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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 SIX

THE PEOPLE, Plaintiff and Respondent, v. SALVADOR MORALES, Defendant and Appellant.	2d. Crim. No. B265051 (Super. Ct. No. 2014039025) (Ventura County)

Salvador Morales appeals after a jury convicted him of assault with a deadly weapon (i.e., a knife) (Pen. Code,[1] § 245, subd. (a)(1)), infliction of corporal injury upon the mother of his child (§ 273.5, subd. (a)), and obstructing an officer in the performance of his duties (§ 148, subd. (a)(1)). Appellant admitted he had suffered two prior strike and serious felony convictions (§§ 667, 1170.12), had served four prior prison terms (§ 667.5, subd. (b)), and committed the offenses while on

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

probation (§ 1203, subd. (k)). The trial court sentenced him to a state prison term of 38 years to life. Appellant contends (1) the court erred in admitting expert testimony on intimate partner battering; (2) Evidence Code section 1109 and CALCRIM No. 852 are unconstitutional; (3) the court erred in admitting prior acts of domestic violence; (4) the court erred in denying his *Romero*[2] motion because the resulting sentence amounts to cruel and unusual punishment; and (5) he was sentenced in violation of section 654. We affirm.

STATEMENT OF FACTS

The Charged Offenses

Appellant and the victim, M.H., are the parents of a son born in 2006. On the afternoon of December 26, 2014, Oxnard Police Officer Nicholas Peña met M.H. at her brother's apartment in response to a domestic violence call. M.H. had a bruise over her eye and a one-inch cut on her forearm. She told the officer that appellant had entered her apartment at 2:00 a.m. that morning without her permission. Appellant pulled her out of bed, hit her with his fists, and kicked her. He then went to the kitchen, got a large knife, and returned to the bedroom. Appellant repeatedly jabbed at M.H. with the knife and cut her arm. M.H. told the officer, "This has been going on forever." She finally "got out" when appellant said he wanted a beer and she offered to go get one for him. She and her son went to her brother's apartment across the street. She told her brother and his girlfriend what had happened and asked her brother's girlfriend to call the police.

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[2] *People v. Superior Court* (*Romero*) (1996) 13 Cal.4th 497 (*Romero*).

M.H. told Officer Peña that appellant had warrants and that she wanted him arrested. She gave the officer a key to her apartment and also gave him consent to enter the apartment.

Officer Peña opened the front door as five other officers surrounded the apartment. Officer Peña announced his presence, called out appellant's name, and ordered him to come to the front door with his hands up. Appellant left the apartment through a back window and ran down the street. He was found hiding behind a hedge and was taken into custody.

In her trial testimony, M.H. recanted what she had told Officer Peña. She claimed that she had lied about the assault because she was angry at appellant for spending Christmas with his girlfriend instead of M.H. and their son. She claimed that appellant had accidentally elbowed her in the forehead. She also claimed she did not recall telling Officer Peña that appellant had cut her arm and said she did not know how the injury occurred. When confronted with an audio recording of her statements to Officer Peña, she claimed that she had lied to the officer. She also claimed that she had lied when she testified at the preliminary hearing that appellant pointed a knife at her and that she stood up and accidentally cut herself on it.

Prior Acts of Domestic Violence Against D.A.

D.A. and appellant were previously married and have a son together. On July 29, 2013, appellant went to D.A.'s apartment and accused her of taking drugs and having sex with her neighbors. When D.A. tried to leave, appellant grabbed her by the shirt and yanked her onto the ground. As a result of the incident, appellant was convicted of inflicting corporal injury upon D.A.. When D.A. spoke to the police about the incident, she

still had bruises from a prior encounter with appellant. Although she did not remember how the prior incident had happened, she recalled that appellant had sent her threatening text messages.

