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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE,

Plaintiff and Respondent,

v.

SHANAVIAN LIDDELL et al.

Defendants and Appellants.

B292304

(Los Angeles County
Super. Ct. No. YA094785)

APPEAL from judgments of the Superior Court of Los Angeles County. Edmund W. Clarke Jr., Judge. Affirmed in part, and remanded with directions.

Maggie Shrout, under appointment by the Court of Appeal, for Defendant and Appellant Shanavian Liddell.

Jared G. Coleman, under appointment by the Court of Appeal, for Defendant and Appellant Carlisha Lewis.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, David E. Madeo and Idan Ivri, Deputy Attorneys General, for Plaintiff and Respondent.

Shanavian Liddell and Carlisha Lewis appeal from judgments which sentence them to state prison for their participation in the kidnapping, false imprisonment, assault, and torture of Ashleigh Wells over five days in August 2016. They contend insufficient evidence supports the conviction for kidnapping, and sentencing errors warrant reversal or modification of their judgments. Lewis also contends she qualifies for pretrial mental health diversion. The arguments lack merit. However, we find the trial court imposed an unauthorized sentence and remand for the limited purpose of correcting that error. We otherwise affirm the judgments.

FACTS

Wells befriended Liddell and Lynette Cleveland in early 2016. They quickly became close friends and saw one another almost every day. Cleveland also stayed with Wells in her apartment. Wells met Liddell's friend, Lewis, during this time. Timothy Thomas was a mutual friend of Liddell's and Wells's. He was a known drug dealer with gang ties, whom Wells had known for 16 years.

On August 20, 2016, Liddell and Cleveland returned from a barbecue to Thomas's apartment on West Boulevard. They were robbed at gunpoint by three young black men. Each robber held a handgun and demanded drugs and money. They took Liddell's and Cleveland's identification cards and wallets. Liddell believed they were Crip gang members because they wore blue rags over their faces and used gang slang. As they left, Liddell heard them say, "This is bullshit. She lied . . . There's not shit in here."

Liddell immediately drove with Cleveland to speak with Thomas. Before she had time to tell him about the robbery, a car pulled up behind her. The same three men jumped out and

began to shoot at them. Thomas fled with two of the men in pursuit. Liddell, whose car was boxed in by the robbers' car, rammed their car and the car in front to get away. The robbers followed.

The robbers stopped their pursuit when the police arrived. Liddell did not tell the officers about the earlier robbery because she was afraid they would discover that drugs were used and sold at the West Boulevard apartment. After speaking with the police, Liddell drove Cleveland and Thomas to Thomas's home in Hemet, where they stayed until August 24, 2016. While in Hemet, Liddell called Wells, suggesting they meet soon at a motel room to hang out. Wells agreed.

Day 1: August 24

Liddell arranged for her cousin, Steve Arnold, to drive Wells to Gardena, where Arnold had rented a motel room. Cleveland and Liddell met Wells and Arnold at a CVS drugstore near the motel.

The women walked to the motel room and began to socialize and smoke marijuana. They returned to CVS for snacks. Later that night, they decided to go back to CVS a third time before it closed. As they were preparing to leave the room, Wells was unable to locate her phone, though she knew it was in the motel room because it was wirelessly streaming music to a speaker in the room. Cleveland and Liddell convinced her to leave without it.

On the way to CVS, Arnold called, and they instead drove to a liquor store for cigarettes and tequila. Arnold joined them in the motel room, where they drank, used cocaine, and smoked marijuana together.

Suddenly, Liddell's demeanor changed. She locked the door and began to pull the curtains, declaring "I'm only going to ask you this one time about what happened on West." She accused Wells of setting up the robbery, explaining that a mutual friend named Dominique Davis had implicated Wells. Davis and Wells had only recently reconciled after a longstanding feud. When Wells expressed confusion, Liddell told her what happened.

Wells denied any involvement in the robbery. She stated she had just dropped Davis off at the bus station that morning and Davis had given her no indication anything was wrong. Liddell ordered Arnold, who was approximately six feet tall and 200 pounds, to block the door. She threatened that her "cousins" wanted to hurt Wells in retaliation for the robbery. Liddell also pulled a handgun out of the nightstand by the bed, held it for a few seconds while looking at Wells, and then replaced it in the nightstand.

Liddell then brought out duct tape, latex gloves, and a hammer. She duct-taped Wells's hands and legs together. She did the same to Cleveland, explaining Cleveland may know something since she had been staying with Wells. Cleveland denied any knowledge of the robbery.

