



## The People v. Joseph Heredia

2012 | Cited 0 times | California Court of Appeal | February 15, 2012

P. v. Heredia

CA4/1

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Affirmed.

Joseph Heredia appeals from a judgment convicting him of several counts of assault with a deadly weapon with gang enhancements. The offenses occurred when defendant and several of his fellow gang members, armed with knives, assaulted another group of individuals. Defendant argues: (1) his conviction on one of the counts (victim Veronica Flores) must be reversed because the evidence showed he did not intend that she be stabbed, and (2) all but one of the sentences on the gang enhancements should have been stayed under Penal Code<sup>1</sup> section 654.

We reject these contentions and affirm.

### FACTUAL AND PROCEDURAL BACKGROUND

The victims of the assaults were Ricardo Flores, his wife Veronica Flores, and three other males (Jose Perez, Joel Cota, and Andre Carazolez). The events leading to the assaults started about 1:00 a.m. on May 3, 2009, when two males were seen slashing tires in front of Ricardo and Veronica's residence. When Ricardo confronted the males about the tire slashing, one of them stated, "[T]hat's it, this is OTNC" and ran up a driveway towards a house. Veronica told the other male they were not from a gang and did not want any problems, and the male responded, " 'Well, you guys fucked up now because we know where you live.' "

About one minute later, 15 to 20 males, including defendant, arrived on the scene. Numerous males in the group had knives in their hands. As the group approached, Veronica grabbed her husband (who was intoxicated) by the arm and backed him across the street towards a church. About 10 of the males in the group surrounded Ricardo and Veronica. One assailant held Ricardo from behind and



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held a knife over Ricardo's shoulder. The males were saying, "[T]ell us when to stab him, tell us when to do it, tell us when to shank him." Several of the males then started stabbing Ricardo.

While Ricardo was being held and stabbed by the assailants, Veronica was trying to drag Ricardo out of the circle. Veronica testified she saw "knives coming from all directions" and she was pulling her husband by his arm. During the attack an assailant was trying to push her off her husband because she was "getting in the way" of her husband being stabbed, and she was hitting the assailants' hands to prevent the knives "from actually going in [her] husband's body." When asked if the knives came close to her, Veronica responded yes, explaining: "[T]hey were right next to me. I didn't at any point feel like I was trying to be stabbed, too. It just seemed like they were strictly aiming for my husband and just trying to move me out of the way to accomplish that." (*Italics added.*) As this was occurring, Veronica knew her husband was being stabbed because she saw blood.

Veronica was able to drag her husband out of the circle of assailants. As she followed her husband up the driveway towards their home, an assailant (still trying to stab her husband) pushed her to the ground to get her out of the way. The assailant tried to pick up a heavy trash can that was blocking his access to Ricardo, but then gave up and left the scene.

During the incident, victim Perez came outside as the group of assailants was approaching with the knives. When the attack on Ricardo commenced, Perez ran back to the house, but he was stabbed in the arm before he could escape.

When victim Cota arrived on the scene, he saw Ricardo surrounded by the assailants, and then about three assailants with knives surrounded Cota. The assailants were "cussing" at Cota and saying "OTNC." One of the assailants (who did not have a knife) tried to punch Cota. Cota pushed the assailant back, causing him to fall to the ground. Another assailant responded by saying, "'Oh, you fucked up,' " and then swung at Cota's face with a knife but did not make contact. The assailants chased Cota as he ran away, but Cota was able to make it back to the Flores home.

Victim Carazolez came outside to assist Ricardo after Ricardo had been stabbed. An assailant threw a bottle at Carazolez and stabbed him in the side and back. The assailants ran away at the sound of police sirens. Once the authorities arrived, the stabbing victims were transported to the hospital.

That same night defendant and other persons at a nearby residence were detained and arrested. Several witnesses identified defendant as one of the males who was with the group of assailants.<sup>2</sup> The prosecution's gang expert testified that defendant is a member of the OTNC (Old Town National City) gang.

As a result of the attacks, Ricardo suffered a collapsed lung; Perez required stitches in his arm; and Carazolez sustained an injury to his liver and underwent surgery. Veronica was not stabbed, but she suffered a sore rib from being pushed to the ground.



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## Defense

Testifying on his own behalf, defendant stated he was no longer a gang member and he knew nothing about the assaults. He testified he was asleep when the police woke him up with their guns drawn.

## Jury Verdict and Sentence

Defendant was charged with five counts of assault with a deadly weapon (victims Ricardo, Perez, Carazolez, Veronica and Cota), with an allegation that he acted to benefit his gang for all five counts. He was also charged with enhancements for personal infliction of great bodily injury to Ricardo, and personal use of a deadly weapon against Ricardo and Cota. The jury found him guilty of the five assault counts, with true findings on the five gang enhancements. The jury found the personal infliction of great bodily injury and personal weapon use allegations to be not true. He was sentenced to 14 years four months in prison.

