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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

CARMEN HUNT,

Plaintiff and Appellant,

v.

EL CAMINO COMMUNITY COLLEGE,

Defendant and Respondent.

B235293

(Los Angeles County  
Super. Ct. No. BC400227)

APPEAL from a judgment of the Superior Court of Los Angeles County,  
Amy D. Hogue, Judge. Affirmed.

Roderick & Arnold and Trina R. Roderick for Plaintiff and Appellant.

Law Offices of Larry Frierson and Larry Frierson for Defendant and Respondent.

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## INTRODUCTION

In this action for damages for employment discrimination based on a disability of Post Traumatic Stress Disorder (PTSD), plaintiff Carmen Hunt appeals from the judgment on a jury verdict in favor of defendant El Camino Community College. Hunt assigns as error the trial court's ruling in limine precluding evidence that Hunt was raped by a professor at El Camino College in 1982 (Evid. Code, § 352). She contends that this ruling was an abuse of discretion because the rape was critical evidence of the nexus between her PTSD and her requests for accommodation to teach off campus. We conclude the trial court did not abuse its discretion and affirm the judgment.

## FACTUAL AND PROCEDURAL BACKGROUND

### 1. *Factual background*

Hunt commenced working as a full-time speech communications professor at the El Camino College in the fall of 1980. She teaches public speaking, small group communication, argument and debate.

In August 2002, Hunt suffered a severe anxiety attack and collapsed on the college's campus. Hunt entered the San Marino psychiatric clinic where she was medicated. She remained at the clinic for a year and a half under psychiatric care. Hunt received a diagnosis of PTSD caused by an incident in 1982 when she claims she was raped by a dean on the college campus. Her psychologist testified that it is common for PTSD to occur years after a sexual assault. El Camino College does not dispute that Hunt suffers from PTSD.

At Hunt's request, El Camino College granted her 100 percent medical leave from 2002 until the fall of 2005. In 2004, Hunt began therapy with psychologist Nanette de Fuentes, which continued through the date of trial. Also at the time of trial, Hunt was medicated under the care of a psychiatrist.

Hunt and Dr. de Fuentes "figured out pretty early on that [Hunt] could work, [she] just couldn't work at El Camino." In early 2004, Hunt explained to Dean Thomas Lew "that [she] was having problems working at El Camino," but would work somewhere else. She proposed participating in a faculty exchange program in Hawaii, particularly

Maui, where her uncle lived. Dr. Lew was supportive and told Hunt to apply to the faculty exchange program. He later denied her proposal.

Hunt also requested the option of teaching online commencing in the summer of 2005. El Camino College denied this request because it wanted to fill the on-campus class.

Hunt's therapists agreed that Hunt could return to teaching at the college in the fall of 2005. The college offered Hunt a position to teach full time on campus, but Hunt rejected the offer because her therapists believed she should commence teaching on a part-time basis. Hence, the college arranged for Hunt to return to teaching on campus, part-time, i.e., a 40 percent load in the fall of 2005. Hunt taught two classes in the morning, two days a week. Although the classes she wanted to teach were not being offered that semester, she was "glad" to be back in the classroom. She began teaching full time in the spring of 2006 with additional restrictions, at Dr. de Fuentes request, that limited her other campus responsibilities.

Between 2002 and 2010, Hunt submitted approximately 10 requests to teach on a study abroad program in Spain. Despite twice being approved to teach in Spain before 2002, each of the 10 requests Hunt submitted after her collapse was denied. Hunt never applied to transfer from El Camino College to another community college in the Los Angeles area.

El Camino College's Human Resources Director called a meeting in February 2006 for the express purpose of discussing accommodations for Hunt, specifically, options for her to return to work full time. Hunt was told it was a friendly meeting and not to bring representation. At the meeting, the Human Resources Director put a document in front of Hunt that would make her a part-time instructor and no longer a full-time tenured faculty member. Hunt rejected the offer.

In addition to the above described time off from work, Hunt took three medical leaves of absence between 1980 and 2002. She also took medical leave for hand surgery in 2005. Hunt had eyelid surgery during a period when she was not working and a tummy tuck in April 1994. She also had gallbladder surgery in 2009. In 2010, Hunt took

time off because her father had cancer. Hunt suffered another PTSD-related episode in the winter of 2010 and commenced medical leave on February 17, 2011. She was on leave at the time of trial in March 2011.

Hunt testified that El Camino College never terminated her employment; never served her with charges to dismiss her from employment; never served her with a written reprimand; and never took disciplinary action against her.

