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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

AARON MICHAEL LAYTHORPE,

Defendant and Appellant.

G045720

(Super. Ct. No. 10NF0192)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Francisco P. Briseño, Judge. Affirmed.

Gregory Marshall, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Julie L. Garland, Chief Assistant Attorney General, A. Natasha Cortina and Ronald A. Jakob, Deputy Attorneys General, for Plaintiff and Respondent.

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A jury convicted defendant Aaron Michael Laythorpe of mayhem (Pen. Code, § 203; all statutory references are to the Penal Code unless otherwise stated), inflicting corporal punishment of the mother of his child (§ 273.5, subd. (a)), four counts of assault with force likely to cause great bodily injury (§ 245, subd. (a)(1)), and battery (§ 242, a misdemeanor) as a lesser included offense of aggravated mayhem. The jury found defendant inflicted great bodily injury (§ 12022.7, subd. (e)) in connection with the charge of inflicting corporal punishment on the mother of his child and in connection with each of the assaults with force likely to cause great bodily injury.

Defendant appeals, contending the consecutive sentences imposed on three of the four violations of section 245, subdivision (a)(1) violate section 654. We affirm.

## I

### FACTS

As defendant does not allege any errors occurred during the trial and raises only a sentencing issue, a full recitation of the facts is not necessary. We set forth the facts relevant to defendant's contention on appeal.

#### *The Beating*

Jill W. dated defendant and had a child with him. In January 2010, she was on maternity leave from her job. Their son was approximately two and a half months old at the time. Two weeks before the date of the incident in this matter, January 23, 2010, Jill W. and defendant were living together, but Jill W. moved out and went to live with her mother prior to the charged incident. Jill W., her son, defendant, and defendant's sister and father went to Fashion Island on January 23. Jill W. remembers drinking beer at Chronic Taco that day, but does not remember how many. She thinks they then went to the beach, but she remembers defendant dropped her off at his grandmother's residence on Orangewood in Anaheim. Apparently defendant told her to wait there and

he would be right back. Defendant and his father drove away in Jill W.'s car. She waited hours for them to return. She was "really mad" when they finally returned, and asked where they had been. The last thing Jill W. remembers from that day was defendant telling her to go outside with him. The next thing she remembers is waking up in the hospital.

Antonio Padilla lived on East Orangewood in Anaheim. Around 9:00 p.m. on January 23, he heard a commotion outside and looked out his apartment window. He saw defendant hitting a woman and heard the woman screaming as she was hit. Padilla yelled at defendant to stop, but when he did not, Padilla left his apartment to put a stop to the violence. Once outside, Padilla saw defendant pull the woman up by her hair and throw her back to the concrete, smashing her face. Padilla said he saw defendant throw the woman to the ground "several times" and "a couple [or] three times." She was bleeding and appeared to be unconscious after the second time. Padilla also saw defendant "stomp[] on her face" once. Defendant grabbed the unconscious woman by her waist and attempted to drag her away. He asked Padilla to help him. Padilla told defendant to leave her where she was. Padilla said defendant was angry and drunk.

The police arrived at that point. Officer Flora Palma of the Anaheim Police Department saw defendant yelling at a Hispanic male. When she ordered defendant to sit down, he put his hands in the air and yelled, "That's my wife. That's my wife." Palma approached Jill W., who appeared lifeless. There was blood on the ground from her head injuries.

### *The Injuries*

When Jill W. woke up in the hospital, her head felt as if it was "going to explode." She was in "a lot" of pain. She had on a neck brace and it was difficult to speak due to the pain. She could barely open her eyes or her mouth and the right side of

her face was paralyzed. She was bleeding from her nose and ears. She had two broken bones inside her right ear and could not hear out of that ear. She said she had bruises all over her face, neck, and even on her body. She had blood on her brain and her vision was very blurry.

Officer Palma contacted Jill W. in the hospital and noted her face was “very swollen.” Jill W. had a hard time speaking. She could not move her face and was unable to open her lips. The entire left side of Jill W.’s face was bruised from top to bottom, her lips were very swollen, her right eye was swollen shut, and there was dry blood in her right ear.

Jill W. was unable to drive when she left the hospital. She was also unable to hold her son for about a month and a half because she could not lift him. She suffered a permanent loss of over 50 percent of the hearing in her right ear. The paralysis on the right side of her face lasted about a month, as did her blurry vision. As of the time of trial about 18 months after the incident, she continued to have chronic headaches and took pain medication every day.

### *Sentencing*

The court sentenced defendant to an aggregate term of 14 years in state prison, imposing a three-year middle term on count three (§ 245, subd. (a)(1)), plus a consecutive term of four years for the great bodily injury enhancement (§ 12022.7, subd. (e)) found in connection with count three, and imposed consecutive terms of one year (one-third the middle term) on count five (§ 245, subd. (a)(1)), one year four months (one-third the middle term) for the great bodily injury enhancement found in connection with defendant’s conviction on count five, one year on count six (§ 245, subd. (a)(1)), one year four months on the great bodily injury enhancement found in connection with count six, one year on count seven (§ 245, subd. (a)(1)), and one year four months on the great

bodily injury enhancement found in connection with count seven. The sentences on counts one (§ 242), two (§ 203), and three (§ 273.5, subd. (a)) were imposed and stayed pursuant to section 654.

## II

### DISCUSSION

Defendant does not challenge his multiple convictions for violating section 245, subdivision (a)(1) in connection with his attack on Jill W. Indeed, his trial counsel conceded his guilt on counts two through seven. Consequently, we are not concerned in this appeal with whether he was properly convicted of four separate counts of violating section 245, subdivision (a)(1).

