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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

ERIC JASON BERNARD,

Defendant and Appellant.

H030145

(Santa Clara County
Super. Ct. No. CC310019)

I. INTRODUCTION

After entering into a negotiated plea agreement, defendant Eric Jason Bernard pleaded guilty to 12 felony counts, including four counts of robbery (Pen. Code, §§ 211, 212.5, subd. (c)),¹ two counts of false imprisonment (§§ 236, 237), two counts of carjacking (§ 215), one count of attempted carjacking (§§ 664, 215), one count of kidnapping (§ 207, subd. (a)), and two counts of assault on a peace officer (§ 245, subd. (d)(1)). Defendant also admitted a firearm enhancement for each count. The trial court imposed an aggregate sentence of 39 years, 10 months.

On appeal, defendant makes two claims of sentencing error. First, he contends that the imposition of consecutive sentences on the basis of aggravating factors not found by a jury violates his Sixth Amendment right to a jury trial under

¹ All further statutory references are to the Penal Code unless otherwise indicated.

Blakely v. Washington (2004) 542 U.S. 296 [124 S.Ct. 2531] (*Blakely*). Second, defendant asserts that the trial court's failure to state the reasons for the consecutive sentence imposed on count 1 (robbery; §§ 211, 212.5, subd. (c)) requires reversal. For reasons that we will explain, we find no merit in either of defendant's claims of sentencing error and therefore we will affirm the judgment.

II. FACTUAL AND PROCEDURAL BACKGROUND

A. Factual Background

In light of defendant's guilty plea, and because the facts underlying defendant's convictions are not at issue, our brief summary of the facts is drawn from the probation report submitted in connection with defendant's sentencing. The probation report indicates that the multiple felony counts alleged against defendant arose from the events of two days, February 15, 2003, and April 9, 2003.

1. Events of February 15, 2003

Defendant and Lawrence Frank, Jr.² approached Huichi Hsu as he was washing his vehicle at about 11:30 a.m. on February 15, 2003, and brandished a weapon. They forced Hsu into the back seat of his vehicle and drove to an Albertson's supermarket with a Bank of America branch inside. Defendant entered the supermarket and approached a Bank of America teller station belonging to Sabreen Kaur. He showed Kaur that he had a handgun tucked into his right front pants pocket and told her to "Give me all your money in your top drawer and your bottom drawer."

After Kaur complied with defendant's demands, defendant instructed her to open the wall drawers behind her. When defendant saw that the wall drawers did

² Lawrence Frank, Jr. was named as a codefendant in defendant's case. Frank is not involved in any of the issues raised in this appeal.

not contain any money, he told Kaur she had 10 seconds to retrieve money from the back. Kaur gave defendant approximately \$6,000 from her teller drawers and between \$3,000 and \$4,000 from the vault. Defendant took the money in a bag and left the Albertson's store. He returned to Hsu's vehicle, which he and Frank then drove to a nearby location. After locking Hsu in the trunk, they left the area. Hsu later managed to free himself from the trunk and contact police.

2. Events of April 9, 2003

William Page encountered defendant after Page parked his Oldsmobile in the parking lot of a Safeway store in San Jose at approximately 12:45 p.m. on April 9, 2003. As Page got out of his car and proceeded towards the store, he was approached by three men, including defendant, Frank, and Jermaine Williams, who threatened him with a handgun and demanded his car keys. Page complied.

Defendant, Frank, and Williams then left in Page's Oldsmobile and headed across the parking lot to a Bank of America, where they stopped. All three men were armed with handguns. Frank stayed in the Oldsmobile while defendant and Williams entered the bank. Williams kept his gun on the customers and employees in the lobby area. Meanwhile, defendant ordered everyone inside the bank to get on the floor, then went behind the bank counter. At some point, two customers entered the bank and defendant also ordered them to get on the floor.

Defendant then instructed a teller, Eleanor Villanueva, to unlock a lower teller drawer. While she did so, defendant opened the top teller drawer and struck Villanueva on the head. Defendant apologized, but proceeded to take money from three different teller stations and place it in a pillowcase. The teller stations belonged to Karamjit Shergill, Eileen Ho, and Mary Castro. The total amount of money taken was \$30,800. The name of one of the Bank of America customer victims was Carmen Rodriguez.

