



COUNTY OF YOLO
OFFICE OF THE DISTRICT ATTORNEY
JEFF W. REISIG, DISTRICT ATTORNEY

September 13, 2018

Attn: Non-Violent Parole Review Process
Board of Parole Hearings
Correspondence-NV
P.O. Box 4036
Sacramento, CA 95812-4036

RE: Candelario Garza, Jr. CDCR #F67607

Dear Board of Parole Hearings,

On August 27, 2018, the Board of Parole Hearings granted release to Inmate Candelario Garza because he no longer posed an unreasonable risk of violence to the community if released. The Yolo County District Attorney's Office believes there has been an error in fact or law and is requesting a review of the decision.

First, the Yolo County District Attorney's Office was not provided with notice that Inmate Garza was again being considered for review. As a result, we were not afforded an opportunity to oppose his release again and provide comment as to the reasons for Inmate Garza's denial. Furthermore, the decision made no reference to our opposition from last year giving the false impression that the District Attorney's Office does not oppose his release. Given that we were not provided an opportunity to oppose and our previous opposition was not referenced, that should be reason enough to reverse the board's decision.

Current Yolo County Case #06F01680

Inmate Garza was convicted at jury trial of a violation of Penal Code § 273.5(a), corporal injury to a spouse of cohabitant in an act of domestic violence, Penal Code § 136.1(b)(1), intimidating a witness or victim, and a violation of Penal Code § 422, criminal threats. The report by the probation officer details adequately the facts as they pertain to the injury to spouse. Last year in its denial, the Board commented that the facts pertaining to the dissuading a witness and criminal threats were not contained in the probation officer's report.

Had we been noticed and afforded an opportunity to respond, we would have been able to provide you with additional facts. Inmate Garza unsuccessfully appealed his conviction and sentence. In upholding Inmate Garza's conviction and sentence, the opinion summarized the facts elicited at trial.

"K.G. married defendant in Reno in June 2004. In October 2005, they lived in a trailer parked in the yard of defendant's employer, Zamora Trucking, in Woodland.

Defendant worked on October 9, 2005, a Sunday, and returned home around 7:00 or 7:30 p.m. At around 10:00 p.m. he got upset with K.G., eventually accusing her of infidelity. K.G. denied the accusation, making defendant more irate.

As was her custom, K.G. decided to let matters cool down and walked out of the trailer. Defendant yelled at her from the trailer and then went outside. Swearing at her, defendant told K.G. to get in the house or "people are going to hear you and people are going to call the cops."

Defendant then grabbed K.G. by the hair and dragged her to the trailer, repeatedly punching her in the head with his closed fists while telling her to keep quiet. He threw her inside the trailer, causing K.G. to hit her knees.

K.G. was on the floor of the trailer in the fetal position, horrified, hysterical, and scared. Defendant closed the trailer door, yelling, "Go ahead, yell, go ahead yell, call the cops, call the cops" while holding his fist about three inches from her mouth.

Defendant picked up a hammer and raised it as if to strike K.G.'s head. He then put the hammer down and said, "Go ahead, call the cops, call the cops, I'll kill you if you call the cops." K.G. had heard this threat before and it usually kept her from calling the police.

Defendant told K.G. "You are not going anywhere" and threw her purse to the opposite end of the trailer. The wounded K.G. asked for ice, which made defendant angrier. K.G. replied, "It feels like I am not in Kansas anymore," and defendant became angrier still, telling her to shut up and saying, "What? Do you want some more of this?"

Later, after having a beer, defendant calmed down and tearfully told K.G. he was sorry. Defendant told her to go out and get some hamburgers. Instead, K.G. drove to a Denny's parking lot, where she stayed for 30 to 45 minutes before driving to the apartment of her friend, K. Gray.

At Gray's apartment, K.G. looked into a mirror and saw a large lump on her forehead and her lips were "busted and bleeding." She also had bald spots from where defendant had pulled out her hair. K.G. called the police and recounted defendant's attack to the responding officer.

