

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
THIRD APPELLATE DISTRICT  
(Yolo)

----

THE PEOPLE,

Plaintiff and Respondent,

v.

THEODORE ROLANDO WOOTEN,

Defendant and Appellant.

C067180

(Super. Ct. No. 102688)

APPEAL from a judgment of the Superior Court of Yolo County, Stephen L. Mock, Judge. Affirmed.

Paul V. Carroll, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette and Michael P. Farrell, Assistant Attorneys General, Julie A. Hokans, Daniel B. Bernstein and Catherine Chatman, Deputy Attorneys General, for Plaintiff and Respondent.

In *People v. Ahmed* (2011) 53 Cal.4th 156 (*Ahmed*), the California Supreme Court explained how to determine whether any of multiple sentence enhancements for a single crime must be stayed. *Ahmed* thus addressed the question of whether Penal Code

section 654<sup>1</sup> prohibits imposition of more than one enhancement for the same underlying criminal act. (*Ahmed*, at p. 162.) In this case, we address a question left unanswered by the Supreme Court in *Ahmed* -- whether section 654 applies to bar imposition of the same type of sentence enhancement offenses arising out of separate criminal acts.

Defendant Theodore Rolando Wooten seeks to avail himself of section 654 by arguing that the sentence enhancements for great bodily injury (§§ 12022.7, subd. (a), & 12022.8) imposed for his attempted murder (§§ 664, 187) and his forcible oral copulation (§ 288a, subd. (c)(2)) of the same victim must be stayed under section 654 and our high court's guidance in *Ahmed, supra*, 53 Cal.4th 156. Defendant also requests that the abstract of judgment be amended to more accurately reflect the two consecutive sentences for the two counts of kidnapping for rape.

We conclude that neither section 654 nor *Ahmed* applies to stay sentence enhancements imposed for offenses arising out of separate criminal acts. We reject defendant's contention that he engaged in a single, indivisible attack on the victim. Thus, we affirm the trial court's imposition of separate sentence enhancements for great bodily injury inflicted in the commission of attempted murder and forcible oral copulation. We also conclude that the abstract of judgment should be amended to reflect more clearly the sentences imposed by the trial court. In all other respects, the judgment is affirmed.

---

<sup>1</sup> Undesignated statutory references are to the Penal Code.

## BACKGROUND

### *Trial*

Evidence introduced at trial showed that defendant viciously attacked victims M.S. and H.D. on separate occasions.

### *Attack on M.S.*

In the early morning of May 1, 2010, defendant knocked on the doors of several rooms at the Town House Motel in West Sacramento. M.S. saw defendant walking past her window at around 6:30 a.m. Defendant stopped, pounded on her window, and said something.

M.S. opened the door to tell defendant to leave, but defendant forced his way inside. Defendant locked the door, began choking M.S., and told her to undress. M.S. disrobed and defendant forced her into the bathroom, dragging and hitting her on the way.

Once inside the bathroom, defendant bent M.S. over and tried to have sex with her. He got angry after failing to penetrate her. Defendant then hit M.S. a couple of times and ordered her to perform oral sex on him, which she did.

M.S. tried to escape by running from the bathroom. Defendant caught her, punched her repeatedly, and then slammed her into a wooden bench. In the ensuing struggle, M.S. tried to stab defendant in the back with a pen and a spoon, while defendant chewed on M.S.'s ears and right nipple. At one point, M.S. bit down on defendant's finger so hard that two of her bottom front teeth fell out. Defendant positioned himself over M.S. and kicked M.S. in the head at least eight times, causing

her head to cut open. M.S., who was bleeding by this time, screamed for help.

Other residents heard screaming and someone called for help. M.S.'s next door neighbor, Bertrand Souvera, went to M.S.'s window, where he saw a black man pinning a white woman on the floor and raising his free hand. Souvera kicked in the front door and asked the man to get off the woman. The man then ran out of the room.

M.S. called 911 and told the operator she had been attacked, was bleeding very badly, and needed an ambulance. An ambulance arrived at 6:45 a.m. The emergency medical technician saw M.S. sitting on her bed naked, and "a lot of blood everywhere." M.S. told emergency personnel that a man beat her after unsuccessfully trying to have sex with her. She later identified defendant as her assailant in a photographic lineup.

M.S. sustained a full thickness scalp laceration extending from her eyebrows to the back of her head. The bleeding from the scalp wound threatened her life. The laceration involved every layer of skin, so that the scalp was separated from the skull and could be lifted off. The laceration also injured the muscles of her eyes and eyebrows, potentially affecting her ability to make facial expressions.

