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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 EIGHT

THE PEOPLE, Plaintiff and Respondent, v. MELVIN EARL FARMER, JR., Defendant and Appellant.	B293994 (Los Angeles County Super. Ct. No. NA105864)

APPEAL from a judgment of the Superior Court of Los Angeles County. James D. Otto, Judge. Affirmed as modified.

Vanessa Place, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Stephanie A. Miyoshi and Allison H. Chung, Deputy Attorneys General, for Plaintiff and Respondent.

A jury convicted Melvin Earl Farmer, Jr., of 12 offenses—among them rape, sexual battery, sexual assault, and robbery—against four elderly women at or near a senior living center in Long Beach. The trial court sentenced him to an aggregate term of 280 years to life plus 143 years. On appeal, Farmer contends the court erred in imposing great bodily injury enhancements on three of the offenses. He also challenges the imposition of numerous fines, fees, and assessments on due process grounds. We modify the judgment to stay two great bodily injury enhancements. We affirm the judgment in all other respects.

FACTUAL AND PROCEDURAL BACKGROUND

We summarize the evidence in accordance with the usual rules on appeal. (*People v. Virgil* (2011) 51 Cal.4th 1210, 1263.)

I. The Crimes

A. Zola L.

On February 2, 2017, around 4:30 p.m., 67-year-old Zola L. passed Farmer as she was walking near the senior living center where she worked as a caregiver. Farmer commanded Zola, "don't do anything," and grabbed her in a bear hug. He kicked Zola's legs out from under her, causing her to fall to the ground face first, and then laid on top of her. Zola screamed and Farmer yelled at her to "shut up" or he would hit her. Farmer grabbed the collar of Zola's shirt and forced her up. He then struck Zola in her left eye, which knocked her unconscious. When she came to, Farmer was on top of her, going through her purse. Farmer took Zola's phone, smiled, and walked away. Zola suffered iritis as a result of the attack, which affected her vision.

B. D.G.

Two days later, on February 4, 2017, 68-year-old D.G. heard a knock at the door of her apartment located in the senior living center. D.G. opened the door, expecting it to be her neighbor. Instead, it was Farmer, who forced open the door and entered the apartment. Farmer grabbed D.G.'s purse off her dining room table and left the residence.

C. Sharon P.

The next day, on February 5, 2017, at 5:45 a.m., 63-year-old Sharon P. heard the doorbell ring at her apartment located in the senior living center. Sharon opened her door but did not see anyone. As she began to close the door, Farmer pushed against it and forced his way into the apartment.

Sharon pinned Farmer against the door and repeatedly hit him in the face, until Farmer agreed to leave. Sharon backed off to allow Farmer to exit, at which point he struck her with his fist once or twice under her right eye, which broke her cheek, jaw, eye socket, and nose. The force from the blow also caused Sharon to fall to the ground and break her right leg.

While Sharon was on the ground, Farmer repeatedly asked, "Where is the damn money, bitch?" Farmer demanded Sharon get up, but every time she tried, her leg collapsed under her weight, causing her to scream in pain. Sharon was too injured to resist further. At points, she hoped Farmer would kill her to end her misery.

Farmer asked Sharon "where's your wallet, bitch," and Sharon responded, "in the bedroom." Farmer placed his arms under Sharon's armpits, dragged her into the bedroom, and threw her on the bed. Farmer located Sharon's wallet and took from it $160 in cash and an ATM card.

Farmer then removed his pants and demanded Sharon "jerk him off," which she proceeded to do because she was in extreme pain and unable to resist. Sharon also hoped she could collect Farmer's DNA. Farmer next demanded Sharon orally copulate him, which she refused. He then went to the foot of the bed, grabbed Sharon's broken leg, and "shoved" it straight into the air. He proceeded to insert his penis and fingers into her vagina, and thrust a few times.

Farmer left the room momentarily and returned with a kitchen knife. He showed Sharon the knife and said he would have his partner kill her if she moved or called the police. Farmer then fled. Sharon waited 10 or 15 minutes before calling the police. She was hospitalized for 17 weeks to treat her injuries.

D. Helga C.

A few days later, on February 9, 2017, 90-year-old Helga C. heard the doorbell ring to her apartment in the senior living center. Farmer was outside and told her he was there to change her locks. Helga, thinking Farmer had the wrong address and wanting to help him, opened the door a bit, and Farmer forced his way into the home.