According to the officer, K.G. had: "two circular, approximately half-inch scrapes on both sides of her chin. She also had an approximate half-inch bruise in the center of her upper lip and approximately one-inch circular bruise that was swelling in the center of her forehead."

K.G. told the officer she had been involved in approximately 50 physical altercations with her husband during their marriage. Although she said the injuries on her chin were from an incident two months ago, they appeared fresh to the officer. K.G. accepted the officer's offer to get her an emergency protective order.

K.G. testified to prior acts of abuse from defendant. They first lived in Vallejo after marrying. Defendant started to abuse her in October of 2004, when he backhanded her in the face and called her a "F'in bitch." Even though K.G. tried to please him, defendant constantly made derogatory remarks to her during their first few months together.

Defendant hit K.G. a few more times while they were living in Vallejo with one of defendant's friends. One attack took place in the bedroom, where defendant hit her over the head with his fist, pushing her into the entertainment center and knocking over speakers. He struck her five or six times with closed fists but left no visible injuries. She did not report the incident because she still had hope and wanted to try harder. Defendant also once put a putty knife to her arm and accused K.G. of having an affair.

Another incident occurred when they were living in their own residence in Vallejo. Defendant and K.G. were arguing over K.G.'s son eating at the breakfast table. After she turned her back and started to walk away, defendant threw a wax candle, striking K.G. in the back of the head. K.G. crouched in the corner in a fetal position, covering her head with a cushion from the couch. With blood gushing from her head, K.G. told defendant she was bleeding, which only made him madder. Defendant then pushed and shoved K.G. to the shower to wash the blood from her clothes.

The cut to her head was deep and about two inches long. K.G. asked to go to the hospital, but defendant accused her of being a snitch who wanted to get him in trouble.

Her son had been in the bedroom, but came out after defendant threw the candle.

K.G. told her mother about the incident and went to a battered women's shelter. She left the shelter after three days and returned with her son to live with defendant. This led to K.G.'s eight-year-old son being placed in foster care. K.G. did not want to file a police report or request a restraining order, as she was afraid to make waves with law enforcement. Defendant had often told K.G. that, "If you are a snitch you die," which made her afraid for her life.

Although defendant promised not to hit her, the physical abuse resumed within a week of K.G.'s return. K.G. once again left defendant to spend some time at a friend's house, but thereafter returned to live with defendant. The pace of the beatings increased, and by the summer of 2005 defendant was hitting K.G. weekly. Although K.G. frequently left defendant, she would eventually return to him.

K.G.'s son testified. He once saw defendant push his mother into a cupboard when they were living in Vallejo, causing her mouth to bleed. Another time he was in his bedroom and peeked out, seeing defendant throw the candle at K.G.'s head, cracking it open. The candle was five inches long and about an inch and a half round. Another time, defendant pushed K.G. into a television.

In February 2005, K.G.'s mother picked up K.G. and her son in Vallejo. K.G. was visibly nervous and shaken as she entered the car. She showed her mother a fresh cut on the top of her head, about three-to-four inches long and one-third to one-quarter of an inch wide.

K.G. said defendant was angry with her for not getting tortillas from the store and threw a large pillar candle at her head. K.G.'s mother told her to get the wound looked at, but K.G. was afraid this would get her hurt more. K.G.'s mother told Children's Protective Services about the incident as she was afraid for her daughter and grandson.

K. Gray testified that K.G. started coming to her apartment in Woodland in February or March 2005. She noticed a great change in her friend's behavior, as K.G. would now "curl up in a ball and cry, and she was just somebody else." Starting in March, K.G. and defendant stayed with her for three to five months. Defendant fought with K.G. every day during their stay, yelling at her, throwing things, and calling her names.

K.G. came to Gray's apartment on the night of the October 9th incident. She was scared, had a big lump on her head, and her lip and nose were bloody, fat, and cut. K.G. also showed Gray a bald spot, explaining this happened when defendant dragged her into the trailer by her hair. She also had a huge lump on the top of her head and a lump on the side of her head, towards the back.