On or about January 15, 2014, appellant was outside D.A.'s apartment when she arrived home with her children. Another man approached appellant. After D.A. and her children went inside, she looked outside and saw appellant arguing with the other man, whom she then recognized as her daughter's father. After a few minutes, the daughter's father walked away. As D.A. was watching appellant through her kitchen window, appellant threw a hammer at the window and said, "I'm going to fucking kill you, bitch." The hammer shattered the window and almost hit D.A. in the head. Shards of glass cut her head and were embedded in her arms and hands. Appellant proceeded to climb on top of D.A.'s car and kick in a window. As a result of the incident, appellant was convicted of making criminal threats, inflicting corporal injury, and violating a restraining order.

Prior Acts of Domestic Violence Against M.H.

On January 11, 2014, appellant tried to enter M.H.'s apartment through the kitchen window. M.H. ran to her downstairs neighbor's apartment and her mother called the police. She did not recall telling the police that appellant had kicked at her legs and slapped her face as she ran out of the apartment. As result of the incident, appellant was convicted of aggravated trespassing.

On October 14, 2014, Officer Kaya Boysan spoke to M.H. at her apartment. M.H. told Officer Boysan that appellant had entered her apartment at about 4:00 that morning, presumably with a key she had given him before their relationship had deteriorated. She repeatedly asked appellant to

leave. He refused and told her to lock herself in the bedroom because he was afraid of what he might do. After M.H. complied, appellant threatened to break down the door and drag her out by her feet. Officer Boysan advised M.H. to change her locks and told her how to get a restraining order. At trial, M.H. claimed she did not recall the incident.

Expert Testimony on Intimate Partner Battering

Gail Pincus testified for the prosecution as an expert on intimate partner battering (IPB), formerly known as battered women's syndrome (BWS). Pincus described the cycle of domestic abuse that leads to IPB and the types of tactics the abuser uses to maintain the relationship and perpetuate the violence. Tactics include criticism, intimidation, emotional abuse, isolation, and economic control. When the tactics fail to alleviate the tension building within the abuser, he blames the victim for failing him and becomes angry. The physical abuse typically begins with minor acts and progresses to serious violence. If the abuser is jailed, he will pressure the victim into recanting and blaming herself. After accommodating the abuser, the victim stops trusting herself and her own memory and ends up depending even more on the abuser.

The typical battered woman ends the relationship five to seven times before she finally leaves for good. The cycle increases in frequency and severity over time, leading the victim to develop posttraumatic stress disorder. Once this happens, the victim will not seek help until she is faced with a situation she deems life-threatening. At that point a "trauma window" opens, giving the victim a moment of clarity. In that moment, she might have the courage to call 911 or go to a shelter. The "trauma window" stays open only so long as the victim feels safe. If she

feels threatened again, she will deny, minimize, or blame herself for speaking out about the abuse. About 80 percent of IPB victims end up recanting and many of them return to their abuser.

DISCUSSION

I.

Expert Testimony on IPB

Prior to trial, the prosecution moved to admit Pincus's expert testimony on IPB. The prosecutor made clear that Pincus would merely testify regarding IPB in general and would not be offering any opinions specific to the case. Appellant objected on grounds of relevance and argued that general testimony on IPB would not assist the jury in deciding what happened in the instant case. Defense counsel also asserted that the proposed testimony was a form of vouching for M.H. and was barred by Evidence Code section 1107, which prohibits expert testimony on domestic violence "when offered against a criminal defendant to prove the occurrence of the act or acts" with which he is charged.

The court overruled appellant's objections and found that the proposed testimony would comply with Evidence Code section 1107 "if it is narrowly tailored to avoid commenting upon a specific witness's credibility or whether a crime occurred." The court recognized that counsel's concerns did not affect the admissibility of the evidence. The court also instructed the jury on the limited purpose of Pincus's testimony in accordance with CALCRIM No. 850.[3]

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[3] The jury was instructed: "You have heard testimony from Gail Pincus regarding the effect of battered women's syndrome/intimate partner battering. [¶] Gail Pincus's

On appeal, appellant acknowledges that "expert testimony on battered women's experience, generally, offered to support an alleged victim's credibility in a domestic violence case . . . , is acceptable under applicable statutory and case law." He claims, however, that Pincus went too far in the instant case by offering testimony "on the abusive behavior typical of battering men (i.e, testimony about typical verbal and emotional abuse, weapon use, sexual abuse, coercion and control, etc.)." He asserts that this testimony "should [have been] barred as an improper form of profile evidence or as character opinion evidence" and was admitted in violation of Evidence Code section 1107 and his due process rights.