Using both of his hands, Farmer forcefully shoved Helga into a bedroom and onto the bed. Farmer began searching the closet, turned around and said, "Where is your money, you bitch?" Farmer then pulled his pants down, exposing his penis, and demanded Helga "touch it" and "suck it." He threatened that if Helga did not cooperate, he would get a gun.

When Helga refused, Farmer pulled her off the bed by her feet and into the living room. He struck Helga in the face multiple times and forcefully pulled on her arms. While he was

striking Helga, he was screaming, "you bitch, where is your money." At one point, he pulled Helga by the hands and took the rings off her fingers. Whenever Helga tried to stand, Farmer pushed her to the ground. This happened between 20 and 30 times.

Throughout the encounter, Farmer was searching the residence for money. At one point, he went to the kitchen and grabbed a fork. He returned to the living room and made a thrusting motion with the fork in Helga's direction. About 20 minutes after Farmer dragged Helga out of the bedroom, he accidentally triggered an alarm and fled.

Helga was taken to a hospital and diagnosed with a brain hemorrhage and fractured cheekbone. She had red markings, scrapes, bruises, and swelling on her face. The skin was pulled back or missing from portions of her arm and hands, exposing her bare flesh. Her hands were also bruised and swollen and there was blood in her fingertips.

II. Criminal Case

A. Charges

Based on the above incidents, Farmer was charged by amended information as follows.

As to Sharon P., Farmer was charged with forcible rape (Pen. Code, § 261, subd. (a)(2); count 1),[1] sexual battery by restraint (§ 243.4, subd. (a); count 2), first degree residential robbery (§ 211; count 3), first degree burglary (§ 459; count 4),

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

and dissuading a witness from reporting a crime (§ 136.1, subd. (b)(1); count 5).[2]

As to Helga C., Farmer was charged with assault to commit oral copulation during the commission of a first degree burglary (§ 220, subd. (b); count 7), first degree residential robbery (§ 211; count 8), first degree burglary (§ 459; count 9), and criminal threats (§ 422, subd. (a); count 10).[3]

As to D.G., Farmer was charged with first degree residential robbery (§ 211; count 11) and first degree burglary (§ 459; count 12).[4]

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[2] On count 1, it was further alleged that Farmer personally used a knife in the commission of the rape, committed the rape during the commission of a burglary (§ 667.61, subd. (e)), kidnapped the victim (*id*., subd. (d)) and caused great bodily injury (*ibid*). The information further alleged a multiple victim special circumstance (§ 667.61, subds. (a) & (e)). On counts 1 through 4, it was alleged Farmer inflicted great bodily injury upon the victim (§§ 12022.7, subd. (a), 12022.8). On counts 1, 3, and 5, it was alleged that Farmer used a deadly or dangerous weapon (§ 12022, subd. (b)(1)). On count 4, it was alleged that another person, other than an accomplice, was present in the residence during the burglary (§ 667.5, subd. (c)).

[3] On counts 7 through 9, it was further alleged Farmer inflicted great bodily injury upon the victim who was 70 years of age or older (§§ 12022.7, subd. (c), 12022.8), and used a deadly or dangerous weapon (§ 12022, subd. (b)(1)). On count 9, it was alleged that another person, other than an accomplice, was present in the residence during the burglary (§ 667.5, subd. (c)).

[4] On count 12, it was further alleged that another person, other than an accomplice, was present in the residence during the burglary (§ 667.5, subd. (c)).

As to Zola L., Farmer was charged with second degree robbery (§ 211; count 13) and elder abuse (§ 368, subd. (b)(1); count 14).

As to all counts, except count 2, it was alleged that Farmer suffered three prior convictions for serious felonies (§ 667, subd. (a)(1)). As to all counts, except counts 2 and 14, it was further alleged that Farmer suffered three prior convictions within the meaning of the "Three Strikes" law (§§ 667, subd. (d), 1170.12, subd. (b)).[5]

B. Trial and Sentencing

The case was tried to a jury in July 2018. The jury convicted Farmer of the above counts and found true the special allegations, with the exception of the deadly or dangerous weapon allegations appended to counts 1, 3, and 5, and the multiple victim allegation appended to count 1. The trial court found true the prior conviction allegations.

