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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

JOSE MANUEL ARREDONDO,

Defendant and Appellant.

D086347

(Super. Ct. No. FWV23003719)

APPEAL from a judgment of the Superior Court of San Bernardino County, Katrina West, Judge. Affirmed as modified.

Denise M. Rudasill, under appointment by the Court of Appeal, for Defendant and Appellant.

Rob Bonta, Attorney General, Lance E. Winters, Chief Assistant Attorney General, Charles C. Ragland, Assistant Attorney General, Christopher P. Beesley and Namita Patel, Deputy Attorneys General, for Plaintiff and Respondent.

A jury convicted Jose Manuel Arredondo of inflicting corporal injury upon Jane Doe, the parent of his child, resulting in a traumatic injury, in

violation of Penal Code section 273.5, subdivision (a);¹ simple assault, in violation of section 240; and violating a court order, in violation of section 166, subdivision (a)(4). Arredondo asserts there was insufficient evidence of a traumatic injury and, to the extent that we conclude that there was, the conviction for simple assault must be dismissed as a lesser included offense of inflicting corporal injury on a spouse or coparent. We conclude there was sufficient evidence that Arredondo inflicted a traumatic injury on Doe, strike the conviction for simple assault, and affirm the judgment as modified.

I. FACTUAL AND PROCEDURAL BACKGROUND

Doe and Arredondo were previously in a romantic relationship. They had two children together.

Between 2011 and 2021, Arredondo committed several acts of domestic violence against Doe. He was convicted on three separate counts of inflicting corporal injury upon the mother of his children resulting in a traumatic condition, and one count of making criminal threats; he suffered two probation violations; and he had one other case dismissed as part of a plea deal. Doe ended the relationship in the interim, sometime around 2017.

In 2021, Doe received a temporary restraining order, and, in 2022, Doe obtained a complete no-contact criminal protective order against Arredondo. Arredondo was to stay 100 yards away from Doe at all times.

Doe had sole custody of their two children. There were no custody exchanges, and Arredondo did not see his children unless they were visiting their grandmother.

The incident leading to the present appeal occurred in the early morning hours of October 28, 2023. Doe was asleep in her apartment when she woke suddenly and remembered that she had left some valuables in her

¹ Further unspecified statutory references are to the Penal Code.

car. Fearing her car would be broken into, Doe went to retrieve the items. She exited the apartment through the front door and locked it on her way out. She left the stairway and living room lights on. Doe returned after retrieving the items from the car, unlocked the door, and walked in to find Arredondo standing between the door and the stairs. Doe was startled as she had not invited Arredondo over and did not expect him to be there.

Doe asked Arredondo what he was doing there. Arredondo smiled, said Doe looked “sexy,” and, “it’s been too long.” Doe said, “what do you mean?” and Arredondo “started coming at [her].” He tried to hug her and she pushed him away, while asking, again, “what are you doing?” Arredondo grabbed Doe in a bear hug around her upper neck. Doe tried to push Arredondo away but he grabbed her harder, squeezing her neck and causing her to have trouble breathing. It “hurt so bad” that Doe believes she passed out for a moment, but then woke back up and started fighting Arredondo off.

At some point, Doe and Arredondo fell to the floor. Arredondo was on top of Doe and she could feel him in between her legs. He was still squeezing her around the neck and she felt like she was nodding out because she could not breathe. Arredondo was groping Doe and trying to push her legs apart. She felt an erection against her body. Doe managed to push Arredondo off and ran out the front door of the apartment. Later, she reviewed the footage from a doorbell camera that she had on the front door, and saw that Arredondo left after her. She provided the footage to the police, and it was played for the jury at trial.

After running out of the apartment, Doe went to her brother’s apartment in the same complex and told him what happened. He went looking for Arredondo but did not find him. Doe stayed at her brother’s

apartment that evening and their other brother came over the next morning. The two brothers convinced Doe to call the police.

