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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE, Plaintiff and Respondent, v. RALPH MOLINA, Defendant and Appellant.	B269867 (Los Angeles County Super. Ct. No. VA138431)

APPEAL from a judgment of the Superior Court of Los Angeles County, John A. Torribio, Judge. Modified and, as so modified, affirmed; remanded for further proceedings.

Christian C. Buckley, under appointment by the Court of Appeal, for Defendant and Appellant.

Kathleen A. Kenealy, Acting Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Shawn McGahey Webb and Gary A. Lieberman, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant and appellant Ralph Molina appeals from the judgment entered following a jury trial that resulted in his convictions for two counts of making criminal threats, two counts of false imprisonment by violence, felony infliction of corporal injury on a cohabitant, and misdemeanor resisting, delaying or obstructing a peace officer. The charges arose from three separate incidents involving Molina and his girlfriend, Maria Torres. During the first incident, Molina allegedly choked Torres. The jury was unable to reach a verdict on this count; consequently the trial court declared a mistrial and dismissed it. In the second incident, Molina allegedly threatened Torres with a knife and told her she could not leave their residence. The jury convicted Molina of making criminal threats and false imprisonment by violence, but found the allegation that he used a knife not true. In the third incident, Molina assaulted and threatened Torres and attempted to prevent her from leaving their bedroom. In regard to this incident, the jury convicted Torres of making criminal threats, felony injury to a cohabitant, and felony false imprisonment. Because Molina refused to exit the bedroom when sheriff's deputies arrived, he was also convicted of misdemeanor resisting arrest. The trial court sentenced Molina to a term of four years eight months.

Molina appeals, arguing there was insufficient evidence to support the infliction of corporal injury conviction, one of the false imprisonment convictions, and one of the criminal threats convictions; the trial court committed instructional error; and Penal Code section 654[1] requires a stay on certain of the criminal threats or false imprisonment offenses. We agree that there was

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[1] All further undesignated statutory references are to the Penal Code.

insufficient evidence to prove infliction of corporal injury on a cohabitant, and accordingly reduce the conviction to the lesser included offense of battery. We also conclude that the sentences on either the criminal threats or false imprisonment offenses in counts 6 and 7, and 1 and 3, must be stayed pursuant to section 654, and remand for resentencing. We otherwise affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

1. *Facts*

a. *People's evidence*

Maria Torres was Molina's girlfriend. As of February 2015, they had been in a relationship for approximately two years. The couple lived in Torres's Los Angeles home with her children. They had talked about separating, and argued on occasion.

(i) *February 3, 2015 incident (count 4)*

On approximately February 3, 2015, while Torres was sleeping, Molina got on top of her and put her in a "half Nelson" chokehold. He said he could kill her. She believed him, and was afraid. She could not breathe, and asked Molina to let her go. After approximately five minutes, he released her. Torres's neck was bruised for approximately a week. She did not alert police regarding the incident. Molina had never been physically abusive to Torres previously.

(ii) *February 11, 2015 incident (counts 6 and 7)*

On approximately February 11, 2015, Molina was in the couple's kitchen, cooking, and was cutting food on the counter with a large knife. Torres was in the living room about 11 feet away. She told Molina she was going out. Molina replied that "he didn't want [Torres] to go out." Molina stated, " 'I'm holding

the knife and I can use it.' " Molina gestured with the knife.[2] Torres, afraid, "kind of froze." Ten or 15 minutes later Molina told Torres, " 'Go ahead' " and she left the residence. Torres testified that she did not leave the house until Molina told her to go.

(iii) *February 24 and 25, 2015 incidents (counts 1, 2, 3, and 5)*

At approximately 10:00 p.m. on February 24, Torres and Molina were lying in bed. Torres, who was looking at her cellular telephone, had the ceiling light on. Molina demanded she turn it off. Torres stated she was checking messages on her phone and declined to turn off the light. Molina said if she did not turn it off, he would remove the light bulb and throw it out the window. When Torres did not turn off the light, Molina made good on his threat.

Torres got up, but Molina told her to go to bed. When Torres "just stood there," Molina blocked the bedroom door with a "really heavy" five-foot long table. He grabbed Torres and threw or pushed her on the bed. Straddling her, he grabbed her hands, twisted her wrists outward, and forced her wrists behind her back. He stated he was going to do a "citizen's arrest" on her. He then released Torres's right hand, removed a metal necklace from his neck, and attempted to put it around her neck and choke her with it. He stated he could kill Torres. She was afraid he could and would do so. Torres pushed her hand upward to prevent Molina from choking her, and hit his hand. Molina slapped her cheek. He then got off Torres and demanded that she go to bed.

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[2] Torres was not asked, and did not explain, the manner in which Molina gestured with the knife.