After taking the money, defendant and Williams returned to the Oldsmobile where Frank was waiting. The three men then drove to a nearby carport where they exchanged the stolen Oldsmobile for defendant's Chevrolet Camaro. Sometime later, police spotted the Camaro at the intersection of Tully Road and Capitol Expressway. When the police attempted to make contact, Frank, the driver of the Camaro, evaded them and a police pursuit ensued.

During the pursuit, Frank reportedly told defendant to shoot at the police because that the only way to lose them. On two occasions, when the Camaro stopped and the pursuing police vehicles approached, defendant shot numerous rounds at the police vehicles. Investigators later discovered bullet holes in the police vehicles of Officer Galvan and Officer Granado.

As the Camaro crossed McKee Road, Frank indicated that they would carjack a Cadillac sedan traveling nearby. When the Cadillac entered a parking lot and stopped, the Camaro pulled up beside it. Defendant approached the Cadillac and banged on a window while demanding that the driver, Virginia Taylor, relinquish her car. Taylor drove away in fear for her safety at the exact moment that defendant shattered the Cadillac's rear driver's side window. Investigators later found a bullet hole in the Cadillac as well as a portable scanner that did not belong to Taylor.

After Taylor escaped, Frank made an unsuccessful attempt to carjack another vehicle and was later apprehended. Defendant and Williams were apprehended after running into a Sav-Mart store. Police officers discovered the stolen money inside the Sav-Mart store and two handguns nearby.

B. The First Amended Information

The first amended information was filed on August 29, 2005. Fourteen felony counts were included in the complaint, as follows: (1) robbery (§§ 211, 212.5, subd. (c)) of United States currency in the possession of Carmen Rodriguez

on April 9, 2003, with a firearm enhancement (§ 12022.53(b)); (2) robbery (§§ 211, 212.5, subd. (c)) of United States currency in the possession of Karamjit Shergill on April 9, 2003, with a firearm enhancement (§ 12022.53, subd. (b)); (3) false imprisonment (§§ 236, 237) of Eileen Ho on April 9, 2003, with a firearm enhancement (§ 12022.5, subd. (a)); (4) false imprisonment (§§ 236, 237) of Mary Castro on April 9, 2003, with a firearm enhancement (§ 12022.5, subd. (a)); (5) carjacking--victim is driver (§ 215; victim William Page) on April 9, 2003, with a firearm enhancement (§ 12022, subd. (a)(1)); (6) attempted murder of a peace officer with premeditation (§§ 664, subd.(f), 187), with a firearm enhancement (§ 12022.53, subds. (b), (c)); (7) attempted murder of a peace officer with premeditation (§§ 664, subd.(f), 187), with a firearm enhancement (§ 12022.53, subds. (b), (c)); (8) attempted carjacking--victim is driver (§§ 664, 215; victim Virginia Taylor) on April 9, 2003, with a firearm enhancement (§ 12022.53, subd. (b)); (9) kidnapping (§ 207, subd. (a); victim Huichi Hsu) on February 15, 2003, with a firearm enhancement (§ 12022, subd. (a)(1)); (10) carjacking--victim is driver (§ 215; victim Huichi Hsu) on February 15, 2003, with a firearm enhancement (§ 12022.53, subd. (a)(1)); (11) robbery (§§ 211, 212.5, subd. (c)) of United States currency in the possession of Sabreen Kaur on February 15, 2003, with a firearm enhancement (§ 12022, subd. (a)(1)); (12) robbery (§§ 211, 212.5, subd. (c)) of United States currency in the possession of Eleanor Villanueva on April 9, 2003, with a firearm enhancement (§ 12022.53, subd. (b)); (13) assault on a peace officer (§ 245(d)(1)), Abraham Galvan, on April 9, 2003, with a firearm enhancement (§ 12022.53, subds. (b), (c)); and (14) assault on a peace officer (§ 245, subd. (d)(1)), Rick Granado, with a firearm enhancement (§ 12022.53, subd. (b), (c)).

C. The Guilty Plea

Defendant entered into a negotiated plea agreement in which he agreed to plead guilty to four counts of robbery (§§ 211, 212.5, subd. (c); counts 1, 2, 11, 12), two counts of false imprisonment (§§ 236, 237; counts 3, 4); two counts of carjacking (§ 215; counts 5, 10), attempted carjacking (§ 664, 215; count 8), kidnapping (§ 207, subd. (a); count 9), and two counts of assault on a police officer ((§ 245, subd. (d)(1); counts 13, 14). Defendant also admitted the firearm enhancement for each count.