During her interrogation, Liddell used the hammer to strike Wells's knees three times and Cleveland's knees twice. Both continued to deny any knowledge about the robbery. Liddell also used Wells's phone, which she apparently had hidden earlier, to call Davis, who did not answer. Soon afterwards, Liddell freed Cleveland, stating she believed Cleveland had nothing to do with the robbery. That night, Liddell, Cleveland, and Arnold slept in the bed while Wells slept on a chair, still bound with duct tape.

Day 2: August 25

Cleveland was left to watch Wells while Liddell and Arnold paid for another night at the motel and further investigated the robbery. Cleveland did not untie Wells, leave the room, or call for help while they were gone. Before she left, Liddell asked Wells if she had anything to tell her. Wells responded, "No."

Wells remained bound most of the day, though she was untied to use the restroom and eat a meal. Wells slept on the floor that night.

Day 3: August 26

The following morning, the group left the motel. Wells's restraints were cut, she changed her clothes, and Arnold drove them to Liddell's brother's house to retrieve Liddell's car keys. Wells sat in the back seat of the car with Cleveland. As they approached her brother's house, Liddell ordered Wells to duck down in the seat so that he would not see her. They stopped at the liquor store for cigarettes and Ralphs grocery store for food. At no time was Wells left alone.

Arnold also drove them to the Los Angeles Police Department Southwest Station because Liddell needed to speak with the detectives investigating the shooting incident. Arnold parked at a restaurant across the street from the police station. He gave Wells permission to use the restroom and Cleveland accompanied her. Wells passed a bystander walking to the restroom, but she did not ask for help.

Wells did not try to escape or otherwise seek help because she hoped to defuse the situation with her friends and did not want to make a scene or involve the police. Wells was also hoping to speak to Thomas and straighten out what she considered a misunderstanding with him. Although Wells feared

for her safety, she did not, at that time, “know that there was a real reason to run away.”

They all returned to Thomas’s apartment on West Boulevard. Wells was again bound and told to remain in the second floor bedroom when Thomas arrived. After he left, Liddell removed Wells’s restraints and allowed her to take a shower and eat.

After dinner, Liddell began to ask Wells about the robbery. She was suspicious that no one had answered the calls she made from Wells’s phone or appeared to be looking for Wells. She said, “They must know,” accusing Wells of lying. She and Cleveland bound Wells with extension cords, attaching the cords to a pole in the center of the living room. Wells overheard Liddell tell Arnold, “I still got that,” which Wells understood to be the gun she had seen in the motel room.

Liddell continued to question Wells about the robbery. She used an electric cattle prod on Wells several times, causing her “excruciating” pain. Wells urinated on herself and screamed for Liddell to stop. Eventually, Arnold yelled from another room, “That’s enough.” Liddell stopped, but told Wells that she “better hope” Liddell fell asleep before she decided to interrogate Wells further. Liddell appeared angrier than when she hit Wells with the hammer at the motel. Wells remained tied to the pole the entire night.

Day 4: August 27

The next morning, Davis called Wells’s phone. Liddell became even more suspicious when she heard Davis ask Wells unusual questions about Cleveland over the speakerphone. After the call ended, Liddell put on a pair of thick black gloves

and punched Wells twice in the left eye. Wells, still tied to the pole, began to bleed profusely.

Shortly after, Wells was unbound, cleaned up, and taken to the dining area because Lewis had arrived with her children. Liddell spoke with Lewis in the bedroom and she left soon after. Liddell then told Wells to call her mother and son to say goodbye. Crying, Wells told her mother and son that she loved them. Her mother asked what was wrong, but Wells said she was just tired. Liddell tied Wells up again and led her to the bedroom. Wells heard voices in the other room, including new voices she did not recognize.

After approximately two hours, Liddell and Cleveland moved Wells to Arnold's car, tying her bound legs and hands to the headrests. As she was escorted out of the apartment, she saw Thomas in the living room. Wells attempted to escape while she was in the car. She managed to free a hand, but set off the car alarm, which someone remotely deactivated. Arnold and Liddell untied Wells from the headrests, but left her arms and legs bound. They drove to a drive-through smoke shop. When they returned to the apartment, Cleveland, Lewis, and Thomas's son, Marquis, were there.

They again tied Wells to the pole. Marquis and Liddell questioned why Wells set up the robbery and attempted murder. Wells continued to proclaim her innocence. Liddell asked Cleveland if she wanted to participate in the beatings. Cleveland began to punch and kick Wells. After a few minutes, Liddell asked Lewis if she thought she could "bust" Wells's other eye. Lewis said yes, and punched Wells's right eye twice. Liddell goaded Lewis, "You can do better than that," causing Lewis to hit

Wells with more force. Liddell also hit Wells in the right eye. Wells felt her right eye begin to bleed.

