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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

CHRISTOPHER ALVIN CASH,

Defendant and Appellant.

B268019

(Los Angeles County
Super. Ct. No. BA324699)

APPEAL from a judgment of the Superior Court of Los Angeles County, Craig Richman, Judge. Affirmed as modified.

David M. Thompson, under appointment by the Court of Appeal, for Defendant and Appellant.

Kathleen A. Kenealy, Acting Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Steven D. Matthews and Robert C. Schneider, Deputy Attorney Generals, for Plaintiff and Respondent.

Defendant Christopher Cash entered the apartment of his girlfriend's best friend, Tiffany M., without consent. Over the next few hours, defendant tied up, raped, penetrated, suffocated, and stabbed Tiffany. He tore up photographs of Tiffany and her boyfriend and stole a videotape of Tiffany and her boyfriend from the apartment. Tiffany needed surgery and spent more than a week in the hospital after the attack.

After a bench trial, defendant was convicted of three counts of forcible sexual penetration with a foreign object (Pen. Code, § 289, subd. (a)(1))¹ and one count each of forcible rape (§ 261, subd. (a)(2)), torture (§ 206), burglary (§ 459), and robbery (§ 211). The court also found true several special allegations, including allegations of torture for each of the sexual offenses. (§ 667.61, subds. (a) & (d).)

On appeal, defendant contends only that the torture conviction and true findings on the torture special allegations were not supported by substantial evidence. We disagree and affirm, though we direct the trial court to modify the abstract of judgment to reflect the correct sentences on counts 4 and 8.

PROCEDURAL HISTORY

An amended information filed by the Los Angeles County District Attorney charged defendant with attempted murder (§§ 187, subd. (a) & 664), forcible rape (§ 261, subd. (a)(2)), forcible sexual penetration by foreign object (§ 289, subd. (a)(1)), first-degree burglary (§§ 459, 460, subd. (a)), robbery (§ 211), and torture (§ 206). The amended information alleged that the rape and three sexual penetrations were “one-strike” offenses within the meaning of section 667.61, subdivisions (a) and (d), because

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

defendant committed the offenses during the commission of a first-degree burglary with intent to rape, inflicted torture (§ 206) and great bodily injury (§§ 12022.53, 12022.7, 12022.8), and personally used a knife to do so (§§ 12022, 12022.3, 12022.5, 12022.53). The amended information also alleged defendant personally used a knife during the attempted murder and torture (§12022, subd. (b)(1)), and caused great bodily injury during the attempted murder (§ 12022.7, subd. (a)).

Defendant waived his right to a jury trial. The trial court, as trier of fact, found defendant not guilty of the attempted murder. The trial court found defendant guilty of all of the other offenses, and found true all of the related enhancements and special allegations.

The court sentenced defendant to consecutive terms of 25 years to life for each of the four sex offenses; life with the possibility of parole for the torture; the midterm of four years for the burglary to run consecutive to all other terms; and imposed and stayed the midterm of three years for the robbery.² The

² The Attorney General accurately notes that the abstract of judgment incorrectly states that defendant was sentenced to “05 years to Life” on two of the penetration counts, counts 4 and 8 of the amended information, rather than “25 years to Life.” “An abstract of judgment is not the judgment of conviction; it does not control if different from the trial court’s oral judgment and may not add to or modify the judgment it purports to digest or summarize.” (*People v. Mitchell* (2001) 26 Cal.4th 181, 185.) Because “[c]ourts may correct clerical errors at any time, and appellate courts (including this one) that have properly assumed jurisdiction of cases” may order correction of an abstract of judgment that does not accurately reflect the oral pronouncement of sentence (*id.* at pp. 185-188), we direct the trial court to correct the abstract of judgment and forward a copy of the corrected

court imposed and stayed sentences for the enhancements and allegations. Defendant timely appealed.

FACTUAL BACKGROUND

In April 2007, victim Tiffany lived in an apartment in Studio City. Tiffany's boyfriend, Tom Brown, and her best friend, X.M., had keys to Tiffany's apartment. X.M. lived with her boyfriend, defendant, in Rancho Cucamonga. Tiffany interacted with defendant infrequently and did not consider him a friend. She socialized, talked, and texted with X.M. often, however, and saw Brown almost every day, though usually not on Friday nights.