He rolled over and "went to bed." The incident lasted "maybe five minutes." Torres texted her daughter, who was in another room of the house, and told her to call the police. The daughter did so. Torres went to the door to move the table. Observing that Molina did not get up, she moved the table from the doorway and went to the living room with her daughter. Molina did not try to stop her. A "couple of minutes" later Molina exited the bedroom. Torres told Molina she had called the police. He returned to the bedroom. Torres waited outside for officers to arrive.

Los Angeles County Sheriff's Deputy Miguel Meza and his partner responded to the call. Meza described Torres's demeanor as "distraught. She seemed worried, scared. She seemed . . . a little afraid of going back inside the house." She complained of pain in her face and arms. She was transported to the hospital.

Deputy Meza entered the house and announced his presence. When he knocked on the bedroom door Molina told him he was trying to sleep and would talk to him in the morning. Meza stated he needed to talk to Molina that evening, but Molina refused to exit the bedroom and told Meza to go away. After several hours a sheriff's department Special Services Unit used "flash bang" devices to force Molina to exit.

b. *Defense evidence*

Molina testified in his own behalf. On February 24, he was asleep when Torres came into the bedroom and turned on the light. He asked her to please turn it off. He was tired because he had been working 10-hour days. She refused, told him to shut up, and lightly "smacked" him approximately three times. He grabbed her hand and told her he would press charges if she continued. Torres then turned the light on and off repeatedly. Molina removed the light bulb and threw it out the window,

stating, " 'I know what you're up to. Just leave me alone. I want to go to sleep.' " He then went to sleep. He did not place anything in front of the door. Torres left the room. Shortly thereafter, Molina went outside and Torres stated she was calling the sheriff. Molina went back inside and went to sleep. When deputies arrived he spoke to them through the window but declined to come outside, stating he would go to the station and speak with them in the morning. He went back to sleep, was awakened by the flash bang devices, and exited the bedroom.

Molina stated that the kitchen incident and the choking incident "never happened." He did not tell Torres she could not leave and never threatened her. He also denied that he had ever hit, choked, or threatened her with a knife.

2. *Procedure*

Trial was by jury. Molina was convicted of two counts of making criminal threats (§ 422, subd. (a), counts 1 and 6), two counts of false imprisonment by violence (§ 236, counts 3 and 7), injuring a cohabitant (§ 273.5, subd. (a), count 2), and misdemeanor resisting, delaying or obstructing a peace officer (§ 148, subd. (a)(1), count 5.) The jury found not true the allegations that Molina used a deadly weapon, a knife, in the commission of counts 6 and 7. It deadlocked on count 4, injuring a cohabitant. That charge was subsequently dismissed. The trial court sentenced Molina to four years eight months in prison. It imposed a restitution fine, a suspended parole restitution fine, and a criminal conviction assessment.

Molina appeals.

DISCUSSION

1. *Sufficiency of the evidence*

Molina contends his convictions for making criminal threats, felony false imprisonment, and inflicting injury on a cohabitant, arising from the February 11 and February 24 incidents (counts 2, 6, and 7) are not supported by substantial evidence and must be reversed. For ease of reference, we hereinafter refer to the former as the "kitchen incident" and the latter as the "bedroom incident."

a. *Standard of review*

When determining whether the evidence was sufficient to sustain a criminal conviction, " ' "we review the entire record in the light most favorable to the judgment to determine whether it contains substantial evidence—that is, evidence that is reasonable, credible, and of solid value—from which a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt." [Citation.]' " (*People v. McCurdy* (2014) 59 Cal.4th 1063, 1104; *People v. Johnson* (2015) 60 Cal.4th 966, 988.) We presume in support of the judgment the existence of every fact the trier of fact could reasonably deduce from the evidence. (*People v. Medina* (2009) 46 Cal.4th 913, 919.) Reversal is not warranted unless it appears " 'that upon no hypothesis whatever is there sufficient substantial evidence to support [the conviction].' [Citation.]" (*People v. Bolin* (1998) 18 Cal.4th 297, 331; *People v. Zamudio* (2008) 43 Cal.4th 327, 357.) We must accept logical inferences the jury might have drawn from the evidence even if we would have concluded otherwise. (*People v. Solomon* (2010) 49 Cal.4th 792, 811-812.)

b. *The evidence was insufficient to prove Torres suffered injury during the February 24 bedroom incident*

Molina argues that because Torres sustained no injury during the bedroom incident, his conviction in count 2 for injuring a cohabitant (§ 273.5, subd. (a)) must be reduced to misdemeanor battery. We agree.

