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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

ERIK ALBERTO CARDENAS,

Defendant and Appellant.

2d Crim. No. B268719
(Super. Ct. No. 1450920)
(Santa Barbara County)

Erik Alberto Cardenas appeals from the judgment entered after his conviction by a jury of simple kidnapping (Pen. Code, § 207, subd. (a));¹ attempting to dissuade a victim, by force or threat, from reporting a crime (§ 136.1, subd. (c)(1)); attempting to dissuade a victim from assisting in the prosecution of a crime (§ 136.1, subd. (b)(2)); and three counts of inflicting corporal injury upon a cohabitant. (§ 273.5, subd. (a).) One of the corporal injury counts (count 2) alleged a date that was the same

¹ All statutory references are to the Penal code unless otherwise stated.

as the date of the kidnapping. As to this count, the jury found that appellant had personally inflicted great bodily injury under circumstances involving domestic violence. (§ 12022.7, subd. (e).) Appellant was sentenced to prison for 12 years.

The simple kidnapping conviction is based on appellant's dragging the victim a short distance from a hallway to a bathroom inside a house. Appellant contends that this movement is insufficient to establish the asportation element of simple kidnapping. In addition, appellant contends that the trial court erroneously permitted a witness to testify as an expert on intimate partner battering. We affirm.

Facts

We summarize only the facts relevant to whether the evidence is sufficient to support the asportation element of simple kidnapping.

In March 2014 appellant and his live-in girlfriend, Reina C., got into an argument inside appellant's two-story house. In the downstairs bedroom, appellant slapped, squeezed, kicked, and choked Reina C. He also pulled her hair, punched her hard in the stomach eight times, and "pushed [her] face into the ground."

Elias Ramirez rented the upstairs bedroom. He heard appellant and Reina C. arguing. Ramirez knocked on appellant's closed bedroom door and asked if appellant and Reina C. were okay. At that time, Reina C. was "on the floor with [her] face . . . in the ground." Appellant was "holding [her] down." He told her to say she "was fine." Reina C. tried to "yell like a help yell." But she "couldn't say anything." Ramirez testified: "They both said they were fine so I went back upstairs and fell asleep; that was it."

Reina C. got up from the floor and tried to walk from the bedroom to the kitchen to retrieve her purse and keys. She “didn’t make it very far [‘]cause [appellant] grabbed [her by the hair] and dragged” her along the floor back to the bedroom. Appellant grabbed her while she was in a hallway outside of the bedroom.

Reina C. ended up on the floor in the bedroom’s bathroom. While she was lying on her side, appellant twice “slammed” her head against the tile floor. At that point, Reina C. “gave up.” Appellant told her to lie on the bed and go to sleep. Reina C. lay on the bed, but she could not sleep because she “was in too much pain and sad.”

A police officer who went to appellant’s house testified: “When you walked into the front door . . . you made a right turn and there was a hallway. I went to the right, then that hallway turned to the left. You go into that door [at the end of the hallway] and you walk into a bedroom that had a bed . . . and if you make a right-hand turn or u-turn you would go into the open vanity area of the bathroom.”

Reina C. initially cooperated with the police and recounted how appellant had battered her. But at trial she denied that appellant had been violent. She testified that, while drunk on alcohol and Xanax, she had fallen several times and injured herself.

Sufficiency of the Evidence: Asportation Element

To prove the crime of simple kidnapping in violation of section 207, subdivision (a), “the prosecution must generally ‘prove three elements: (1) a person was unlawfully moved by the use of physical force or fear; (2) the movement was without the person’s consent; and (3) the movement of the person was for a

substantial distance.’ [Citation.] This last element, i.e., that the victim be moved a substantial distance, is called the ‘asportation’ element. [Citation.]” (*People v. Bell* (2009) 179 Cal.App.4th 428, 435.)

“[F]or simple kidnapping asportation the movement [of the victim] must be ‘substantial in character’ [citation], but . . . the trier of fact may consider more than actual distance.” (*People v. Martinez* (1999) 20 Cal.4th 225, 235.) “Section 207(a) proscribes kidnapping or forcible movement, not forcible movement for a specified number of feet or yards.” (*Id.*, at p. 236.) In *Martinez* our Supreme Court adopted a *totality of the circumstances* approach to the asportation element: It is “proper for the court to instruct that, in determining whether the movement is “substantial in character” [citation], the jury should consider the totality of the circumstances. Thus, in a case where the evidence permitted, the jury might properly consider not only the actual distance the victim is moved, but also such factors as whether that movement increased the risk of harm above that which existed prior to the asportation, decreased the likelihood of detection, and increased both the danger inherent in a victim’s foreseeable attempts to escape and the attacker’s enhanced opportunity to commit additional crimes.” (*Id.* at p. 237, fn. omitted.) But “contextual factors, whether singly or in combination, will not suffice to establish asportation if the movement is only a very short distance. [¶] In addition, in a case involving an associated crime, the jury should be instructed to consider whether the distance a victim was moved was incidental to the commission of that crime in determining the movement’s substantiality.” (*Ibid.*)