Sometime in March 2007, defendant questioned why Tiffany was dating someone older—Brown was about 20 years older than Tiffany—and asked why the four of them never hung out together. Defendant also expressed concern about Tiffany's weight; she was under five feet tall and weighed approximately 90 pounds. Defendant's questions made Tiffany uncomfortable, but she eventually gave X.M. her mailing address so that defendant could order some protein shakes and have them shipped to Tiffany's apartment.

One Friday in April 2007, defendant arrived at Tiffany's apartment unannounced at around 9:00 p.m. Tiffany was surprised to see defendant, who had been there only once before. Defendant told Tiffany he planned to buy X.M. an engagement ring and wanted her to hold onto it for him. Tiffany agreed to hold the ring.

Defendant then turned the conversation toward Tiffany's boyfriend, Brown, whom he had never met. Defendant asked why Brown was not around to take care of her, and again queried

abstract to the Department of Corrections and Rehabilitation.

why the four of them did not socialize together. Defendant also commented it was “ridiculous” that Tiffany was dating Brown because she looked like his daughter in the photographs displayed in her living room. Tiffany became uncomfortable and told defendant he needed to leave so she could do some work. As they were walking to the door, defendant again gestured to the photographs of Tiffany and Brown and commented about the age difference between them.

The following Wednesday, Brown drove Tiffany home from work during rush hour. During the drive, Tiffany looked out the window and saw defendant driving near them. She thought this was unusual, because defendant neither lived nor worked in the area.

Two days later, on Friday, April 27, 2007, Tiffany drove herself to work in the morning. She and Brown returned to her apartment during the lunch hour, and Tiffany opened the blinds and some windows while they were there. When they left, Tiffany locked the bottom lock on the door but left the deadbolt unlocked, as was her custom.

Upon her return to the apartment around 7:00 p.m., Tiffany noticed that the deadbolt was locked. She thought that was strange but unlocked the door and entered the apartment. She immediately noticed that the apartment was hot and dark, which was unusual since the blinds and windows had been left open. As Tiffany set down the items she had been carrying, she saw “somebody in black run out of my room, and they jump[ed] on me.” The assailant’s face was covered and he disguised his voice. During the course of the attack, however, Tiffany realized it was defendant.

Tiffany screamed as she went flying and fell to the ground. Defendant put one arm around Tiffany's neck and his other, latex-gloved hand over her mouth. He threatened to kill her if she screamed again. He then told Tiffany to stand up and walked her to her bedroom. Once there, defendant threw Tiffany onto the bed, face down, and told her he was there to get videotapes that Tiffany and her boyfriend had made of themselves being intimate—videotapes that only Tiffany's closest friends knew about. Tiffany told defendant where the tapes were, and he grabbed them and threw them onto the bed. Defendant then threw Tiffany onto the bed, face down, and tied her hands behind her back.

Defendant told Tiffany he had been following her and Brown for the past month and asked her if Brown would be stopping by that evening. Tiffany said that he would not. Defendant responded that he hoped Brown would stop by because he really wanted to kill him and would love to do so.

Defendant had placed a pillow over Tiffany's head while he tied her hands, and he began pushing down on the pillow, pushing Tiffany's face into the comforter and sheets, when he asked her about Brown. Tiffany had difficulty breathing; she testified, "he's pushing the pillow over my head, so I can't breathe."

Tiffany's cell phone started to ring, "and the text messages kept going off." Brown had planned to call her around 7:00 p.m., and she could tell from distinctive ringtones that he and X.M. were the ones calling and texting. Defendant asked who kept calling, and she told him it was her best friend and a friend from work. Defendant listened to a voice mail on the phone and told Tiffany that Brown had left a message for her. Defendant

repeated that he wished Brown would show up because he would love to kill him.

When Brown called again, defendant answered the phone and held it to Tiffany's ear. Brown asked Tiffany why she had not been answering the phone—he testified that she usually answered after “half a ring”—and she told him she was lying down because she had a migraine. After Tiffany told Brown that she loved him, defendant hung up the phone. He left the bedroom and began rummaging around in the kitchen and living room. Before returning to the bedroom, he turned on the living room television at a high volume. Tiffany testified that, “at some point, he came back into the room and put some type of plastic over my head so I couldn't breathe at all.” Defendant removed the plastic just as she began to get dizzy. He put her back on the bed and put the pillow over her head, causing her to become light-headed again. Defendant then removed the pillow and tied a blindfold around Tiffany's eyes before returning to the kitchen.

