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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE, Plaintiff and Respondent, v. ZACHARY PAUL HARMON, Defendant and Appellant.	B265455 (Los Angeles County Super. Ct. No. PA074635)

APPEAL from a judgment of the Superior Court of Los Angeles County. Monica Bachner, Judge. Affirmed.

Law Offices of John F. Schuck, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Zee Rodriguez and Esther P. Kim, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant and appellant Zachary Paul Harmon (defendant) appeals from the judgment entered upon his conviction of torture, false imprisonment, attempted mayhem, and child abuse. He contends that his trial counsel rendered ineffective assistance by not requesting a jury instruction regarding voluntary intoxication, and that his sentence for false imprisonment was prohibited multiple punishment which should have been stayed. We find no merit to defendant's contentions, and affirm the judgment.

BACKGROUND

Defendant was charged in a six-count information as follows: count 1, torture in violation of Penal Code section 206;[1] count 2, child abuse in violation of section 273a, subdivision (a); count 3, attempted mayhem in violation of sections 664/203; count 4, attempted aggravated mayhem in violation of sections 664/205; count 5, false imprisonment by violence in violation of section 236; and count 6, sexual battery by restraint in violation of section 243.4, subdivision (a). The information also alleged that defendant personally inflicted great bodily injury on the victim during the commission of counts 1 and 2, within the meaning of section 12022.7, subdivision (a), and that defendant personally used deadly and dangerous weapons, a power drill and a cigarette, in the commission of counts 1 and 2, and scissors in the commission of counts 1 through 4, within the meaning of section 12022, subdivision (b)(1). A jury found defendant guilty of counts 1, 2, 3, and 5, but not guilty of counts 4 and 6. The jury found true the great bodily injury allegation as to count 2, but found the remaining special allegations not true.

On July 9, 2015, the trial court sentenced defendant to life in prison on count 1 (torture), plus a consecutive high term of three years as to count 5 (false imprisonment). The court imposed the high term of six years as to count 2 (child abuse), enhanced by three years for great bodily injury, and the high term of four years as to count 3

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

(attempted mayhem). The terms imposed as to counts 2 and 3 were stayed pursuant to section 654.

Defendant filed a timely notice of appeal from the judgment.

Prosecution evidence

In September 2012, Christian was six years old. Christian was interviewed that month by Maryann Lague, a forensic nurse and expert in interviewing child abuse victims, and a video of the interview was shown to jury. Although he did not remember much of the events nearly three years later, Christian also testified at trial about that time, when he lived with his mother, baby sister, dog, and defendant, who was his stepfather. The family lived in a one-bedroom apartment in which Christian's bedroom was a closet under a stairway. His bed was a beanbag, and he had no blanket or pillow. He spent long hours in his closet, either prevented or forbidden by defendant from coming out, usually with the light out. The light switch was on the outside, and defendant would move a dresser in front of the door or frighten him if he came out. Once defendant choked him such that he thought he was going to die. Defendant had his scary look that Christian had seen about five times, and after that Christian was afraid to leave the closet. Christian was often hungry in his closet, and would have to wait for long periods to go to the bathroom. Defendant brought him food occasionally, usually a banana, a protein shake, cheese, and some orange pills. Christian's mother never came to his closet. Defendant would sometimes choke her, as well. Once, defendant told Christian that when Christian turned 18, defendant would kill him. Christian believed him because defendant owned a knife. Defendant grew "green stuff" in the bedroom closet. He would "smush" it and smoke it, and afterward he was sleepier and happier, less angry.

At about 7:40 p.m. on September 15, 2012, Christian's mother, Angela Harmon, called 911 from a pay phone. She told the operator that she needed the police and a paramedic, explaining that her husband Zach was beating up her six-year-old son because he thought that the child had raped the baby. The operator attempted to persuade her to remain on the line, but she said, "I have to go save my son."

Los Angeles Police Officer Damaris Bonffil arrived at defendant's apartment within a few minutes with her partner, Officer Jeffrey Punzalan. They took defendant into custody, passed him to other officers, and then conducted a room-by-room search for the victim. Officer Punzalan observed marijuana plants growing under grow lights in the bedroom and bedroom closet. After opening the bathroom door, Officer Bonffil saw Christian standing in the bathtub, naked. He appeared to be in complete shock, said nothing, and just stared at her. He had cuts all over his face, his lip was bleeding, and tip of his penis appeared ruptured and bloody. Officer Bonffil rode with Christian to the hospital in the ambulance, and observed while photographs were taken of his injuries. In addition to the injuries she had observed in the bathroom, Christian had what appeared to be a burn mark on his stomach, and bruises on both legs and his back.