We agree with the People that appellant forfeited this claim by failing to raise it below. Although appellant generally objected to Pincus's testimony and made numerous objections throughout the course of that testimony, none of those objections were sufficient to preserve the claim he now raises. Appellant did object on relevance grounds when the prosecutor asked Pincus if there were "any common traits of batterers," but that objection was sustained following an unreported sidebar discussion. Appellant did not object, however, when Pincus earlier testified regarding the tactics an abuser typically uses to maintain the abusive cycle of the relationship. His claim that

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testimony about battered women's syndrome/intimate partner battering is not evidence that the defendant committed any of the crimes charged against him. [¶] You may consider this evidence only in deciding whether or not [M.H.'s] conduct was not inconsistent with the conduct of someone who has been abused, and in evaluating the believability of her testimony."

the court erred in admitting this testimony is thus forfeited. (*People v. Williams* (2000) 78 Cal.App.4th 1118, 1126.)

In any event, the challenged testimony was properly admitted. Qualified expert testimony is admissible when that testimony may "assist the trier of fact." (Evid. Code, § 801, subd. (a).) Expert testimony in IPB, "including the nature and effect of physical, emotional, or mental abuse on the beliefs, perceptions, or behavior of victims of domestic violence," is admissible in a criminal action "except when offered against a criminal defendant to prove the occurrence of the act or acts of abuse which form the basis of the criminal charge." (Evid. Code, § 1107, subd. (a).) Testimony that an abuser often "uses psychological, emotional, or verbal abuse to control the victim" is admissible in this context to assist the jury in assessing the victim's credibility. (*People v. Brown* (2004) 33 Cal.4th 892, 906-907; *People v. Gadlin* (2000) 78 Cal.App.4th 587, 595.) Indeed, "limiting the testimony to the victim's state of mind without some explanation of the types of behavior that trigger [IPB] could easily defeat the purpose for which the expert is called, which is to explain the victim's actions in light of the abusive conduct." (*Gadlin*, at p. 595.)

Notwithstanding this authority, appellant maintains that the testimony in this case "went way beyond what was necessary for [IPB] to be understood and to explain why [M.H.] would recant." He specifically takes issue with Pincus's testimony that an abuser often exercises sexual and financial control over the victim and may try to turn her children against her. Appellant complains that "there was no reason why Pincus needed to use such an inflammatory example to describe the modus operandi of a spousal abuser to explain why the victim

would recant, especially in light of the fact that there was no evidence of this kind of coercion in the record."

The record makes clear, however, that Pincus had no knowledge of the facts of the instant case. Moreover, her description of an abuser who was "worse" than appellant more likely enured to his benefit than prejudiced him. (*People v. Gadlin*, *supra*, 78 Cal.App.4th at p. 595 ["To the extent that the expert testimony suggests hypothetical abuse that is worse than the case at trial, it may even work to the defendant's advantage"].)[4] The jury was also instructed that Pincus's testimony was "not evidence that [appellant] committed any of the crimes charged against him" and could be considered "only in deciding whether or not [M.H.'s] conduct was not inconsistent with the conduct of someone who has been abused, and in evaluating the believability of her testimony." We presume the jury understood and followed these instructions. (*People v. Hinton* (2006) 37 Cal.4th 839, 864.) Accordingly, it is not reasonably probable that the result would have been different had the challenged testimony been excluded. Any error in admitting the testimony was thus harmless. (*People v. Fields* (2009) 175 Cal.App.4th 1001, 1018 [erroneous admission of evidence reviewed under standard of review set forth in *People v. Watson* (1956) 46 Cal.2d 818, 836 (*Watson*).)