When he returned to the bedroom, defendant began asking questions about the people in photographs displayed around the bedroom. Tiffany told him the names of her friends. Defendant said he would have to pay X.M. a visit. Defendant also said that he would pay a visit to Tiffany's nieces and nephews in Texas, even though Tiffany had not mentioned them.

Defendant picked Tiffany up and carried her into the bathroom. He put her on the floor, placed her head in his lap, and covered her nose and mouth with his hands so she could not breathe. Tiffany again became dizzy and light-headed, and began to lose feeling in her body. Defendant moved his hands, “for a second,” then covered Tiffany's nose and mouth again as she struggled to get free. When Tiffany started to lose consciousness

after 20 to 30 seconds, defendant removed his hands and left her lying on the floor.

When defendant returned to the bathroom, he told Tiffany to get up. He took her back to the bedroom, placed her face up on the bed, and asked her for cash. After Tiffany told him she did not have any cash, he stuffed a sock in her mouth and covered her nose so she could not breathe and felt like she was choking. Defendant eventually removed the sock and left the room again.

When he returned, defendant removed Tiffany's pants and underwear and lifted her shirt. As she screamed and struggled, defendant pushed a pillow over her face and began licking her stomach and breast. When Tiffany did not heed defendant's demands to stop making noise, she testified, he ran a knife "slowly up the inner part of my right leg into my thigh, all the way up to my stomach and circled my stomach with the knife, and then ran it across my stomach and told me that if I screamed, he would kill me." Tiffany stopped screaming, and defendant left her on the bed.

Tiffany heard defendant retrieve and turn on her vibrator, which he forcefully shoved into her vagina "several times," causing her to scream in pain. Defendant then put lubricant on his fingers and "jam[med]" his fingers into Tiffany's anus. Tiffany felt severe pain. She cried and screamed, and defendant pushed the pillow down on her face again. Defendant then removed his pants and raped Tiffany. During the rape, which lasted several minutes, defendant held the pillow over Tiffany's face so she could not breathe. She testified that her body "start[ed] to go numb."

At the conclusion of the rape, Tiffany felt defendant rubbing the knife back and forth across her stomach. Defendant

then leaned over to Tiffany's ear and said, "If you tell anyone about this, I'm going to fucking kill you." He removed the pillow from her face and sliced her throat with the knife. Tiffany then "felt another sharp pain," in the left side of her abdomen, as defendant stabbed her there with the knife. Tiffany felt pain so severe she wanted to die to make it stop. She felt cold and numb and felt peace come over her as she passed out.

The next thing Tiffany remembered was defendant telling her to stand up. When she could not, defendant pulled her off of the bed and dragged her across the floor to the bathroom. Defendant positioned Tiffany over the toilet seat and pulled her neck back. She could feel the wound in her neck tearing and, beneath the blindfold, saw her blood dripping into the toilet. After about 10 to 15 seconds, defendant left Tiffany on the floor.

At some point—Tiffany could not remember when, as she was "out of it"—defendant placed her on his lap again and covered her nose and mouth so she could not breathe. He covered her face "on and off," at approximately 10 to 15 second intervals; Tiffany "kept feeling like [she] was going to pass out even more." She lost consciousness at some point.

When she came to, Tiffany realized her hands were untied. Defendant was still covering her mouth and nose, however, and she tried to use her hands to push his away. She also tried to scratch him, hoping to get his DNA under her fingernails. The next thing she remembered was being dragged back to the bedroom. She looked up and saw a clock; the attack had continued well into the 9:00 p.m. hour.

Defendant left Tiffany on the floor near her bed and threw pillows, blankets, and a comforter on top of her. She could not breathe as the "weight was piling up." Defendant left her there

and went to the living room, where Tiffany heard “things being ripped”—the photographs of her and Brown. Defendant returned and put pressure on Tiffany’s wrists and ankles. He then inserted something into her vagina. Tiffany passed out and awoke to the sound of her front door slamming.