In his interview with Maryann Lague about two weeks later, Christian told her about the beating. Defendant shaved Christian's head, punched him in his back with his knuckles, kicked him in his "private part" and kept on kicking him there until it was swollen. Defendant also slapped him on the face, spanked him with a wooden spoon, burned him with a cigarette, and scratched his face with his fingernails. Defendant "tried to cut [his] pee pee off" with scissors and brushed it with a hairbrush. Christian thought he was going to die, but defendant stopped when Christian started bleeding. In the closet, Christian was wearing a T-shirt and shorts. Defendant took Christian into the living room, removed his clothing, told him he was going to put a ball in his mouth, tie it, and drill his "pee pee" off with the drill. When defendant could not find the rope and ball, he instead spun the drill in such a way as to make Christian believe he intended to use it to harm Christian. Defendant had a scary, angry face when he said that.

Detectives Maria Roumbos and Calvin De Hesa interviewed defendant two days later after defendant waived his *Miranda* rights.[2] The interview was recorded and played for the jury. Defendant claimed that Christian had told him that his biological father and grandfather had forcible anal sex with the child and had made Christian do it to other

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[2] See *Miranda v. Arizona* (1966) 384 U.S. 436, 444-445.

kids, so the family left their home in Arizona, and came to California about one month before defendant was arrested.[3] Defendant claimed they left Arizona when, after reporting what Christian's father was doing to him, CPS (child protective services) "flipped around" and instead opened a case on defendant, claiming he had been spanking Christian. Defendant added that he was allowed to spank Christian because he was Christian's dad, but he "wasn't doing nothing crazy like, you know, what's happened to him."

Defendant also claimed that he was trying to save Christian, but then he learned that he was "doing stuff" to the baby and the dog. On September 15, 2012, defendant "caught" Christian. Defendant explained that the baby was asleep in her little bed and Christian was in his room (the closet) reading, with the door closed.[4] Defendant came around corner, and for a split second out of the corner of his eye saw Christian having sex with the baby, whose diaper was pulled to the side.[5] Defendant said, "What the F . . . are you doing?" Christian jumped up quickly, said "Nothing," ran into the kitchen, and looked scared. Defendant was not sure of what he saw, so he questioned Christian. Christian said he had been checking her pacifier, but then said he was pulling up her blanket, and then said he was checking her diaper to see if she needed to be changed. Finally, Christian confessed that he had been putting a marker "in there"; then he said it was his finger, and then he said it was his penis.

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[3] Christian's father, Mark I. testified that Christian' mother failed to deliver Christian for a weekend visit, then disappeared with him. Mark I. filed a missing persons report with Tucson police and did not hear from them until he was notified that Christian was in the hospital. Christian now lives with Mark I. in Arizona.

[4] Defendant denied that he regularly locked Christian in the closet. He claimed that Christian slept in the living room, and had only his books, toys, and desk in closet. Defendant also said that Christian urinates in the room, on a towel or under the beanbag, which did not "set [him] off" when it was an accident, "[b]ut if he is like continuously pissing in there it's annoying."

[5] Defendant did not clarify how he saw Christian with the baby if he was in his closet with the door closed and the baby was in her bed.

Defendant told the detectives that when Christian said he was putting markers in the baby's butt and his penis in her vagina, and that he had been having sex with the dog for over a year, he lost it, spanked Christian "real hard" and slapped him around. He explained that Angela had told him that Christian tried to put his fingers in her while she slept on the couch, and that she had seen him do it to the baby the other day, but Christian's confession was the final straw. Defendant told him to go take a shower, then to go into his room and stay there. Defendant followed him, spanked him on the buttocks with his hand, and slapped him. Detective De Hesa asked him whether he was trying to teach Christian a lesson. Defendant replied that he wanted to make sure he never raped anyone again.