## *2. Procedural background*

After receiving a right to sue letter, in April 2009 Hunt brought this lawsuit against El Camino College seeking damages for violation of the Fair Employment and Housing Act (Gov. Code, § 12940 et seq.) (FEHA) based on disability discrimination.<sup>1</sup>

El Camino College moved in limine under Evidence Code section 352 to exclude evidence that Hunt was sexually assaulted in 1982. The college asserted that Hunt claimed she was raped, and that the word “rape” was highly inflammatory and it was prejudicial evidence because the statute of limitations had run, Hunt had never alleged that the college was liable for her rape, and the vice president to whom she claimed she reported the rape *20 years later* is deceased. By contrast, the college asserted, it did not dispute that Hunt suffered a disability based on stress, with the result the rape evidence had no probative value.

Hunt opposed the motion arguing that the rape evidence was necessary to show that she suffered from a severe, recognized disability; that her requests for accommodation to teach off campus, either online or in an exchange, were reasonable in light of the particular circumstances; and to show that El Camino College failed to provide a reasonable accommodation under FEHA.

The trial court partially granted the in-limine motion. The court ruled that the identity of the alleged rapist was not material to Hunt’s case; the jury would be distracted

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<sup>1</sup> Hunt’s complaint also sought damages for defamation, negligence per se, and hostile work environment based on sexual harassment unrelated to the attack. Her appeal does not raise any issues with respect to those causes of action and so we do not address them.

by the question of whether Hunt was raped and whether a college official was the perpetrator; and El Camino College had no means by which to rebut the evidence. The court allowed Hunt's witnesses to testify that Hunt attributed her PTSD to "an alleged incident in 1982 when she claims she was sexually assaulted on the El Camino Community College campus" but that her witnesses could not testify about any other details of the alleged rape.

During trial, the court further limited its ruling. It instructed witnesses outside the jury's presence, "there shall be no reference to any rape or assault by any faculty member or any other person, dean, *or anything else associated with [the] college;*" "[s]o the witnesses are not to say or tell the jury that it was on campus, or that an administrator was involved, or that it was a rape;" and "the witnesses [are] not to . . . *to communicate that any sexual assault occurred on campus* or in connection with anybody at the college, because that's not what this case is about." (Italics added.)

The jury sent the court the following question during deliberations, "(A) How many years has Ms. Hunt been employed by El Camino College? And (B) During that time, how many sick leaves, disability leaves, leaves of absence, etc has she requested and been granted? [¶] (C) How many months/years in total do the above granted leaves amount to?" (Underlying in original.) The jury returned a verdict in favor of El Camino College and against Hunt on all causes of action.

Hunt moved for new trial. At the hearing on the new trial motion, the court explained its view of the case that the jury "understood the assault occurred on campus, that it was a sexual assault, and that it induced her [PTSD]. I don't think they bought the idea that she should get special privileges to go and teach in Hawaii and other places as she was requesting." The court denied the new trial motion and Hunt filed her timely appeal.

## CONTENTIONS

Hunt contends that the trial court abused its discretion in excluding reference to the word "rape," which is the cause of her PTSD, and then preventing her witnesses from testifying about any connection between El Camino College and the attack.

## DISCUSSION

### 1. *Disability discrimination in violation of FEHA*

FEHA provides a cause of action for an employer's failure to provide a reasonable accommodation for an employee's known disability. (Gov. Code, § 12940, subds. (a), (m).) Among recognized disabilities are mental disabilities, which include "any mental or psychological disorder . . . such as . . . emotional or mental illness" that "limits a major life activity." (Gov. Code, § 12926, subd. (j)(1).) " 'Under the express provisions of the FEHA, the employer's failure to reasonably accommodate a disabled individual is a violation of the statute in and of itself.' [Citations.] Similar reasoning applies to violations of Government Code section 12940, subdivision (n), for an employer's failure to engage in a good faith interactive process to determine an effective accommodation, once one is requested. [Citations.]" (*Gelfo v. Lockheed Martin Corp.* (2006) 140 Cal.App.4th 34, 54.)

"Two principles underlie a cause of action for failure to provide a reasonable accommodation. First, the employee must request an accommodation. [Citation.] Second, the parties must engage in an interactive process regarding the requested accommodation and, if the process fails, responsibility for the failure rests with the party who failed to participate in good faith. [Citation.] While a claim of failure to accommodate is independent of a cause of action for failure to engage in an interactive dialogue, each necessarily implicates the other." (*Gelfo v. Lockheed Martin Corp.*, *supra*, 140 Cal.App.4th at p. 54.)