T.L. had a romantic relationship with defendant in 2000 and 2001. She broke off the relationship and one week later, in September 2001, defendant called, saying he wanted to come to town and talk with her. T.L. said no, hung up, and went out to celebrate her birthday with a friend.

She returned to her home at 3:30 a.m. and found the front door unlocked and slightly opened. Her son had earlier told T.L. defendant was there. After T.L. went to the bedroom and turned on the light, defendant grabbed T.L. by the hair and began hitting her on the nose and eyes with his fists. T.L. unsuccessfully struggled to get away, and the beatings only stopped when she agreed to lie down in bed with him.

Defendant had sex with T.L. She did not want to have sex with defendant, but went along because she was scared. Defendant, who was drunk, eventually passed out allowing T.L. to escape.

T.L. suffered a broken nose and black eyes from the assault. When she first turned on the light, she noticed defendant's nickname was written on the wall. While hitting her, defendant said, "I should have shot you like I shot my former wife, Olga." Defendant tried to return to T.L.'s house the next week, but was stopped by her nephew. He was convicted of domestic violence charges and sent to prison as a result of the assault on T.L."¹

Given the extreme violence and cruelty towards K.G. it should be of no surprise that Inmate Garza claimed his rights were violated, denied his guilt and stated that "almost everything in the trial was a fabrication" in his probation interview.

The facts elicited at trial demonstrate that Inmate Garza was armed with a weapon and threatened to kill the victim. Furthermore, the incident with K.G. was not an isolated incident but one of many, many incidents of violence committed upon her.

Prior Strike Offense and Prior Domestic Violence

On September 15, 1989, Inmate Garza was arrested for robbery, a violation of Penal Code § 211, in Yolo County. On September 12, 1989, the victim had stepped out of his house and walked to his car around 9:30 p.m. At this time Inmate Garza drove by in his car, turned around, and stopped in front of the victim's house. He exited his vehicle and walked up to the victim. Inmate Garza asked the victim if he had a problem with him and the victim replied he was just looking at his car. Inmate Garza told him not to look at his car and grabbed the victim's gold chain and shirt, pulling them both. Inmate Garza took the victim's gold chain and pulled the victim's watch and threw it to the ground. He then kicked the victim in the thigh and took the chain. Subsequently Inmate Garza was sentenced to 3 years in prison for this offense.

On April 3, 2002, Inmate Garza was convicted of violating Penal Code § 273.5(a) corporal injury to a spouse or cohabitant and Penal Code § 236/237(a), false imprisonment. The facts of which are detailed above courtesy of the Court of Appeal Opinion. His latest offense was another conviction of a corporal injury to a spouse. Inmate Garza's criminal history shows a pattern of violence, particularly against the women he is romantically involved with. Domestic violence is a violent and serious offense. To date he has been convicted of two felonies for injuring his spouse with different victims. These are violent offenses and demonstrate his failure to commit to rehabilitation.

Inmate Garza's criminal history demonstrates the unreasonable risk of violence he remains to the community, particularly to those with whom he is in a relationship. According to his criminal history, he has been convicted repeatedly for crimes involving violence against others and his wives. Since 1986, Inmate Garza has been convicted of five felonies and one misdemeanor.

¹ For the Board's reference, the entire opinion is attached.

In its decision to grant release the Board found the factors in aggravation outweighed the factors in mitigation in both the commitment offense his prior criminal history. The Board then found that his overall Institutional Adjustment mitigated his current risk of violence.

In ultimately determining that the inmate no longer posed an unreasonable risk of violence if released, the Board noted the inmate "performance over the past three years evidences significantly improved behavior and a sustained effort to participate in rehabilitative programs." Inmate Garza's last disciplinary action was merely three years ago and involved fighting with violence. This most recent action should not be downplayed in light of his violent history. Additionally, much of Inmate Garza's self-help/rehabilitative programs started in 2018 and three of his programs he started one month ago. This hardly seems like a sustained effort to participate in programs. Three years of discipline free behavior pales in comparison to his many years of violent behavior.