Officer Albert Charco arrived at the apartment complex to speak with Doe at approximately 11:00 a.m. on October 28, 2023. He saw redness on her neck and a few scratches on the top portion of her torso. He tried to document the injuries through photographs, but he testified at trial that the redness did not show up as well in the photos as in person.

Officer Charco located and arrested Arredondo later that afternoon. During the transport to the detention center, Arredondo asked if the arrest had anything to do with him “chopping up his son’s bike last night at [Jane Doe’s] house.”²

The People charged Arredondo with: Count 1—assault with the intent to commit rape (§ 220, subd. (b)); count 2—injury upon his children’s mother resulting in a traumatic injury (§ 273.5, subd. (a)); count 3—assault by means of force likely to cause injury (§ 245, subd. (a)(4)); and count 4—disobeying a court order (§ 166, subd. (a)(4)).

The People dismissed count 3 after the evidence was presented at trial, before the matter was submitted to the jury. The jury found Arredondo guilty of counts 2 and 4, as charged. The jury found Arredondo not guilty of the charged count 1, but guilty of the lesser included offense of simple assault.

In a bifurcated bench trial, the trial court found the People had proven eight aggravating factors beyond a reasonable doubt, and that Arredondo had a strike prior. The court sentenced Arredondo to the upper term on count 2, doubled by the strike, for a total of eight years in prison, plus an additional

² The transcript of Officer Charco’s testimony says, “chopping up his son’s bike,” but elsewhere, the parties refer to Arredondo’s statement as indicating that he was “dropping off” the bike.

six months for count 4, to be served concurrently, and six months for the simple assault conviction in count 1, stayed pursuant to section 654.³

Arredondo filed a timely notice of appeal.

II. DISCUSSION

Arrendondo raises two issues on appeal. First, he asserts we must reverse the conviction on count 2 because there was insufficient evidence the injury resulted in a traumatic condition. Second, to the extent that we decline to dismiss count 2 on that basis, he asserts the conviction for simple assault in count 1 must be dismissed as a necessarily included offense of count 2.

A. Sufficiency of the Evidence Regarding Traumatic Condition

We first address Arredondo's contention that there was insufficient evidence Doe suffered a traumatic condition.

Section 273.5, subdivision (a) provides, "A person who willfully inflicts corporal injury resulting in a traumatic condition upon a victim described in subdivision (b) [including the mother or father of the offender's child] is guilty of a felony." "It is the prosecution's burden in a criminal case to prove every element of a crime beyond a reasonable doubt." (*People v. Cuevas* (1995) 12 Cal.4th 252, 260 (*Cuevas*).)

"To determine whether the prosecution has introduced sufficient evidence to meet this burden, courts apply the 'substantial evidence' test." (*Cuevas, supra*, 12 Cal.4th at p. 260.) "The standard is deferential: 'When a trial court's factual determination is attacked on the ground that there is no

³ We note that the abstract of judgment does not accurately reflect the trial court's oral pronouncement of judgment, as it does not include the sentences for counts 1 and 4. As discussed *post*, we exercise our inherent authority to amend the abstract to conform with the oral announcement.

substantial evidence to sustain it, the power of an appellate court *begins* and *ends* with the determination as to whether, *on the entire record*, there is substantial evidence, contradicted or uncontradicted, which will support the determination.’ ” (*People v. Superior Court (Jones)* (1998) 18 Cal.4th 667, 681.) “ ‘We do not reweigh evidence or reevaluate a witness’s credibility.’ ” (*People v. Houston* (2012) 54 Cal.4th 1186, 1215 (*Houston*).)

Section 273.5, subdivision (d) defines “ ‘traumatic condition’ ” as used in subdivision (a) as “a condition of the body, such as a wound, or external or internal injury, including, but not limited to, injury as a result of strangulation or suffocation, whether of a minor or serious nature, caused by a physical force.” It specifies further, “For purposes of this section, ‘strangulation’ and ‘suffocation’ include impeding the normal breathing or circulation of the blood of a person by applying pressure on the throat or neck.” (§ 273.5, subd. (d).)