2. *The cause of Hunt's disability is not relevant to her disability discrimination cause of action.*

"The court's ruling on a motion in limine is reviewed for abuse of discretion. [Citation.]" (*Piedra v. Dugan* (2004) 123 Cal.App.4th 1483, 1493.) We will disturb the court's exercise of discretion only upon a clear showing of abuse. (*Gouskos v. Aptos Village Garage, Inc.* (2001) 94 Cal.App.4th 754, 761-762.) A court abuses its discretion by acting in an arbitrary, capricious, or patently absurd manner that results in a manifest miscarriage of justice. (*People v. Rodriguez* (1999) 20 Cal.4th 1, 9-10.)

Under Evidence Code section 352, “[t]he court in its discretion may exclude evidence if its probative value is substantially outweighed by the probability that its admission will (a) necessitate undue consumption of time or (b) create substantial danger of undue prejudice, of confusing the issues, or of misleading the jury.” The record must “ ‘affirmatively show that the trial court weighed prejudice against probative value.’ ” (*People v. Prince* (2007) 40 Cal.4th 1179, 1237.)

“Evidence Code section 352 is designed for situations in which evidence of little evidentiary impact evokes an emotional bias. [Citation.]” (*People v. Olguin* (1994) 31 Cal.App.4th 1355, 1369-1370, disapproved on other grounds by *People v. Cromer* (2001) 24 Cal.4th 889, 901, fn. 3.) “ ‘ ‘ ‘The “prejudice” referred to in Evidence Code section 352 applies to evidence which uniquely tends to evoke an emotional bias against the defendant as an individual and which has very little effect on the issues. . . . ‘[T]he statute uses the word in its etymological sense of “prejudging” a person or cause on the basis of extraneous factors. [Citation.]’ [Citation.]” [Citation.] In other words, evidence should be excluded as unduly prejudicial when it is of such nature as to inflame the emotions of the jury, motivating them to use the information, not to logically evaluate the point upon which it is relevant, but to reward or punish one side because of the jurors’ emotional reaction. In such a circumstance, the evidence is unduly prejudicial because of the substantial likelihood the jury will use it for an illegitimate purpose.’ [Citation.]” (*People v. Doolin* (2009) 45 Cal.4th 390, 439.)

Here, the court granted El Camino College’s motion in limine in part only, by allowing evidence that Hunt was sexually assaulted in 1982, but disallowing the use of the word “rape,” reasoning that the college could not rebut the story and the identity of the assailant was not material, while the word would distract the jury. The court later restricted the evidence further to preclude connecting the attack with the college. We conclude the trial court exercised its discretion.

On the question of the probative value of the attack, El Camino College never disputed Hunt suffered from PTSD and so there was no issue in this case about whether Hunt suffered a disability. (Gov. Code, § 12926, subd. (j).) Also, Hunt testified that

because of her PTSD, she could not work on campus. Consequently, the *cause* of Hunt's disability, namely the 1982 sexual assault and its connection to the El Camino College campus, was not relevant to the questions the jury had to resolve, i.e., whether the college reasonably accommodated Hunt.

By contrast, the word "rape" is extremely vivid and triggers a highly emotional response which would understandably ignite the jury's emotions. Also, the trial court reasonably concluded the testimony would confuse and distract the jury from the relevant issues. Where the source of Hunt's disability was not at issue, the emotional impact of using the evidence would vastly outweigh the probative value of the evidence. Indeed, given the cause of Hunt's disability was not material, the trial court's in limine ruling actually helped Hunt by allowing her to inform the jury that she was sexually assaulted, which would understandably engender sympathy for her. By carefully fashioning a ruling that allowed evidence of Hunt's sexual assault, the court enabled Hunt to explain the source of her PTSD without evoking any unnecessary or unfair emotional bias against the college. Therefore, the record shows the court exercised its discretion judiciously by weighing the probative value of the word "rape" against its prejudicial effect, as required by Evidence Code section 352.

