Filed 7/2/18 P. v. Edmonison CA2/1

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE, Plaintiff and Respondent, v. LEVI EDMONISON, Defendant and Appellant.	B279970 (Los Angeles County Super. Ct. No. BA431961)

APPEAL from a judgment of the Superior Court of Los Angeles County, Douglas W. Sortino, Judge. Affirmed.

Lise M. Breakey, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Paul M. Roadarmel and William N. Frank, Deputy Attorneys General, for Plaintiff and Respondent.

A jury convicted defendant Levi Edmonison of inflicting corporal injury on a cohabitant, possessing a firearm as a felon, making a criminal threat, and misdemeanor battery of a cohabitant. Defendant contends on appeal that the trial court committed prejudicial instructional and evidentiary errors. We disagree and affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

On August 20, 2012, defendant threatened to kill his sister during an argument at their grandfather's house. She feared for her safety, fled from the house and reported the threat to the police.

On November 26, 2014, defendant pushed his girlfriend, who had told defendant she was pregnant, against a wall of her apartment. When the girlfriend attempted to call the police, defendant punched her in the stomach and demanded that she have an abortion. Defendant then threatened her with a gun and struck her in the mouth before leaving. The girlfriend reported the incident to the police.

On December 3, 2014, police officers arrested defendant and found a loaded semiautomatic handgun in his pants pocket. Defendant had a prior felony conviction.

On December 4, 2014, defendant was released on bond and ordered to appear in court on December 29, 2014.

On December 5, 2014, the prosecutor filed a three-count complaint alleging defendant had made a criminal threat against his sister, inflicted corporal injury on his girlfriend and possessed a firearm as a felon.

On December 29, 2014, the prosecutor filed an amended complaint alleging additional charges. According to the prosecutor, on that day, defendant spoke with his attorney in court and "promptly fled." Defendant's bond was forfeited, and the court issued a warrant for his arrest.

On July 8, 2015, defendant and his girlfriend argued at her apartment. Defendant grabbed her by the neck and slammed her onto the bed, and landed on top of her, while maintaining his hold on her neck. When defendant released his girlfriend, she telephoned the police. Defendant fled before officers arrived. At the time, defendant's girlfriend was approximately six months pregnant.[1]

Defendant was arrested on the warrant in 2016 and later charged in an amended information with having committed the following offenses: On August 20, 2012, making a criminal threat against his sister (Pen. Code, § 422, subd. (a)); on November 26, 2014, inflicting corporal injury on his girlfriend (Pen. Code, § 273.5, subd. (a)), making a criminal threat against his girlfriend and assaulting his girlfriend with a semiautomatic handgun (Pen. Code, § 245, subd. (b)); on December 3, 2014, possessing a firearm as a felon; and on July 8, 2015, inflicting corporal injury on his girlfriend. As to the criminal threat and aggravated assault charges involving his girlfriend, the information specially alleged that defendant had personally used a firearm (Pen. Code, § 12022.5, subd. (a)) and had suffered a prior serious or violent felony conviction within the meaning of the "Three Strikes" law (Pen. Code, §§ 667, subds. (b)-(j); 1170.12) and Penal Code section 667, subdivision (a)(1).

Following a trial, the jury found defendant guilty of making a criminal threat against his sister, possessing a firearm as a felon, and inflicting corporal injury on his girlfriend on July 8, 2015. The jury also found him guilty of committing misdemeanor battery of a cohabitant (Pen. Code, § 243, subd. (e)(1)) on November 26, 2014, as a lesser included offense of inflicting corporal injury. The jury acquitted defendant of the remaining counts. On the

---

[1] The girlfriend gave birth to their daughter in October 2015.

prosecutor's motion, the trial court dismissed the remaining special allegations and sentenced defendant to a prison term of 5 years 4 months. This appeal followed.

DISCUSSION

A. The Challenged Flight Instruction

1. *Relevant proceedings*

Before trial, the prosecutor requested the court to take judicial notice of and admit into evidence, as consciousness of guilt, defendant's flight from court on December 29, 2014, and his failure to surrender on the warrant. Defense counsel moved in limine to exclude the evidence on various grounds.