“Prior to January 1, 2012, the statute provided: ‘As used in this section, “traumatic condition” means a condition of the body, such as a wound or external or internal injury, whether of a minor or serious nature, caused by a physical force.’ (Former § 273.5, subd. (c), as amended by Stats. 2007, ch. 582, § 1, p. 4894.)” (*People v. Reid* (2024) 105 Cal.App.5th 446, 456 (*Reid*).) The Legislature changed the definition to include strangulation and suffocation specifically because of a concern that such cases are often overlooked. (*Ibid.*) The Legislature noted, “ ‘ “In many cases, the lack of physical evidence caused the criminal justice system to treat “choking” cases as minor incidents, much like a slap to the face where only redness might appear. Today, based on the involvement of the medical profession, specialized training for police and prosecutors, and ongoing research,

strangulation has become a focus area for policy makers and professionals working to reduce intimate partner violence and sexual assault.” ’ ’ (*Ibid.*)

In addition, “California case law interpreting [the current version of] section 273.5 makes clear that even a ‘minor injury [is] sufficient to satisfy the statutory definition’ of a traumatic condition.” (*Reid, supra*, 104 Cal.App.5th at p. 457.) Accordingly, courts have found that “the alleged impeding of [a victim’s] ability to breathe normally, and/or the alleged possible impeding of the circulation of [the victim’s] blood to her brain, were the physical manifestations—traumatic conditions—resulting from [the defendant’s] infliction of corporal injury.” (*Id.* at p. 459.)

Even before the amendments related to strangulation and suffocation, courts recognized that the term “traumatic condition” encompasses “ ‘traumata of all kinds,’ ” including “internal injuries as well as external injuries” and “both serious and minor injury.” (*People v. Gutierrez* (1985) 171 Cal.App.3d 944, 952.) In passing section 273.5, “the Legislature has clothed persons of the opposite sex in intimate relationships with greater protection by requiring less harm to be inflicted before the offense is committed. Those special relationships form a rational distinction which has a substantial relation to the purpose of the statute.” (*Gutierrez*, at p. 952.)

Here, Doe testified that she “had a really bad headache, and [her] neck was hurting for, like, a week” after the attack. She explained further that Arredondo was holding her “really tight” on the back of her neck with his forearms, “like a bear hug.” It hurt and she “felt something pop back there.” She also had redness on her neck and soreness in her throat for about a week after the attack.

Doe testified further that when she and Arredondo were struggling on the floor, Arredondo was squeezing her so hard that she “kept on nodding out,

because [she] couldn't breathe." Counsel asked if that grab, when they were on the floor, was tighter than the first, and Doe stated that the first one was also "really, really tight" and "made [her] pass out."

Officer Charco testified that he saw the redness on Doe's neck, although it did not show up well on the photographs that he took, and also saw a few scratches on the top portion of Doe's torso. Doe's brother did not recall seeing any redness, but did recall Doe telling him that her neck hurt and that she couldn't breathe during the attack.

We conclude that the foregoing testimony is substantial evidence that Arredondo caused Doe to suffer a traumatic condition, particularly given the inclusion of language regarding strangulation or suffocation in the definition of "traumatic condition" in section 273.5, subdivision (d). The strangulation caused Doe to at least feel like she was losing consciousness, and she was left with red marks on her neck, a headache, and a sore throat for about a week following the attack. These were all physical manifestations of the strangulation. (See *Reid, supra*, 104 Cal.App.5th at p. 459.)