## DISCUSSION

### I. Assault with a Deadly Weapon Against Veronica

Defendant argues his conviction for assault with a deadly weapon against Veronica must be reversed. He asserts the record supports she was the victim of a simple assault, but does not support she was a victim of assault with a deadly weapon. In support of this contention, he cites Veronica's testimony that she was not the intended target of the knife assault.

The crime of assault requires that the defendant commit an act that by its nature will probably result in the application of wrongful physical force on another. (People v. Williams (2001) 26 Cal.4th 779, 782; People v. Colantuono (1994) 7 Cal.4th 206, 214, 216.) Assault is a general intent crime, requiring that the defendant willfully commit the proscribed act. (People v. Williams, supra, at p. 782; People v. Colantuono, supra, at pp. 213-214.) Further, the defendant must have had knowledge of facts that would lead a reasonable person to realize the application of force was likely to result from the act. (People v. Williams, supra, at p. 788.)

Intent to harm is not an element of assault; all that is required is knowledge of the relevant facts and intent to do the act that is likely to result in the application of the wrongful force. (People v. Williams, supra, 26 Cal.4th at pp. 782, 786, 790 [assaultive act, by its nature, subsumes intent to injure]; People v. Colantuono, supra, 7 Cal.4th at pp. 214-215, 218.) As explained in Colantuono: "[T]he question of intent for assault is determined by the character of the defendant's willful conduct considered in conjunction with its direct and probable consequences. If one commits an act that by its nature will likely result in physical force on another, the particular intention of committing a battery is thereby subsumed. Since the law seeks to prevent such harm irrespective of any actual



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purpose to cause it, a general criminal intent or willingness to commit the act satisfies the mens rea requirement for assault." (People v. Colantuono, supra, 7 Cal.4th at p. 217.)

Applying these principles, the courts have concluded that a defendant is liable for assault against a reasonably foreseeable victim regardless whether the defendant was subjectively targeting that particular person. (People v. Felix (2009) 172 Cal.App.4th 1618, 1628-1629; see People v. Bland (2002) 28 Cal.4th 313, 329; People v. Perez (2010) 50 Cal.4th 222, 233-234.) Contrary to defendant's contention, this conclusion applies equally to aggravated assault as well as simple assault. That is, when a defendant commits aggravated assault by using a weapon, the fact the defendant did not intend to use the weapon against a particular person does not relieve the defendant of culpability vis-a-vis that person if it was reasonably foreseeable the person could be harmed by the weapon. (People v. Tran (1996) 47 Cal.App.4th 253, 261-262 [jury could reasonably find knife-wielding defendant, who chased a man holding a baby, guilty of assault with a deadly weapon against man and baby even if defendant did not intend to harm baby; knife attack on man could foreseeably have wounded baby]; People v. Felix, supra, 172 Cal.App.4th at p. 1623, 1630 [jury could reasonably find that defendant, who was targeting a man when he shot into home, was also liable for assault with firearm against two children inside the home; defendant knew it was likely children were inside]; People v. Trujillo (2010) 181 Cal.App.4th 1344, 1355, 1357 [jury could reasonably find defendant, who shot into a vehicle, was liable for assault with firearm against two victims even though defendant did not see second person in car; shooting indiscriminately into car created reasonable likelihood of hitting all persons inside car].)

The courts have explained, "[A] person who harbors the requisite intent for assault is guilty of the assault of all persons actually assaulted. . . . [F]or assault, 'there are as many crimes as there are victims.' . . . [¶] Because the gravamen of assault is the likelihood that the defendant's actions will result in a violent injury to another [citations], it follows that a victim of assault is one for whom such an injury was likely." (People v. Trujillo, supra, 181 Cal.App.4th at pp. 1354-1355.) "[N]o subjective intent to injure a particular victim is required. Rather, a defendant's intended acts are evaluated objectively to determine whether harm to a charged victim was foreseeable." (People v. Felix, supra, 172 Cal.App.4th at p. 1629.)

Here, the record supports that defendant willfully participated in the group assault. Further, the record supports that Veronica could have been stabbed as she tried to protect her husband from the knife-wielding assailants. A reasonable person in defendant's position would have realized that there was a reasonable likelihood that Veronica could be stabbed as she attempted to push the assailants' hands away to stop the knives from penetrating her husband. Even if defendant did not subjectively intend that Veronica be stabbed, the jury could reasonably conclude she was a victim of the knife assault because it was reasonably foreseeable that she could be harmed by the knives. The evidence supports the jury's finding that defendant is guilty of the offense of assault with a deadly weapon against Veronica.