When Detective Roumbos asked defendant how Christian got all the bruises and the scratches on his face, defendant said that Christian had sensitive skin. Defendant explained that during the spanking, Christian fought him and was screaming, so defendant put his hand over his face in an effort to suffocate him and to cover the sound. Defendant added, "I wasn't punching him in the face or trying to, like, doing anything like -- if I want to -- I'm not -- I'm not trying to kill the kid, you know. I don't want to kill him. I just want him to know what he --" Detective Roumbos then commented that what had happened came close to that. Defendant replied, "Well, temporary insanity, crime of passion. I don't know." When the detective asked what had been going through his mind, defendant replied, "Just whited out. I just blacked out. Whited out." He added, "Blanked out. Went insane. I don't know."

At first, defendant denied hitting Christian in the penis and claimed that Christian had punched himself because he was crazy. Defendant admitted that he had spanked him, slapped him in the face, covered his mouth when he was screaming, but he denied punching Christian in the "dick." Defendant claimed that he stopped when Angela said, "Don't kill him." Defendant said that the detectives were getting him "riled up and taking [him] back into that state." He added, "I didn't do anything wrong, man. He raped my daughter, my dog, and molested my wife." Finally, defendant admitted that he had kicked Christian in the penis as hard as he could. He kicked Christian so hard that it

caused him to come up off the ground a little bit. Defendant denied that he cut or burned Christian. When asked about the injuries on Christian's buttocks, defendant replied, "What injuries? I just spanked him on the butt till it was black and blue." Asked what level of force he used when spanking Christian on a scale of one to ten, defendant said, "As hard as he could. I was mad" and then, "A ten." He did not know how many times - not his prior exaggerated estimate of a billion times, but it was a lot of times. Defendant told the detectives that Christian had sensitive skin and bruised easily, like his mother.

Afterward, defendant gave Christian two spoonfuls of cannabis butter and ibuprofen for his pain. Defendant told the detectives that he was trying to teach Christian a lesson, but knew that he overdid it. Earlier in the interview, defendant claimed that he blocked the closet door only that one day as a time out, so that defendant could go to the bathroom without worrying that Christian would molest the baby, and that he checked on Christian every five or ten minutes. Defendant later admitted that he kept Christian in his room all day because his injuries were visible. Once they healed, he intended to call "CPS" to have him taken away, because he did not want him around his daughter and his dog. Defendant explained, "[I]f I didn't kick him in the balls and I could have called the cops right away if all I had done is spanked him."

Detective De Hesa asked defendant whether he considered taking Christian to the hospital. Defendant replied that he did "a lot" of online research about testicular injuries and found that unless it was "super severe," the worst thing that would happen is he would be unable to have children or get an erection. Defendant did not think that was too bad. He added: "That's okay. It's going to heal up. He's not going to die or nothing." Defendant could see that "[h]is dick was like -- looked broken. And his balls were all swell up black." But he knew that he would "be here" if he called an ambulance anyway. He added, "But now that I'm here anyways, it could have been better, huh? Cause since I didn't right away that makes me look worse."

When Detective De Hesa asked defendant about his marijuana use, defendant told him that he usually smoked a couple joints per day, and probably smoked more that day. He added, "Probably after I found that out, you know, before I went and did anything I

probably went and got real high first," and, "I want to calm myself down as much as possible so I don't kill the kid." When Detective De Hesa asked defendant to clarify whether it was after he saw "this" or "way before that," defendant explained that it was after he saw Christian and questioned him. Defendant explained the he had "already put so much energy into just getting him to confess," that he threw his hands up, went to his room, and got high to help him calm down. He "hit a pipe" and might have had half a joint. Later in the interview, defendant admitted that he had "lost it" and "gone off" when Christian confessed and before he left him to smoke some marijuana. He told the detectives that he had smoked marijuana for 15 years. Defendant denied that he took other drugs or had been drinking alcohol that day, although he thought he might have had a beer. But he did not think that would have affected him.

DISCUSSION

I. Voluntary Intoxication

Defendant contends that counts 1 and 3 must be reversed because his trial counsel rendered ineffective assistance by failing to request a jury instruction regarding voluntary intoxication, such as CALCRIM No. 3426.[6]

The Sixth Amendment right to assistance of counsel includes the right to the effective assistance of counsel. (*Strickland v. Washington* (1984) 466 U.S. 668, 686-674; see also Cal. Const., art. I, § 15.) "Generally, a conviction will not be reversed based on a claim of ineffective assistance of counsel unless the defendant establishes *both* of the

