

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

|                                                                                                                                                                                                                                                                                                             |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115. |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

v.

VINCENT PADILLA,

Defendant and Appellant.

B286587

(Los Angeles County  
Super. Ct. No. BA455712)

APPEAL from a judgment of the Superior Court of Los Angeles County, Carol H. Rehm, Jr., Judge. Affirmed as modified and remanded.

David M. Thompson, 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, Senior Assistant Attorney General, Shawn McGahey Webb, Supervising Deputy Attorney General, Shezad H. Thakor, Deputy Attorney General, for Plaintiff and Respondent.

A jury convicted defendant and appellant Vincent Padilla (defendant) of violating Penal Code section 273.5, subdivision (a),<sup>1</sup> which makes it a crime to inflict corporal injury on a spouse or former spouse, a cohabitant or former cohabitant, a fiancé, or someone with whom the offender has or had an engagement or a “dating relationship.” It is the last of these categories that is at issue in this appeal. Specifically, we consider whether the prosecution introduced sufficient evidence of “frequent, intimate associations primarily characterized by the expectation of affectional or sexual involvement independent of financial considerations” (§§ 273.5, subd. (b)(3), 243, subd. (f)(10)) between defendant and victim Manuel A. (Manuel). We also decide whether a remand is in order due to a legislative change in sentencing law.

## I. BACKGROUND

Manuel, a transgender woman, was the prosecution’s principal witness at trial (a police officer was the only other witness to testify). Manuel testified about the nature of her relationship with defendant and what occurred one evening when she decided to “break up with” him.

### A. *Manuel’s Trial Testimony*

Manuel described defendant as her “ex-boyfriend,” whom she first met while they both were in county jail in September 2016. When asked to explain what she meant by “boyfriend,” and specifically whether it was “a romantic relationship,” Manuel

---

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

said it was. When asked on cross-examination how she “start[ed] a dating relationship with [defendant],” Manuel explained, “We didn’t really talk about that to be honest. It just happened.”<sup>2</sup>

Manuel and defendant were in a relationship for two weeks. For three days during that time, defendant and Manuel stayed together at the house of one of defendant’s friends.

At the end of the two-week relationship, in the evening on November 22, 2016, defendant and Manuel were “hanging out” on Western and Melrose Avenues in Los Angeles. Defendant “started going off on [Manuel] and going crazy[,] and [Manuel] just couldn’t take it so [she] decided to break up with him.” Manuel told defendant “it was over” and started to walk away.

Manuel was just steps away when defendant approached from behind and punched Manuel in the face, hitting her nose. Manuel walked to seek help at a nearby convenience store because she was “like bleeding nonstop.” Defendant followed Manuel to the store, telling her to be quiet and not to say anything, and when Manuel reached the store, defendant fled.

Paramedics and police officers arrived at the convenience store and Manuel told the officers “[her] ex-boyfriend broke [her] nose.” Manuel went to a hospital the following day for treatment and a doctor reset Manuel’s nose by “crack[ing] it,” which, naturally, was painful. A couple months later, Manuel spoke to a police detective and showed the detective photographs of

---

<sup>2</sup> Manuel agreed when asked, immediately thereafter, “So you never really started an official relationship; is that correct?” No further questions were asked regarding the meaning of “official relationship.”

defendant that Manuel had in her phone to identify who was responsible for breaking her nose.<sup>3</sup>

*B. Verdict and Sentencing*

The jury found defendant guilty on the sole section 273.5, subdivision (a) count charged, and the jury found true the additional allegation that defendant personally inflicted great bodily injury on Manuel. The trial court sentenced defendant to an aggregate term of 16 years in prison: six years for the substantive crime (including doubling pursuant to the Three Strikes law), five years for the great bodily injury enhancement, and five years for sustaining a prior serious felony conviction (§ 667, subd. (a)(1)).

## II. DISCUSSION

Manuel’s trial testimony sufficed to establish the “dating relationship” element of the domestic violence charge. It has long been the law that a single witness can provide the substantial evidence necessary to support a conviction on appeal, and here, Manuel’s testimony about her “romantic relationship” with defendant, her reference to defendant as her “boyfriend,” and her disclosure of a three-day period when the two were living together establishes the requisite frequent intimate association with expectation of affection. We will therefore affirm the conviction but remand to give the trial court an opportunity to exercise discretion, which it did not have at the time of

---

<sup>3</sup> Manuel also still had defendant’s “health access programs card” in her wallet when she met with the detective.

sentencing, to strike defendant's five-year prior serious felony conviction enhancement if the court so chooses.