Pursuant to section 273.5, subdivision (a), "[a]ny person who willfully inflicts corporal injury resulting in a traumatic condition" upon a cohabitant is guilty of a felony. The statute defines "traumatic condition" as "a condition of the body, such as a wound, or external or internal injury, including, but not limited to, injury as a result of strangulation or suffocation, whether of a minor or serious nature, caused by a physical force. For purposes of this section, 'strangulation' and 'suffocation' include impeding the normal breathing or circulation of the blood of a person by applying pressure on the throat or neck." (§ 273.5, subd. (d).) Section 273.5 is violated even when the defendant inflicts only a minor injury. (§ 273.5, subd. (d); *People v. Wilkins* (1993) 14 Cal.App.4th 761, 771.) Thus, section 273.5 is violated if there is evidence of bruising (*People v. Beasley* (2003) 105 Cal.App.4th 1078, 1085 (*Beasley*)) or redness (*People v. Wilkins, supra,* at p. 771) or a punch resulting in a black eye (*People v. Johnson* (2007) 150 Cal.App.4th 1467, 1477). Pain alone, without any physical manifestation, is insufficient to constitute a traumatic condition. (*People v. Abrego* (1993) 21 Cal.App.4th 133, 138 (*Abrego*) [soreness and tenderness, without any physical manifestation of injury, did not constitute a traumatic condition]; *Beasley, supra,* at p. 1086 [pain suffered during incident, without any evidence of wounds or injury, was insufficient to constitute a traumatic condition].) Section 273.5 requires a lesser showing of

harm than other statutes. " '[T]he Legislature has clothed persons of the opposite sex in intimate relationships with greater protection by requiring less harm to be inflicted before the offense is committed.' [Citation.]" (*People v. Silva* (1994) 27 Cal.App.4th 1160, 1166; *People v. Gutierrez* (1985) 171 Cal.App.3d 944, 952.)

In *Abrego,* the defendant slapped or punched the victim five times in the face and head. She testified she had not been injured or bruised, had not felt pain because she was intoxicated at the time, and had not sought medical treatment. However, she told an investigating officer that she felt pain and tenderness where she had been struck. The officer did not observe any injuries. (*Abrego, supra,* 21 Cal.App.4th at p. 135.) *Abrego* found this evidence insufficient to establish a violation of section 273.5, reasoning: " 'It is *injury* resulting in a traumatic condition that differentiates this crime from lesser offenses.' " (*Abrego*, at p. 137.) "The People argue that the soreness and tenderness [the victim] experienced were sufficient to constitute a traumatic condition within the meaning of section 273.5. However . . . the statute requires *injury* from a traumatic condition, even though the injury may be minor. The record discloses no evidence of even a minor injury sufficient to satisfy the statutory definition. [¶] . . . [I]n other penal statutes the Legislature has differentiated infliction of pain from infliction of injury. In section 273a, the Legislature has made it a crime to willfully cause or inflict unjustifiable physical pain on a child. In section 273d, the Legislature has made it a crime to 'willfully inflict[ ] upon any child any cruel or inhuman corporal punishment or injury resulting in a traumatic condition . . . .' If the Legislature intended pain to constitute an injury resulting in a traumatic condition, section 273a would be superfluous." (*Id.* at

p. 138.) The court concluded "the evidence is insufficient to establish Abrego's guilt of spousal abuse." (*Ibid.* at p. 138; see also *Beasley, supra,* 105 Cal.App.4th at p. 1086 [pain victim experienced during the incident was insufficient to constitute a traumatic condition within the meaning of section 273.5].)

Here Torres testified she felt pain when Molina twisted her wrists. When asked by the prosecutor, "Did you experience any pain after that incident?" Torres replied, "Just my wrists and my left shoulder." The pain lasted a few days. Torres did not have any visible bruising or swelling. When asked whether she felt pain when Molina slapped her face, she replied: "I think I was more, like, my wrist and my shoulder that . . . he had forced to my back that were more in pain." Although she was transported to the hospital, apparently as a precaution, there was no evidence regarding what treatment she received there, or for what condition. No other evidence of any injury was presented. There was no showing of any redness, bruising, swelling, or scratching. There was no evidence Torres had limited motion in her wrists or shoulder. There was no evidence she required medication or treatment for any injury, visible or not. In short, there was no evidence of any physical manifestation of injury, other than pain.[3] Under these circumstances, *Abrego* teaches that the evidence was insufficient to establish the "traumatic condition" element of the crime.

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[3] Of course, Torres testified that when Molina choked her in the first February 3, 2015 incident, his attack left her with bruises. Both the bruising and the choking would have constituted a traumatic condition for purposes of section 273.5. But these injuries formed the basis for count 4, rather than count 2.

The People argue that *Abrego* and *Beasley* are distinguishable from the instant matter because there, the pain was only transitory, whereas here, Torres testified it lasted a few days. They urge that the jury could infer from the fact Torres suffered pain for a few days that she had suffered some sort of internal injury. They point out that an injury need not be visible to qualify as a traumatic condition for purposes of section 273.5. Certainly, the People are correct that section 273.5 does not require a visible injury; an internal condition may qualify. We are not here faced with pain lasting for a lengthy period; Torres testified her wrists and shoulder were sore for only a few days. The People's argument that injury can be inferred from pain alone would do away with the well-settled distinction between pain and injury. As Molina points out, the People's theory would "turn every touching that causes pain" into a traumatic condition. This reading is, in our view, incompatible with the statute. While even very minor injuries suffice, there must be evidence of some actual injury.