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[6] CALCRIM No. 3426 instructs: "You may consider evidence, if any, of the defendant's voluntary intoxication only in a limited way. You may consider that evidence only in deciding whether the defendant acted [or failed to do an act] with [specific intent or mental state required]. [¶] A person is *voluntarily intoxicated* if he or she becomes intoxicated by willingly using any intoxicating drug, drink, or other substance knowing that it could produce an intoxicating effect, or willingly assuming the risk of that effect. [¶] In connection with the charge of [charged offense requiring specific intent or mental state], the People have the burden of proving beyond a reasonable doubt that the defendant acted [or failed to act] with [specific intent or mental state required]. If the People have not met this burden, you must find the defendant not guilty of [charged offense requiring specific intent or mental state]."

following: (1) that counsel's representation fell below an objective standard of reasonableness; *and* (2) that there is a reasonable probability that, but for counsel's unprofessional errors, a determination more favorable to defendant would have resulted. [Citations.] If the defendant makes an insufficient showing on either one of these components, the ineffective assistance claim fails." (*People v. Rodrigues* (1994) 8 Cal.4th 1060, 1126.)

"[C]ounsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." (*Strickland v. Washington*, *supra*, 466 U.S. at p. 690.) "'Tactical errors are generally not deemed reversible; and counsel's decisionmaking must be evaluated in the context of the available facts. [Citation.] To the extent the record on appeal fails to disclose why counsel acted or failed to act in the manner challenged, we will affirm the judgment "unless counsel was asked for an explanation and failed to provide one, or unless there simply could be no satisfactory explanation . . . ." [Citation.]' [Citations.]" (*People v. Hart* (1999) 20 Cal.4th 546, 623-624.)

The record does not reflect whether counsel had a tactical reason for not requesting the instruction. Defendant contends no reasonable attorney would have made such a tactical choice. He argues that since torture and attempted mayhem are specific intent crimes, and there was evidence that defendant smoked marijuana and drank beer that day, a reasonable defense attorney would have requested the voluntary intoxication instruction to permit the jury to find that the defendant did not harbor the required specific intent.

It is probable that defense counsel determined that the instruction was not supported by substantial evidence and would be refused by the trial court. A reasonably competent attorney might well determine that a particular motion would be futile, and does not render ineffective assistance by not making it. (*People v. Price* (1991) 1 Cal.4th 324, 386-387.) In particular, counsel does not render ineffective assistance by failing to request factually and legally unsupported jury instructions. (*People v. Szadziewicz* (2008) 161 Cal.App.4th 823, 836.)

"The offense of torture (§ 206) requires that the perpetrator act with 'the [specific] intent to cause cruel or extreme pain and suffering for the purpose of revenge, extortion, persuasion, or for any sadistic purpose . . . .'" (*People v. Pearson* (2012) 53 Cal.4th 306, 325.) Section 203 defines simple mayhem as "unlawfully and maliciously depriv[ing] a human being of a member of his body, or disables, disfigures, or renders it useless." Simple mayhem is a general intent crime. (*People v. Sekona* (1994) 27 Cal.App.4th 443, 458.) However, "[a]n *attempt* to commit a crime requires a specific intent to commit the crime and a direct but ineffectual act done toward its commission. [Citation.]" (*People v. Kipp* (1998) 18 Cal.4th 349, 376, italics added.)

"Evidence of voluntary intoxication is admissible solely on the issue of whether or not the defendant actually formed a required specific intent." (§ 29.4, subd. (b).) "Normally, merely showing that the defendant had . . . used drugs before the offense, without any showing of their effect on him, is not enough to warrant an instruction on [voluntary intoxication]. [Citations.]" (*People v. Pensinger* (1991) 52 Cal.3d 1210, 1241; see also *In re Avena* (1996) 12 Cal.4th 694, 723.) Rather, to be entitled to an instruction on voluntary intoxication, the defendant must show not only that he consumed intoxicating substances, but also that "he became intoxicated to the point he failed to form the requisite intent . . . . [Citation.]" (*People v. Ivans* (1992) 2 Cal.App.4th 1654, 1661; see also *People v. Williams* (1997) 16 Cal.4th 635, 677.)

Defendant contends that some of the statements made in the police interview provided sufficient evidence to require the instruction. For example, defendant told the detectives that he had been smoking marijuana on the day of the incident, probably more than two joints, maybe a beer, that he "got real high," and was "not really thinking completely clear." Defendant also points to the explanation that when he assaulted Christian, he "Just whited out. I just blacked out. Whited out." "Blanked out. Went insane." Defendant concludes from these excerpts that "there was undisputed evidence that appellant was 'real high' and had 'blacked out' as a result of marijuana use and alcohol consumption."