Liddell then told Wells she would allow her the chance to defend herself. She instructed Wells to pick who in the group she wanted to fight. Wells named Liddell, despite believing it would not be a fair fight regardless of whom she chose. Wells was untied. She swung at Liddell, but missed. She was immediately hit in the back of the head. After she fell to the ground, the entire group began to hit and kick her. She felt something cold and hard hit her, like a hammer. She also felt something hot cut across her back and legs. She believed she was “tased” on her back and her feet.

Wells tried to cover her head and block the blows, but began to lose consciousness. She lost consciousness after she was hit in the jaw several times. When Wells woke, it was dark. She was lying on her stomach with her feet tied to the pole and a towel nearby. Her hands were free. She used the towel to wipe her face because she was spitting up blood. A female voice told Wells to stop getting blood everywhere. Wells covered her head with the towel and went back to sleep.

Day 5: August 28

Wells woke the next morning in tremendous pain; she was unable to talk or see very well due to her injuries. Liddell gave her permission to use the restroom. Wells crawled most of the way to the restroom but when she attempted to use the wall to stand, Liddell told her not to get blood on the wall. Wells saw herself in the bathroom mirror and began to cry. Her eyes were “pretty much swollen shut” and her lips were “busted.” There was blood everywhere. She attempted to wash the blood from her

face, but Liddell ordered her out of the bathroom. Cleveland and Liddell bound Wells to a chair in the bedroom.

Liddell told Wells she and Cleveland were leaving for a couple of hours, but warned, “Don’t try no stupid shit.” She said her cousin was outside and Arnold would be back to check on Wells.

The Escape

Wells, fearing for her life, freed herself and crept down the stairs after they left. When she saw no one in the apartment or outside, she ran for help. Wells asked several people if she could use their phone, but was rebuffed because they did not want to be involved. She ultimately ran into a television repair shop on West Boulevard where two men were inside.

To the men, Wells looked like “she was beat up something terrible.” She told the men someone was trying to kill her and asked to use the phone to call her mother. The men refused, and said they were going to call 911 instead. Wells said she did not want to get the police involved because she was afraid Liddell and the others would be able to track her down and hurt her further. She “just wanted to get away.” The men called 911 when Wells collapsed and lost consciousness.

Paramedics observed that Wells’s face and eyes were swollen. Wells told them she had been held captive for five days and kicked and hit repeatedly. She asked the paramedics to park the ambulance in the back of the store so Liddell and the others would not see it. Wells was transported to UCLA Medical Center, where medical staff treated her for multiple broken bones in her face, including her eye sockets and sinus area. She also suffered cuts to her face and legs, and had a first-degree burn on

her shoulder. Wells reported she had been tased and tied up with extension cords and phone cords.

The Criminal Proceedings

Liddell, Cleveland, and Lewis were charged with torture (count 1; Pen. Code, § 206);¹ kidnapping (count 2 against Liddell and Cleveland only; § 207, subd. (a)); false imprisonment by violence (count 3; § 236); and assault by means likely to produce great bodily injury (count 4; § 245, subd. (a)(4)). As to all counts, the information further alleged that each defendant personally inflicted great bodily injury. (§ 12022.7, subd. (a).) A firearm enhancement was alleged against Liddell as to counts 1 through 3.

At trial, Wells testified to the events as described above. Wells also testified to the lasting effects of her ordeal, including numerous scars on her body, post-traumatic stress syndrome, impaired vision, migraines, and a cracked tooth. The People presented evidence corroborating Wells's account, including surveillance video from CVS, testimony from one of the men at the repair shop, and testimony about her injuries from staff at UCLA Medical Center.

The People also presented evidence from the police investigation. One of the detectives assigned to the matter testified that the West Boulevard apartment was completely empty when officers executed a search warrant there; it smelled of bleach and cleaning supplies. The pole in the living room had been removed, but there were corresponding plates still attached to the floor and the ceiling that indicated where the pole had been. The officers recovered a bundle of extension cords near the

¹ All undesignated section references are to the Penal Code unless otherwise specified.

front door, one of which had blood splattered on it. A BB gun made to look like a semi-automatic pistol was recovered from Arnold's apartment.