Here, the jury was instructed with CALCRIM No. 1215, which articulates the same standards expressly approved in *Martinez*. The application of those standards to the facts of this case is a function within the province of a jury sitting as the trier of fact. The jury, properly instructed, determined that the movement of Reina C. was substantial in character under all of the circumstances.

Appellant argues that the movement of Reina C. from the hallway to the bedroom's bathroom is insufficient to establish the asportation element because it was not substantial in character and "was merely incidental" to "the associated offense of corporal injury to a cohabitant." We apply the substantial evidence rule. "[T]he relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.' [Citation.]" (*People v. Hatch* (2000) 22 Cal.4th 260, 272.)

The evidence is not insufficient merely because of the short distance of the forcible movement. The record does not show the actual distance. In *People v. Shadden* (2001) 93 Cal.App.4th 164, 167, the defendant entered a video store, punched the store owner who was at the front counter, and dragged her nine feet into a back room where he attempted to rape her. This court concluded that the evidence was sufficient to establish the asportation element of aggravated kidnapping. We rejected the defendant's claim that the evidence was insufficient because he had "moved [the victim] only nine feet." (*Id.* at p. 168.) We noted that "in *People v. Martinez, supra*, 20 Cal.4th at pages 234-237, 239, our Supreme Court rejected the standard of fixed minimum distances" (*Ibid.*) In addition, we

observed that “[w]here movement changes the victim’s environment, it does not have to be great in distance to be substantial.” (*Id.* at p. 169; see *People v. Arias* (2011) 193 Cal.App.4th 1428, 1435 [asportation element of simple kidnapping established where victim was forcibly moved 15 feet from outside his apartment to inside the apartment, thus “increas[ing] his risk of harm in that he was moved from a public area to the seclusion of his apartment”].)

The forcible movement of Reina C. from the hallway to the bedroom’s bathroom changed her environment. It “increased the risk of harm above that which existed prior to the asportation” (*People v. Martinez, supra*, 20 Cal.4th at p. 237.) When appellant grabbed Reina C., she was in the hallway on her way to the kitchen to retrieve her purse and keys. It is reasonable to infer that, upon retrieving these items, she intended to leave the house. Appellant’s asportation of Reina C. prevented her from escaping and forced her back into the bedroom, where he could continue to batter her. The asportation “decreased the likelihood of detection” by Ramirez, the occupant of the upstairs bedroom. (*Ibid.*) Ramirez had access to the hallway outside appellant’s bedroom but not to the bedroom when the door was shut. Reina C. said that the bedroom door “locks on the inside.” By dragging Reina C. from the hallway to the bedroom’s bathroom, appellant gave himself an “enhanced opportunity to commit additional crimes.” (*Ibid.*) Appellant twice slammed Reina C.’s head against the bathroom’s tile floor.

We reject appellant’s claim that the movement of Reina C. was merely incidental to “the associated offense of corporal injury to a cohabitant.” A similar claim was rejected in *People v. Salazar* (1995) 33 Cal.App.4th 341. Salazar forcibly

moved the victim 29 feet from a motel walkway to inside a motel room, where he assaulted her with intent to commit rape. In upholding the defendant's kidnapping conviction, the court concluded that the movement was not incidental to the assault. The court reasoned: "[T]he movement was not natural to the crime. Salazar could have raped Maria on the walkway outside the motel room door and avoided moving her at all. The movement of Maria was not necessarily related to the rape crime itself; rather, a jury could reasonably conclude it was an essential part of Salazar's plan to avoid detection and to make the crime easier to commit. Accordingly, while the movement was perhaps incidental to Salazar's particular plan for rape, it was not incidental to the actual commission of the crime itself." (*Id.* at p. 347.) The same reasoning applies to appellant's forcible movement of Reina C. from the hallway to the bedroom's bathroom, where he continued to batter her. (See *People v. Shadden*, *supra*, 93 Cal.App.4th at p. 169 ["Where a defendant drags a victim to another place, and then attempts a rape, the jury may reasonably infer that the movement was neither part of nor necessary to the rape"]; *People v. Diaz* (2000) 78 Cal.App.4th 243, 247 ["The court in *Salazar* explained that the 29-foot movement into the motel room, though essential to Salazar's plan to commit the assault and avoid detection, was not incidental to the actual commission of the crime, which could have occurred in the motel hallway"].)