Thus, as in *Abrego,* we modify the judgment to reflect a conviction for the lesser included offense of battery (§ 242.) (See § 1181, subd. (6); *Abrego, supra,* 21 Cal.App.4th at p. 138; *People v. Eagle* (2016) 246 Cal.App.4th 275, 279; *People v. Stuedemann* (2007) 156 Cal.App.4th 1, 10, fn. 6; *People v. Gutierrez, supra,* 171 Cal.App.3d at p. 952.)

c. *Felony criminal threats (count 6) – February 11 kitchen incident*

Molina urges that there was insufficient evidence to prove he violated section 422, criminal threats, during the kitchen incident. We disagree.

Section 422[4] makes it an offense to willfully threaten to commit a crime which will result in death or great bodily injury to another person under specified circumstances. (*People v. Toledo* (2001) 26 Cal.4th 221, 224; *People v. Maciel* (2003) 113 Cal.App.4th 679, 685-686.) To prove a violation of section 422, the prosecution must establish that (1) the defendant willfully threatened to commit a crime which would result in death or great bodily injury to another person; (2) the defendant made the threat with the specific intent that the statement would be taken as a threat, even if he or she did not intend to carry it out; (3) the threat, on its face and under the circumstances made, was so unequivocal, unconditional, immediate, and specific as to convey to the victim a gravity of purpose and immediate prospect of execution; (4) the threat actually caused the victim to be in sustained fear for his or her own safety, or for that of the victim's immediate family; and (5) the victim's fear was reasonable under the circumstances. (*In re George T.* (2004) 33 Cal.4th 620, 630; *People v. Toledo,*

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[4] Section 422 provides in pertinent part: "(a) Any person who willfully threatens to commit a crime which will result in death or great bodily injury to another person, with the specific intent that the statement, made verbally, in writing, or by means of an electronic communication device, is to be taken as a threat, even if there is no intent of actually carrying it out, which, on its face and under the circumstances in which it is made, is so unequivocal, unconditional, immediate, and specific as to convey to the person threatened, a gravity of purpose and an immediate prospect of execution of the threat, and thereby causes that person reasonably to be in sustained fear for his or her own safety or for his or her immediate family's safety, shall be punished by imprisonment . . . ."

supra, at pp. 227-228; *People v. Bolin, supra,* 18 Cal.4th at p. 337.) The totality of the circumstances, including the parties' prior contacts and the manner in which the communication was made, are relevant to prove that the communication conveyed to the victim a gravity of purpose and an immediate prospect of execution of the threat. (*In re Ryan D.* (2002) 100 Cal.App.4th 854, 860; *People v. Butler* (2000) 85 Cal.App.4th 745, 753-754; *People v. Solis* (2001) 90 Cal.App.4th 1002, 1013.) "Section 422 was not enacted to punish emotional outbursts," but "targets only those who try to instill fear in others." (*People v. Felix* (2001) 92 Cal.App.4th 905, 913; *In re Ryan D., supra,* at p. 861.)

The evidence supporting the criminal threats charge in count 6 was that Molina was preparing food in the kitchen, using a large knife; Torres told him she wanted to go out; and Molina stated that "he didn't want [Torres] to go out." He then stated, " 'I'm holding the knife and I can use it,' " which Torres understood as a threat. This evidence was sufficient to support the conviction. In context, Molina's statement was an implied threat to harm Torres if she went against his wishes and went out. Indeed, unless understood as a threat, the statement that Molina could use the knife made little sense. Torres testified that a week or two earlier, during the first incident, Molina had choked her and said he could kill her, causing her fear. This context clothed the knife threat with a sinister connotation. (See *In re George T., supra,* 33 Cal.4th at p. 635 ["A communication that is ambiguous on its face may nonetheless be found to be a criminal threat if the surrounding circumstances clarify the communication's meaning"].)

It was objectively reasonable for Torres to understand Molina's subsequent comment regarding the knife as a threat to use the knife to kill or injure her. Certainly using a large kitchen knife against a victim would result in significant or substantial physical injury. Torres testified that she "froze" and did not leave for up to 15 minutes later, when Molina gave her permission to go. She was afraid and "waited until he said something." Her testimony thus indicated sustained fear. Her statement that she "couldn't believe that this was happening, and [she] didn't know what to do" further indicated she understood the threat to be genuine. She "felt like . . . he could actually kill—follow through with his threat. . . ." Contrary to Molina's argument, we do not believe the statement was too vague to constitute a threat; in context, Torres's understanding of the comment was objectively reasonable. Nor are we persuaded by Molina's argument that the threat was not unconditional, immediate, and unequivocal. In context, the statement that Molina could use the knife was neither equivocal nor conditional.