Liddell testified on her own behalf. She admitted she was with Wells all five days, but claimed she only used force against her on August 27, 2016, after Thomas ordered her to do so. Liddell testified she complied because she was afraid of Thomas and his friends. She admitted to beating Wells and using the electric cattle prod on her feet. She confirmed she, Cleveland, Arnold, and Marquis, Thomas's son, each punched, kicked, or cut Wells throughout the day.

Liddell denied Wells was harmed or bound at the motel, or that anyone prevented her from leaving during that time. She testified Wells used methamphetamine at the motel, causing her to become jittery. She believed Wells accompanied them willingly to the motel and to the apartment on West Boulevard.

Liddell explained that during the time she and Cleveland stayed with Thomas at his home in Hemet, they discussed who could be behind the robbery and shooting. Thomas's friend, who she believed had just been released from jail, accused Liddell of orchestrating the robbery. He also demanded, "Bitch, you need to find out what happened" Because Thomas already suspected her, Liddell was afraid she would end up like Wells if she did not obey him.

Liddell testified Wells admitted that members of a Crip gang named Schoolyard were involved in the robbery and shooting. Liddell conveyed that information to Thomas's friend, who had been calling for daily updates and threatening Liddell.

The Verdicts and Sentences

Liddell was found guilty on all counts, and the great bodily injury allegations as to counts 2 through 4 were found true.² The jury found the firearm enhancement allegations not true. On count 1 (torture), Liddell was sentenced to life, with a seven-year minimum parole eligibility period. The court imposed a consecutive determinate term of eight years, the high term, on count 2 (kidnapping). It imposed a midterm two-year concurrent sentence on count 3 (false imprisonment) and a midterm two-year concurrent sentence on count 4 (assault). The trial court also imposed and stayed the three bodily injury enhancements for counts 2 through 4.

Lewis was found guilty on counts 3 (false imprisonment) and 4 (assault), but not guilty on count 1 (torture). The jury also found true the great bodily injury allegations as to counts 3 and 4. She was sentenced to an aggregate term of seven years and eight months, comprised of the high term of four years on count 4, plus three years for the great bodily injury enhancement, and a consecutive term of eight months (one-third the midterm of 24 months) as to count 3. The court further imposed and stayed a one year term for the great bodily injury enhancement as to count 3.³ Liddell and Lewis timely appealed.⁴

² The trial court struck the great bodily injury enhancement allegation as to count 1.

³ We note the trial court improperly imposed and stayed the great bodily injury enhancements found true against Liddell on counts 2 through 4 and against Lewis on count 3. (§ 12022.7, subd. (a).) Except in circumstances not applicable here, the trial court had no discretion to impose and stay the enhancements. (*People v. Haykel* (2002) 96 Cal.App.4th 146, 152.) Rather, the

DISCUSSION

I. Substantial Evidence Supports the Kidnapping Conviction

Liddell challenges her conviction for kidnapping in count 2, contending the facts adduced at trial were insufficient to prove the crime.

In closing, the prosecutor argued the kidnapping charge could reasonably be based on either of two events that occurred during the five-day period: (1) when Wells was moved from the motel in Gardena to the apartment on West Boulevard on Day 2 of her captivity or (2) when she was moved to the car from the apartment on West Boulevard on Day 4.

Liddell argues Wells voluntarily left the motel in Gardena and accompanied the group on their various errands before going to the apartment on West Boulevard. She also contends the movement from the apartment to the car was not a sufficiently substantial distance to qualify as a kidnapping. We disagree.

A. Applicable Law

“‘In reviewing the sufficiency of the evidence, we must determine “whether, after viewing the evidence in the light most

court was required to either impose or strike the enhancements. (*People v. Bradley* (1998) 64 Cal.App.4th 386, 391; § 1385.) The sentences on the great bodily injury enhancements are unauthorized. (*People v. Vizcarra* (2015) 236 Cal.App.4th 422, 432.) We thus remand the matter for the limited purpose of allowing the trial court to exercise its discretion to impose the enhancements under section 12022.7, subdivision (a), or to strike them. (*People v. Solorzano* (2007) 153 Cal.App.4th 1026, 1041.)

⁴ Cleveland was also found guilty on all counts. She is not a party to this appeal.

favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.”’ [Citation.] ‘Substantial evidence’ is evidence which is ‘“reasonable in nature, credible, and of solid value.”’ [Citation.]” (*People v. Morgan* (2007) 42 Cal.4th 593, 613–614.)