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[4] In his reply brief, appellant complains that "[t]he *Gadlin* decision did not explain how the extraneous and inflammatory testimony could work to the defendant's advantage" and adds that "[r]espondent also provides no insight." The potential advantage, however, is readily apparent: If the expert characterizes a "typical" or "quintessential" perpetrator of IPB as one who is "worse" than the defendant, the jury is more likely to infer that the defendant's actions did not amount to IPB.

II.

Evidence Code section 1109 and CALCRIM No. 852

Evidence of appellant's prior uncharged acts of domestic violence against M.H. and D.A. were admitted under Evidence Code section 1109 to prove he has a propensity to commit domestic violence. The jury was instructed on this theory pursuant to CALCRIM No. 852. For purposes of federal review, appellant preserves a constitutional claim by asserting that Evidence Code section 1109 and CALCRIM No. 852 violate due process and equal protection. We reject the claim in light of *People v. Falsetta* (1999) 21 Cal.4th 903 (*Falsetta*), *People v. Reliford* (2003) 29 Cal.4th 1012, and their progeny.

III.

Prior Acts of Domestic Violence (Evid. Code, §§ 352, 1109)

Assuming that Evidence Code section 1109 is constitutional, appellant contends the court abused its discretion in admitting evidence of appellant's four prior acts of domestic violence. We conclude that the evidence was properly admitted under Evidence Code sections 1109 and 352.

Evidence of prior criminal acts is ordinarily inadmissible to show a defendant's disposition to commit such acts. (Evid. Code, § 1101.) The Legislature, however, has created an exception to this rule in criminal domestic violence cases. (Evid. Code, § 1109; *People v. Brown* (2011) 192 Cal.App.4th 1222, 1232 (*Brown*).) In those cases, the Legislature has concluded that the policy considerations favoring admitting evidence of uncharged domestic violence offenses outweigh the policy considerations favoring excluding such evidence. (*Brown*, at p. 1232.) "[Evidence Code] [s]ection 1109, in effect 'permits the admission of defendant's other acts of domestic violence for the

purpose of showing a propensity to commit such crimes. [Citation.]' [Citation.]" (*Ibid.*) The admission of prior acts as propensity evidence encompasses both charged and uncharged acts. (*Falsetta*, *supra*, 21 Cal.4th at pp. 917-918.)

Even if the evidence is admissible under Evidence Code section 1109, "the trial court must still determine, pursuant to Evidence Code section 352, whether the probative value of the evidence is substantially outweighed by the probability the evidence will consume an undue amount of time or create a substantial danger of undue prejudice, confusion of issues, or misleading the jury. [Citation.]" (*Brown*, *supra*, 192 Cal.App.4th at p. 1233.) "The court enjoys broad discretion in making this determination, and the court's exercise of discretion will not be disturbed on appeal except upon a showing that it was exercised in an arbitrary, capricious or patently absurd manner that resulted in a manifest miscarriage of justice. [Citations.]" (*Ibid.*)

The court did not abuse its discretion in admitting the evidence of appellant's prior uncharged acts of domestic violence. In arguing to the contrary, appellant claims the court applied an incorrect definition of "undue prejudice" in determining whether the evidence was admissible under Evidence Code section 352. The court defined undue prejudice "as any likelihood that the evidence will be received by the jury other than for the permitted purpose but for a nonpermitted purpose, that is, that they would consider and be moved by it in a way that the law doesn't permit them to be." According to appellant, this definition is "inconsistent with the historical rule that propensity evidence is infinitely more prejudicial than it is probative."

But Evidence Code section 1109 is an express exception to this "historical rule." Moreover, the court's definition of undue prejudice is entirely consistent with our Supreme Court's pronouncements on the issue: "The prejudice which exclusion of evidence under Evidence Code section 352 is designed to avoid is not the prejudice or damage to a defense that naturally flows from relevant, highly probative evidence. '[A]ll evidence which tends to prove guilt is prejudicial or damaging to the defendant's case. The stronger the evidence, the more it is "prejudicial." The "prejudice" referred to in Evidence Code section 352 applies to evidence which uniquely tends to evoke an emotional bias against the defendant as an individual and which has very little effect on the issues. In applying [Evidence Code] section 352, "prejudicial" is not synonymous with "damaging."' [Citation.]" (*People v. Karis* (1988) 46 Cal.3d 612, 638.)

