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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

STEPHANIE LYNN JOHNSON,

Defendant and Appellant.

D080807

(Super. Ct. No. BAF2000948)

APPEAL from a judgment of the Superior Court of Riverside County, Rene Navarro, Judge. (Retired Judge of Santa Clara Sup. Ct. assigned by the Chief Justice pursuant to art. VI, § 6 of the Cal. Const.) Affirmed.

Rex Adam Williams, under appointment by the Court of Appeal, for Defendant and Appellant.

Rob Bonta, Attorney General, Lance E. Winters, Chief Assistant Attorney General, Charles C. Ragland, Assistant Attorney General, Collette C. Cavalier, and Joy Utomi, Deputy Attorneys General, for Plaintiff and Respondent.

A jury convicted Stephanie Lynn Johnson of corporal injury on a spouse within seven years of a prior conviction (Pen. Code,<sup>1</sup> § 273.5, subd. (f)(1); count 1); contempt of court by violation of a protective order, involving an act of violence (§ 166, subd. (c)(4); count 2); and misdemeanor spousal battery (§ 166, subd. (c)(1); count 3). Johnson was convicted on count 3 under subdivision (c)(4), but the court later amended it to subdivision (c)(1).

The trial court found the allegation of a prior strike conviction to be true. Johnson was sentenced to a total term of five years and four months in prison, consisting of the low term of two years for count 1, doubled due to the strike prior, and a consecutive term of 16 months for the contempt conviction.

Johnson appeals challenging only her sentence. She contends the court's sentence violated section 654.<sup>2</sup> After our review of the record, we conclude the court determined that counts 1 and 2 were committed at different times and involved separate acts with separate intents. Thus, the imposition of consecutive sentences did not violate section 654. We affirm the judgment.

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

<sup>2</sup> Section 654, subdivision (a) provides: "An act or omission that is punishable in different ways by 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. An acquittal or conviction and sentence under any one bars a prosecution for the same act or omission under any other."

## STATEMENT OF FACTS

The facts of the offenses are not in dispute. Nor does Johnson challenge her convictions. Accordingly, we will adopt the respondent's accurate summary of the facts for background purposes.

Johnson and R.M. were married for approximately 11 to 12 years but were separated for the last five to six years. They have had a volatile relationship throughout their marriage.

### A. Prior offense

In September 2017, Johnson and R.M. were at home with their son. Johnson and R.M. began to argue, and Johnson threw a cell phone at R.M.'s face. The cell phone hit the corner of R.M.'s left eye. R.M. reported the incident to police. Johnson was convicted of assault, and a criminal protective order was issued in the course of this incident. Two other criminal protective orders were issued against Johnson after this time.

### B. Instant offense

By July 9, 2020, Johnson had moved back in with R.M. That afternoon, R.M. was sitting in the living room with Johnson. R.M. was sitting on the couch, drinking alcohol when he and Johnson began to argue. R.M. and Johnson were arguing over allegations that R.M. was having an affair with Johnson's cousin. Johnson picked up a two-liter bottle of soda and threw the soda all over R.M. while he was sitting down. At some point during the argument, Johnson punched R.M. in the mouth, and knocked out his bottom tooth. R.M. went to the bathroom to wash his mouth because there was blood. R.M. reported the incident to police and told them that he had restraining orders against Johnson because she had hit him two years ago.

On March 10, 2021, Johnson came back to R.M.'s home. At some point, the two started arguing. Johnson grabbed a cord and wrapped it around

R.M.'s neck. Part of the cord was draped around R.M.'s nose and it was tight. Johnson was behind R.M. and used force to pull the cord. R.M. is unsure how long the cord was wrapped around his face or neck. During this time, Johnson and R.M.'s son was trying to enter the room through the window. R.M. was able to get away and left the room to find his son and call the police.

## DISCUSSION

Johnson contends the crimes in counts 1 and 2 arise from the single act of violence on R.M., which occurred sometime after Johnson entered the home. She reasons the contempt count, includes an act of violence, thus the contempt must have occurred when Johnson punched R.M. knocking out a tooth. The trial court found the contempt and the assault involved different acts at different times. Johnson apparently moved back into R.M.'s home, in violation of the criminal protective order at some time before the argument that gave rise to the assault took place.

The trial court stated: “[T]he counts which the defendant stands convicted did not arise out of the same set of operative facts and/or circumstances and do not share the same intent or objective, nor did they arise from a single, indivisible course of conduct. All three crimes which the defendant was convicted of were separate crimes and separate dates. As such, Penal [C]ode section 654 is not applicable to the Court’s sentencing choices.”

In order to avoid the consequences of the trial court’s factual finding, Johnson argues the fact the prosecution charged an aggravated violation of the protective order, which included an act of violence, compels a conclusion the act of contempt did not occur until the assault occurred. We reject that argument because the allegation of contempt involving an act of violence is a

provision that aggravates simple contempt to a felony, as long as the violence occurs during the time the defendant is under a protective order.

Section 654, subdivision (a) precludes multiple punishment for a single act or a single course of conduct. (*People v. Jones* (2002) 103 Cal.App.4th 1139, 1143 (*Jones*); *People v. Corpening* (2016) 2 Cal.5th 307, 313.)

The determination of whether multiple offenses arise from a single act or course of conduct is generally a question of fact. A trial court's factual findings regarding the application of section 654 are reviewed for substantial evidence. (*People v. Osband* (1996) 13 Cal.4th 622, 730-731; *Jones, supra*, 103 Cal.App.4th at p. 1143.) We give great deference to the trial court's factual findings and will only reverse where such findings are not supported by the record. (*People v. Murphy* (1980) 111 Cal.App.3d 207, 213; *People v. Ratcliffe* (1981) 124 Cal.App.3d 808, 815.)

It appears from the record that Johnson entered R.M.'s home in violation of the protective order and that she remained there until she was arrested. Thus, Johnson had already acted in contempt of the protective order before the argument took place. She remained in contempt of the protective order when the dispute with R.M. escalated into an assault. The assault occurred while Johnson and R.M. were sitting together, at which point they got into an argument. During the argument, Johnson punched R.M. There is nothing in the record to indicate Johnson entered the home with the intent to assault R.M. As she had previously done, Johnson returned to the home in violation of the court's order. The dispute leading to the assault arose after she had been in the house for a while.

Johnson was charged with violation of a protective order, involving an act of violence. Johnson contends the allegation involved an act of violence of necessity shows the contempt and the assault arose from a single act.

The People argue the “involving an act of violence” is a penalty provision that aggravates contempt. The People contend the violation of the protective order occurred prior to the assault and arose from separate acts and intentions. We think the People have the better argument.

“ [A] penalty provision prescribes an added penalty to be imposed when the offense is committed under specified circumstances . . . [and] is separate from the underlying offense and does not set forth elements of the offense or a greater degree of the offense charged.’ ” (*Robert L. v. Superior Court* (2003) 30 Cal.4th 894, 899.)

The contempt offense in this case received felony punishment because of the prior conviction and the fact violence occurred during the course of the contempt. “A penalty provision which relates solely to a defendant’s status as a repeat offender does not punish an ‘act or omission’ and is not subject to section 654.” (*People v. DeSimone* (1998) 62 Cal.App.4th 693, 700; *People v Coronado* (1995) 12 Cal.4th 145, 157.)

The trial court found that the contempt count and the assault count involved different acts at different times. Johnson was already in contempt of the protective order when she punched R.M. during an argument. The sentence imposed in this case does not violate section 654.

DISPOSITION

The judgment is affirmed.

HUFFMAN, J.

WE CONCUR:

McCONNELL, P. J.

BUCHANAN, J.