“To prove a defendant guilty of kidnapping, the prosecution must establish that (1) the defendant took, held, or detained another person by using force or by instilling reasonable fear; (2) using that force or fear, the defendant moved the other person, or made the other person move a substantial distance; and (3) the other person did not consent to the movement.” (*People v. Burney* (2009) 47 Cal.4th 203, 232; § 207, subd. (a).) “[T]he force used against the victim ‘need not be physical. The movement is forcible where it is accomplished through the giving of orders which the victim feels compelled to obey because he or she fears harm or injury from the accused and such apprehension is not unreasonable under the circumstances.’” (*People v. Majors* (2004) 33 Cal.4th 321, 326–327.)

Consent requires the victim to “‘act freely and voluntarily and not under the influence of threats, force, or duress.’” (*People v. Sattiewhite* (2014) 59 Cal.4th 446, 477 (*Sattiewhite*).) Mere passivity does not amount to consent. (*Ibid.*) Neither is the victim required to express some form of protest or resistance. (*Ibid.*) Even where a victim’s initial cooperation is obtained without force or fear, a kidnapping occurs if the accused subsequently compels the victim to accompany her. (*People v. Hovarter* (2008) 44 Cal.4th 983, 1017 [where victim voluntarily accepted ride with the defendant, that voluntariness is vitiated when the defendant does not let the victim out of the car]; accord, *People v. Thompson* (1967) 252 Cal.App.2d 76, 87–88 [movement

is not consensual where victim agrees to follow robber upstairs, stops midway up the stairs to look at relatives below, and continues only after robber waves gun and says “Come on, come on.”].)

B. Substantial Evidence Supports a Finding That Wells Did Not Consent to the Movement to the West Boulevard Apartment

Here, the jury could reasonably have based its kidnapping finding on the group’s travel from the motel to the West Boulevard apartment, including the stops along the way. Liddell does not contest the first two elements of the crime are met; she instead focuses only on consent, contending Wells voluntarily accompanied them.

The record reveals substantial evidence to support a finding that Wells did not consent to the movement. Wells testified she did not want to accompany Liddell, Cleveland, and Arnold when they left the motel in Gardena. She did not believe she was free to leave or that it would have been easy to get away while they were travelling from the motel to the West Boulevard apartment. Wells testified, “[M]ost of the time the car was moving. And at that point, once again, [she] thought that there was still going to be a way out of it without needing to jump out of a moving car or something.”

Notably, Wells had to ask Arnold for permission to use the restroom while they waited for Liddell across from the police station. At no point was Wells ever left alone. Wells also testified she was “in fear” and did not try to escape because she was afraid of “anything happening more than [what] had already happened up to that point.” By that point, Wells had been hit with a hammer and bound with duct tape. The jury could have

reasonably inferred from these circumstances and Wells's testimony that Liddell and her cohorts had instilled fear in Wells such that she felt compelled to accompany them. This is substantial evidence to support a finding that Wells did not consent to the movement to the West Boulevard apartment.

Liddell contends Wells's testimony indicates she wanted to stay with the group to clear her name. Likewise Wells's failure to protest or ask to be taken home proves she consented. We are not persuaded. At best, Liddell's argument presents a contrary interpretation of the evidence. The jury could reasonably accept that Wells hoped to clear her name, but still did not consent to the movement. Moreover, Wells's failure to object or ask to be taken home could be reasonably interpreted as evidence that she knew it would have been futile to do so. Indeed, her passivity was not necessarily an indication of her consent. (*Sattiewhite, supra*, 59 Cal.4th at pp. 476–477.) By contrast, Wells had to ask permission to use the restroom. Reversal is “not warranted simply because the circumstances might also reasonably be reconciled with a contrary finding.” (*People v. Lindberg* (2008) 45 Cal.4th 1, 27.)

Because we find substantial evidence supports her kidnapping conviction under the first event (movement from the motel to the apartment), we need not address whether the second event (movement from the apartment to the car) also supports the kidnapping conviction. (See *People v. Aguilar* (1997) 16 Cal.4th 1023, 1035 [where prosecutor presents the jury with alternative factual scenarios on which to base a conviction, the conviction may be affirmed if the evidence is sufficient to support one of those scenarios].)

II. Section 654 Did Not Preclude Separate Sentences for Liddell on Counts 2 through 4

Liddell contends her sentences on counts 2 through 4 should be stayed pursuant to section 654 because the offenses constituted an indivisible course of conduct that involved the same objective: to extract information from Wells regarding the robbery and shooting. We disagree. Substantial evidence supports the trial court's finding that the crimes were not part of a course of conduct entailing only one objective or intent.