Arredondo relies on *People v. Abrego* (1993) 21 Cal.App.4th 133, to assert the "soreness" and "pop" Doe felt were insufficient to constitute a traumatic condition, but *Abrego* is distinguishable. (*Id.* at p. 138.) There, the victim "testified that when Abrego struck her, she was drunk, and she did not feel any pain. She further testified she had not been injured or bruised, and she did not seek medical treatment. However, she had told a police officer who responded to the scene that her face and head were sore and tender where Abrego had struck her. The officer did not notice any injuries." (*Id.* at p. 136.) In that context, the appellate court found there was no evidence of even a minor injury and differentiated the concept of "pain" from a "traumatic condition." (*Id.* at p. 138.)

Here, by contrast Doe did not state that she was not injured, Officer Charco noted redness, and Doe testified that the redness and her sore throat (an internal injury) persisted for a week after the attack. Moreover, *Abrego* was decided in 1993, before the Legislature amended section 273.5 to address strangulation and suffocation. (See *Reid, supra*, 104 Cal.App.5th at p. 456.)

Arredondo also asserts that the redness did not show up on the photographs or a video from Officer Charco's body worn camera, but Officer Charco explained that he could see the redness better in person. Regardless, the jury was entitled to weigh any conflicting evidence at trial, and we cannot and will not reweigh that same evidence on appeal. (See *Houston, supra*, 54 Cal.4th at p. 1215.) For the same reasons, we likewise decline Arredondo's invitation to make a credibility determination as to the veracity of Doe's testimony or any motivation she may have had to lie about her injuries. (See *ibid.*) These issues were squarely before the jury.

Based on the foregoing, we conclude there was sufficient evidence Doe suffered a traumatic condition and decline to dismiss the conviction.

B. The Simple Assault Conviction

As to count 1, instead of convicting Arredondo with the charged offense of assault with intent to commit rape, the jury found Arredondo guilty of the lesser included offense of simple assault. The trial court imposed an additional term of six months for that conviction but stayed it under section 654. Arredondo asserts the trial court should have instead struck the simple assault conviction because simple assault is a necessarily included offense of inflicting corporal injury upon the mother or father of the offender's child resulting in a traumatic condition.

1. Relevant Legal Principles

A defendant may be charged with—and in some cases convicted of—multiple crimes arising out of the same conduct but cannot receive multiple punishments for the same act or omission. (§§ 654, 954; *People v. Reed* (2006) 38 Cal.4th 1224, 1226–1227 (*Reed*).) “When section 954 permits multiple conviction[s], but section 654 prohibits multiple punishment[s], the trial court must stay execution of sentence on the convictions for which multiple punishment is prohibited.” (*Reed*, at p. 1227.)

However, under a judicially created exception to the general rule, a defendant may *not* be convicted of multiple offenses for the same act where one of the offenses is a necessarily included offense of the other; rather, the trial court must vacate one of two convictions before sentencing. (*Reed*, *supra*, 38 Cal.4th at p. 1227; *People v. Ramirez* (2009) 45 Cal.4th 980, 984; *People v. Vazquez* (2021) 63 Cal.App.5th 107, 114 (*Vazquez*).) “‘[I]f a crime cannot be committed without also necessarily committing a lesser offense, the latter is a lesser included offense within the former.’” (*Reed*, at p. 1227.)

The application of these rules also depends on the facts of the case at hand. For example, in *People v. Johnson* (2007) 150 Cal.App.4th 1467 (*Johnson*), the court explained that “the crime described by section 273.5 is complete upon the willful and direct application of physical force upon the victim, resulting in a wound or injury. It follows that where multiple applications of physical force result in separate injuries, the perpetrator has completed multiple violations of section 273.5.” (*Johnson*, at p. 1477.) Thus, it follows that even if simple assault is, by definition, a necessarily included offense of inflicting corporal injury upon a fellow parent under section 273.5, the two convictions could stand if based on two separate acts of physical force upon the victim.