At a hearing, the trial court concluded that defendant's failure to appear and the resulting forfeiture of his bond and issuance of a bench warrant were relevant to show his consciousness of guilt and were proper subjects of judicial notice. In response, defense counsel referred to the arguments in his written motion and stated, "I don't believe it's relevant. It's subject to [Evidence Code] section 352,[2] but the way the court is proposing it, I like it much better than what I got out of the [prosecutor's] trial brief, which includes testimony from a bondsman, potential testimony from one of the lawyers in my office. Even testimony from [the prosecutor] I think is going to open a can of worms. But the way the court is proposing [it is] just to take judicial notice that there was a failure to appear." The prosecutor indicated that he was contemplating presenting evidence of the circumstances surrounding defendant's failure to appear. The court informed defense counsel that it would consider any objections to the admissibility of such evidence.

---

[2] Statutory references are to the Evidence Code, unless otherwise indicated.

The parties ultimately stipulated to informing the jury that defendant "bonded out [in the instant] case on December 5th, 2014, [and] was cited to appear but did not appear for December 29th, 2014." No other evidence was introduced concerning defendant's failure to appear.

Without objection, the trial court later instructed the jury with CALCRIM No. 372, the flight instruction: "If the defendant fled immediately after the crime was committed or after he was accused of committing the crime, that conduct may show that he was aware of his guilt. If you conclude that the defendant fled or tried to flee, it is up to you to decide the meaning and importance of that conduct. However, evidence that the defendant fled or tried to flee cannot prove guilt by itself."

2. *The flight instruction was properly given*

Defendant argues that the trial court prejudicially erred by instructing the jury with CALCRIM No. 372.

The Attorney General asserts that because defense counsel "assented to the trial court's ruling that [defendant's] failure to appear after bonding out in the instant matter was a proper subject for judicial notice . . . , [defendant] is barred from challenging it on appeal under the doctrine of invited error." We reject this contention.

First, defendant is not challenging the stipulation itself. Instead, he contends the stipulation was insufficient evidence to justify giving the flight instruction.

Second, the doctrine of invited error does not apply. "Under the doctrine of invited error, when a party by its own conduct induces the commission of error, it may not claim on appeal that the judgment should be reversed because of that error. [Citations.] But the doctrine does not apply when a party, while making the appropriate objections, acquiesces in a judicial determination.

[Citation.] As [the Supreme Court] has explained: ' "An attorney who submits to the authority of an erroneous, adverse ruling after making appropriate objections or motions, does not waive the error in the ruling by proceeding in accordance therewith and endeavoring to make the best of a bad situation for which he was not responsible." ' " (*Mary M. v. City of Los Angeles* (1991) 54 Cal.3d 202, 212-213; see *Norgart v. Upjohn Co.* (1999) 21 Cal.4th 383, 403.)

Such is the case here. The trial court had already rejected defense counsel's argument that defendant's failure to appear in court, forfeiture of his bond and failure to surrender on the warrant was inadmissible. By accepting the court's ruling and entering into a stipulation with the prosecutor based on that ruling, defense counsel was strategically making the best of a bad situation: It was reasonable for counsel to believe, as a matter of trial tactics, that the stipulation may dissuade the prosecutor from seeking to introduce additional, and potentially more damaging, evidence relating to defendant's failure to appear. Regardless of the propriety of the court's evidentiary ruling, there was no invited error by defense counsel. (See e.g., *Norgart v. Upjohn Co.*, *supra*, 21 Cal.4th at p. 403; *Gillan v. City of San Marino* (2007) 147 Cal.App.4th 1033, 1052.)