A. Proceedings Below

At sentencing, defense counsel argued section 654 applied to counts 2 through 4 because they were “ancillary or subsumed under [the torture] count.” Defense counsel argued the crimes were committed pursuant to a course of conduct, which was not complete until Wells escaped or the defendants left the apartment. He implied the prosecution proceeded on this course-of-conduct theory because the information alleged the crimes occurred over a five-day period, even after Wells specified dates for each crime.

The prosecutor disagreed, contending all the crimes were “distinct, separate violent felonies,” with kidnapping and torture sharing no elements in common. He also noted Wells was kidnapped, falsely imprisoned, and assaulted on different occasions in several different locations, which could have resulted in additional counts.

The court found the kidnapping to be distinct from the torture. It questioned why it should not hold Liddell accountable for the separate conduct, reasoning, “[I]f I treat this all as a course of conduct, I’m in essence saying once you decide you’re going to torture people, [it] doesn’t matter how much you do to

them over the long course of that; that you're just going to get on[e] sentence anyway. So an hour of torture versus four days of torture versus G.B.I. is going to be all the same."

The trial court declined to apply section 654 to stay any of the sentences. It found the events occurring at the beginning of the five-day ordeal were not "depraved" and only involved "low violence kidnapping," but the situation changed "as soon as Ms. Liddell learned she wasn't going to get the information she wanted, she was going to escalate the violence and the injury."

B. Applicable Law

"Section 654 prohibits multiple punishment for a single physical act that violates different provisions of law." (*People v. Jones* (2012) 54 Cal.4th 350, 358.) This prohibition extends to separate punishment for multiple crimes "committed during 'a course of conduct deemed to be indivisible . . .'" (*People v. Harrison* (1989) 48 Cal.3d 321, 335 (*Harrison*); *People v. Islas* (2012) 210 Cal.App.4th 116, 129.) "It is defendant's intent and objective, not the temporal proximity of his offenses, which determine whether [his conduct] is indivisible." (*Harrison, supra*, 48 Cal.3d at p. 335.) Where the defendant has only a single intent and objective and all her offenses were incidental to that single intent and objective, she may be punished only once. On the other hand, if the defendant harbored multiple criminal objectives, she may be punished for each statutory violation "even though the violations shared common acts or were parts of an otherwise indivisible course of conduct." (*Ibid.*) "[C]ases have sometimes found separate objectives when the objectives were either (1) consecutive even if similar or (2) different even if simultaneous. In those cases, multiple punishment was permitted. [Citation.] . . . [¶] Section 654 turns on the

defendant's objective in violating both provisions” (*People v. Britt* (2004) 32 Cal.4th 944, 952 (*Britt*), disapproved on another ground in *People v. Correa* (2012) 54 Cal.4th 331.)

“A trial court’s express or implied determination that two crimes were separate, involving separate objectives, must be upheld on appeal if supported by substantial evidence.” (*People v. Brents* (2012) 53 Cal.4th 599, 618; *People v. Coleman* (1989) 48 Cal.3d 112, 162.) If the court makes no express section 654 finding, a finding that the crimes were divisible and thus subject to multiple punishments is implicit in the judgment and must be upheld if supported by substantial evidence. (*People v. Lopez* (2011) 198 Cal.App.4th 698, 717.)

C. Substantial Evidence Shows Liddell Harbored Multiple Objectives

Liddell contends she only harbored one objective throughout the five days Wells was kept captive: to extract information from Wells about the robbery and shooting such that section 654 precluded the trial court from imposing separate punishment for counts 2 through 4. We disagree. Substantial evidence supports a finding that Liddell harbored multiple objectives in committing the crimes of false imprisonment, kidnapping, torture, and assault over the course of five days of escalating violence. (*Harrison, supra*, 48 Cal.3d at p. 335.)

In committing the crime of false imprisonment, it is undisputed that Liddell was concerned with gathering information from Wells regarding the robbery and shooting because “she didn’t know who to trust.” As a result, she lured Wells to the motel and falsely imprisoned her there by taking her phone, locking the doors, pulling the curtains, and directing Arnold to block the door. However, she also bound Wells and hit

her knees with a hammer as she interrogated her, demonstrating a secondary objective underlying the false imprisonment was to keep Wells from escaping while she was interrogated.

Liddell harbored a separate objective for the kidnapping, which was to hide Wells from others. (*Britt, supra*, 32 Cal.4th at pp. 951–952.) Liddell held this objective when she moved Wells from the motel room, which was situated above the motel’s office and to which housekeeping had access, to the West Boulevard apartment, which afforded them more privacy. During the kidnapping on Day 3, Liddell also sought to keep Wells from her brother when she ordered Wells to duck down in the seat as they approached her brother’s house.

