obtained a gun, forced her to drive away with him, and prevented her from getting help. Duarte's prior domestic abuse was not categorically different from the conduct alleged in this case.

d. *Time Consumption*

The court reasonably concluded that admission of the prior acts evidence would not consume an undue amount of time. Duarte was charged with 20 counts involving separate incidents. Most of the trial evidence related directly to the charged crimes, including testimony from Duarte, Kea and her daughters, and police officers, as well as evidence regarding phone records and GPS tracking. That multiple witnesses testified about Duarte's several victims directly supported that he had a propensity for domestic violence and undermined his (and bolstered Kea's) credibility. (*Merchant, supra*, 40 Cal.App.5th at p. 1194 [that the defendant engaged in domestic violence against different women strengthens its probative value].)

e. *Due Process*

Duarte argues that admission of the evidence of prior domestic violence violated his due process rights. We disagree. Evidence of a defendant's prior domestic violence in a prosecution for an offense involving domestic violence does not violate the defendant's right to due process. (*People v. Johnson* (2000) 77 Cal.App.4th 410, 412.)

**DISPOSITION**

The judgment is affirmed. The trial court is directed to modify the abstract of judgment to stay the one-year sentence on Duarte's conviction for vandalism involving breaking a door, and to forward the corrected abstract to the Department of Corrections and Rehabilitation.

NOT TO BE PUBLISHED.

ROTHSCHILD, P. J.

We concur:

BENDIX, J.

M. KIM, J.