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### II. Application of Multiple Victim Exception to Gang Enhancements

Defendant was sentenced to a total of 14 years four months. For count 1 assault with a deadly weapon, he received a four-year term, plus five years for the gang enhancement. He received consecutive sentences on counts 2 and 3, consisting of one year for each assault with a deadly weapon count, and one year eight months for each gang enhancement on these counts. He received concurrent sentences on counts 4 and 5 and on a prior prison term enhancement.

Defendant argues that under section 654 he can be punished for only one gang enhancement because all the counts occurred during the same transaction and he had a single objective to benefit his gang. Accordingly, he contends the trial court erred in failing to stay all the gang enhancements but one.

When a defendant is convicted of multiple offenses that are part of an indivisible course of conduct, the defendant may be punished for only one count; the sentences on the remaining counts must be stayed. (§ 654, subd. (a); *People v. Deloza* (1998) 18 Cal.4th 585, 591-592.) The purpose of section 654 is to ensure that a defendant's punishment is commensurate with his or her culpability. (*People v. Oates* (2004) 32 Cal.4th 1048, 1063.) Whether a course of criminal conduct is divisible so as to allow multiple punishment under section 654 depends on whether the defendant had a separate objective for each offense. (*People v. Britt* (2004) 32 Cal.4th 944, 951-952.) The California Supreme Court has recently held that section 654 applies to enhancements that are based on the nature of the offense. (*People v. Ahmed* (2011) 53 Cal.4th 156, 162-163.)

However, " 'the limitations of section 654 do not apply to crimes of violence against multiple victims.' " (*People v. Oates*, supra, 32 Cal.4th at p. 1063.) Even if the defendant has the same objective when committing a crime of violence against multiple victims, multiple punishment is warranted because a defendant who commits an act of violence " 'by a means likely to cause harm to several persons is more culpable than a defendant who harms only one person.' " (*Ibid.*)

Although recognizing the multiple victim exception, defendant argues it should be applied only to substantive offenses, not to gang enhancements. The contention is unavailing. The California Supreme Court has repeatedly recognized that the multiple victim exception to section 654 applies to enhancements. (See, e.g., *People v. Oates*, supra, 32 Cal.4th at pp. 1052-1053, 1063-1066 [defendant convicted of multiple counts of attempted murder based on firing at group of people; under multiple victim exception, section 654 did not prohibit punishment for multiple firearm enhancements]; *People v. King* (1993) 5 Cal.4th 59, 63-64, 78-79 [defendant convicted of murder and attempted murder based on shooting of multiple victims during robbery; under multiple victim exception, section 654 did not prohibit punishment for multiple firearm enhancements].)

As explained by our high court when evaluating a firearm enhancement, "where a defendant commits crimes of violence against multiple victims, section 654 permits imposition of '[an enhancement] for each separate offense for which the enhancement is found true.' " (*People v. Oates*, supra, 32 Cal.4th



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at p. 1064.) Enhancements " 'do not constitute separate crimes or offenses, but simply are the basis for the imposition of additional punishment for the underlying substantive offense.' . . . Nothing in [the enhancement statute] or its legislative history suggests that the Legislature intended to alter operation of the 'multiple victim' exception to section 654, i.e., to treat a term enhancement 'more restrictively for multiple punishment purposes than the term for the underlying offense.' " (Id. at p. 1066.)

Assault with a deadly weapon qualifies as a crime of violence for purposes of the multiple victim exception. (People v. Hall (2000) 83 Cal.App.4th 1084, 1089-1090.) The increased punishment of the gang enhancement statute is a response to the terror and violence inflicted on the community by gang activity. (See People v. Akins (1997) 56 Cal.App.4th 331, 338.) When, as here, a defendant commits a gang-related assault that endangers multiple individuals, the defendant is more culpable than a defendant who engages in gang-related conduct that endangers a single individual. With respect to punishment for multiple gang enhancements, defendant has not presented any reason to deviate from our high court's clear directive that the multiple-victim exception to section 654 applies to enhancements.

### DISPOSITION

The judgment is affirmed.

WE CONCUR: MCINTYRE, J. AARON, J.

1. Subsequent statutory references are to the Penal Code.

2. Veronica testified defendant had a knife, but she was not sure if defendant was one of the males stabbing her husband. Cota identified defendant as the assailant who swung at him with a knife. Witness Karla Guevara testified that defendant had a knife in his hand and was standing behind another assailant near Ricardo. Witness Henry Hernandez testified that he could not tell if defendant had a knife but he did not see him with one.