M.S. also sustained multiple lacerations to her ears and face, as well as two broken teeth. Swelling and redness on her neck was consistent with choking, a laceration on her right nipple was consistent with having been bitten, and bruises on her left breast were consistent with blunt force trauma. Her

wounds were so extensive that they could not be sutured under local anesthetic. M.S. still suffered scarring and nerve damage at the time of the trial.

The crime scene investigator found "a tremendous amount of blood" in the room, concentrated in the southeast corner. DNA testing on blood from a pen in the room found a mixture of M.S.'s and defendant's DNA. M.S.'s blood was on defendant's shoe when he was arrested.

*Attack on H.D.*

On May 27, 2010, 21-year-old H.D. went to a birthday party in West Sacramento. There was much drinking at the party. She had planned for her boyfriend to pick her up at a nearby Valero service station on Sacramento Avenue.

H.D. left the party at 2:30 a.m. and began walking to the Valero station. On her way to the station, she met defendant, who came from an apartment complex and began talking to her. He seemed friendly, and told H.D. that he needed to go to the Valero station to get a lighter.

Defendant told H.D. he wanted to walk with her. H.D. became uncomfortable when defendant offered to show her a short cut and kept trying to guide her towards dark roads. As H.D. approached the Valero station, her boyfriend called and told her that he was at a different Valero station. When defendant entered the station, H.D. ran off towards the other Valero station.

Defendant chased H.D. and grabbed her by the hair, eventually forcing her behind a restaurant on Sacramento Avenue.

H.D. screamed and yelled; defendant got to a corner behind the building and threw her to the ground. He pinned H.D. with his forearm on her neck and removed her underwear with the other hand.

Carrie Repass, a resident of a nearby apartment, heard an argument in the restaurant's parking lot. A man was telling a woman to go in one direction, while a woman insisted she did not want to go that way. Repass left the window for awhile; when she returned, she saw a man grabbing a woman who had her face shoved against a chain link fence. Repass then called the police. She heard the woman keep saying, "No," and saw the man pull clothing off the woman as she tried to kick him off her.

Shortly after 3:00 a.m., Sacramento police found defendant lying on top of H.D. while holding her in a headlock. H.D.'s underwear was on the ground and she was crying.

Defendant told police he did not rape H.D., and said she sat on his lap just before the officers arrived.

#### *Defense Evidence*

Defendant testified that he did not force M.S. to have sex with him, and did not try to force H.D. to have sex with him. According to defendant, M.S. asked to buy \$40 of methamphetamine from him. She invited defendant into her room and they discussed getting drugs. M.S. initiated oral sex with defendant, but she got mad over the drugs and started to fight. Defendant struck back at her in self-defense.

Defendant maintained that H.D. flirted with him and called him cute when they met outside his apartment complex. H.D.

kissed defendant and asked him to walk her to the Valero station. She followed defendant behind the restaurant, sat on his lap, and kissed him. According to defendant, when H.D. said, "No. Stop." she was refusing to go to the Valero station.

*Judgment and Sentencing*

Trial culminated in the jury convicting defendant of the following offenses:

Count 1 - attempted rape (§§ 664, 261, subd. (a)(2));

Counts 2 and 4 - two counts of kidnapping to commit rape (§ 209, subd. (b)(1));

Count 3 - forcible oral copulation with kidnapping, force or fear, burglary, and great bodily injury enhancements (§§ 288a, subd. (c)(2), 12022.8, 667.61, subds. (a), (d)(2), (d)(4), (e)(1)-(3));

Count 5 - attempted rape with a great bodily injury enhancement (§§ 664, 261 subd. (a)(2), 12022.8);

Count 6 - first degree burglary of an inhabited dwelling with a great bodily injury enhancement (§§ 459, 667.5, subd. (c)(21), 12022.7, subd. (a));

Count 7 - mayhem (§ 203); and

Count 8 - attempted murder with a great bodily injury enhancement (§§ 664, 187, 12022.7, subd. (a)).

The trial court sentenced defendant to an indeterminate term of 39 years to life in prison in addition to a determinate term of 17 years and 8 months. As pertinent to this appeal, the trial court imposed a great bodily injury enhancement pursuant to section 12022.8 on the forcible oral copulation offense in

count 3, and a great bodily injury enhancement pursuant to section 12022.7, subdivision (a), on the attempted murder offense in count 8.