Tiffany managed to sit up and realized that her hands and feet were turning purple from being tied with electronics charging cords. Tiffany eventually extricated herself, put on pants, and went to a neighbor’s apartment for help. The neighbor called 911; a recording of the call was admitted into evidence.

Tiffany was transported to the hospital, where surgeon Dr. Christojohn Samuel performed emergency surgery. Dr. Samuel testified that the laceration on Tiffany’s neck was four centimeters long. Though it was about one centimeter too shallow to affect the carotid artery, the cut required “about six sutures” to repair. The stab wound to Tiffany’s abdomen was only about two centimeters long but was deeper than the neck wound. It reached through Tiffany’s muscles to her intestine, which was punctured by the knife. Dr. Samuel testified that there also was a vein that was “bleeding profusely.” He further testified that the internal bleeding was potentially life-threatening, and that intestinal fluid leaking from the puncture wound posed a risk of peritonitis, a serious abdominal infection. The surgery to repair the intestine and stanch the bleeding lasted an hour to an hour and a half, and Tiffany remained in the hospital for eight or nine days afterward.

After she was discharged from the hospital, Tiffany had to stay with her sister for about a month because she “could barely walk,” “barely sit down,” was “throwing up consistently,” and needed assistance with daily tasks such as bathing, dressing, and

eating. At the time of trial eight years later, Tiffany testified that she continued to suffer from severe abdominal pain.

The parties stipulated that spermatozoa was present in samples retrieved from Tiffany's vulva, external labia, and anus. They further stipulated that DNA extracted from the vulva sample matched DNA obtained from a red straw found in defendant's car. DNA in both samples also matched a reference sample from defendant. Tiffany identified defendant as her attacker, and defendant eventually admitted to police, during interviews that were admitted into evidence, that he raped and stabbed Tiffany. One of the videotapes of Tiffany and Brown was missing from Tiffany's apartment and was never recovered.

DISCUSSION

The trial court found defendant guilty of torture, an offense which requires the infliction of "great bodily injury as defined in Section 12022.7 upon the person of another," "with the intent to cause cruel or extreme pain and suffering for the purpose of revenge, extortion, persuasion, or for any sadistic purpose." (§ 206.) The court also found true allegations that defendant "inflicted . . . torture on the victim . . . in the commission" of the sex offenses. (§ 667.61, subd. (d)(3).)

Defendant contends the torture conviction and findings must be reversed because "there was insufficient evidence that he intended to cause Tiffany cruel and extreme pain for any purpose." In his view, "[t]he trial court totally misinterpreted the evidence in finding [him] guilty of torture." He claims that Tiffany "was a very high strung witness who was prone to great exaggeration," that her injuries "were really not all that severe," and that he acted from infatuation and obsession rather than with intent to harm her.

Our role in reviewing the sufficiency of the evidence is limited. We review the entire record in the light most favorable to the judgment determine whether it contains substantial evidence—evidence that is reasonable, credible, and of solid value—from which a reasonable trier of fact could find defendant guilty beyond a reasonable doubt. (*People v. Flores* (2016) 2 Cal.App.5th 855, 871; *People v. Pre* (2004) 117 Cal.App.4th 413, 421 (*Pre*).) We do not reweigh evidence or reevaluate the credibility of witnesses, whose testimony constitutes substantial evidence if it is believed by the trier of fact and is not “physically impossible or inherently improbable.” (*People v. Young* (2005) 34 Cal.4th 1149, 1181.) We presume in support of the judgment the existence of every fact the trier of fact reasonably could deduce from the evidence, and we do not set aside the judgment unless there is no hypothesis under which sufficient evidence would support it. (*Flores, supra*, 2 Cal.App.5th at p. 871; *Pre, supra*, 117 Cal.App.4th at p. 421.) This is a high bar, and defendant has not cleared it here.