The quoted and paraphrased statements did not provide *undisputed* evidence, as defendant claims, as many were contradicted by other statements made by defendant. Further, some statements have been taken out of context and others have been misconstrued. While defendant said he "blacked out" and "whited out," he did not say that it was a result of marijuana use or alcohol consumption. When asked to clarify when he smoked the marijuana, defendant explained that it was *after* he had "already put so much energy into just getting [Christian] to confess"; and he admitted that he "lost it" and had "gone off" *before* he left Christian to smoke some marijuana.

Moreover, even assuming that defendant had gotten "high" before his attack on Christian, defendant has identified no substantial evidence that his voluntary intoxication had any effect on his ability to formulate intent or that he did not in fact form the necessary intent. Indeed, defendant explained that he had smoked marijuana for 15 years, and that it calmed him down, helped him to sleep, and he did not think that having a beer would have an effect. In addition, Christian had seen defendant smoke the "green stuff" he grew in his room, and in Christian's experience, defendant was sleepier, happier, and less angry afterward.

We conclude that under such circumstances, any request for a voluntary intoxication instruction would have been futile, which would have been a satisfactory reason for defense counsel not to request it. (See *People v. Price, supra*, 1 Cal.4th at pp. 386-387; *People v. Szadziewicz, supra*, 161 Cal.App.4th at p. 836.)

Regardless, defendant has failed to demonstrate a reasonable probability that the result would have been different absent the alleged error. We have reviewed the entire record, and discern no such probability, as there was overwhelming evidence of defendant's ability to formulate the specific intent to cause Christian "cruel or extreme pain and suffering for the purpose of revenge, . . . persuasion, or [other] sadistic purpose" (§ 206), and the specific intent to attempt to deprive Christian "of a member of his body, or disable[], disfigure[], or render[] it useless." (§ 203.) Defendant punched six-year-old Christian in his back with a closed fist, kicked him in his penis multiple times, kicked him in the testicles so hard that he came off the ground, slapped him on the face, spanked

him with a wooden spoon until his buttocks were black and blue, burned him with a cigarette, scratched his face with fingernails, deliberately placed his hand over Christian's face in an effort to suffocate him, tried to cut Christian's penis off with scissors, and intended to drill his penis off, but for his inability to find a ball and rope. Defendant admitted that much of what he did was intended to persuade Christian to confess and to teach Christian a lesson, and that he used such a high level of force because he was angry.

Defendant was sober enough to formulate a plan to have Christian removed from the home without risking arrest. Because Christian's injuries were visible, he intended to call law enforcement and social services after they healed. He also apparently intended to keep Christian in his closet until then, so that defendant could go to the bathroom without having to keep watch over Christian. Defendant was also sufficiently sober to do "a lot" of online research about testicular injuries and concluded that he did not have to risk taking Christian to the hospital. Finally, two days later, defendant remembered what he did and thought he had done nothing wrong, except to expose himself to the risk of arrest by kicking Christian rather than just spanking him and by not seeking medical treatment.

In sum, defendant's claim of ineffective assistance fails, as he has not met his burden to demonstrate that counsel failed to exercise reasonable professional judgment or that he was prejudiced by the alleged error. (See *Strickland v. Washington*, *supra*, 466 U.S. at pp. 690, 694; *People v. Rodrigues*, *supra*, 8 Cal.4th at p. 1126.)

II. Sentencing under section 654

Defendant contends that the trial court erred in ordering the sentence for false imprisonment (count 5) to run consecutively to the sentence for torture (count 1), and should instead have imposed and stayed the sentence pursuant to section 654. We find defendant's argument lacks merit.

"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." (§ 654, subd. (a).) In general, section 654 precludes multiple punishments for a single physical act that violates different provisions of law, although "what is a single physical act might not always be easy to ascertain. In some situations, physical acts might be simultaneous yet separate for purposes of section 654." (*People v. Jones* (2012) 54 Cal.4th 350, 358.) In the case of multiple physical acts, it may be appropriate to apply the "intent and objective" test to determine whether each is separately punishable. (*Id*. at pp. 359-360.) Under that test, "Whether a course of criminal 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." (*Neal v. State of California* (1960) 55 Cal.2d 11, 19 (*Neal*), disapproved on other grounds by *People v. Correa* (2012) 54 Cal.4th 331, 334, 336.) Under this test, multiple punishments are proper where the facts demonstrate that a defendant harbors multiple objectives which may be "similar but consecutive" or "separate, although sometimes simultaneous." (*People v. Latimer* (1993) 5 Cal.4th 1203, 1212, italics omitted.)