Turning to the merits of defendant's claim of instructional error, we review de novo the propriety of giving the jury a particular instruction. (*People v. Posey* (2004) 32 Cal.4th 193, 218.) If we conclude the trial court erred in giving the flight instruction, we apply the harmless error standard of *People v. Watson* (1956) 46 Cal.2d 818, 836 to determine whether the error requires reversal. (*People v. Silva* (1988) 45 Cal.3d 604, 628.) "[W]hen there is evidence of a defendant's flight, such evidence may be considered in deciding guilt or innocence and [a flight instruction] must be given sua sponte, pursuant to Penal Code section 1127c." (*People*

v. Williams (1997) 55 Cal.App.4th 648, 651; see also *People v. Mendoza* (2000) 24 Cal.4th 130, 179.) Flight does not require the physical act of running or the reaching of a faraway haven. (*People v. Wallace* (2008) 44 Cal.4th 1032, 1074.) It only requires " ' "a purpose to avoid being observed or arrested." ' " (*Ibid.*)

Defendant's argument overlooks the prosecution's evidence of defendant's conduct to avoid arrest immediately following the incidents involving his girlfriend: On November 26, 2014, defendant rode away on his bicycle after attacking his girlfriend and stopping her from calling the police; and on July 8, 2015, defendant fled after choking his girlfriend, prompting her to call the police. Defendant's conduct on these two occasions was certainly more compelling evidence of consciousness of guilt than the somewhat equivocal evidence of defendant's failure to appear as ordered. In light of the prosecution's evidence, the court was obligated to give the flight instruction.

Defendant also contends that the flight instruction violated his fair trial rights because it created a permissive inference of his guilt, merely because he failed to appear in court. However, the California Supreme Court rejected a comparable challenge to a similar flight instruction (CALJIC No. 2.52) in *People v. Mendoza* , *supra*, 24 Cal.4th at pp. 179, 180-181.[3] Like CALJIC No. 2.52, CALCRIM No. 372 does not direct that a particular inference be

---

[3] CALJIC No. 2.52 provides: "The [flight] [attempted flight] [escape] [attempted escape] [from custody] of a person [immediately] after the commission of a crime, or after [he] [she] is accused of a crime, is not sufficient in itself to establish [his] [her] guilt, but is a fact which, if proved, may be considered by you in light of all other proved facts in deciding whether a defendant is guilty or not guilty. The weight to which this circumstance is entitled is a matter for you to decide."

drawn, and it does not violate due process. It is for the jury to decide to which facts, if any, the inference should apply. (*Ibid.*)

Further, any error in giving the flight instruction was not prejudicial. CALCRIM No. 372 instructed the jury that it should determine not only *whether* defendant had fled, but also "the meaning and importance of that conduct." The cautionary nature of the flight instruction is beneficial to the defense, admonishing the jury to be circumspect concerning evidence that may otherwise be considered conclusively inculpatory. (*People v. Jackson* (1996) 13 Cal.4th 1164, 1224.) Moreover, the jury was instructed that "[s]ome of these instructions may not apply, depending on your findings about the facts of the case." (CALCRIM No. 200.)

B. The Prosecution's Domestic Violence Expert

1. *Relevant proceedings*

Although defendant's girlfriend had reported both incidents of domestic violence to the police, she recanted those statements at the preliminary hearing and at trial. She claimed she had previously lied to the police and in court because she was angry with defendant.

Before trial, the prosecutor informed the court of his intention to have psychologist Sandra Baca testify as an expert witness on domestic violence or intimate partner battering. Dr. Baca would give her opinion as to why victims often recant their claims of domestic violence. Over defense objections, the court concluded the expert testimony, as limited, as relevant to the girlfriend's credibility and not unduly prejudicial under section 352.

At trial, Dr. Baca testified it was common for victims of intimate partner battering to stay with or to return to their abusers and to recant their original story of abuse. For the victims, recanting was a means of coping with the abusive relationship and avoiding the shame or fear of being disbelieved, among other

reasons. Without objection, Dr. Baca then testified that Lenore Walker, "the one who started a lot of the domestic violence movement[s] in the late 70's," had noted that violence may occur only once in a relationship. "Other times [Walker] has said if there is no intervention, eventually somebody is going to get killed."

Dr. Baca also testified without defense objection that victims of attempted strangulation sometimes minimize it, rationalizing that the abuser "put his hands around my neck, you know, to scare me. . . . But all of the behavior is considered domestic violence. And some potentially life threatening when you put your hands around somebody's neck. And the fear that the person has[,] is he going to let go." At this point, the trial court sustained its own objection to Dr. Baca's testimony as nonresponsive: "No, I think the question was this issue of recanting statements, does it apply only to minor or less violent acts of domestic violence, or does it apply regardless of the degree?" Dr. Baca answered: "Regardless of the degree."