The People agreed to dismiss counts 6 and 7 in the amended information, which alleged attempted murder of a peace officer with premeditation (§§ 664, subd.(f), 187). No other promises were made to defendant. Prior to accepting defendant's guilty plea on August 29, 2005, the trial court advised him that his plea would subject him to a minimum sentence of 24 years and a maximum sentence of 65 years, two months.

D. Sentencing

At the sentencing hearing held November 17, 2005, the trial court noted that this was a “very, very serious case” that “raise[d] a great and grave concern in this Court.” The trial court then imposed an aggregate sentence of 39 years, 10 months, which the court structured as follows without any objection by defendant.

Count 14 (assault on a police officer, § 245, subd. (d)(1)) was selected as the principal term. The trial court imposed the middle term of six years plus 20 years, consecutive, pursuant to the firearm enhancement (§ 12022.53, subd. (c)), for a total term of 26 years on count 14.

On count 1 (robbery, §§ 211, 212.5, subd. (c)) the trial court imposed a consecutive sentence of four years, four months. On count 2 (robbery, §§ 211, 212.5, subd. (c)) the trial court imposed a concurrent sentence of 13 years (the

middle term plus 10 years pursuant to the firearm enhancement, § 12022.53, subd. (b)).

On count 3 (false imprisonment, §§ 236, 237), the trial court imposed a concurrent sentence of six years (the middle term plus four years pursuant to the firearm enhancement, section 12022.5, subd. (a)). On count 4 (false imprisonment, §§ 236, 237) the trial court imposed a concurrent sentence of six years (the middle term of two years plus four years on the firearm enhancement, § 12022.5, subd. (a)).

On count 5 (carjacking, § 215), the trial court imposed a consecutive sentence of one year, eight months (one-third the middle term plus one-third of the firearm enhancement, § 12022, subd. (a)(1)), “because this count involves a separate victim.” The trial court also imposed a consecutive sentence on count 8 (attempted carjacking, §§ 664, 215), of four years, two months (one-third the middle term plus one-third of the firearm enhancement, § 12022.53, subd. (b)), stating, “[a]gain, there is a separate victim.”

On count 9 (kidnapping, § 207, subd. (a)), the trial court imposed a consecutive sentence of two years (one-third the middle term plus one year pursuant to the firearm enhancement, § 12022, subd. (a)(1)), also on the ground that a separate victim was involved. On count 10 (carjacking, § 215), the trial court imposed a concurrent sentence of six years (five years plus one year pursuant to the firearm enhancement, § 12022, subd. (a)(1)).

On count 11 (robbery, §§ 211, 212.5, subd. (c)), the trial court imposed a consecutive sentence of one year, four months (one-third the middle term) due to the “separate victim, separate time.” On count 12 (robbery, §§ 211, 212.5, subd. (c)), the court imposed a concurrent term of 13 years (the middle term plus 10 years pursuant to the firearm enhancement, § 12022.53, subd. (b)).

On count 13 (assault on a peace officer, § 245, subd. (d)(1)), the trial court imposed a concurrent sentence of 26 years (the middle term plus 20 years pursuant to the firearm enhancement, § 12022.53, subd. (c)).

III. DISCUSSION

A. *Blakely Sentencing Error*

1. The Parties' Contentions

Defendant's first contention on appeal is that the imposition of consecutive sentences on counts 1, 5, 8, 9, and 11 on the basis of aggravating factors not found by a jury violates his Sixth Amendment right to a jury trial under *Blakely, supra*, 542 U.S. 296.

Defendant also complains that he did not receive notice of the aggravating factors on which the consecutive sentences were based because the People failed to plead these aggravating factors and the trial court merely indicated at the time of sentencing that "these were separate violations."

Additionally, defendant asserts that his claim of *Blakely* error is cognizable on appeal despite his failure to object to the consecutive sentences at the time of sentencing in November 2005, for two reasons. First, an objection would have been futile in light of the ruling in *People v. Black* (2005) 35 Cal.4th 1238, 1244, that "the judicial factfinding that occurs when a judge exercises discretion to impose an upper term sentence or consecutive terms under California law does not implicate a defendant's Sixth Amendment right to a jury trial." Second, defendant claims that he did not waive his right to a jury trial on the issue of aggravating factors when he waived his jury right as part of his plea agreement, because he received no advice regarding his rights to notice and a jury trial on the aggravating factors.