Molina's primary argument is that, because the jury found the knife use allegation not true, the prosecution's theory that he threatened Torres by using the knife was not tenable. Molina acknowledges that inconsistent verdicts alone do not establish insufficient evidence. However, he posits that the jury's "factual rejection of the prosecution's allegation . . . must be considered in addressing whether there was substantial evidence of the underlying offenses." In other words, he urges that without the use of the knife, there was no threat, and his statements were insignificant. He also points out that the jury could not reach a verdict on the first incident in which he allegedly choked Torres.

We agree that if there had been no knife, or if Molina had not made the statement he could use the knife, his mere assertion that he did not want Torres to go out could not qualify as a criminal threat. But the fact the jury rendered a "not true" finding on the knife enhancement does not mean we must disregard Torres's testimony regarding the knife and Molina's statements about it. "Inconsistent verdicts alone do not establish insufficient evidence. 'An acquittal of one or more counts shall not be deemed an acquittal of any other count.' " (*People v. Hussain* (2014) 231 Cal.App.4th 261, 273.) " 'The law generally accepts inconsistent verdicts as an occasionally inevitable, if not entirely satisfying, consequence of a criminal justice system that gives defendants the benefit of a reasonable doubt as to guilt, and juries the power to acquit whatever the evidence.' [Citation.] '[I]f an acquittal of one count is factually irreconcilable with a conviction on another, or if a not true finding of an enhancement allegation is inconsistent with a conviction of the substantive offense, effect is given to both. [Citations.]' [Citation.] 'The jury may have been convinced of guilt but arrived at an inconsistent acquittal or not true finding "through mistake, compromise, or lenity . . . ." ' " (*Ibid.;* see, e.g., *People v. Avila* (2006) 38 Cal.4th 491, 600; *People v. Abilez* (2007) 41 Cal.4th 472, 512-513; *People v. Santamaria* (1994) 8 Cal.4th 903, 911.) As our Supreme Court has explained: " '[T]here is no prohibition against considering all of the evidence in the record to determine the sufficiency of evidence on one count merely because the jury did not reach a unanimous verdict on a count to which the evidence may have related.' [Citation.] The failure of the jury to reach a verdict . . . 'may show no more than jury lenity, compromise, or mistake, none of which undermines the validity of a verdict.' [Citation.]

'The United States Supreme Court has explained: "[A] criminal defendant is afforded protection against jury irrationality or error by the independent review of the sufficiency of the evidence undertaken by the trial and appellate courts. *This review should not be confused with the problems caused by inconsistent verdicts. Sufficiency-of-the-evidence review involves assessment by the courts of whether the evidence adduced at trial could support any rational determination of guilty beyond a reasonable doubt. [Citations.] This review should be independent of the jury's determination that evidence on another count was insufficient*." [Citation.]' [Citations.]" (*People v. Covarrubias* (2016) 1 Cal.5th 838, 890-891, first italics added.)

For the foregoing reasons, we conclude the criminal threats conviction in count 6 was supported by substantial evidence.

d. *Felony false imprisonment (count 7) – February 11 kitchen incident*

A similar analysis governs Molina's contention that the evidence was insufficient to support his conviction for false imprisonment by violence arising from the kitchen incident.

"False imprisonment is the unlawful violation of the personal liberty of another." (§ 236; *People v. Wardell* (2008) 162 Cal.App.4th 1484, 1490 (*Wardell*); *People v. Babich* (1993) 14 Cal.App.4th 801, 806.) "[T]he essential element of false imprisonment is restraint of the person. Any exercise of express or implied force which compels another person to remain where he does not wish to remain, or to go where he does not wish to go, is false imprisonment. [Citation.] False imprisonment is a felony if it is effected by violence or menace. (§ 237.)" (*People v. Bamba* (1997) 58 Cal.App.4th 1113, 1123; *Wardell, supra,* at p. 1490.) Menace is defined as a verbal or physical threat of harm, either

express or implied. (*People v. Aispuro* (2007) 157 Cal.App.4th 1509, 1512; *Wardell,* at p. 1490.) "An express or implied threat of harm does not require the use of a deadly weapon or an express verbal threat to do additional harm. Threats can be exhibited in a myriad number of ways, verbally and by conduct." (*Aispuro, supra,* at p. 1513.) A jury may properly consider the victim's fear when determining whether the defendant impliedly or expressly threatened harm. (*People v. Islas* (2012) 210 Cal.App.4th 116, 127.)