The court sentenced Farmer to an aggregate prison term of 280 years to life plus 143 years. Pertinent to the issues raised on appeal, the court imposed great bodily injury enhancements (§§ 12022.7, 12022.8) on counts 1 through 4 (related to Sharon P.) and counts 7 through 9 (related to Helga C.). The court stayed the sentences on counts 4 and 9, including the great bodily injury enhancements, pursuant to section 654.[6] The court also imposed

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[5] Farmer was also charged with the forcible rape of another woman, Jessica L. The jury deadlocked on that count, so we need not discuss it further.

[6] The abstract of judgment reflects that count 4 was stayed, but the court did not explicitly state so at sentencing. The court did, however, explicitly state the total sentence imposed on counts 1 through 5 was 150 years to life plus 56 years. That

various fines, fees, and assessments, which we discuss in detail below.

Farmer timely appealed.

DISCUSSION

I. The Great Bodily Injury Enhancements are not Barred by Section 12022.7, Subdivision (h)

Farmer contends the trial court erred in imposing on counts 2, 3, and 8 great bodily injury enhancements. He argues the imposition of such enhancements is barred by section 12022.7, subdivision (h), which precludes the imposition of more than one section 12022.7 enhancement on the same offense. We disagree.

Section 12022.7, subdivision (a), provides that "[a]ny person who personally inflicts great bodily injury on any person other than an accomplice in the commission of a felony or attempted felony shall be punished by an additional and consecutive term of imprisonment in the state prison for three years." Great bodily injury, for purposes of section 12022.7, means "a significant or substantial physical injury." (§ 12022.7, subd. (f).)

Section 12022.7, subdivisions (b) through (e), set forth separate great bodily injury enhancements, which depend on the characteristics of the victim and circumstances of the injury. For example, if the victim is 70 years of age of older, subdivision (c) mandates an additional term of imprisonment of five years. The imposition of multiple enhancements is limited by subdivision (h), which provides the "court shall impose the additional terms

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calculation is consistent with the court having stayed count 4. The People also indicated in their sentencing memorandum that count 4 should be stayed.

of imprisonment under either subdivision (a), (b), (c), or (d), but may not impose more than one of those terms for the same offense."

Here, the trial court imposed section 12022.7 enhancements on counts 2, 3, and 8.[7] The court imposed only one such enhancement per count. Each count, moreover, corresponded to a separate offense: count 2 concerned the sexual battery of Sharon P., count 3 the robbery of Sharon, and count 8 the robbery of Helga. Accordingly, the court did not violate section 12022.7, subdivision (h)'s prohibition on the imposition of multiple great bodily injury enhancements for the same offense.[8]

Farmer's reliance on *People v. Ausbie* (2004) 123 Cal.App.4th 855[9] is misplaced. In that case, the trial court imposed two section 12022.7, subdivision (a), enhancements on a single conviction for assault given there were two victims who

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[7] The court also imposed, but stayed, section 12022.7 enhancements on count 1 (rape of Sharon), count 4 (burglary of Sharon), count 7 (sexual assault of Helga), and count 9 (burglary of Helga). On counts 1 and 7, it imposed section 12022.8 great bodily injury enhancements, which are not subject to section 12022.7, subdivision (h).

[8] In his reply brief, Farmer contends the term "offense," as used in section 12022.7, subdivision (h), does not refer to the "criminal offense" on which the enhancement is attached, but rather to the "nature of the enhancement relative to the crimes committed." We simply do not know what Farmer means by this. In any event, he points to no authority interpreting section 12022.7, subdivision (h), in this manner.

[9] Disapproved of on other grounds by *People v. Santana* (2013) 56 Cal.4th 999.

suffered great bodily injury. On appeal, the court rejected the defendant's argument that only one enhancement was permitted pursuant to section 12022.7, subdivision (h). The court explained: "[T]he statutory language does not limit the number of section 12022.7, subdivision (a) enhancements to be imposed when there are multiple victims. Properly construed, subdivision (h) simply prohibits the trial court from imposing more than one section 12022.7 enhancement for injury to an individual victim." (*People v. Ausbie*, at p. 864.)