2. *The expert testimony was properly admitted*

Defendant contends the trial court prejudicially erred and violated his fair trial rights by allowing Dr. Baca's testimony to exceed the permissible scope of her expert opinion. Specifically, defendant argues that Dr. Baca's testimony that " 'if there is no intervention [to stop the domestic violence], eventually somebody is going to get killed' " and that some domestic violence "is potentially life-threatening when an abuser puts his hands around the victim's neck" should have been excluded.

Defendant has forfeited this argument by failing to object at trial to the testimony he now disputes. (See § 353, subd. (a); *People v. Jones* (2012) 54 Cal.4th 1, 61 [defendant's forfeiture of section 352 claim by failing to raise it at trial]; *People v. Tafoya* (2007) 42 Cal.4th 147, 166 [defendant's forfeiture of confrontation

clause claim by failing to raise it at trial].) In any event, admission of the testimony was not an abuse of discretion. (See *People v. Johnson* (1993) 19 Cal.App.4th 778, 790 [trial court's admission of expert testimony not to be reversed "absent a clear showing of an abuse of discretion"].)

Section 1107 provides for the admission of expert testimony on "intimate partner battering and its effects, including the nature and effect of physical, emotional, or mental abuse on the beliefs, perceptions, or behavior of victims of domestic violence, except when offered against a criminal defendant to prove the occurrence of the act or acts of abuse which form the basis of the criminal charge." (§ 1107, subd. (a).)

In referring to instances in which an abuser places his hands around a victim's neck, Dr. Baca was explaining how victims of attempted strangulation would sometimes excuse such potentially life-threatening harm. This testimony was well within the permissible scope of her expert opinion, and relevant to the credibility of defendant's girlfriend, and thus properly admitted. Moreover, neither this testimony nor Dr. Baca's testimony that unchecked domestic violence can lead to someone being killed was prejudicial. It is common sense and common knowledge that attempted strangulation and unrestrained physical assault can result in the death of the victim. The jury could not have been shocked, or for that matter even mildly surprised, by the testimony. Dr. Baca neither repeated nor elaborated on her testimony; and the prosecutor did not refer to the testimony in arguing to the jury. Moreover, the admission of the evidence was not prejudicial; there is no reasonable probability that defendant would have obtained a more favorable outcome had the disputed testimony not been admitted. (*People v. Watson, supra,* 46 Cal.2d at p. 836.)

C. The Prior Acts of Uncharged Domestic Violence and 911 Calls

1. *Uncharged acts of domestic violence involving former girlfriends*

Over defense objections, the prosecutor introduced, under section 1109, evidence that defendant had previously committed uncharged acts of domestic violence against former girlfriends K.S. and S.P., neither of whom was a victim in this case.

On February 11, 2008, during an argument at his grandfather's home, defendant pushed his then-girlfriend K.S. against a wall. The grandfather intervened and told defendant to leave. Defendant's father and sister were also present at the time. Defendant's sister made two telephone calls to the emergency operator (911 calls) to summon the police. Defendant was later convicted of misdemeanor battery of girlfriend K.S.

On April 10, 2010, defendant argued with his then-girlfriend S.P., with whom he was living at the time. He slapped her face and took her cellular phone when she attempted to call the police.

On June 24, 2010, defendant argued with S.P. at their home and slapped her face, causing her lip to split open. He was later convicted of misdemeanor battery of S.P.[4]

Based on these three acts of domestic violence and a fourth act involving the girlfriend in this case, the jury was instructed with CALCRIM No. 852A on uncharged offenses offered to prove a defendant's propensity to commit domestic violence. (See CALCRIM No. 852A.)

---

[4] Evidence of the April 10, 2010 and June 24, 2010 incidents was taken from S.P.'s testimony in an earlier trial after the court determined that S.P. was unavailable for trial. (§§ 1290-1291.)