Here, the People did not allege Molina used actual violence to compel Torres to remain in the house during the kitchen incident; thus the question is whether Molina falsely imprisoned Molina by menace. Molina argues there was insufficient evidence that his statement to Torres, i.e., that he did not want her to leave, was insufficient to support a finding of menace, notwithstanding her testimony that she did not leave until he gave her permission. He avers that, because there was no proof he intended to restrain Torres against her will and compelled her to stay in the house for 15 minutes, count 7 must be reversed. As he urged with his argument regarding count 6, he argues that the jury's not true finding on the deadly weapon enhancement attached to count 7 is inherently incompatible with a conclusion he used the knife to effectuate the false imprisonment.

As we have discussed *ante,* the evidence was sufficient to show Molina threatened Torres with the knife, and the jury's not true finding on the enhancements does not compel us to disregard Torres's testimony. Molina told Torres he did not want her to go out and stated he could use the knife. Juxtaposing these statements, the jury could reasonably infer they constituted an implied threat Molina would injure Torres with the knife if she

attempted to leave the house. Torres testified that she was "afraid" and "froze." Molina's statement, " 'Go ahead' " was what prompted her to leave the house; prior to that she did not attempt to leave. Torres's statement that she "really wasn't thinking at that moment when I froze. I just waited until he said something" indicated she was frightened by his threat into remaining in the house, despite her stated desire to go out. The evidence was sufficient.

2. *Alleged instructional error*

a. *Additional facts*

The trial court and parties apparently conferenced regarding jury instructions off the record. Immediately prior to reading the instructions, the trial court confirmed that there were no objections or additional requests. After the court read the instructions, but prior to closing arguments, defense counsel stated he believed "the lesser-included offenses should have been read to the jurors." The court stated it believed counsel had already made "a record that [he] wanted them" but denied the request, stating: "That's denied. [¶] Defendant denied any charges—any conduct at all. Court's understanding when he denies any involvement at all, then . . . there is no basis for any lessers unless the facts themselves lend themselves to it, and I don't see anything that does in this particular instance."

Molina urges that the trial court erred by failing to instruct on the lesser included offense of simple battery on count 2, and misdemeanor false imprisonment on counts 3 and 7. As we have already determined that count 2, felony infliction of corporal injury to a cohabitant, must be reduced to simple battery, Molina's argument regarding count 2 is moot.

b. *Applicable legal principles and standard of review*

A trial court must instruct the jury on all general principles of law relevant to the issues raised by the evidence, including lesser included offenses, whether or not the defendant makes a formal request. Instruction on a lesser included offense is required when there is evidence that indicates the defendant is guilty of the lesser offense but not of the greater. (*People v. Whalen* (2013) 56 Cal.4th 1, 68-69; *People v. Thomas* (2012) 53 Cal.4th 771, 813.) Substantial evidence is evidence that a reasonable jury could find persuasive. (*People v. Benavides* (2005) 35 Cal.4th 69, 102.) The existence of *any* evidence, no matter how weak, will not justify instructions on a lesser included offense. (*Whalen, supra*, at p. 68; *People v. Wyatt* (2012) 55 Cal.4th 694, 698.) In deciding whether there is substantial evidence we do not evaluate the credibility of the witnesses, a task for the jury. (*Wyatt, supra*, at p. 698; *People v. Manriquez* (2005) 37 Cal.4th 547, 585.) We independently review the question of whether the trial court erred by failing to instruct on a lesser included offense. (*People v. Booker* (2011) 51 Cal.4th 141, 181.)

The failure to instruct on a lesser included offense in a noncapital case does not require reversal " 'unless an examination of the entire record establishes a reasonable probability that the error affected the outcome.' " (*People v. Wyatt*, supra, 55 Cal.4th at p. 698; *People v. Beltran* (2013) 56 Cal.4th 935, 955; *People v. Breverman* (1998) 19 Cal.4th 142, 165.)

Misdemeanor false imprisonment is a lesser included offense of false imprisonment by violence, menace, fraud, or deceit. (*People v. Babich, supra,* 14 Cal.App.4th at pp. 804, 807.)

c. *Count 7: false imprisonment during the kitchen incident*

Molina argues that the trial court erred by failing to instruct on the lesser included offense of misdemeanor false imprisonment in regard to the kitchen incident because he did not order Torres to do anything and, according to the jury, did not use the knife, nor did he suggest that he would harm Torres if she left. He insists that there was more than an abstract possibility that, had the jury been instructed on the lesser included offense, there was a reasonable chance it would have concluded any false imprisonment did not rise to the level of a felony.