Liddell’s objective changed again when she committed torture on Days 3 and 4 by using the cattle prod on Wells and punching her in the eye. The acts were meant to punish Wells for not giving her the answers she wanted. This was most evident when Liddell instructed Wells to call her mother and son to say goodbye. At this point, Liddell’s objective was no longer to determine whether Wells was involved in the robbery and shooting. Liddell’s increasing suspicions appeared to be confirmed after no one returned the calls she made on Wells’s phone, it did not appear anyone was looking for Wells, and Davis asked unusual questions during her call to Wells. Further, Wells testified Liddell appeared even angrier at the apartment than at the motel.

We do not agree that Liddell’s objective on Day 4, when she and her cohorts beat Wells unconscious, continued to be obtaining information. As the trial court noted, “they were going up and up and up the chain of violence and participants, they didn’t have too many steps to go before they [were] going to kill

her.” It defies logic that Liddell was trying to get answers out of Wells when she was beaten to the point of unconsciousness and near death.

Liddell harbored yet another objective when she committed the crime of assault by untying Wells and telling her to choose an opponent to fight. In doing so, Liddell sought to instigate others to beat or kill Wells. To this point, members of the group had taken turns beating, cutting, punching, kicking, and using a taser on Wells, who had managed to survive. As the trial court observed, however, there were not “too many steps to go before they [were] going to kill her.” The court reasonably could have concluded that Liddell had decided to kill Wells to cover up her crimes, but believed no individual person had the ability to do so because they had failed before this and no one had a gun. Indeed, after Wells was untied, swung at Liddell, and missed, she was immediately hit in the back of the head. After she fell to the ground, the entire group began to hit and kick her. She felt something like a hammer hit her. She also felt something hot cut across her back and legs, which she believed was a taser.

The police never recovered the gun that Wells saw at the motel, only a BB gun made to look like a real firearm. Without the means to shoot Wells, Liddell sought to instigate a group beating to kill her. That they failed may have simply been because the others did not share Liddell’s objective. Liddell’s conduct in untying Wells and challenging her to fight was distinct from her previous conduct of hurting Wells while she was bound; it follows that her objectives for those two types of conduct would be distinct.

These multiple objectives gave rise to multiple violations and multiple punishment. (*Britt, supra*, 32 Cal.4th at pp. 951–

952.) Thus, the trial court did not err in declining to apply section 654 to stay the sentences for counts 2 through 4. Having found no error, we need not address Liddell's argument that the trial court's failure to stay her sentences violated her constitutional rights.

III. Section 654 Did Not Preclude Separate Sentences for Lewis

Lewis likewise argues her sentence on count 3 for false imprisonment should have been stayed pursuant to section 654 because it was part of an indivisible course of conduct with the assault on count 4. She contends her sole intent was to harm Wells. Like the trial court, we do not find this argument compelling.

At sentencing, Lewis's counsel urged the trial court to "merge" counts 3 and 4 as to Lewis because it was a single course of conduct occurring over one evening. The trial court disagreed, finding the assault could reasonably be found to arise from Lewis's response to Liddell's challenge to "bust" Wells's eye while the false imprisonment count arose from a desire to restrain Wells, as demonstrated by the multiple restraints by force in which Lewis participated.

We rely on the same legal authorities discussed above to conclude substantial evidence supports a finding Lewis had separate objectives for each offense and thus, separate punishment was properly imposed. It is apparent that the objective underlying the false imprisonment was to prevent Wells from escaping; she was tied to a pole in the living room while Lewis was present. Lewis's objective in assaulting Wells was to inflict harm on Wells to prove herself to Liddell, who had asked if she could "bust" Wells's other eye and then goaded her to punch

Wells with more force, saying, “You can do better than that.” Substantial evidence supports a finding that Lewis held separate objectives for each offense, allowing for separate punishment. (*Harrison, supra*, 48 Cal.3d at p. 335.)

Alternatively, section 654 does not bar Lewis’s separate sentences for counts 3 and 4 because “a course of conduct divisible in time, although directed to one objective, may give rise to multiple violations and punishment.” (*People v. Beamon* (1973) 8 Cal.3d 625, 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.” (*People v. Gaio* (2000) 81 Cal.App.4th 919, 935; *People v. Kwok* (1998) 63 Cal.App.4th 1236, 1255.)

People v. Trotter (1992) 7 Cal.App.4th 363 (*Trotter*) is instructive. There, the defendant shot three times in rapid succession at a pursuing officer as he led police on a high-speed car chase. (*Id.* at pp. 366–367.) On appeal, he argued he should not have been sentenced consecutively in two of the three assaults, arguing they were part of a single course of conduct and were incidental to one objective. (*Id.* at p. 366.)