Hunt argues that characterizing the rape as sexual assault improperly diminished the gravity of the attack. Rape is a form of sexual assault. (See *Mary M. v. City of Los Angeles* (1991) 54 Cal.3d 202, 221 [employing terms "rape" and "sexual assault" interchangeably]; *People v. Earle* (2009) 172 Cal.App.4th 372, 385 ["rape or other assaultive sexual behavior"]; *Carney v. Santa Cruz Women Against Rape* (1990) 221 Cal.App.3d 1009, 1025 [characteristics of rape trauma syndrome are "the type of behavior a lay juror would normally associate with a sexual assault"]; *People v. Pena* (1992) 7 Cal.App.4th 1294, 1315 [rape is a " " "sexually assaultive behavior" " "].) More important, however, using the word "rape" would have improperly inflamed the jury and could have likely prompted them to use the information to punish El Camino College where the jury was otherwise not required to decide whether Hunt suffered a disability.



Notwithstanding the order partially granting El Camino Colleges' motion in limine was proper, Hunt obliquely argues the ruling harmed her. (*People v. Jackson* (1985) 174 Cal.App.3d 260, 266 [we review trial court error under Evid. Code, § 352 to determine whether it is reasonably probable that a result more favorable to the appellant would have occurred in absence of error].) She first contends that the ruling prevented her from demonstrating the reasonableness of her accommodation request because the court excluded evidence that the assault occurred on campus. We disagree.

Hunt's accommodation requests would not have sounded any more reasonable to the jury if the word "rape" were used or the assault were directly connected to the campus. The jury heard that Hunt was sexually assaulted and that because of her disability, Hunt was unable to work on campus. Her opening statement mentioned her inability to work on campus and Hunt testified that she told Dr. Lew as much. She testified she and Dr. de Fuentes "figured out pretty early on that [she] could work[; she] *just couldn't work at El Camino.*" (Italics added.) Hunt is really arguing that the in-limine ruling prevented her from showing that the college violated FEHA in its refusal to provide her with the accommodation she *wanted*, namely to work in Maui or Spain, or to teach public speaking, communication, argument, and debate online. But, "[t]he employer is not obligated to choose the best accommodation or the accommodation the employee seeks. [Citation.]" (*Hanson v. Lucky Stores, Inc.* (1999) 74 Cal.App.4th 215, 228; *Soldinger v. Northwest Airlines, Inc.* (1996) 51 Cal.App.4th 345, 370).<sup>2</sup> The jury heard that Hunt did not seek to work at another campus in the community college system in the Los Angeles area.

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<sup>2</sup> *Jensen v. Wells Fargo Bank* (2000) 85 Cal.App.4th 245, cited by Hunt does not advance her argument, for among other reasons, it involved the reversal of a summary judgment, not a trial. (*Id.* at p. 254.) Hunt cites *Jensen* to construct an argument based on her supposition about what would occur in *Jensen*, *if upon remand*, the trial court excluded evidence of the cause of Jensen's PTSD. "A decision, of course, is not authority for what it does not consider." (*Mercury Ins. Group v. Superior Court* (1998) 19 Cal.4th 332, 348.)

Hunt next contends that as the result of the in-limine ruling, she was unable to prove El Camino College's discriminatory motive. She argues, "for the jury to properly assess El Camino [College's] discriminatory animus in refusing to accommodate [her] PTSD, it needed an accurate picture of the event that triggered that PTSD and its connection to the very officials trying to retaliate against Hunt." Apart from the fact this argument conflates numerous elements of employment discrimination, the contention is unavailing for two reasons. First, the college had no reason to protect itself from liability for the attack by discriminating against her or otherwise because the statute of limitations had run (Code Civ. Proc., § 335.1). Second, the jury heard that Hunt complained of the 1982 sexual assault to at least two members of the faculty or administration in 1990 but that *no discriminatory conduct occurred in the intervening 15-year period until purportedly 2004*, and so the jury could reasonably conclude there was no connection between the attack and the alleged discrimination. The jury also heard that meanwhile, in August 2002 Hunt collapsed and went on 100 percent disability until August 2005. It also heard about the numerous leaves Hunt had taken over the years. During deliberations, the jury's question specifically asked for a tally of the sick leaves, disability leaves, leaves of absence that Hunt had been given. We can only conclude from this inquiry that the jury found El Camino College did accommodate Hunt by keeping her job open for her during her *three year* disability leave while paying her full salary, then allowing her to return part time but with full pay until the spring of 2006, and that otherwise Hunt could and did work on campus. In sum, no amount of testimony about the attack would have resulted in a more favorable verdict for Hunt. (*People v. Jackson, supra*, 174 Cal.App.3d at p. 266.)

DISPOSITION

The judgment is affirmed. Each party to bear its own costs on appeal.

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ALDRICH, J.

We concur:

KLEIN, P. J.

KITCHING, J.