2. *911 Calls*

Audio recordings of defendant's sister's two 911 calls were admitted into evidence over defense objections. Neither call referred to any threat of violence or act of violence by defendant against K.S. The court admitted the 911 calls to show the sister's mental state in connection with defendant's later criminal threat against her and to impeach her testimony that she no longer remembered making the calls.

In the first 911 call, the sister reported that her father was "trying to kill" defendant and the police should come for defendant, who "escalated the problem." The sister explained that defendant had a restraining order barring him from the home, but he refused to leave, was threatening her grandfather, and was about to fight her father.

In the second 911 call made shortly thereafter, the sister told the emergency operator that defendant had "an anger problem," was "really close" to hitting their father, possessed no weapons, was involved in "a heated, like, family argument," and there were children in the house.

3. *There was no prejudicial instructional or evidentiary error concerning the 911 calls and incidents involving S.P.*

Defendant makes two related claims of prejudicial error concerning the sister's 911 calls: First, he argues that because the calls were not relevant to any purported acts of domestic violence, the court improperly failed to give a limiting instruction that the calls were not being offered against defendant.[5] Second, defendant

---

[5] To the extent defendant suggests the trial court admitted the 911 calls as propensity evidence, he is mistaken. The record shows the court admitted the February 11, 2008 incident, meaning

contends that the 911 calls in combination with the wording of CALCRIM No. 852A may have misled the jury. Defendant is referring to that portion of the instruction that informed the jury that it could consider as uncharged domestic violence offenses, "the February 11, 2008 incident involving [defendant's sister], [his father], and [former girlfriend K.S.]" as well as the three other incidents. According to defendant, after hearing the 911 calls, and in the absence of a limiting instruction, the jury may have mistakenly believed it was permitted by CALCRIM No. 852A to consider defendant's behavior toward his family members as propensity evidence of domestic violence.

Although defendant frames his contentions as evidentiary error, he is actually asserting instructional error, which he has not preserved on appeal. Defendant's failure to request an instruction on the limited admissibility of the 911 calls forfeited his claim of error, and the court had no sua sponte duty to give the limiting instruction. (*People v. Hajek and Vo* (2014) 58 Cal.4th 1144, 1246, overruled on another ground by *People v. Rangel* (2016) 62 Cal.4th 1192, 1216.) Defendant's failure to object at trial to the wording of CALCRIM No. 852A as misleading or unclear forfeited this contention on appeal. (*People v. Cole* (2004) 33 Cal.4th 1158, 1211.)

In any event, the challenged wording of CALCRIM No. 852A merely served to identify for the jury one of the four prior uncharged domestic violence incidents. What immediately followed in the instruction were definitions of domestic violence, which did not include family members as victims. In the absence of evidence to the contrary, we assume the jury followed this instruction and did not view defendant's behavior toward his father, grandfather,

---

the physical altercation between defendant and K.S. as reported to the police, under section 1109, not the 911 calls.

and sister as section 1109 propensity evidence. (*People v. Chism* (2014) 58 Cal.4th 1266, 1299.)

Defendant additionally contends that the 911 calls and the uncharged acts of domestic violence involving S.P. was unnecessary, confusing and cumulative evidence and thus prejudicial. Nothing in the record supports this claim. With respect to the 2010 incidents involving S.P., the trial court found they were part of a pattern of acts of domestic violence committed by defendant from 2008 through 2015. Admitting them into evidence was neither time-consuming nor confusing and was probative of defendant's inclination under section 1109 to physically abuse his girlfriends.

D. Cumulative Error

Defendant contends the errors he has identified, when considered cumulatively, denied him his fair trial rights. (See *People v. Hill* (1998) 17 Cal.4th 800, 844-845 ["a series of trial errors, though independently harmless, may in some circumstances rise by accretion to the level of reversible and prejudicial error"].) For the reasons we have explained, none of the errors defendant has alleged, to the extent they were errors and considered cumulatively, deprived him of a fair trial. Accordingly, we reject defendant's claim of cumulative error.

DISPOSITION

The judgment is affirmed.
NOT TO BE PUBLISHED.

ROTHSCHILD, P. J.

We concur:

JOHNSON, J.

BENDIX, J.