Therefore, the District Attorney's Office respectfully argues that the overall decision of the Board is in error in that the factors related to his commitment offenses and his criminal history should outweigh the Board's finding of mitigation related to his institutional behavior. Additionally, the District Attorney's Office respectfully disagrees that his institutional adjustment mitigates the current risk of violence in that much of his programming has been in the last year.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Melinda Aiello", is written over a horizontal line.

Melinda Aiello
Assistant Chief Deputy District Attorney
Yolo County District Attorney's Office

RE: Candelario Garza, Jr. CDCR #F67607

ATTACHMENT "A"

KeyCite Red Flag - Severe Negative Treatment
Unpublished/noncitable January 23, 2008

2008 WL 188055

Not Officially Published

(Cal. Rules of Court, Rules 8.1105 and 8.1110, 8.1115)

Only the Westlaw citation is currently available.

California Rules of Court, rule 8.1115, restricts
citation of unpublished opinions in California courts.

Court of Appeal, Third District, California.

The PEOPLE, Plaintiff and Respondent,

v.

Candelario GARZA, Defendant and Appellant.

No.

C053616

(Super.Ct.No. 06-1680).

Jan. 23, 2008.

Attorneys and Law Firms

Office of the State Attorney General, Sacramento, CA, for
Plaintiff and Respondent.

David Neil Morse, Attorney at Law, San Francisco, CA,
for Defendant and Appellant.

Opinion

CANTIL-SAKAUYE, J.

*1 A jury convicted defendant Candelario Garza of corporal injury to a spouse (Pen.Code, § 273.5, subd. (a)), dissuading a witness (Pen.Code, § 136.1), and making criminal threats (Pen.Code, § 422). The trial court sustained allegations of a prior conviction under Penal Code section 273.5 within the last seven years (Pen.Code, § 273.5, subd. (e)(1)), a prior strike, and three prior prison terms, and sentenced defendant to 18 years and four months in prison.

On appeal, defendant contends prior misconduct evidence was improperly admitted and his sentence for criminal threats should have been stayed pursuant to Penal Code section 654. We shall affirm.

BACKGROUND

K.G. married defendant in Reno in June 2004. In October 2005, they lived in a trailer parked in the yard of defendant's employer, Zamora Trucking, in Woodland.

Defendant worked on October 9, 2005, a Sunday, and returned home around 7:00 or 7:30 p.m. At around 10:00 p.m. he got upset with K.G., eventually accusing her of infidelity. K.G. denied the accusation, making defendant more irate.

As was her custom, K.G. decided to let matters cool down and walked out of the trailer. Defendant yelled at her from the trailer and then went outside. Swearing at her, defendant told K.G. to get in the house or "people are going to hear you and people are going to call the cops."

Defendant then grabbed K.G. by the hair and dragged her to the trailer, repeatedly punching her in the head with his closed fists while telling her to keep quiet. He threw her inside the trailer, causing K.G. to hit her knees.

K.G. was on the floor of the trailer in the fetal position, horrified, hysterical, and scared. Defendant closed the trailer door, yelling, "Go ahead, yell, go ahead yell, call the cops, call the cops" while holding his fist about three inches from her mouth.

Defendant picked up a hammer and raised it as if to strike K.G.'s head. He then put the hammer down and said, "Go ahead, call the cops, call the cops, I'll kill you if you call the cops." K.G. had heard this threat before and it usually kept her from calling the police.

Defendant told K.G. "You are not going anywhere" and threw her purse to the opposite end of the trailer. The wounded K.G. asked for ice, which made defendant angrier. K.G. replied, "It feels like I am not in Kansas anymore," and defendant became angrier still, telling her to shut up and saying, "What? Do you want some more of this?"

Later, after having a beer, defendant calmed down and tearfully told K.G. he was sorry. Defendant told her to go out and get some hamburgers. Instead, K.G. drove to a Denny's parking lot, where she stayed for 30 to 45 minutes before driving to the apartment of her friend, K.

Gray.

At Gray's apartment, K.G. looked into a mirror and saw a large lump on her forehead and her lips were "busted and bleeding." She also had bald spots from where defendant had pulled out her hair. K.G. called the police and recounted defendant's attack to the responding officer.