## **DISCUSSION**

### **I**

#### *Sentence Enhancements for Great Bodily Injury on M.S.*

Defendant contends that the great bodily injury enhancements imposed on counts 3 and 8 arise out of a single indivisible course of conduct, i.e., a continuous assault against M.S. Thus, he urges us to apply section 654 to stay the enhancement imposed under section 12022.7 for count 8. After the completion of briefing in this case, the California Supreme Court issued its decision in *Ahmed*, *supra*, 53 Cal.4th 156. Accordingly, we requested and received supplemental letter briefs from the parties regarding the applicability of *Ahmed* to this case. Having considered the parties' arguments on this point, we conclude that neither section 654 nor *Ahmed* applies to stay the challenged great bodily injury enhancement.

### **A.**

#### *Section 654 and Sentence Enhancements*

Section 654 precludes multiple punishments for a single criminal act by providing that "[a]n act or omission that is punishable in different ways by different provisions of law shall be punished under the provision that provides for the longest potential term of imprisonment, but in no case shall the act or omission be punished under more than one provision." (§ 654, subd. (a).)



Although it has long been settled that section 654 bars multiple punishments for the same substantive offense (see *People v. Correa* (2012) 54 Cal.4th 331, 341), the California Supreme Court only recently resolved the question of whether section 654 also applies to sentence enhancements. (*Ahmed, supra*, 53 Cal.4th at p. 162.) The *Ahmed* court concluded that section 654 may apply to sentence enhancements arising from the circumstances of the crime and not imposed based on the status of the offender. (*Ahmed* at p. 161.) As our Supreme Court noted, sometimes separate enhancements apply to different aspects of the same substantive offense. (*Id.* at p. 163.) Nonetheless, the high court noted that considerations of whether section 654 requires an enhancement to be stayed will generally be unnecessary because the sentence enhancement statutes themselves will more often indicate whether multiple punishments may be imposed. Thus, “[o]nly if the specific statutes do not provide the answer should the court turn to section 654.” (*Ahmed* at pp. 159-160.)

*Ahmed* involved a defendant who shot his girlfriend in the stomach with a pistol and was convicted of assault with a firearm (§ 245, subd. (a)(2)) with enhancements for personal use of a firearm (§ 12022.5, subd. (a)) and personal infliction of great bodily injury (§ 12022.7, subd. (e)). (*Ahmed, supra*, 53 Cal.4th at pp. 160-161.) The trial court sentenced defendant to consecutive terms on both enhancements, but the Court of Appeal reversed on grounds that section 654 barred imposing both enhancements. (*Ahmed* at p. 161.) Thus, the threshold question

before the Supreme Court was "how, if at all, section 654 applies to whether a court may impose multiple enhancements *for a single crime.*" (*Ahmed, supra*, 53 Cal.4th at pp. 160-161, italics added.)

The *Ahmed* court held that, in instances of multiple enhancements arising out of the same substantive offense, courts should first determine whether the applicable enhancement statutes address the permissibility of multiple punishments. (*Ahmed, supra*, 53 Cal.4th at p. 163.) Since "[e]nhancements are 'provisions of law' under which an 'act or omission' is 'punishable,'" the Supreme Court held that section 654 applies "to enhancements when the specific statutes do not provide the answer." (*Ahmed, supra*, 53 Cal.4th at p. 164.)

In articulating this approach, the *Ahmed* court recognized that enhancements differ from substantive crimes. Specifically, "[p]rovisions describing substantive crimes . . . generally define criminal acts. But enhancement provisions do not define criminal acts; rather, they increase the punishment for those acts. They focus on aspects of the criminal act that are not always present and that warrant additional punishment." (*Ahmed, supra*, 53 Cal.4th at p. 163.) When applied to a single substantive offense, section 654 "bars multiple punishments for the same aspect of a criminal act." (*Ahmed*, at p. 165.) In so holding, *Ahmed* did not address the imposition of multiple sentence enhancements for separate substantive offenses.

In *People v. Akins* (1997) 56 Cal.App.4th 331, the court observed that "nearly all of the cases that have applied section

654 to limit enhancements have done so in the context of a *single act committed against a single victim.*" (*Id.* at p. 338, italics added.) Thus, "[t]he 'cases which do apply . . . section 654 to enhancements have limited the number of enhancements applied to a single conviction, when there was a single act committed against a single victim.' [Citations.]" (*People v. Arndt* (1999) 76 Cal.App.4th 387, 396.) This rule reflects the language of section 654, which speaks in terms of "[a]n act or omission . . . ." In short, section 654 applies to situations in which several offenses are committed during a course of conduct deemed to be indivisible. (*People v. Beamon* (1973) 8 Cal.3d 625, 639.)