Farmer latches onto this latter statement—"subdivision (h) simply prohibits the trial court from imposing more than one section 12022.7 enhancement for injury to an individual victim"—and insists it means only one section 12022.7 enhancement may be imposed per victim, no matter the number of offenses. We do not read the statement so broadly. Rather, it is clear from context the court was referring only to situations involving a single offense. Here, the relevant enhancements were attached to separate offenses, which is not precluded by section 12022.7, subdivision (h). It is irrelevant that some of the offenses were committed against the same victims. (See *People v. Wooten* (2013) 214 Cal.App.4th 121, 133 (*Wooten*) [affirming imposition of two great bodily injury enhancements on two offenses against the same victim].)

II. The Great Bodily Injury Enhancements on Counts 2 and 3 Must Be Stayed Pursuant to Section 654

Farmer alternatively contends the great bodily injury enhancements imposed on counts 2, 3, and 8 should be stayed pursuant to section 654. Although never stated explicitly, we understand his argument to be that the enhancements imposed on count 2 (sexual battery of Sharon P.) and count 3 (robbery of

Sharon) should be stayed because they are premised on the same act that gave rise to the enhancement imposed on count 1 (rape of Sharon). Similarly, he appears to argue the enhancement on count 8 (robbery of Helga C.) should be stayed because it is premised on the same act that gave rise to the enhancement imposed on count 7 (assault to commit a sex crime of Helga). We agree with Farmer in part.

A. Applicable Law

Section 654 provides, "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); see *People v. Harrison* (1989) 48 Cal.3d 321, 335.) Its prohibition of multiple punishments extends to situations in which the defendant commits several criminal acts during an indivisible course of conduct. (*People v. Beamon* (1973) 8 Cal.3d 625, 639; *Harrison, supra*, at p. 335.)

"Whether a 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. [Citation.] If all of the offenses are incident to one objective, the court may punish the defendant for any one of the offenses, but not more than one. [Citation.] If, however, the defendant had multiple or simultaneous objectives, independent of and not merely incidental to each other, the defendant 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." (*People v. Cleveland* (2001) 87 Cal.App.4th 263, 267–268.)

Even if the defendant commits the criminal acts pursuant to a single objective, he may be subjected to multiple punishments if the acts are divisible in time. (*People v. Beamon*, *supra*, 8 Cal.3d at p. 639, fn. 11; *People v. Gaio* (2000) 81 Cal.App.4th 919, 935.) To determine whether the criminal acts are divisible in time, courts consider whether the defendant had an opportunity to reflect upon and renew his intent before committing the next act and whether each act created a new risk of harm. (*People v. Gaio*, at p. 935; *People v. Kwok* (1998) 63 Cal.App.4th 1236, 1255.)

Sentencing enhancements that go to the nature of an offense, such as great bodily injury enhancements, are subject to section 654. (*People v. Ahmed* (2011) 53 Cal.4th 156, 162–163; see *People v. Moringlane* (1982) 127 Cal.App.3d 811, 817 [§ 654 "prohibits the imposition of multiple enhancements for the single act of inflicting great bodily injury upon one person"]; *People v. Alvarez* (1992) 9 Cal.App.4th 121, 127 ["generally only one enhancement for great bodily injury may be imposed where multiple offenses are committed against a single victim on a single occasion"].)

In *People v. Reeves* (2001) 91 Cal.App.4th 14 (*Reeves*), the defendant broke into the victim's home and assaulted her while she was in bed. (*Id.* at pp. 22–23.) He was convicted of burglary and assault with great bodily injury force, and the trial court imposed great bodily injury enhancements on both convictions. (*Id.* at pp. 54–55.) On appeal, the court held section 654 required one of the enhancements be stayed, given both enhancements arose out of a single assault against a single victim. (*Id.* at pp. 56–57.) In so holding, the court noted the absence of evidence making the assault divisible. (*Id.* at p. 57.)

In *Wooten, supra*, 214 Cal.App.4th 121, the court distinguished *Reeves* and affirmed the imposition of two great bodily injury enhancements on offenses committed against the same victim in close succession. In that case, the defendant choked and struck the victim multiple times in the course of forcing her to orally copulate him. (*Wooten*, at p. 125.) When the victim tried to escape to another room, the defendant quickly caught and then brutally beat her. (*Ibid.*) The defendant was convicted of forcible oral copulation and attempted murder, and the trial court imposed great bodily injury enhancements on both convictions. (*Id.* at p. 128.)