*2 According to the officer, K.G. had: "two circular, approximately half-inch scrapes on both sides of her chin. She also had an approximate half-inch bruise in the center of her upper lip and approximately one-inch circular bruise that was swelling in the center of her forehead."

K.G. told the officer she had been involved in approximately 50 physical altercations with her husband during their marriage. Although she said the injuries on her chin were from an incident two months ago, they appeared fresh to the officer. K.G. accepted the officer's offer to get her an emergency protective order.

K.G. testified to prior acts of abuse from defendant. They first lived in Vallejo after marrying. Defendant started to abuse her in October of 2004, when he backhanded her in the face and called her a "F'in bitch." Even though K.G. tried to please him, defendant constantly made derogatory remarks to her during their first few months together.

Defendant hit K.G. a few more times while they were living in Vallejo with one of defendant's friends. One attack took place in the bedroom, where defendant hit her over the head with his fist, pushing her into the entertainment center and knocking over speakers. He struck her five or six times with closed fists but left no visible injuries. She did not report the incident because she still had hope and wanted to try harder. Defendant also once put a putty knife to her arm and accused K.G. of having an affair.

Another incident occurred when they were living in their own residence in Vallejo. Defendant and K.G. were arguing over K.G.'s son eating at the breakfast table. After she turned her back and started to walk away, defendant threw a wax candle, striking K.G. in the back of the head. K.G. crouched in the corner in a fetal position, covering her head with a cushion from the couch. With blood gushing from her head, K.G. told defendant she was bleeding, which only made him madder. Defendant then pushed and shoved K.G. to the shower to wash the blood from her clothes.

The cut to her head was deep and about two inches long. K.G. asked to go to the hospital, but defendant accused her of being a snitch who wanted to get him in trouble.

Her son had been in the bedroom, but came out after defendant threw the candle.

K.G. told her mother about the incident and went to a battered women's shelter. She left the shelter after three days and returned with her son to live with defendant. This led to K.G.'s eight-year-old son being placed in foster care. K.G. did not want to file a police report or request a restraining order, as she was afraid to make waves with law enforcement. Defendant had often told K.G. that, "If you are a snitch you die," which made her afraid for her life.

Although defendant promised not to hit her, the physical abuse resumed within a week of K.G.'s return. K.G. once again left defendant to spend some time at a friend's house, but thereafter returned to live with defendant. The pace of the beatings increased, and by the summer of 2005 defendant was hitting K.G. weekly. Although K.G. frequently left defendant, she would eventually return to him.

*3 K.G.'s son testified. He once saw defendant push his mother into a cupboard when they were living in Vallejo, causing her mouth to bleed. Another time he was in his bedroom and peeked out, seeing defendant throw the candle at K.G.'s head, cracking it open. The candle was five inches long and about an inch and a half round. Another time, defendant pushed K.G. into a television.

In February 2005, K.G.'s mother picked up K.G. and her son in Vallejo. K.G. was visibly nervous and shaken as she entered the car. She showed her mother a fresh cut on the top of her head, about three-to-four inches long and one-third to one-quarter of an inch wide.

K.G. said defendant was angry with her for not getting tortillas from the store and threw a large pillar candle at her head. K.G.'s mother told her to get the wound looked at, but K.G. was afraid this would get her hurt more. K.G.'s mother told Children's Protective Services about the incident as she was afraid for her daughter and grandson.

K. Gray testified that K.G. started coming to her apartment in Woodland in February or March 2005. She noticed a great change in her friend's behavior, as K.G. would now "curl up in a ball and cry, and she was just somebody else." Starting in March, K.G. and defendant stayed with her for three to five months. Defendant fought with K.G. every day during their stay, yelling at her, throwing things, and calling her names.

K.G. came to Gray's apartment on the night of the

October 9th incident. She was scared, had a big lump on her head, and her lip and nose were bloody, fat, and cut. K.G. also showed Gray a bald spot, explaining this happened when defendant dragged her into the trailer by her hair. She also had a huge lump on the top of her head and a lump on the side of her head, towards the back.