In other words, the issue to be decided by the court was whether the evidence of the prior incidents was so prejudicial that the jury was likely to convict him based on the prior incidents rather than the charged crimes. (*Falsetta*, *supra*, 21 Cal.4th at p. 920.) This conforms with the court's stated understanding that it had to determine the likelihood whether the jury would consider the evidence for a "nonpermitted purpose" rather than the purpose permitted by Evidence Code section 1109.

The record belies appellant's claims that (1) the prior uncharged incidents involving M.H. were merely trespasses and did not include any acts or threats of domestic violence; (2) the prior incidents involving D.A. were more inflammatory than the charged acts, which included appellant beating the victim and jabbing at her with a knife; and (3) presentation of the evidence

of the uncharged incidents resulted in an undue consumption of time. We also reject appellant's assertion that any error in admitting evidence of the uncharged incidents was not harmless. Appellant downplays the physical evidence supporting M.H.'s statements to Officer Peña, and fails to account for Pincus's expert testimony and the manner in which it tended to undermine M.H.'s recantations. In light of this evidence, any error in admitting evidence of the uncharged prior incidents was harmless under any standard of prejudice. (*People v. Johnson* (2010) 185 Cal.App.4th 520, 541, citing *Watson*, *supra*, 46 Cal.2d at p. 836, and *Chapman v. California* (1967) 386 U.S. 18, 24.)

IV.

Denial of Romero Motion; Cruel and Unusual Punishment

Prior to sentencing, appellant moved to strike one or both of his prior strike convictions pursuant to *Romero* and reduce his conviction of assault with a deadly weapon to a misdemeanor. The court denied the motion and sentenced appellant to a state prison term of 39 years to life, consisting of 26 years to life for the assault plus two 5-year serious felony enhancements (§ 667, subd. (a)(1)) and four 1-year prior prison term enhancements (§ 667.5, subd. (b)).

Shortly after sentencing, appellant filed a request to recall his sentence pursuant to section 1170, subdivision (d). Appellant claimed that his sentence amounted to cruel and unusual punishment under the state and federal Constitutions and that the court violated section 654 by imposing enhancements for the same prior conviction under sections 667, subdivision (a)(1), and 667.5, subdivision (b). The prosecutor conceded the latter claim and the court struck one of the prison priors, resulting in a total term of 38 years to life. Appellant's

claim that his sentence was cruel and unusual punishment was denied.

On appeal, appellant contends the court abused its discretion in denying his *Romero* motion because the resulting sentence amounts to cruel and unusual punishment. Although he frames the alleged error as a denial of his *Romero* motion, his argument focuses exclusively upon the court's duty to ensure that appellant's sentence did not amount to cruel and unusual punishment. Accordingly, we need only decide whether appellant's sentence of 38 years to life is unconstitutionally cruel and unusual. We conclude it is not.

The Eighth Amendment to the United States Constitution and article 1, section 17 of the California Constitution prohibit cruel and/or unusual punishment. Both clauses prohibit punishment that is disproportionate to a defendant's personal responsibility and moral culpability. (*Enmund v. Florida* (1982) 458 U.S. 782, 801.) States, however, may enact laws to more harshly punish recidivists who either cannot or will not conform their conduct to social norms. (*Rummel v. Estelle* (1980) 445 U.S. 263, 284-285 (*Rummel*).) Under the federal Constitution, noncapital sentences are subject only to a narrow proportionality review, if any. (See *Ewing v. California* (2003) 538 U.S. 11, 23.) A punishment violates the state constitution only if "it is so disproportionate to the crime for which it is inflicted that it shocks the conscience and offends fundamental notions of human dignity. (Fn. omitted.)" (*In re Lynch* (1972) 8 Cal.3d 410, 424.)