The flaw in this argument is that the evidence supported a finding that Molina either made a threat by reference to the knife, or made no threat at all. He testified that the incident never happened; Torres, on the other hand, testified that he threatened her with a knife. If the jury determined Molina did not make the "I'm holding the knife and I can use it" statement in the threatening context we have discussed *ante,* he did nothing that could be construed as falsely imprisoning Torres. Stating that he did not want her to go out, by itself, would not have established misdemeanor false imprisonment. " 'A trial court need not . . . instruct on lesser included offenses when the evidence shows that the defendant is either guilty of the crime charged or not guilty of any crime . . . .' [Citation.]" (*People v. Chenelle* (2016) 4 Cal.App.5th 1255, 1265; *People v. Barton* (1995) 12 Cal.4th 186, 196, fn. 5.) Such is the case here.

d. *Count 3: false imprisonment during the bedroom incident*

Molina next urges that the jury should have been instructed on the lesser included offense of misdemeanor false

imprisonment in regard to count 3, the bedroom incident. He avers that there was no evidence of physical violence that directly prevented Torres from leaving the room; he told her to go to bed but did not tell her she could not leave; and he did not attempt to prevent her from leaving after he ceased straddling her. In his view, the jury could have concluded he initially prevented Torres from leaving by placing the table in front of the door, but did not compel her to stay by violence or menace. Therefore, he insists, it is reasonably probable a properly instructed jury would have convicted him of only misdemeanor false imprisonment.

Molina's argument is not without some force. But assuming arguendo instruction on misdemeanor false imprisonment was required, its omission here was harmless. Molina's argument is premised upon an artificial compartmentalization of his actions. To accept his theory, jurors would have had to conclude his blocking the door with the table was a separate and distinct event from his use of physical force and his verbal threat to Torres. The evidence, however, does not readily support such a characterization. Torres testified that Molina, who was upset and demanding, told her to turn off the light. "[R]ight away" he threw the light bulb out the window. She got up and he told her to go to bed. When she did not, Molina blocked the door with the table, pushed her onto the bed, straddled her, forced her wrists behind her back, attempted to strangle her with his necklace, said he could kill her, slapped her in the face, and, when he rolled off her, again told her to go to bed. The entire incident was "so fast" and lasted "maybe five minutes." This evidence was largely irreconcilable with the view that the false imprisonment consisted only of Molina's act of moving the table in front of the door. Rather, Molina's actions of

moving the table, threatening, and assaulting Torres were part and parcel of the same conduct, undertaken during the same brief and continuous incident. Even if jurors had been instructed on misdemeanor false imprisonment, there is no reasonable probability they would have concluded blocking the door with the table was unrelated to Molina's physical abuse and verbal threat. Accordingly, we discern no reversible error. (See *People v. Wyatt*, *supra*, 55 Cal.4th at p. 698; *People v. Beltran, supra,* 56 Cal.4th at p. 955; *People v. Breverman, supra,* 19 Cal.4th at p. 165.)

3. *Section 654*

a. *Additional facts*

The trial court sentenced Molina to the low term of two years on count 2, infliction of corporal injury on a cohabitant (the base term), and imposed consecutive eight month sentences on the remaining felonies (counts 1, 3, 6, and 7), plus a concurrent six month jail term on the misdemeanor resisting arrest offense (count 5). The court observed that Molina had a minimal prior record, but the offenses amounted to "distinct acts over a period of time." It explained, "[T]he conduct was serious. I picked the low term because [of] his minimal record, but then looking at the totality of the circumstances and the conduct and the period of time it went over, I'm making all other matters consecutive." The trial court initially sentenced Molina to the midterm on the base count, but then reconsidered, stating: "I didn't want to do that. That's a little high." The trial court did not expressly reference section 654, nor did defense counsel argue that section 654 barred punishment on any of the offenses.

Molina argues that pursuant to section 654, only one unstayed sentence may be imposed on counts 1 (criminal threats arising from the bedroom incident), 2 (injury to a cohabitant

arising from the bedroom incident), and 3 (felony injury to a cohabitant), and only one unstayed sentence can be imposed on count 7 (felony false imprisonment arising from the kitchen incident) and count 6 (criminal threats arising from the kitchen incident).

b. *Section 654*

Section 654, subdivision (a), provides that an act or omission 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 not under more than one provision. Thus, section 654 bars multiple punishments for separate offenses arising out of a single occurrence where all were incident to an indivisible course of conduct or a single objective. (*People v. McKinzie* (2012) 54 Cal.4th 1302, 1368, disapproved on another ground in *People v. Scott* (2015) 61 Cal.4th 363, 391, fn. 3; *People v. Calderon* (2013) 214 Cal.App.4th 656, 661; *People v. Galvez* (2011) 195 Cal.App.4th 1253, 1262.) Whether a course of criminal conduct is divisible depends on the intent and objective of the actor. If all the offenses were merely incidental to, or were the means of accomplishing one objective, the defendant may be found to have harbored a single intent and therefore may be punished only once. (*People v. Jackson* (2016) 1 Cal.5th 269, 354; *People v. Capistrano* (2014) 59 Cal.4th 830, 885-886; *People v. Sok* (2010) 181 Cal.App.4th 88, 99; *People v. Jones* (2002) 103 Cal.App.4th 1139, 1143.) But if the defendant harbored multiple or simultaneous objectives, independent of and not merely incidental to each other, he or she may be punished for each violation committed in pursuit of each objective even though the violations share common acts or were parts of an otherwise

indivisible course of conduct. (*Jones, supra*, at p. 1143; *Sok, supra*, at p. 99.) The purpose of section 654 is to ensure that a defendant's punishment will be commensurate with his culpability. (*Capistrano, supra,* at p. 886.)