T.L. had a romantic relationship with defendant in 2000 and 2001. She broke off the relationship and one week later, in September 2001, defendant called, saying he wanted to come to town and talk with her. T.L. said no, hung up, and went out to celebrate her birthday with a friend.

She returned to her home at 3:30 a.m. and found the front door unlocked and slightly opened. Her son had earlier told T.L. defendant was there. After T.L. went to the bedroom and turned on the light, defendant grabbed T.L. by the hair and began hitting her on the nose and eyes with his fists. T.L. unsuccessfully struggled to get away, and the beatings only stopped when she agreed to lie down in bed with him.

Defendant had sex with T.L. She did not want to have sex with defendant, but went along because she was scared. Defendant, who was drunk, eventually passed out allowing T.L. to escape.

T.L. suffered a broken nose and black eyes from the assault. When she first turned on the light, she noticed defendant's nickname was written on the wall. While hitting her, defendant said, "I should have shot you like I shot my former wife, Olga." Defendant tried to return to T.L.'s house the next week, but was stopped by her nephew. He was convicted of domestic violence charges and sent to prison as a result of the assault on T.L.

*4 An expert testified on domestic violence. Domestic violence can be emotional or physical, and is inflicted so the perpetrator can assert power over the victim. There is often a cycle of violence, where the abuse is followed by a honeymoon period as the abuser fears the victim will leave, which is then followed by more abuse as the abuser reasserts his power.

Abusers often tell their victims they will kill them or do something to their children if they leave. The cycle of abuse is often a bonding experience, leading to a tight bond between the abuser and victim. As a result, it is common for the victim to be unable to leave the relationship. The expert did not interview the victim or read any of the police reports.

The defense called the social worker from Children's

Protective Services assigned to K.G. and her son. K.G. told the social worker that she had missed a scheduled visit with her son on October 7 because defendant had held her hostage by driving her around. K.G. previously said she had no contact with defendant.

Defendant's employer testified that defendant was driving trucks for him on the days of October 8 through October 10, 2005. During that time, defendant worked almost every day of the week.

DISCUSSION

I.

Defendant contends the trial court should have excluded T.L.'s testimony regarding defendant's assault and rape of her. We disagree.

Generally, evidence of a person's character or past conduct to prove conduct on a specified occasion is inadmissible. (Evid.Code, § 1101, subd. (a).) Section 1109 provides an exception for prior acts of domestic violence in a domestic violence case. (§ 1109.) This section permits a jury to consider prior incidents of domestic violence for the purpose of showing a defendant's propensity to commit offenses of the same type. (*Ibid.*) However, the evidence is still subject to section 352.

Section 352 permits a court to exclude evidence if its probative value is substantially outweighed by the probability that its admission will necessitate undue consumption of time or create substantial danger of undue prejudice, of confusion, or misleading the jury. (*People v. Harris* (1998) 60 Cal.App.4th 727, 730.) Section 352 weighing is a safeguard that ensures admission of propensity evidence does not violate due process. (*People v. Harris, supra*, at p. 730.)

The trial court's decision under section 352 is reviewed for abuse of discretion. (*People v. Escobar* (2000) 82 Cal.App.4th 1085, 1097.) It will not be overturned unless "palpably arbitrary, capricious and patently absurd." (*People v. Jennings* (2000) 81 Cal.App.4th 1301, 1314.)

Defendant asserts the assault described in T.L.'s

testimony 'involved an unauthorized entry and lying in wait, two factors not found in the other charged and uncharged offenses. These factors do not render the assault described in T.L.'s testimony inadmissible under section 352. The assault on T.L. tended to show defendant's propensity to commit acts of violence against domestic partners with whom he was dissatisfied. Although the charged offenses did not involve this level of planning or lying in wait, they were at least as violent as the assault described in T.L.'s testimony. The testimony of defendant's initial assault on T.L. was relevant propensity testimony and not so prejudicial as to warrant exclusion under section 352.