This is what the People assert here. The People do not dispute that simple assault is generally a necessarily included offense of section 273.5 but assert that the simple assault conviction in count 1 was based on a separate act than the corporal injury conviction in count 2. In support, they point to the prosecutor's closing argument and assert that she carefully distinguished two separate grabs when discussing the two charged offenses. As discussed below, we are not persuaded.

Whether simple assault is a necessarily included offense of inflicting corporal injury is one of law that we would ordinarily review de novo, but where, as here, the analysis requires examination of the evidence regarding each count, "we review the record in the light most favorable to the judgment to determine whether it discloses substantial evidence—that is, evidence which is reasonable, credible, and of solid value—such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt of the [two] crimes he challenges here." (*Johnson, supra*, 150 Cal.App.4th at p. 1477.)

2. The Prosecutor's Closing Argument

When discussing the elements of the crime charged in count 1, the prosecutor argued as follows:

"The first grab almost felt friendly, right? He said something to her. It was the effect of, 'You look sexy. It's been too long.' So he goes and he tries to almost hug her. She says that the first grab is around her shoulders and it almost appears friendly, like he's trying to hug her and bring her close. She says she pushes him away. **And then that's when it became more violent. And he starts to grab now around her neck, okay? And then she says she pushes him away again.**

"She talks about then he grabs her neck again a second time. That second time is now the part that I want you to focus on. Everything from that point on to then what leads up to what happened after that. **He grabs her and they**

fall to the floor, okay? So from that point. **So the act that we're referring to as to Count 1 is that second grab after she's initially pushed him away. He grabs her again around her neck.** She says she can feel him, and she feels his forearms towards the back of her neck. That's what she described, around the sides of her neck and the back. So the defendant did an act that that act being the grabbing of her neck, okay? [¶] . . . [¶]

"We move on to Element 4. When he acted, he had the present ability to apply force to a person. Remember, no one needs to have gotten hurt. But Jane Doe did talk about how she got hurt, right? She talked about when the defendant grabbed and pulled tighter she said she heard a pop. **She said she heard a pop, and she also said that she had trouble breathing. She couldn't breathe. She said she lost consciousness and that her neck hurt for about a week after.**" (Boldface added.)

After finishing the discussion of count 1, the prosecutor turned to count 2 and argued further:

"Count 1 was talking about the second time he strangled her, the second time he wrapped his arms around her neck. Let's move now to that first time, okay? You can kind of parse it out in your mind. So we have the second time he grabbed her. Now, we're talking about the first time.

"When he first walks in, he grabs her. First on the—around the shoulders and then moving up towards her neck. She says he squeezes, and she has difficulty breathing. So he inflicted physical injury. That physical injury would be her difficulty and inability to breathe. The squeezing around her neck. So that element has been met.

"The injury inflicted by the defendant resulted in a traumatic condition. Again, we have a definition. What does traumatic condition mean? Traumatic condition is a wound or bodily injury, whether minor or serious, caused by the direct application of physical force. So can be minor or serious. Just that it is a wound or some kind of bodily

injury. **Jane Doe talks about how she had redness to her neck. She had soreness. She had soreness to her throat and that that condition lasted a week.**

“You had Officer Charco come and he testified that he was able to see some redness. He says that the photo doesn’t really show what he saw in person. And even if it’s difficult to see, again, traumatic condition is minor or serious, does not need to be something that you can physically see in order to find that a traumatic condition has been met. So for those reasons, an injury was inflicted, it did cause traumatic—it did result in a traumatic condition, because of what Jane Doe said, **because of the redness that Officer Charco saw, and that the soreness that she felt and the pop. She mentioned the pop—right?—in her neck?**” (Boldface added.)

The jury instructions did not differentiate between the two separate acts for the two separate counts. The instructions set forth the elements of each crime and informed the jury, “Each of the acts charged in this case is a separate crime. You must consider each count separately and return a verdict for each one.” Although the prosecutor talked about the elements of the two crimes by referencing the “first” and “second” time Arredondo grabbed Doe around the neck, neither the prosecutor nor the court instructed the jury that they could not consider the same testimony or evidence when deliberating as to each of the two separate counts.