Whether section 654 applies in a given case is a question of fact for the trial court, and its findings will not be reversed on appeal if there is any substantial evidence to support them. (*People v. Jackson, supra,* 1 Cal.5th at p. 354; *People v. Capistrano, supra*, 59 Cal.4th at p. 886; *People v. Jones, supra,* 103 Cal.App.4th at p. 1143.) To permit multiple punishment, " ' "there must be evidence to support [the] finding the defendant formed a separate intent and objective for each offense for which he was sentenced." ' " (*Capistrano,* at p. 886.) Because a sentence imposed in violation of section 654 is unauthorized, it may be corrected at any time even if the defendant did not object below. (*People v. Sanders* (2012) 55 Cal.4th 731, 743, fn. 13; *People v. Soto* (2016) 245 Cal.App.4th 1219, 1234.) Where section 654 applies, the proper procedure is to " 'sentence defendant for each count and stay execution of sentence on certain of the convictions to which section 654 is applicable.' " (*People v. Jones* (2012) 54 Cal.4th 350, 353.)

c. *Counts 6 and 7: false imprisonment and criminal threats arising from the kitchen incident*

Molina argues that it was improper to impose sentence on both the criminal threats and false imprisonment offenses arising out of the kitchen incident, because the crimes involved the same acts and a single intent and objective, i.e., to compel Torres not to leave the house. The People concede the point, and we agree. As Molina argues, the counts were based on the identical conduct, and there is no evidence suggesting a separate intent or objective.

Therefore, on remand, the trial court shall stay sentence on one of the offenses.

d. *Counts 1, 2, and 3: criminal threats, false imprisonment, and battery arising out of the bedroom incident*

Molina further argues that he cannot be separately punished for the criminal threats, false imprisonment, and battery charges arising from the bedroom incident because all actions were undertaken with a single intent and objective, i.e., preventing Torres from leaving the bedroom. He argues that "this was one short encounter of continuous action. Nothing separated appellant's statements and acts. Whatever threat was made was part and parcel of appellant sitting on Torres" and the act of blocking the door was "included in the assaultive acts. . . ." The People disagree, urging that it may be inferred that Molina had separate and independent objectives: to prevent Torres from leaving the bedroom; to assault her for defying his demands to turn off the light and go to bed; and to threaten her to deter her from defying him in the future. The People also aver that the case must be remanded for resentencing, given the trial court's comments demonstrating its intent to craft a sentence commensurate with Molina's culpability.

We agree with Molina that the criminal threats and false imprisonment offenses arose from the same facts, and were carried out with a single intent and objective. As with the kitchen incident, the focus of Molina's conduct was to force Torres to comply with his demands and prevent her from leaving the bedroom. As we have discussed, the incident was brief and continuous. Although the People posit Molina may have had an additional intent to deter Torres from defying him in the future, there is no evidence supporting this hypothesis. Accordingly,

sentence on one of the offenses must be stayed pursuant to section 654.

The same is not necessarily true in regard to the corporal injury count, which we have determined must be reduced to simple battery. The trial court could have concluded Molina had multiple intents when slapping and straddling Torres, attempting to choke her, and twisting her wrists. As the People argue, the court could have concluded these actions were undertaken out of anger, to punish Torres for ignoring his demands to turn off the light, as well as to prevent her from leaving the room.

We agree with the People that the matter must be remanded for resentencing. In light of our conclusion that the felony infliction of corporal injury conviction in count 2 must be reduced to battery, the appropriate course is to allow the trial court to reconfigure the sentence on remand. "When a case is remanded for resentencing by an appellate court, the trial court is entitled to consider the entire sentencing scheme. Not limited to merely striking illegal portions, the trial court may reconsider all sentencing choices. [Citations.] This rule is justified because an aggregate prison term is not a series of separate independent terms, but one term made up of interdependent components." (*People v. Hill* (1986) 185 Cal.App.3d 831, 834; *People v. Burbine* (2003) 106 Cal.App.4th 1250, 1258.)

DISPOSITION

The judgment is modified as follows. The judgment on count 2, felony infliction of injury on a cohabitant, is reduced to a conviction of violating section 242, battery. Sentence on either the criminal threat or false imprisonment offense in counts 6 and 7, and 1 and 3, shall be stayed pursuant to section 654. The matter is remanded for resentencing in accordance with the opinions set forth herein. In all other respects, the judgment is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

ALDRICH, Acting P. J.

We concur:

LAVIN, J.

GOSWAMI, J.*

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* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.