Finally, defendant requests, as the proper remedy for *Blakely* sentencing error, that the judgment be reversed and the matter remanded to the trial court with directions to impose concurrent terms on all counts.³

The People assert in their respondent's brief that defendant's claim of *Blakely* error is not cognizable on appeal because defendant failed to obtain a certificate of probable cause, citing *People v. Bobbit* (2006) 138 Cal.App.4th 445. In *Bobbit*, the appellate court ruled that the specification of a sentencing lid as part of a negotiated plea agreement requires the defendant to obtain a certificate of probable cause to challenge the imposition of an upper term sentence on the ground of *Blakely* error. (*Bobbit, supra*, 138 Cal.App.4th at pp. 447-448.)

Alternatively, the People rely on the California Supreme Court's decision in *Black, supra*, 35 Cal.4th at page 1244, in which the court rejected the defendant's argument that the imposition of consecutive sentences absent a jury trial on the aggravating factors constitutes *Blakely* error. Alternatively, the People contend that the imposition of consecutive sentences in this case does not violate *Blakely* because defendant pleaded guilty to the multiple victim circumstances alleged in the first amended information, which listed the victim in each of the charged counts, and the trial court properly imposed consecutive sentences since each count involved a separate victim.

2. Analysis

To resolve defendant's claim of *Blakely* error, we need not address the issue of waiver or the requirement of a certificate of probable cause pursuant to section 1237.5. Assuming, without deciding, that defendant's *Blakely* claim is

³ On page 13 of his opening brief, defendant asks this court to direct the trial court to impose the middle term on remand. We understand defendant to argue that the case should be remanded with directions for the trial court to impose concurrent, rather than consecutive, sentences on counts 1, 5, 8, 9, and 11.

cognizable on appeal in the absence of a certificate of probable cause and has not been waived or forfeited, for the reasons discussed below we find that the claim fails for lack of merit.

Our analysis begins with a review of United States Supreme Court authority. In *Blakely*, the high court applied the rule that the court had first announced in *Apprendi v. New Jersey* (2000) 530 U.S. 466, 490: “Other than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt.” Following its decision in *Apprendi*, the Supreme Court in *Blakely* determined that a defendant’s right to a jury trial is violated when the trial court imposes a term greater than the specified statutory maximum for the offense because of a fact not admitted by the accused or found to exist by jurors. (*Blakely, supra*, 542 U.S. at p. 303.)

However, the California Supreme Court ruled in *People v. Black, supra* 35 Cal.4th at page 1244 that a defendant’s Sixth Amendment right to a jury trial, as set forth in *Blakely*, is not violated when the trial court exercises its discretion under section 669⁴ to determine whether to impose sentences consecutively or concurrently. (*Black, supra*, 35 Cal.4th at p. 1262.)

In the present case, the record reflects that the fact of separate acts of violence against multiple victims was the basis for the trial court’s decision to impose consecutive sentences on counts 1, 5, 8, 9, and 11. As the trial court stated, the victims in counts 5, 8, 9, and 11 were separate from the victim in

⁴ Section 669 provides in pertinent part, “When any person is convicted of two or more crimes, whether in the same proceeding or court or in different proceedings or courts, and whether by judgment rendered by the same judge or by different judges, the second or other subsequent judgment upon which sentence is ordered to be executed shall direct whether the terms of imprisonment or any of them to which he or she is sentenced shall run concurrently or consecutively.”

count 1. It is well established that the trial court may impose consecutive sentences for separate acts of violence against multiple victims. (*People v. Shaw* (2004) 122 Cal.App.4th 453, 458; Cal. Rules of Court, rule 4.425(a)(2).)⁵

Accordingly, under the decision in *Black, supra*, 35 Cal.4th at page 1262, defendant was not entitled to a jury trial with respect to the imposition of consecutive sentences. Moreover, we agree with the People that the imposition of consecutive sentences under the circumstances of this case does not violate *Blakely*.