To the contrary, the prosecutor referenced the same injuries while discussing both counts, and thus both times that Arredondo grabbed Doe. In both instances, the prosecutor discussed Arredondo squeezing Doe tightly, Doe’s inability to breathe, the soreness Doe felt as a result, and the “pop.” Even more specifically, when discussing the “traumatic condition” element of count 2, the prosecutor referenced the redness, the soreness, and the pop, without making any attempt to tie those symptoms to a specific grab, nor was

there any evidence in the record suggesting the injuries were the result of the first grab as opposed to the second. Indeed, the prosecutor initially described the “first” grab as “friendly” and noted the “second” was more “violent.” If anything, this would suggest to the jury the second grab caused the injuries.

When Doe testified, she said both grabs hurt and caused her to have trouble breathing. She did not provide any testimony indicating that a specific injury or condition occurred during or because of one grab versus the other. We have concluded, for the reasons set forth *ante*, that there was sufficient evidence to support the verdict on count 2, including the element of traumatic injury, but, based on that same evidence, we must also conclude the People did not prove a separate act of assault, outside that which caused the traumatic injury to Doe’s neck and throat.

In *Johnson*, the victim testified that the defendant “punched her in the nose, eyes, and mouth,” “choked her and held her by her throat against the wall,” “struck her on her neck, her arm, her lower back, and her leg,” and “stabbed her in the left arm.” (*Johnson, supra*, 150 Cal.App.4th at p. 1472.) These were all separate incidents of assault with separate traumatic injuries. (*Ibid.* [“From this evidence the jury could have concluded that defendant completed one violation of section 273.5 when he beat Doe about the head and face, blackening her eyes and splitting her lip; another when he held her by the throat and continued to strike her and restrain her such that she suffered bruises about her back and neck; and another when he injured her upper arm, drawing blood and leaving a visible scar.”]; see also *People v. Kopp* (2019) 38 Cal.App.5th 47, 63 [separate counts supported by separate acts of cutting with a knife versus punches and kicks], review granted on an unrelated issue Nov. 13, 2019, S257844.) To the contrary, here, while Doe did testify that there were at least two “grabs” during the altercation, both

were similar in nature, and there was no evidence suggesting which caused the traumatic condition supporting the conviction in count 2. It is at least conceivable that the traumatic conditions resulted from a combination of both grabs. Thus, although the general legal principles are relevant, the present case is readily distinguishable from *Johnson* and *Kopp*.

For these reasons, and given the narrow circumstances established by the evidence presented in this specific case, we conclude the separate conviction for simple assault must be struck.

C. The Abstract Must Be Amended

Finally, although the parties do not raise the issue, we note that the abstract of judgment is not consistent with the oral pronouncement of judgment. The trial court sentenced Arredondo to eight years on count 2, and two additional terms of six months each on counts 1 and 4. The minute order from the sentencing hearing matches the oral pronouncement, but the abstract of judgment only lists the primary sentence of eight years on count 2. Because we have struck the conviction on count 1, there is no need to address that discrepancy. However, we exercise our authority to modify the abstract of judgment to reflect the oral pronouncement of six months on count 4, to run concurrently to the eight-year sentence on count 2. (See *People v. Alford* (2010) 180 Cal.App.4th 1463, 1466, 1473 [exercising authority to modify judgment, impose sentence, and stay execution of sentence]; *People v. Felix* (2009) 172 Cal.App.4th 1618, 1631 [correcting abstract to match oral pronouncement].)

III. DISPOSITION

The conviction for simple assault in count 1 is struck. The matter is remanded to the trial court with instruction to amend the abstract of

judgment to include the six-month concurrent sentence on count 4. The judgment is otherwise affirmed as modified.

KELETY, J.

WE CONCUR:

McCONNELL, P. J.

RUBIN, J.