Relying on *Reeves*, the defendant argued on appeal that section 654 barred the imposition of two enhancements because they arose out of a single, indivisible course of conduct. (*Wooten, supra*, 214 Cal.App.4th at p. 128.) The court disagreed, explaining that, unlike in *Reeves*, the enhancements arose out of two separate attacks on the victim. The first attack occurred before the forcible oral copulation and was sexual in nature. (*Wooten,* at p. 133.) Once the victim tried to escape, a new assault began, which was designed to punish the victim by inflicting life-threatening injuries. (*Ibid.*) The court concluded that, because the enhancements were premised on separate attacks with separate objectives, section 654's prohibition on multiple punishments for the same act did not apply. (*Wooten*, at p. 133.)

Reeves and *Wooten* teach that section 654 bars the imposition of multiple great bodily injury enhancements that are premised on a single, indivisible attack on a single victim. Where, however, the enhancements are premised on multiple, divisible attacks, section 654 is inapplicable, even if the attacks

were directed at the same victim. Accordingly, we must determine whether the great bodily injury enhancements imposed on the offenses related to Sharon P. and Helga C. are premised on a single, indivisible attack on each victim. If so, the enhancements must be stayed pursuant to section 654.

B. Standard of Review

A trial court is vested with broad latitude to decide if section 654 applies in a given case. Its findings, both express and implied, will not be reversed on appeal if there is substantial evidence to support them. (*People v. Jones* (2002) 103 Cal.App.4th 1139, 1143; *People v. Green* (1985) 166 Cal.App.3d 514, 518.) We view the evidence in the light most favorable to the respondent and presume in support of the sentence the existence of every fact the trial court reasonably could have deduced from the evidence. (*People v. Tarris* (2009) 180 Cal.App.4th 612, 627.)

C. Analysis

1. Counts 7 & 8

As to the enhancements attached to the robbery and sexual assault convictions related to Helga (counts 7 and 8), there is substantial evidence to support a finding that Farmer committed multiple attacks that resulted in great bodily injury. Helga's testimony at trial established that, during the commission of the robbery and sexual assault, Farmer pushed her to the ground 20 to 30 times, struck her in the face multiple times, and pulled her around by her legs and arms. As a result of these acts, Helga suffered multiple severe injuries, including a brain hemorrhage, fractured cheekbone, and bruises and lacerations on her fingers, hands, and arm. Given Helga's advanced age—90 years old—it is reasonable to infer that each shove, strike, and pull separately

caused great bodily injury and significantly worsened those injuries she had already sustained.

The evidence further demonstrates the attacks were divisible in time, despite occurring in relative temporal proximity. Helga testified that the attacks took place over the course of approximately 20 minutes and were interspersed with periods in which Farmer searched the house, affording him ample opportunity to reflect on his actions and renew his intent. Each attack also clearly increased the potential of harm to Helga.

There is also substantial evidence indicating Farmer acted with multiple objectives in inflicting the injuries. Helga testified that, while striking her in the face, Farmer screamed "where is your money," indicating one of his objectives was to facilitate the robbery by intimidating the elderly woman into revealing hidden assets. Helga further testified that Farmer repeatedly shoved her to the ground as she tried to stand, suggesting a second motivation was to incapacitate her and prevent her from fleeing. In that way, the attacks facilitated the sexual assault by increasing the chance the crime would remain unreported until Farmer reached a point of temporary safety.

Because there is substantial evidence showing Farmer inflicted multiple injuries on Helga during separate attacks, the trial court did not err in imposing separate great bodily injury enhancements on counts 7 and 8. (See *Wooten, supra*, 214 Cal.App.4th at pp. 132–133; *People v. Dominick* (1986) 182 Cal.App.3d 1174, 1210 [§ 654 does not preclude two great bodily injury enhancements where "two separate sets of injuries were in fact inflicted . . . on two separate occasions arising out of separate acts"].)