Appellant's sentence does not amount to cruel and unusual punishment under the federal Constitution. In *Rummel*, *supra*, 445 U.S. 263, the United States Supreme Court upheld a

mandatory life sentence under a Texas recidivist statute even though the defendant had been convicted of obtaining $120.75 by false pretenses and his prior convictions consisted of two nonviolent felonies. The Court reasoned that the sentence under a recidivist statute is "based not merely on that person's most recent offense but also on the propensities he has demonstrated over a period of time during which he has been convicted of and sentenced for other crimes." (*Id.* at p. 284.) The statute serves the legitimate goal of deterring repeat offenders and of segregating the recidivist "from the rest of society for an extended period of time." (*Ibid.*) Here, appellant's current offenses involved violence and his prior strike offenses both involved the use of a weapon.

Appellant's characterization of his current convictions as "relatively minor" is wholly unpersuasive. Moreover, his reliance on *People v. Carmony* (2005) 127 Cal.App.4th 1066, is unavailing because the case is plainly inapposite. The defendant in that case was sentenced to 25 years to life based upon a conviction for failing to register as a sex offender. (*Id.* at pp. 1071-1072.) The defendant had actually registered when he moved, but failed to update his registration by the date of his birthday the following month. (*Id.* at p. 1071.) In concluding that his sentence was so disproportionate to the seriousness of the crime so as to violate the Eighth Amendment, the Court of Appeal recognized "[i]t is a rare case that violates the prohibition against cruel and unusual punishment. . . . If the constitutional prohibition is to have a meaningful application it must prohibit the imposition of a recidivist penalty based on an offense that is no more than a harmless technical violation of a regulatory law." (*Id.* at p. 1072.) This is not such a rare case.

Appellant fares no better in claiming that his sentence violates our state Constitution's proscription against cruel and unusual punishment. In California, a "proportionality" review begins with the three-pronged test set forth in *In re Lynch*, *supra*, 8 Cal.3d at pages 425-427, which focuses on the nature of the offense and the offender, the punishment for more serious crimes in the same jurisdiction, and punishment for the same offense in other jurisdictions. Appellant provides no information as to the latter factor. Although he correctly notes that a serious crime of violence such as second degree murder gives rise only to a 15-year-to-life term, he ignores the impact of his recidivism. We are also unpersuaded by his assertion that his third-strike sentence is unconstitutional "in light of the unique facts presented" in his case. Appellant's sentence is justified given his current convictions of assault with a deadly weapon and infliction of corporal injury. (See *In re Coley* (2012) 55 Cal.4th 524, 561-562; *People v. Nichols* (2009) 176 Cal.App.4th 428, 435-437 [holding a three strikes life term not grossly disproportionate for a deliberate failure to register under former § 290]; *People v. Goodwin* (1997) 59 Cal.App.4th 1084, 1093-1094 [three strikes term not cruel and unusual punishment for defendant whose current offense was essentially a shoplifting burglary].) Neither the nature of the current offenses nor the nature of the offender—whose prior offenses include strike convictions for burglary and making criminal threats—supports appellant's claim that his sentence of 38 years to life amounts to cruel and unusual punishment. Appellant has failed to "overcome [his] 'considerable burden' in convincing us his sentence was disproportionate to his level of culpability. [Citation.]" (*People v. Weddle* (1991) 1 Cal.App.4th 1190, 1197.)

V.

Section 654

In sentencing appellant on count 2 (inflicting corporal injury), the court selected the high term of five years, doubled it to ten years based upon one of the strike priors, and ordered the sentence to run concurrent to the sentence imposed on count 1 (assault with a deadly weapon). Appellant contends the sentence on count two should have been stayed under section 654 because the infliction of corporal injury (the act of punching M.H. in the forehead) and the assault with a deadly weapon (the act of jabbing at M.H. with the knife) were committed during the same course of conduct and with the same intent and objective. We disagree.