*5 Defendant also argues the testimony should have been excluded because it included defendant's rape or sexual assault on T.L. He is mistaken.

For a definition of "domestic violence," section 1109, subdivision (d)(3), refers to the meaning set forth in Penal Code section 13700: "(a) 'Abuse' means intentionally or recklessly causing or attempting to cause bodily injury, or placing another person in reasonable apprehension of imminent serious bodily injury to himself or herself, or another. [¶] (b) 'Domestic violence' means abuse committed against an adult or a minor who is a ... person with whom the suspect has had a child or is having or has had a dating or engagement relationship." This includes the crime of rape. (*People v. Poplar* (1999) 70 Cal.App.4th 1129, 1139 (*Poplar*).) Indeed, "rape is a higher level of domestic violence, a similar act of control." (*Ibid.*)

There was overwhelming, detailed evidence of defendant committing several vicious assaults on K.G., his wife. Defendant's sexual assault evidence against T.L. was not prejudicial in light of the remaining prior misconduct evidence including the evidence that defendant assaulted K.G. in the presence of K.G.'s child, or K.G.'s testimony regarding the instant offenses. "The evidence was extremely probative, showing defendant's propensity for violence against domestic partners. The prior incidents of domestic violence were not the sort to evoke an emotional bias against defendant. [Citation.]" (*Poplar. supra*, 70 Cal.App.4th at p. 1139.) Accordingly, we conclude the trial court correctly admitted the sexual assault testimony.

II.

Defendant contends the sentence for count four, making

criminal threats, should have been stayed pursuant to Penal Code section 654. We reject his claim.

Pursuant to Penal Code section 654, if defendant harbored a single intent, multiple punishment is prohibited; if he "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.)

The question of whether defendant entertained multiple criminal objectives is a factual one for the trial court, which is invested with broad latitude in making its determination. (*People v. Hutchins* (2001) 90 Cal.App.4th 1308, 1312.) The court's express or implied findings will be upheld on appeal if supported by substantial evidence. (*Ibid.*) We review the evidence in the light most favorable to the People and presume in support of the judgment the existence of every fact that the trier of fact could reasonably deduce from the evidence. (*Id.* at pp. 1312–1313.)

Defendant argues the offenses of making criminal threats and dissuading a witness come from a single incident with one objective: when defendant picked up a hammer, raised it as if he were going to kill K.G., and said, "Go ahead, call the cops, call the cops, I'll kill you if you call the cops."

*6 This was not, however, the only instance that night where defendant threatened K.G. or sought to dissuade her from contacting the police. As he closed the trailer door, defendant exclaimed to K.G., "Go ahead yell, call the cops, call the cops" and said, "Yell, yell one more time" as he held his fist close to K.G.'s mouth. K.G. was on the floor in a fetal position, defendant having thrown her there, knowing defendant would punish her if she made any more noise.

Defendant clearly had more than one objective when threatening K.G. As the expert testimony explained, domestic abuse, emotional or physical, takes place so the abuser can exert control over the victim. The abuser enjoys dominating and being able to control the person he lives with. An abuser will threaten to kill the victim if she leaves, creating a constant feeling in the victim that she is not safe. That fear in turn overwhelms the victim, keeping her from leaving the relationship.

In addition to keeping K.G. from reporting the incident to the police, the evidence also supports the inference that

defendant threatened to kill K.G. to dominate K.G., to emphasize his control over her and whether she lived or died, so as to induce fear in K.G. The expert evidence demonstrates that exerting control over K.G. was intrinsically valuable to defendant and was a means of keeping her subordinate to him and in the relationship. The intent to control and dominate K.G. is thus a separate objective from preventing her from going to the police. Accordingly, we find substantial evidence to support the trial court's decision to sentence defendant on both counts.

DISPOSITION

The judgment is affirmed.

We concur: SCOTLAND, P.J., and HULL, J.

All Citations

Not Reported in Cal.Rptr.3d, 2008 WL 188055

Footnotes

- ¹ Hereafter, undesignated statutory references are to the Evidence Code.