Farmer's reliance on *People v. Oates* (2004) 32 Cal.4th 1048 and *People v. Reyes-Tornero* (2016) 4 Cal.App.5th 368 is misplaced. Those cases stand for the proposition that section 654 does not preclude the imposition of multiple enhancements where there are crimes of violence against multiple victims. (*Oates*, at p. 1063; *Reyes-Tornero*, at p. 371.) They do not hold that section 654 precludes the imposition of multiple enhancements premised on separate acts against a single victim.

2. Counts 1, 2, & 3

Unlike the enhancements imposed on the convictions related to Helga, it is undisputed that each of the great bodily injury enhancements attached to the offenses against Sharon P. (counts 1, 2, and 3) was premised on the same act: Farmer striking Sharon in the eye, which broke multiple bones in her face and caused her to fall and break her leg.[10] Although Farmer's subsequent actions caused Sharon to suffer considerable pain, there is no evidence demonstrating they resulted in the infliction of additional physical injuries. Because all three enhancements were premised on the same act against the same victim, section 654 mandates two of the enhancements be stayed. (*Reeves, supra*, 91 Cal.App.4th at pp. 56–57; *People v. Moringlane, supra*, 127 Cal.App.3d at p. 817.)

We are not persuaded by the Attorney General's suggestion that a court may impose multiple great bodily injury

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[10] Sharon testified at trial that it was "possible" Farmer struck her in the face two times. There is no evidence, however, that each blow was meaningfully distinct in time or separately resulted in injury. Therefore, we treat them as a single act for purposes of section 654. The Attorney General does not urge otherwise.

enhancements so long as the underlying convictions to which they are attached are not subject to section 654. Such a rule is inconsistent with *Reeves* and *Moringlane*. In both cases, the courts held the imposition of great bodily injury enhancements was precluded under section 654, even though the underlying offenses to which they were attached were not stayed under section 654.

We acknowledge there is language in *Wooten* that would seem to support the Attorney General's position. (See, e.g., *Wooten, supra*, 214 Cal.App.4th at p. 130 ["if section 654 does not bar punishment for two crimes, then it cannot bar punishment for the same enhancements attached to those separate substantive offenses"].) However, based on our examination of *Wooten*'s procedural history, we do not think that is what the court intended.

In a prior opinion in the same case, the *Wooten* court affirmed imposition of the two sentencing enhancements simply "[b]ecause section 654 does not bar punishment for both substantive crimes [to which they were attached] . . . ." (*People v. Wooten* (2012) 147 Cal.Rptr.3d 261, 269, review granted Jan. 10, 2013, S206473.) The California Supreme Court, however, granted review and transferred the cause to the Court of Appeal with directions to reconsider its opinion in light of *Reeves*, *Moringlane*, and *People v. Culton* (1979) 92 Cal.App.3d 113. (*People v. Wooten* (Cal. 2013) 151 Cal.Rptr.3d 105.) In its subsequent, controlling opinion, the Court of Appeal reached the same conclusion, but its reasoning changed. The court explained its new holding as follows: "Because section 654 does not bar punishment for both substantive crimes *and the enhancements are premised on separate attacks*, defendant is not entitled to a

stay of the great bodily injury enhancement imposed for the attempted murder." (*Wooten, supra*, 214 Cal.App.4th at p. 133, italics added.)

It is this latter circumstance—that the enhancements were premised on separate attacks—that distinguishes *Wooten* from the cases cited by the Supreme Court on review. Any language in *Wooten* suggesting it is sufficient that the underlying offenses are not subject to section 654 would appear to be a vestigial leftover from the original opinion. Accordingly, we decline to rely on it.

III. Farmer Forfeited His Arguments Regarding the Fines, Fees, and Assessments

At the sentencing hearing, the trial court imposed $390 in court facilities assessments (Gov. Code, § 70373), $520 in court operations assessments (§ 1465.8), a $266.52 booking fee (Gov. Code, § 29550, subd. (f)), a $10,000 restitution fine (§ 1202.4), and a stayed $10,000 parole revocation fine (§ 1202.45). Farmer did not object to any of these fines, fees, or assessments.