"Because of the many differing circumstances wherein criminal conduct involving multiple violations may be deemed to arise out of an 'act or omission,' there can be no universal construction which directs the proper application of section 654 in every instance. [Citation.]" (*People v. Beamon* (1973) 8 Cal.3d 625, 636-637.) Thus, whether a course of criminal conduct is divisible presents a factual issue for the trial court, and we will uphold its ruling if supported by substantial evidence. (*People v. Coleman* (1989) 48 Cal.3d 112, 162.) "Whether section 654 applies in a given case is a question of fact for the trial court, which is vested with broad latitude in making its determination. [Citations.] Its findings will not be reversed on appeal if there is any substantial evidence to support them. [Citations.] We review the trial court's determination in the light most favorable to the respondent and presume the existence of every fact the trial court could reasonably deduce from the evidence. [Citation.]" (*People v. Jones* (2002) 103 Cal.App.4th 1139, 1143.)

Defendant does not contend that his crimes of torture and false imprisonment were accomplished by a single physical act. Nor does he expressly contend that false imprisonment and torture were part of an *indivisible* course of conduct. Instead, defendant contends that section 654 applies because both crimes were part of a "continuous" course of conduct amounting to child abuse.[7] Defendant borrows the following definition of "continuous course of conduct" from authority relating to the unanimity rule,[8] as "one in which the actus reas is defined as a series of acts over a period of time. [Citations.]" (*People v. Culuko* (2000) 78 Cal.App.4th 307, 325.) Defendant argues that because torture, false imprisonment, attempted mayhem, and child abuse were all abusive crimes, and because the child abuse was a continuous course of conduct, then defendant's intent and objective in committing such crimes was to be abusive. Defendant then concludes that all the crimes were incidental to this one abusive objective, and thus all but one must be stayed.

A course of conduct is not indivisible simply because the conduct occurred within the same alleged time period, nor even simply because it was simultaneous or nearly simultaneous, and objectives are not the same simply because they are similar. (See *People v. Latimer, supra,* 5 Cal.4th at p. 1208.) Further, any suggestion that because defendant's crimes were abusive and committed within a certain period, they must be incidental to a single objective is akin to arguing that all violent crimes committed within a certain period are necessarily incidental to one another. The rule is not so broad, and

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[7] Child abuse is not always a continuous course of conduct; the crime may be committed by a single act or a series of acts. (*People v. Ewing* (1977) 72 Cal.App.3d 714, 717.) Here, the child abuse count was charged as a continuous crime, as the information alleged that it took place between two designated dates, the two-week period between September 1 and September 15, 2012. (See *ibid.*)

[8] "A requirement of jury unanimity typically applies to acts that could have been charged as separate offenses. [Citations.] A unanimity instruction is required only if the jurors could otherwise disagree which act a defendant committed and yet convict him of the crime charged. [Citation.]" (*People v. Maury* (2003) 30 Cal.4th 342, 422-423.) The rule does not apply to child abuse charged as a continuing course of conduct. (*People v. Napoles* (2002) 104 Cal.App.4th 108, 118; see *People v. Culuko, supra,* at pp. 325-329.)

section 654 "cannot, and should not, be stretched to cover gratuitous violence or other criminal acts far beyond those reasonably necessary to accomplish the original offense." (*People v. Nguyen* (1988) 204 Cal.App.3d 181, 191.) Nor should section 654 be stretched to cover all abusive crimes committed against a child simply because they were committed during the same two-week time period. This would not serve the statute's purpose of ensuring that punishment is commensurate with the defendant's culpability. (See *People v. Latimer, supra*, at p. 1211.)

Moreover, the trial court stayed the sentence imposed due to defendant's conviction of the crime of child abuse. Defendant did not receive double punishment for child abuse and the other abusive crimes. The only two crimes committed in the specified time period for which punishment was imposed consecutively were false imprisonment and torture. The issue is thus not whether section 654 applies to false imprisonment and child abuse, but whether section 654 applies to false imprisonment and torture.