In any event, "whether the movement was over a distance merely incidental to an associated crime is simply one of several factors to be considered by the jury (when permitted by the evidence) under the 'totality of circumstances' test enunciated in *Martinez*. The factor is *not* a separate threshold determinant

of guilt or innocence, separated from other considerations bearing on the substantiality of the movement” (*People v. Bell*, *supra*, 179 Cal.App.4th at p. 440.) Applying the totality of the circumstances test and viewing the evidence in the light most favorable to the judgment, we are satisfied that a rational trier of fact could find that the asportation element of simple kidnapping was proved beyond a reasonable doubt. (*People v. Hatch*, *supra*, 22 Cal.4th at p. 272.)

Expert Witness: Intimate Partner Battering

Appellant argues that the trial court erroneously permitted District Attorney Investigator Marisa Tanore to testify as an expert on intimate partner battering. Appellant claims that she “lacked basic qualifications.” “Although often referred to as ‘battered women’s syndrome,’ ‘intimate partner battering and its effects’ is the more accurate and now preferred term.

[Citations.]” (*In re Walker* (2007) 147 Cal.App.4th 533, 535-537, fn. 1.) Intimate partner battering ““has been defined as ‘a series of common characteristics that appear in women who are abused physically and psychologically over an extended period of time by the dominant male figure in their lives.’ [Citations.]”

[Citations.]” (*People v. Gadlin* (2000) 78 Cal.App.4th 587, 593.)

Evidence Code section 1107, subdivision (a) provides, “In a criminal action, expert testimony is admissible . . . regarding intimate partner battering and its effects”

“A person is qualified to testify as an expert if he has special knowledge, skill, experience, training or education sufficient to qualify him as an expert on the subject to which his testimony relates. Whether a person qualifies as an expert in a particular case . . . depends upon the facts of the case and the witness’s qualifications. [Citation.] The trial court is given

considerable latitude in determining the qualifications of an expert and its ruling will not be disturbed on appeal unless a manifest abuse of discretion [is] shown. [Citations.]” (*People v. Bloyd* (1987) 43 Cal.3d 333, 357.) “Discretion is abused when the court exceeds the bounds of reason, all of the circumstances being considered. [Citations.]” (*People v. Bradford* (1976) 17 Cal.3d 8, 20.)

The trial court did not abuse its discretion. For over 15 years, Tanore worked as a police officer for the Santa Maria Police Department. She investigated more than 2,000 domestic violence cases. After leaving the police department, she investigated over 500 domestic violence cases for the Santa Barbara County District Attorney. She has spoken to many victims of domestic violence. In approximately 75 to 80 percent of the domestic violence cases she investigated for the District Attorney, she “spent at least an hour with the . . . victim.” She received training in domestic violence from the Department of Justice and the District Attorney’s Office. The training “covered the characteristics of domestic violence, characteristics of the abuser, the victims, effects to the victim, cycle of violence and power of control.” She is a member of the California Sexual Assault Investigators Association and attended its “meetings to review domestic violence cases and . . . what help the victims have been receiving.” She attended classes and workshops where intimate partner battering was discussed.

Appellant asserts that Tanore’s “credentials as an expert on intimate partner battering . . . were clearly inadequate” because she was not a psychologist, “counselor or social worker with a specialty in the field” and had not “read relevant literature, taught classes or published papers on intimate partner

battering.” Appellant declares, “There is good reason to require that in order to qualify as an expert on intimate partner battering, a witness should have professional education, and extensive research and/or clinical experience.” But appellant does not cite any authority imposing such a requirement. The trial court did not exceed the bounds of reason in concluding that Tanore qualified as an expert on intimate partner battering based on her training, attendance of classes and workshops, and practical experience involving the investigation of more than 2,500 cases of domestic violence.

Disposition

The judgment is affirmed.

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YEGAN, Acting P. J.

I concur:

TANGEMAN, J.

PERREN, J., Dissenting.