Section 654, subdivision (a) prohibits multiple punishment for an "act or omission that is punishable in . . . different provisions of law[.]" Application of section 654 turns on the defendant's intent and objective in violating multiple statutory provisions. (*People v. Capistrano* (2014) 59 Cal.4th 830, 885.) If the offenses are incident to one objective, the defendant may be punished for only one offense. (*People v. Wynn* (2010) 184 Cal.App.4th 1210, 1214-1215.) The trial court has "broad latitude" to decide whether section 654 applies, and its determination will be upheld if supported by substantial evidence. (*People v. DeVaughn* (2014) 227 Cal.App.4th 1092, 1113.)

A course of conduct divisible in time, although directed to one objective, may give rise to multiple punishments. (*People v. Beamon* (1973) 8 Cal.3d 625, 639, fn. 11.) "This is particularly so where the offenses are temporarily 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* (2000) 81 Cal.App.4th 919, 935 (*Gaio*).)

Substantial evidence supports the court's finding that section 654 did not preclude it from sentencing appellant for both inflicting corporal injury upon M.H. and assaulting her with a deadly weapon. The court reasoned that "although these [crimes] occurred at the same time, with the same victim" and "involved, to some extent, the same intent and objective," the counts were based upon "separate acts of violence." Appellant erroneously interprets this statement to mean that "[t]he court obviously concluded the two offenses were committed during a single course of conduct with the same intent or objective." Rather, the court reasoned that although the offenses "involved, *to some extent*, the same intent and objective (italics added)," they constituted "separate acts of violence" such that section 654 does not apply. This reasoning is sound. "No purpose is to be served under section 654 by distinguishing between defendants based solely upon the type *or* sequence of their offenses. . . . [I]t is defendant's intent to commit a number of separate base criminal acts upon his victim, and not the precise code section under which he is thereafter convicted, which renders section 654 inapplicable." (*People v. Harrison* (1989) 48 Cal.3d 321, 338 (*Harrison*); see also *People v. Trotter* (1992) 7 Cal.App.4th 363, 367 (*Trotter*) [quoting same].) "[E]ven under the long recognized 'intent and objective' test, each [act] evinced a separate intent to do violence[.]" (*Trotter*, at p. 368.)

In *Harrison,* the Supreme Court held that section 654 did not bar separate punishment for each of three acts of sexual

penetration that involved the same victim and occurred over the course of a continuous attack that lasted seven to ten minutes. (*Harrison*, *supra*, 48 Cal.3d at pp. 337-338.) In *Trotter*, the court concluded that section 654 did not bar multiple punishment for a defendant who fired two shots at the same victim approximately one minute apart. (*Trotter*, *supra*, 7 Cal.App.4th at pp. 366-367.) These cases support the finding that section 654 did not apply in the instant case. Although the offenses were committed on the same occasion, they were "temporally separated in such a way as to afford [appellant] opportunity to reflect and to renew his or her intent before committing the" assault. (*Gaio*, *supra*, 81 Cal.App.4th at p. 935.) Appellant's claim that he was sentenced for both crimes in violation of section 654 thus fails.[5]

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[5] Appellant asserts that the court's reference to "separate acts of violence" evinces a misunderstanding that section 654's exception for crimes committed against "multiple victims" also applies to crimes against a single victim. The court's statement, however, does not reflect any such misunderstanding. Appellant also erroneously suggests that the court's finding that section 654 did not bar a concurrent sentence is fatally undermined by its finding that a consecutive sentence was not mandated by the three strikes law. (See *People v. Deloza* (1998) 18 Cal.4th 585, 595 ["the analysis for determining whether [section 667,] subdivision (a)(6) and (a)(7) requires consecutive sentencing is not coextensive with the analysis for determining if section 654 permits multiple punishment"].)

The judgment is affirmed.
NOT TO BE PUBLISHED.

PERREN, J.

We concur:

YEGAN, Acting P. J.

TANGEMAN, J.

Matthew P. Guasco, Judge
Superior Court County of Ventura

Sylvia W. Beckham, under appointment by the Court of Appeal, for Defendant and Appellant.

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