On appeal, Farmer challenges the imposition of these fines, fees, and assessments on due process grounds. Relying on *People v. Dueñas* (2019) 30 Cal.App.5th 1157 (*Dueñas*), he requests we vacate or stay them until the People prove he has the present ability to pay them.[11] Farmer, however, concedes he did not raise

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[11] In *Dueñas*, the court held that "due process of law requires the trial court to conduct an inability to pay hearing and ascertain a defendant's present ability to pay before it imposes court facilities and court operations assessments under Penal Code section 1465.8 and Government Code section 70373." (*Dueñas, supra*, 30 Cal.App.5th at p. 1164.) It also held that "although Penal Code section 1202.4 bars consideration of a defendant's ability to pay unless the judge is considering increasing the fee over the statutory minimum, the execution of

this issue in the trial court. For the reasons set out in *People v. Frandsen* (2019) 33 Cal.App.5th 1126, 1153–1155, we find the issue forfeited. (See also *People v. Gutierrez* (2019) 35 Cal.App.5th 1027, 1038 [finding forfeiture where defendant failed to object to fines and fees under §§ 1202.4, 1465.8 & 290.3, and Gov. Code, §§ 70373 & 29550.1, based on inability to pay]; *People v. Bipialaka* (2019) 34 Cal.App.5th 455, 464 [citing *Frandsen* to find *Dueñas* issue forfeited for failure to object in trial court]; *People v. Avila* (2009) 46 Cal.4th 680, 729 [finding forfeiture where the defendant failed to object to imposition of a restitution fine under former § 1202.4 based on inability to pay].)

There is no merit to Farmer's contention that his claims are not subject to forfeiture because the trial court made a legal error, rather than a discretionary one. Legal errors at sentencing are subject to general forfeiture rules. (See *People v. Wall* (2017) 3 Cal.5th 1048, 1074–1075 [claim that trial court made a legal error in its decision to impose the maximum restitution fine would normally be subject to forfeiture].)

Farmer further insists his failure to object is excused because, at the time of his sentencing hearing, *Dueñas* had not yet been decided. Therefore, he contends, the law was against him and any objection to the fines, fees, and assessments would have been futile. Once again, we are not persuaded.

Even before *Dueñas* was decided, section 1202.4 and Government Code section 29550 expressly contemplated an objection based on inability to pay. Section 1202.4 provides that,

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any restitution fine imposed under this statute must be stayed unless and until the trial court holds an ability to pay hearing and concludes that the defendant has the present ability to pay the restitution fine." (*Ibid.*)

although a "defendant's inability to pay shall not be considered a compelling and extraordinary reason not to impose a restitution fine," it may be considered "in increasing the amount of the restitution fine in excess of the minimum fine . . . ." (§ 1202.4, subd. (c).) Government Code section 29550 similarly provides that the court may impose a lesser fee "upon a showing that the defendant is unable to pay the full amount." (Gov. Code, § 29550, subd. (f).) Here, the trial court imposed at sentencing the full Government Code section 29550 fee, and a $10,000 restitution fine, which is well above the minimum fine of $300 (§ 1202.4, subd. (b)(1)). It was therefore incumbent on Farmer to exercise his statutory right to object to the fine and fee on the basis that he did not have the ability to pay them. His failure to do so forfeited the issue.

The same is true of the assessments imposed under section 1465.8 and Government Code section 70373. Initially, given Farmer declined to object to the $10,000 restitution fine and $266.52 booking fee based on his inability to pay, we are confident he would not have objected to these additional assessments, which totaled only $910.

In any event, although the statutory provisions for these assessments suggest they are mandatory, nothing in the record of the sentencing hearing indicates Farmer was foreclosed from making the same request that the defendant in *Dueñas* made in the face of similar mandatory assessments. We also disagree with Farmer's suggestion that the eventual success of such arguments was unforeseeable. *Dueñas* was decided based on longstanding constitutional principles and represents a clarification of existing law rather than new law. We therefore stand by the traditional and prudential virtue of requiring

parties to raise an issue in the trial court if they desire appellate review of that issue.

DISPOSITION

The judgment is modified to stay the great bodily injury enhancements imposed on counts 2 and 3. The trial court is directed to prepare an amended abstract of judgment consistent with these modifications and forward a certified copy of the amended abstract of judgment to the Department of Corrections. In all other respects, the judgment is affirmed.

BIGELOW, P. J.

We Concur:

GRIMES, J.

STRATTON, J.