The *Trotter* court rejected this contention, reasoning:

“The purpose behind section 654 is ‘to insure that a defendant’s punishment will be commensurate with his culpability. [Citation.]’ [Citation.] Defendant’s conduct became more egregious with each successive shot. Each shot posed a separate and distinct risk to [the pursuing officer] and nearby freeway drivers. To find section 654 applicable to these facts would violate the very purpose for the statute’s existence. [¶]

Furthermore, this was not a case where only one volitional act gave rise to multiple offenses. Each shot required a separate trigger pull. All three assaults were volitional and calculated, and were separated by periods of time during which reflection was possible. None was spontaneous or uncontrollable. '[D]efendant should . . . not be rewarded where, instead of taking advantage of an opportunity to walk away from the victim, he voluntarily resumed his . . . assaultive behavior.' " (*Trotter*, *supra*, 7 Cal.App.4th at pp. 367–368, fn. omitted.)

As in *Trotter*, Lewis's conduct was not spontaneous or uncontrollable. When she returned to the apartment after her first visit with the children, Lewis aided and abetted the false imprisonment. She then accepted Liddell's challenge to "bust" Wells's right eye. The assault and the false imprisonment were separated in time by Cleveland punching and kicking Wells. This provided ample time for Lewis to reflect and renew any intent to harm Wells, if that was her sole intent. We agree with *Trotter* that Lewis should not be rewarded where, instead of taking advantage of an opportunity to walk away from the situation, she voluntarily participated in both offenses. (*Trotter*, *supra*, 7 Cal.App.4th at pp. 367–368.)

IV. Lewis Has Forfeited Her Argument That She Is Entitled to Mental Health Diversion

Lewis argues the matter must be remanded for the trial court to exercise its discretion to order her case diverted for treatment of her mental health disorders under section 1001.36. She asserts she is eligible for mental health diversion due to her "mild intellectual disability, major depressive disorder, generalized anxiety disorder and cannabis use disorder."

As a threshold matter, Lewis has forfeited the issue for failure to raise it below. (*People v. Saunders* (1993) 5 Cal.4th 580, 589–590.) Section 1001.36 came into effect on June 27, 2018. (§ 1001.36, added by Stats. 2018, ch. 34 (A.B.1810), § 24, eff. June 27, 2018.) A jury was empaneled on June 26, 2018. Section 1001.36, subdivision (b)(3), allows a prima facie showing of eligibility “[a]t any stage of the proceedings.” Section 1001.36, subdivision (c), further provides that diversion may occur “at any point in the judicial process from the point at which the accused is charged until adjudication[.]” Thus, although it is called “pretrial” diversion, there is no indication the Legislature intended for diversion to occur only before trial. Lewis had the opportunity to request mental health diversion during her trial, but failed to do so. She may not now argue she is eligible for diversion.

Even if the issue has not been forfeited, we conclude section 1001.36 is not retroactive. Lewis contends she should be considered for mental health diversion under section 1001.36 because her case is not yet final. She relies on *People v. Frahs* (2018) 27 Cal.App.5th 784 (*Frahs*), which held that section 1001.36 applies retroactively. On December 27, 2018, the Supreme Court granted review in *Frahs* (S252220) to address the question of retroactivity of Penal Code section 1001.36. Eight months later, the court in *People v. Craine* (2019) 35 Cal.App.5th 744 (*Craine*), rejected the reasoning in *Frahs* and held section 1001.36 does not apply retroactively, where, as here, a defendant has been tried and sentenced. (Accord, *People v. Torres* (2019) 39 Cal.App.5th 849, 852.) Another court noted that retroactivity is conceptually in conflict with several aspects of the statute’s explicit text, but nevertheless rejected the reasoning of *Craine*

and concluded that the statute should be applied retroactively. (*People v. Weaver* (2019) 36 Cal.App.5th 1103.) We believe *Craine* is better reasoned and express our agreement with the court's careful and correct analysis. Aside from that, we have nothing to add. We will follow *Craine* and reject Lewis's contention.

DISPOSITION

The matter is remanded with directions to the trial court to exercise its discretion to impose or strike the great bodily injury enhancement under section 12022.7, subdivision (a), as to counts 2 through 4 against Liddell and count 3 against Lewis. The judgments are otherwise affirmed.

BIGELOW, P. J.

We concur:

GRIMES, J.

WILEY, J.