I respectfully dissent from the majority's conclusion that the evidence is sufficient to sustain appellant's conviction for simple kidnapping. (Pen. Code, § 207.) The majority offers that "[t]he evidence is not insufficient merely because of the short distance of the forcible movement." (Maj. opn., p. 5.) But the majority jumps the gun in its analysis. The jury must first determine not only whether the movement was substantial but, in cases involving an associated crime, if that movement was "incidental to the commission of that crime in determining the movement's substantiality." (*People v. Martinez* (1999) 20 Cal.4th 225, 237.) This is not a mere academic exercise but one designed to determine if more than one crime was committed. (*Ibid.*)

The short distance appellant moved Reina C., when considered in light of the surrounding circumstances, also compels a finding that the very limited movement was merely incidental to the corporal injury he was inflicting upon her. The event occurred in a very restricted area: The beating began in appellant's bedroom. Reina walked a short distance¹ (if any)

¹ The majority states, "The record does not show the actual distance." The prosecutor, however, did not dispute defense counsel's measurements from bedroom to kitchen of 12 feet and that Reina C. did not make it to the kitchen. While there is no other testimony concerning distances, prosecution exhibits 4 through 7 capture the very short distance involved. They are included as appendix A saving the use of 4,000 words to illustrate the obvious: Exhibit 4 - the entrance into the home; Exhibit 5 - the right turn into the hallway leading to the bedroom and the hallway that ends in a "T" intersection which, upon turning left, ties to the two to three foot "hallway" at the entrance of the bedroom (testimony of Officer X); Exhibit 6 - the two to three foot

down the hall, and appellant dragged her back into the same room where the assault had commenced and where it continued. The environment did not change; the prosecutor conceded as much in her closing argument. Even the upstairs boarder was precisely where he had been when he first heard the assault, and his access to the bedroom was the same - the door was shut on both occasions.

Appellant dragged Reina C. back into a room she was attempting to exit in order to continue beating her - it was one continuous event. I disagree with the majority's conclusion that this limited movement appreciably changed the victim's environment and increased the risk of harm that was inherent in the ongoing assault. "Movement across a room or from one room to another, in short, cannot reasonably be found to be asportation "into another part of the same county." (Pen. Code, § 207.)" (*People v. Williams* (2017) 7 Cal.App.5th 644, 667, quoting *People v. Daniels* (1969) 71 Cal.2d 1119, 1140.) This pronouncement was premised on the recognition that brief movements frequently accompany a robbery. (*Williams*, at pp. 667-668; *Daniels*, at p. 1140.) It is an unfortunate reality, however, that domestic abusers also frequently drag their victims by their hair - indeed, such an act could be sufficient by itself to support a conviction for inflicting corporal injury. Nothing about the manner or circumstances in which appellant committed that act here supports a finding that the movement was not incidental to his ongoing assault upon her - he beat her in the bedroom, grabbed her by the hair in the hall and dragged her to the bedroom where the beating continued.

"hallway" leading to the bedroom; Exhibit 7 - the bedroom viewed from doorway.

The majority offers *People v. Salazar* (1995) 33 Cal.App.4th 341, in rejecting the conclusion that appellant's movement of Reina C. was merely incidental to the corporal injury he was in the course of inflicting upon her. The case is inapposite because it involved an aggravated kidnapping for rape rather than simple kidnapping. Moreover, the victim in *Salazar* was moved 29 feet from a motel walkway to the inside of a motel room. In concluding that the movement was not merely incidental to the rape, the court reasoned that "the movement was not natural to the crime. Salazar could have raped [the victim] on the walkway outside the motel room door and avoided moving her at all." (*Id.* at p. 347.) In the instant matter the beating was "natural" to the crime.

The rules of appellate review require the case be viewed in a light most favorable to conviction, resolving all conflicts in the evidence and drawing all reasonable inferences in favor of conviction. (*People v. Johnson* (1980) 26 Cal.3d 557, 576.) But I am also instructed that the supportive evidence must be of ponderable legal significance, reasonable in nature, credible, and of solid value. (*Ibid.*) This is a case of a brutal beating of a domestic partner. The evidence supporting the finding of guilt of this charge and of the other charges is overwhelming. It is not, however, a kidnapping.

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PERREN, J.



Exhibit 4



Exhibit 5



Exhibit 6



Exhibit 7

Patricia Kelly, Judge

Superior Court County of Santa Barbara

Sanger Swysen & Dunkle, Stephen K. Dunkle, for
Defendant and Appellant.

Kamala D. Harris, Xavier Becerra, Attorney
Generals, Gerald A. Engler, Chief Assistant Attorney General,
Lance E. Winters, Senior Assistant Attorney General, Scott A.
Taryle, Supervising Deputy Attorney General, Colleen M.
Tiedemann, Timothy L. O'Hair, Deputy Attorney Generals, for
Plaintiff and Respondent.