Defendant raised one issue on appeal. He contends the trial court violated section 654 when it sentenced him to consecutive sentences on his multiple convictions for violating section 245, subdivision (a)(1). He argues his actions constituted but one act and the court should have stayed the sentence on all but one of the counts pursuant to section 654. We disagree.

Section 654, subdivision (a) provides in pertinent part: “An act or omission that is punishable in different ways by different provisions of law shall be punished under the provision that provides for the longest potential term of imprisonment, but in no case shall the act or omission be punished under more than one provision.” Section 654 does not prohibit multiple convictions; it bars multiple punishments. (*People v. Mesa* (2012) 54 Cal.4th 191, 195.) When section 654 applies, “the trial court must stay execution of sentence on the convictions for which multiple punishment is prohibited. [Citations.]” (*People v. Reed* (2006) 38 Cal.4th 1224, 1227.)

Courts have not limited section 654’s application only to those instances in which a single act violates more than one statute. “Section 654 will prohibit double punishment not only where there was ‘but one act in the ordinary sense, but also where

there was a course of conduct which violated more than one statute but nevertheless constituted an indivisible transaction' (*People v. Perez* (1979) 23 Cal.3d 545, 551), and indivisibility of separate acts to a single course of conduct depends on the intent and objective of the actor. (*Neal v. State of California* [(1960)] 55 Cal.2d 11, 20-21.)” (*People v. Jones* (1981) 124 Cal.App.3d 749, 754.) “Our case law has found multiple criminal objectives to be a predicate for multiple punishment only in circumstances that involve, or arguably involve, multiple acts.” (*People v. Mesa, supra*, 54 Cal.4th at p. 199.) When multiple acts have been found to exist, we must determine whether the course of conduct “is divisible and therefore gives rise to more than one act within the meaning of section 654 depends on the intent and objective of the actor. If all of the offenses were incident to one objective, the defendant may be punished for any one of such offenses but not for more than one.’ [Citation.]” (*People v. Rodriguez* (2009) 47 Cal.4th 501, 507, italics omitted.)

Use of broad and amorphous statements of intent, however, improperly rewards defendants who have “‘greater criminal ambition with less punishment.’” (*People v. Harrison* (1989) 48 Cal.3d 321, 335-336.) A prime example of this may be found in sex cases. In *People v. Perez, supra*, 23 Cal.3d at pages 552-553, the Supreme Court found “section 654 does *not* bar multiple punishment simply because numerous sex offenses are rapidly committed against a victim with the ‘sole’ aim of achieving sexual gratification.” (*People v. Harrison, supra*, 48 Cal.3d at pp. 324-325.) In *Harrison*, the court upheld the trial court’s imposition of sentence on each of the defendant’s three violations of forcible sexual penetration with a foreign object committed against the same victim. In doing so, the court relied “on a *uniform* line of post-*Perez* cases finding no section 654 bar to multiple punishment for rapidly repeated crimes . . . .” (*Id.* at p. 325) *Perez*’s “section 654 analysis was directed to *any* case in which ‘a number of base criminal acts’ were committed against a single victim. [Citation.]” (*Id.* at p. 337.)

The defendant in *Harrison* attacked his victim and placed his finger in her vagina. She struggled, dislodging his finger, but after pushing her back down onto the bed he again inserted his finger into her vagina. She continued to struggle, again dislodging his finger. This time she attempted to flee, but Harrison caught her and inserted his finger a third time. The first violation lasted four seconds and the second violation lasted five seconds. (*People v. Harrison, supra*, 48 Cal.3d at p. 325.) Harrison argued the trial court should have stayed the sentences on two of the three counts because he had a single intent during the episode: sexual gratification. (*Id.* at p. 336.) The court rejected Harrison’s argument and upheld the trial court’s imposition of sentence on each of the three offenses. (*Id.* at p. 338.)

Multiple crimes do not constitute a single transaction when the defendant had an opportunity “to reflect between offenses and each offense created a new risk of harm.” (*People v. Feliz* (2001) 92 Cal.App.4th 905, 915.) “Under section 654, a course of conduct divisible in time, though directed to one objective, may give rise to multiple convictions and multiple punishment ‘where the offenses are temporally separated in such a way as to afford the defendant an opportunity to reflect and renew his or her intent before committing the next one, thereby aggravating the violation of public security or police already undertaken.’ [Citation.]” (*People v. Lopez* (2011) 198 Cal.App.4th 698, 717-718.) In this case, defendant had the same opportunity to reflect between each violent act against the victim, especially after she was knocked unconscious.

Defendant struck Jill W. and her screams caused Padilla to leave his apartment in an attempt to stop defendant. Once Padilla left his apartment, he saw defendant pick Jill W. off the ground by her hair several times and throw her back down, smashing her face on the concrete. She was bleeding and appeared to be unconscious after the second time. Padilla also saw defendant “stomp[] on her face” once. Unlike the situation that may be present in a fight when the parties exchange blows in rapid

succession — such that it may be said a defendant did not have the opportunity to reflect on his or her actions before renewing an intent to inflict another blow — here defendant had that opportunity. There was no evidence Jill W. put up any fight. Defendant repeatedly lifted her off the ground by her hair and slammed her back down on the concrete. Jill W. appeared to be unconscious after the second time, yet defendant repeated his assaults, eventually “stomping” the apparently lifeless victim on her head after having flung her to the ground the last time. Under these facts, the trial court did not err in imposing sentence on each of defendant’s convictions for assault with force likely to cause great bodily injury.

### III

#### DISPOSITION

The judgment is affirmed.

MOORE, ACTING P. J.

WE CONCUR:

ARONSON, J.

FYBEL, J.