As we have discussed, the United States Supreme Court in *Blakely* determined that a defendant's right to a jury trial is violated when the trial court imposes a term greater than the specified statutory maximum for the offense because of a fact not admitted by the accused or found to exist by jurors. (*Blakely, supra*, 542 U.S. at p. 303.) Thus, even if the rule in *Blakely* applies to the facts used to impose a consecutive sentence, the right to a jury trial set forth in *Blakely* is not violated where the defendant *has admitted* those facts in making his guilty plea.

Here, the record reflects that defendant admitted, in the course of making his guilty plea to counts 1, 5, 8, 9, and 11, that he had committed separate acts of violence against multiple victims. At the sentencing hearing, defendant pleaded guilty to all counts as set forth in the amended information, with the exception of counts 6 and 7. As the People correctly point out, the amended information stated the name of the victim involved in each count for which a consecutive sentence

⁵ California Rules of Court, rule 4.425(a)(2) provides, “ Criteria affecting the decision to impose consecutive rather than concurrent sentences include: [¶] (a) Criteria relating to crimes [¶] Facts relating to the crimes, including whether or not: [¶] . . . [¶] (2) The crimes involved separate acts of violence or threats of violence”

was imposed, including count 1 (robbery--victim Carmen Rodriguez); count 5 (carjacking--victim William Page); count 8 (attempted carjacking--victim Virginia Taylor); count 9 (kidnapping--victim Huichi Hsu) and count 11 (robbery--victim Sabreen Kaur).

By pleading guilty to counts 1, 5, 8, 9, and 11, as alleged in the amended information, defendant admitted that he had committed separate acts of violence against multiple victims. Consequently, we find that the trial court did not commit *Blakely* error when it imposed consecutive sentences based upon facts admitted by defendant.

However, our analysis cannot conclude without a discussion of the recent decision in *Cunningham v. California* (Jan. 22, 2007, No. 05-6551) 549 U.S. ____, [127 S. Ct. 856] (*Cunningham*)), which the United States Supreme Court issued while this appeal was pending. In *Cunningham*, the high court overruled the California Supreme Court's holding in *Black, supra*, 35 Cal.4th 1238 that the provisions of California's Determinate Sentencing Law authorizing the trial court to find the facts permitting an upper term sentence did not violate a defendant's right to a jury trial under *Blakely*. (*Cunningham, supra*, 549 U.S. at p. ____ [127 S.Ct. at p. 860].) The Supreme Court concluded that because the Determinate Sentencing Law "authorizes the judge, not the jury, to find the facts permitting an upper term sentence, the system cannot withstand measurement against our Sixth Amendment precedent." (*Id.* at p. ____ [127 S.Ct. at p. 871].)

We asked the parties to submit supplemental briefing regarding the application of *Cunningham* to the present case. In his supplemental brief, defendant argues that *Cunningham* supports his contention that the imposition of consecutive sentences in his case violated his Sixth Amendment right to a jury trial, based on the high court's statement that "[t]his Court has repeatedly held that, under the Sixth Amendment, any fact that exposes a defendant to a greater

potential sentence must be found by a jury, not a judge, and established beyond a reasonable doubt, not merely by a preponderance of the evidence.” (*Cunningham, supra*, 549 U.S. at p. ____ [127 S.Ct at p. 863].) Defendant asserts the trial court was therefore precluded from imposing consecutive sentences in his case on the basis of “an extra finding beyond the element of the crimes”

The People respond in their supplemental brief that the decision in *Cunningham* “solely involved the question of *Blakely*’s effect on upper terms, and sheds no additional light on consecutive sentencing.” Therefore, the People urge that *Black* remains authoritative on the issue of consecutive sentencing.

We agree that the decision in *Cunningham* did not address consecutive sentencing, and therefore we remain bound by the California Supreme Court’s ruling in *Black, supra*, 35 Cal.4th at page 1262, that a defendant’s Sixth Amendment right to a jury trial is not violated when the trial court exercises its discretion under section 669 to determine whether to impose sentences consecutively or concurrently. (*Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 455.)

However, even assuming, without deciding, that *Cunningham* should be interpreted to overrule *Black* with respect to consecutive sentencing, we would nevertheless reject defendant’s claim. The decision in *Cunningham* reaffirmed the ruling in *Blakely* that “the Federal Constitution’s jury-trial guarantee proscribes a sentencing scheme that allows a judge to impose a sentence above the statutory maximum based on a fact, other than a prior conviction, not found by a jury or admitted by the defendant. [Citations.]” (*Cunningham, supra*, 549 U.S. at p. ____ [127 S.Ct. at p. 860].) The trial court may therefore impose a sentence above the statutory maximum based on a fact admitted by the defendant. Here, defendant admitted to the multiple victim circumstances when he pleaded guilty to counts 1, 5, 8, 9, and 11, as alleged in the amended information that named each of the

victims. Consequently, even under defendant's interpretation of *Cunningham*, the imposition of consecutive sentences in his case does not violate his Sixth Amendment right to a jury trial under *Blakely* or *Cunningham*.