When the criminal acts forming the basis for convictions of multiple substantive offenses are divisible -- i.e., reflecting separate intents, objectives, or events -- then section 654 has been held inapplicable. (*People v. Britt* (2004) 32 Cal.4th 944, 951-952 (*Britt*).) Thus, it follows that if section 654 does not bar punishment for two crimes, then it cannot bar punishment for the same enhancements attached to those separate substantive offenses. This is true even if the same *type* of sentence enhancement is applied to the underlying offenses.

A sentence enhancement relates to an aspect of the substantive offense to which it attaches, not to other similar enhancements for separate criminal acts. (See *Ahmed, supra*, 53 Cal.4th at p. 163.) Just as the use of a single gun against multiple victims admits separate sentences for an assault against each individual, so too separate enhancements -- even

under the same statute -- may be imposed on each conviction. (*Britt, supra*, 32 Cal.4th at p. 952 [“[s]ection 654 turns on the defendant’s objective in violating both provisions, not the Legislature’s purpose in enacting them”]; see also, e.g., *People v. Hendrix* (1997) 16 Cal.4th 508, 511.) Conversely, a string of offenses against a single victim may yield multiple convictions of substantive offenses when each is committed for a different purpose. (See, e.g., *People v. Castro* (1994) 27 Cal.App.4th 578, 584-585 [holding that “section 654 does not preclude separate punishment for multiple sex offenses which, although closely connected in time and part of the same criminal venture [against a single victim], are separate and distinct, and which are not committed as a means of committing any other sex offense, do not facilitate commission of another sex offense, and are not incidental to the commission of another sex offense”].) Thus, the same type of enhancement may be imposed for each substantive offense committed with differing intent or for a different purpose. So long as the conduct giving rise to the convictions of separate substantive offenses is divisible or arises from separate criminal acts, nothing in section 654 or *Ahmed, supra*, 53 Cal.4th 156 requires the staying of the attached enhancements.

Defendant argues that section 654 can bar multiple enhancements even when attached to substantive offenses that may be punished separately. In so arguing, he relies on a case cited with approval by the *Ahmed* court, namely *People v. Reeves* (2001) 91 Cal.App.4th 14 (*Reeves*). (See *Ahmed, supra*,

53 Cal.4th at p. 164.) In *Reeves*, the defendant was convicted of burglary and "assault with great bodily injury force" along with a great bodily injury enhancement (§ 12022.7) for both crimes. (*Reeves*, at pp. 54-55.) The Court of Appeal held that even though section 654 did not bar separate punishment for the underlying offenses, it barred imposing multiple great bodily injury enhancements arising out of a single indivisible assault against a single victim. (*Reeves*, at pp. 56-57.) Defendant claims other cases are in accord. (See *People v. Alvarez* (1992) 9 Cal.App.4th 121, 127 (*Alvarez*); *People v. Moringlane* (1982) 127 Cal.App.3d 811, 817 (*Moringlane*); *People v. Culton* (1979) 92 Cal.App.3d 113, 117 (*Culton*).)

The *Ahmed* court included *Reeves* in a string citation only for the proposition that section 654 applies to sentence enhancements. (*Ahmed, supra*, 53 Cal.4th at p. 163 [cited to support the observation that "§ 654 does apply to enhancements"].) *Reeves, supra*, 91 Cal.App.4th 14 did apply section 654 to enhancements attached to separate substantive offenses against a single victim. However, *Reeves* did so because prior cases had reached the same result and it found no cases to the contrary. (*Reeves, supra*, 91 Cal.App.4th at pp. 56-57, citing *Alvarez, supra*, 9 Cal.App.4th at p. 127; *Moringlane, supra*, 127 Cal.App.3d at p. 127; *Culton, supra*, 92 Cal.App.3d at p. 127.) The prior cases cited by *Reeves*, however, cannot support a rule that separately punishable offenses may nonetheless carry sentence enhancements that may be stayed under section 654.