Torture is the infliction of great bodily injury with "the intent to cause cruel or extreme pain and suffering for the purpose of revenge, . . . persuasion, or for any sadistic purpose." (§ 206; see also *People v. Pearson, supra*, 53 Cal.4th at p. 325.) The common meaning of sadistic purpose is "'satisfaction . . . derived from inflicting harm on another.'" (*People v. Raley* (1992) 2 Cal.4th 870, 901, fn. 4.) "False imprisonment is the unlawful violation of the personal liberty of another." (§ 236.) False imprisonment is a felony if "effected by violence, menace, fraud, or deceit." (§ 237, subd. (a).) "'Violence' in the statute means the exercise of physical force 'greater than that reasonably necessary to effect the restraint.' [Citations.] 'Menace' is an express or implied *threat* of force. [Citation.]" (*People v. Newman* (2015) 238 Cal.App.4th 103, 108.)

As respondent correctly observes, even if the two offenses were committed with a single generalized intent and objective, it does not necessarily follow that they occurred during an indivisible course of conduct for purposes of section 654. (*People v. Gaio* (2000) 81 Cal.App.4th 919, 935.) "[A] course of conduct divisible in time, although directed to one objective, may give rise to multiple violations and punishment.

[Citations.]" (*People v. Beamon, supra*, 8 Cal.3d at p. 639, fn. 11.) "This is particularly so where the offenses are temporally separated in such a way as to afford the defendant opportunity to reflect and to renew his or her intent before committing the next one, thereby aggravating the violation of public security or policy already undertaken. [Citation.]" (*People v. Gaio*, at p. 935.)

Substantial evidence established that the torture of Christian took place on September 15 when defendant inflicted great bodily injury and extreme suffering upon him. Defendant admitted he intended to persuade Christian to confess and to teach Christian a lesson, and that he used a high level of force because he was angry. Substantial evidence demonstrated that prior to September 15, defendant committed one or more separate acts of false imprisonment. The trial court could reasonably infer that Christian was often kept in his closet against his will, as he described being hungry for long periods, or eating what defendant brought him there, waiting long periods to go to the bathroom, and not seeing his mother while there. The court could reasonably infer that defendant committed the acts by violence and menace, as Christian had learned from defendant's choking and scary looks to be afraid to come out on occasions when the dresser was not blocking the door or could be moved.

Defendant thus had ample time to reflect on his actions between the days preceding September 15. He also had ample time on September 15 to reflect on his actions in confining Christian in the closet after torturing him, and he did in fact reflect on his actions, as defendant admitted that he confined Christian in the closet in order to hide his visible injuries. Defendant continued to reflect on Christian's forced confinement, as he spent some time researching genital injuries on the internet.

Moreover, substantial evidence showed that on September 15, defendant's acts in committing false imprisonment and those amounting to torture were committed with different objectives and thus separately punishable, although they were close in time. Prior to September 15, defendant confined Christian in the closet by violence or menace apparently because it was his usual abusive practice, not to facilitate torturing him, as there was no evidence of great bodily injury prior to September 15. And as defendant

confined Christian in the closet *after* he tortured him on September 15, the evidence could not demonstrate that defendant falsely imprisoned Christian as the means to effectuate the torture he had already inflicted. Conversely, as there was no evidence that Christian attempted to leave the closet on September 15, the court could reasonably infer that defendant's prior violence and menace prevented his attempt on that day as well; and thus, that the torture was not the means by which defendant effectuated the false imprisonment.

Indeed, defendant admitted his multiple intents and objectives in confining Christian and in torturing Christian on September 15. Defendant admitted that he confined Christian on that day in order to keep him out of sight while his visible injuries healed so they would not incriminate him, and in order to relieve himself of the task of keeping watch over Christian. Defendant admitted that his acts of physical violence were committed to persuade Christian to confess to sexual assault, to teach Christian a lesson, and to express his anger.

In sum, substantial evidence supports findings that defendant harbored multiple criminal objectives during his course of criminal conduct, that the false imprisonment of Christian was not merely incidental to the torture or the means of committing it, and that the torture was not merely incidental to the false imprisonment or the means of committing it. The trial court thus did not err in imposing consecutive sentences for both crimes.

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

_____, J.
CHAVEZ

We concur:

_____, P. J.
BOREN

_____, J.
HOFFSTADT