For these reasons, we reject defendant's claim of *Blakely* sentencing error.

B. Failure to State Reasons

Defendant's second contention on appeal is that reversal is required because the trial court failed to state its reasons for imposing the consecutive sentence on count 1 (robbery; §§ 211, 212.5, subd. (c)).

The People concede that the trial court failed to state reasons for imposing the consecutive sentence on count 1. However, the People assert that defendant waived this claim by failing to object when the consecutive sentence was imposed on count 1 without a reason. Additionally, the People maintain that the error is harmless because it is not reasonably probable that a more favorable sentence would have been imposed in the absence of error, since the trial court obviously imposed a consecutive sentence on count 1 because a separate victim was involved.

It is well established that a statement of reasons must be given on the record where the court imposes a determinate term to run consecutively to another term. (*People v. Black, supra*, 35 Cal.4th at p. 1262, fn. 17; *People v. Neal* (1993) 19 Cal.App.4th 1114, 1117; Cal. Rules of Court, rule 4.406(a), (b)(5); § 1170, subd. (c).)⁶ However, we reject defendant's contention that the trial court's failure to state the reasons for imposing a consecutive sentence on count 1 constitutes reversible error, for two reasons.

First, the waiver doctrine applies to defendant's claim. Complaints about the manner in which the trial court articulates the reasons for its discretionary

⁶ Section 1170, subdivision (c), provides in pertinent part, "The court shall state the reasons for its sentence choice on the record at the time of sentencing."

sentencing choices cannot be raised for the first time on appeal. (*People v. Scott* (1994) 9 Cal.4th 331, 356.) “Although the court is required to impose sentence in a lawful manner, counsel is charged with understanding, advocating, and clarifying permissible sentencing choices at the hearing. Routine defects in the court’s statement of reasons are easily prevented and corrected if called to the court’s attention.” (*Id.* at p. 353; see also *People v. Davis* (1995) 10 Cal.4th 463, 552.) Thus, defendant waived his claim by failing to object to the lack of a statement of reasons for the consecutive sentence on count 1 at the time of sentencing.

Second, defendant’s claim would fail even if the claim was not waived. The California Supreme Court has ruled that where the trial court “errs in identifying or articulating its sentencing choices, the reviewing court has no choice but to remand the matter for resentencing unless it finds the error nonprejudicial, i.e., it is ‘not reasonably probable that a more favorable sentence would have been imposed in the absence of the error.’ [Citation.]” (*People v. Scott, supra*, 9 Cal.4th at p. 355.) Thus, where the record shows the existence of at least one criterion or factor in aggravation to support the imposition of a consecutive sentence, the failure to state reasons for the consecutive sentence is harmless error. (*People v. Davis, supra*, 10 Cal.4th at p. 552.) Defendant’s reliance on the decision in *People v. Turner* (1978) 87 Cal.App.3d 244 for a contrary rule (failure to state reasons for imposing an aggravated sentence necessitates resentencing) is misplaced because the *Turner* decision predates the California Supreme Court’s decisions in *People v. Davis, supra*, 10 Cal.4th 463 and *People v. Scott, supra*, 9 Cal.4th 331.

In the present case, defendant pleaded guilty to count 1 as set forth in the amended information, thereby admitted that he had committed a separate act of violence against victim Carmen Rodriguez. Accordingly, the record showed the

existence of at least one fact to support the imposition of a consecutive sentence on count 1. (See Cal. Rules of Court, rule 4.425(a)(2).) The trial court's failure to articulate its reasons for imposing a consecutive sentence on count 1 therefore constitutes harmless error because it is not reasonably probable that a more favorable sentence would have been imposed in the absence of the error.

IV. DISPOSITION

The judgment is affirmed.

BAMATTRE-MANOUKIAN, ACTING P.J.

WE CONCUR:

MCADAMS, J.

DUFFY, J.