*Alvarez* held that section 654 did not prevent "multiple sentence enhancements for infliction of great bodily injury on multiple victims on a single occasion with a single objective." (*Alvarez, supra*, 9 Cal.App.4th at p. 128.) *Moringlane* and *Culton* limited imposition of more than one gun enhancement for a single gun use against multiple victims. (See *Moringlane, supra*, 127 Cal.App.3d at p. 819; *Culton, supra*, 92 Cal.App.3d at p. 117.) Both cases based their holdings on *In re Culbreth* (1976) 17 Cal.3d 330 and *People v. Miller* (1977) 18 Cal.3d 873. (*Moringlane* at p. 819; *Culton* at p. 117.) *Culbreth* and *Miller* have been expressly disapproved. (See *People v. King* (1993) 5 Cal.4th 59, 79; *People v. Oates* (2004) 32 Cal.4th 1048, 1067-1068, fn. 8.) In light of the guidance provided by the high court in *Ahmed, King, and Oates*, we conclude that *Reeves* and the cases on which it relies provide no valid support for the proposition that multiple enhancements may not be imposed even when the underlying substantive offenses do not fall within the scope of section 654.

Accordingly, we proceed to consider whether defendant's convictions for attempted murder and forcible oral copulation arose from an indivisible course of conduct.

**B.**

*Attempted Murder and Forcible Oral Copulation of M.S.*

We note defendant does not assert that section 654 bars punishment for the attempted murder and forcible oral copulation convictions themselves. Section 654 does not bar multiple punishments for a single course of criminal conduct when the

defendant entertains multiple criminal objectives. (*People v. Centers* (1999) 73 Cal.App.4th 84, 98.) Instead, defendant challenges only the imposition of separate enhancements for the great bodily injury inflicted on M.S.

Here, the record shows that defendant had separate criminal intents for the attempted murder and the forcible oral copulation of M.S. Although defendant characterizes his offenses as arising out of an indivisible attack on M.S. that spanned his entrance into her motel room to the time he left her lying on the floor with life-threatening injuries, there is simply no conflating his intent to kill and his intent to force the victim to orally copulate him. Defendant burst into M.S.'s room prepared to use force to perpetrate sex crimes against the victim. As soon as he was inside her motel room, he began choking her and telling her to remove her clothes. The victim complied with his instructions to go into the bathroom where he told her to bend over because "he wanted to have sex with her . . . ." After defendant failed to make vaginal penetration, he became angry and forced her to orally copulate him.

When M.S. pushed defendant away and tried to run for the door, his intent changed. As the victim testified, defendant's violence in the bathroom had been "sexual, more sexual." Rather than committing further sexual offenses against M.S. after she fled the bathroom, defendant focused only on beating her. Defendant's assault became punishment for her resistance that he answered by inflicting life-threatening injuries on her.

While defendant may have engaged in sustained violence against the victim, his purposes shifted from sexual gratification to sadistic infliction of pain after he was unable to make vaginal penetration and M.S. refused to further orally copulate him. Because section 654 does not bar punishment for both substantive crimes, defendant is not entitled to a stay of the great bodily injury enhancement imposed for the attempted murder.

## II

### *Abstract of Judgment*

The trial court sentenced defendant to consecutive terms of seven years to life for the two counts of kidnapping for rape. (§ 209, subd. (b)(1).) The abstract of judgment indicates two consecutive terms of seven years to life were imposed for the offenses. On appeal, defendant requests an amendment of the abstract to show two indeterminate life terms without any minimum term.

The punishment for violating section 209, subdivision (b)(1), is "imprisonment in the state prison for life with the possibility of parole." Section 3046 requires a defendant sentenced to life with the possibility of parole to serve "at least seven calendar years" before being eligible for parole. (§ 3046, subd. (a)(1).)

Defendant argues that the sentence described in the abstract "may not be technically incorrect" but might cause confusion since the Department of Corrections and Rehabilitation may interpret the sentence as including the minimum seven-year



term described by section 3046 as well as an additional seven-year term.

The Attorney General suggests amending the abstract to show that the seven-year-to-life terms were imposed pursuant to section 3046. The suggestion is well taken. Although the sentence as stated in the abstract is technically correct, in order to avoid confusion, we order the abstract amended to state that the sentence was imposed pursuant to section 3046. (*People v. Gonzalez* (2010) 180 Cal.App.4th 1420, 1428.)

DISPOSITION

The judgment is affirmed. The trial court is directed to prepare an amended abstract of judgment showing the consecutive seven-year-to-life terms in counts 2 and 4 were imposed pursuant to Penal Code section 3046. The court shall forward a certified copy of the amended abstract to the Department of Corrections and Rehabilitation.

\_\_\_\_\_  
HOCH, J.

We concur:

\_\_\_\_\_  
HULL, Acting P. J.

\_\_\_\_\_  
ROBIE, J.