The trial court expressly found “Mr. Cash stabbed or slashed Ms. M. to make a point. Pun intended. That he was in the process of telling her that he would kill people important to her should she tell the police or other people what had happened to her and who had done it. And that is the persuasiveness of the statement. . . . I also believe that there was a sadistic purpose to Mr. Cash’s actions. . . . [C]learly from beginning to end, there was . . . sadism involved in the manner in which this attack took place. I am talking about the multiple occasions where Ms. M. was suffocated or put in a position of near suffocation either by having a pillow thrust against her or a hand held over her nose and mouth. I’m not going to go through all the details of all of

those things. . . . [B]ut I do find sadistic purpose in just stabbing a victim for no reason whatsoever after the crimes have been committed, again, for no reason whatsoever.” The evidence amply supports these findings and defendant’s convictions.

The stab wounds to Tiffany’s neck and abdomen, both “extremely vulnerable area[s] of the body” (*People v. Moore* (2002) 96 Cal.App.4th 1105, 1114), met the statutory definition of great bodily injury. All that is required is “a significant or substantial physical injury” (§ 12022.7, subd. (f)); even abrasions, lacerations, and bruising may fill the bill. (*People v. Jung* (1999) 71 Cal.App.4th 1036, 1042; *Pre, supra*, 117 Cal.App.4th at p. 420.) The wound to Tiffany’s neck missed a crucial blood vessel by one centimeter and required several sutures to mend. The wound to her abdomen punctured a blood vessel and a vital organ, required lengthy emergency surgery to mend, and continued to cause Tiffany significant pain years later. The trial court reasonably found these wounds serious under any measure. Even if Tiffany “was prone to great exaggeration” in describing the pain she suffered, a notion the trial court plainly rejected in crediting her testimony, torture “does not require any proof that the victim suffered pain.” (§ 206.)

“Intent to cause cruel or extreme pain can be established by the circumstances of the offense and other circumstantial evidence.” (*Pre, supra*, 117 Cal.App.4th at p. 420.) The circumstances in this case demonstrate that defendant intended to cause Tiffany cruel or extreme pain. In a planned attack that continued for more than two hours, defendant methodically bound, sexually assaulted, and raped Tiffany while intermittently suffocating her and threatening her boyfriend and family. The attack culminated in two knife wounds and threats

to kill Tiffany, whom defendant left bound and buried beneath a pile of linens. These circumstances all support the inference that defendant acted with the intent to cause Tiffany cruel or extreme pain.

They also support the inference that defendant was motivated by “revenge, extortion, persuasion, or . . . any sadistic purpose.” (§ 206.) Defendant’s repeated expressions of anger and frustration over Tiffany’s relationship with Brown, and his desire to kill Brown, paired with his efforts to obtain videotapes and destroy photographs of the couple, support an inference that defendant acted for the purpose of obtaining revenge against Tiffany. The stabbing was concurrent with defendant’s threat to kill Tiffany if she told anyone about the incident, from which it is reasonable to infer he inflicted the pain to persuade Tiffany not to report the attack. Moreover, as the trial court expressly found, defendant’s actions evinced a sadistic purpose, “the infliction of pain on another person for the purpose of experiencing pleasure.” (*People v. Raley* (1992) 2 Cal.4th 870, 901.) Defendant repeatedly suffocated Tiffany, dragged her around the apartment, and pulled her head back so she could see her own blood dripping from the wound in her neck. Defendant also prolonged the attack for more than two hours, far longer than necessary to accomplish the sex and property crimes. The trial court reasonably inferred that defendant derived pleasure from doing so.

We reject defendant’s reliance on the facts and circumstances of other torture cases in an attempt to argue his acts were insufficiently egregious. (*People v. Hale* (1999) 75 Cal.App.4th 94, 107; *Pre, supra*, 117 Cal.App.4th at p. 423.) “[A] comparison to the facts in other cases is of little value in assessing the sufficiency of the evidence in a particular case.”

(*Pre, supra*, 117 Cal.App.4th at p. 423.) The fact that defendant knew the victim and did not inflict injuries as severe as those in other cases does not undermine the sufficiency of the evidence in this case.

DISPOSITION

Defendant's abstract of judgment is ordered corrected to reflect sentences of 25 years to life rather than 5 years to life on counts 4 and 8. The clerk of the superior court is instructed to prepare an amended abstract of judgment reflecting this correction and to serve a copy on the Department of Corrections and Rehabilitation. The judgment is affirmed in all other respects.

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COLLINS, J.

We concur:

EPSTEIN, P. J.

MANELLA, J.