A. *Substantial Evidence Supports Defendant's Conviction*

“When considering a challenge to the sufficiency of the evidence to support a conviction, we review the entire record in the light most favorable to the judgment to determine whether it contains substantial evidence—that is, evidence that is reasonable, credible, and of solid value—from which a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. [Citation.] We presume in support of the judgment the existence of every fact the trier of fact reasonably could infer from the evidence. [Citation.] If the circumstances reasonably justify the trier of fact's findings, reversal of the judgment is not warranted simply because the circumstances might also reasonably be reconciled with a contrary finding. [Citation.]” (*People v. Covarrubias* (2016) 1 Cal.5th 838, 890 (*Covarrubias*).) “Except where additional evidence is required by statute, the direct evidence of one witness who is entitled to full credit is sufficient for proof of any fact.” (Evid. Code, § 411; accord, *People v. Barnwell* (2007) 41 Cal.4th 1038, 1052; see also *Covarrubias*, *supra*, at p. 912.)

The section 273.5 conviction at issue here requires a predicate finding that a “dating relationship,” as defined in section 243, subdivision (f)(10), existed between the perpetrator and the victim. Section 243, subdivision (f)(10) defines “dating relationship” as “frequent, intimate associations primarily characterized by the expectation of affectional or sexual involvement independent of financial considerations.”

Manuel's testimony proves she associated with defendant for intimate, affectional purposes, and also that the association qualifies as "frequent." Her answers to questions on direct and cross-examination establish that she considered defendant her (ex-)boyfriend, that her two-week relationship with defendant was a "romantic relationship" and a "dating relationship" (at least colloquially understood), and that the two spent frequent time together—during the two-week period they at a minimum lived with each other for three days and were together on the night of the assault. Other circumstantial evidence reinforces the jury's conclusion that defendant and Manuel had a dating relationship. Manuel had pictures of defendant in her phone (which she showed to a police detective) and Manuel had defendant's health programs access card in her wallet. Further, when Manuel decided to "break up with" defendant and told him "it was over," defendant's reaction was to punch Manuel in the face—a highly emotional (and criminal) reaction that tends to undercut any claim that the relationship between the two was "merely a casual business or social relationship." (*People v. Rucker* (2005) 126 Cal.App.4th 1107, 1117 (*Rucker*).)

Defendant's arguments that seek to undercut this evidence are all unavailing. He suggests, for instance, that Manuel's testimony was insufficiently specific about whether she and defendant were sexually involved because "romantic relationship" was too general a description. But defendant himself uses, in his reply brief, the description "romantically involved" to describe the relationships in *Rucker* and *People v. Upsher* (2007) 155 Cal.App.4th 1311 (*Upsher*) that he agrees were sufficient to satisfy the statutory "dating relationship" standard. The reply brief's diction illustrates why Manuel's "romantic relationship"

description would have adequately conveyed to the jury the intimate nature of the relationship and the concomitant expectation of affectional or sexual involvement. Defendant also suggests there were greater outward indicia of a dating relationship for the couples at issue in *Upsher* and *Rucker*, but this sort of factual comparison does not carry the day; as courts have long recognized, “[w]hen we decide issues of sufficiency of evidence, comparison with other cases is of limited utility, since each case necessarily depends on its own facts.” (*People v. Thomas* (1992) 2 Cal.4th 489, 516.) Furthermore, even on such a comparison, the facts that established a dating relationship in *Upsher* are comparable to those here. (*Upsher, supra*, at p. 1323 [dating relationship established “largely upon inferences”: the defendant used a nickname to refer to the victim, the defendant and the victim were “highly emotional,” the defendant was at the victim’s home in the early morning hours, and the defendant referred to the victim as “my girl” and “my lady friend”]; see also *Rucker, supra*, 126 Cal.App.4th at p. 1116 [“The statutory definition requires ‘frequent, intimate associations,’ a definition that does not preclude a relatively new dating relationship”].) Taking all the evidence into account, the proof that defendant and Manuel were in the statutorily defined dating relationship is sufficient to withstand substantial evidence review.

*B. The Trial Court Should Have an Opportunity to Exercise Its Discretion to Strike the Serious Felony Conviction Enhancement*

When the trial court sentenced defendant, imposition of the section 667, subdivision (a)(1) five-year enhancement for sustaining a prior serious felony conviction was mandatory.

(§ 1385, subd. (b) [“This section does not authorize a judge to strike any prior conviction of a serious felony for purposes of enhancement of a sentence under Section 667”].) A recent legislative change, however, deletes the provision of section 1385 that makes imposition of a section 667 prior serious felony conviction enhancement mandatory (and related language in section 667 itself), thereby permitting trial courts to strike such enhancements when found to be in the interest of justice. (Sen. Bill No. 1393 (2017-2018 Reg. Sess.) §§ 1, 2.) The changes made by Senate Bill 1393 are set to take effect on January 1, 2019. (See *People v. Camba* (1996) 50 Cal.App.4th 857, 865.)

Defendant argues, and the Attorney General agrees, that the change in law worked by Senate Bill 1393 would apply retroactively to defendant under the principles espoused in *People v. Francis* (1969) 71 Cal.2d 66 and *In re Estrada* (1965) 63 Cal.2d 740 (*Estrada*). But the Attorney General objects to a remand to allow the trial court to consider exercising its newfound discretion under section 1385 for two reasons: one, because the claim for Senate Bill 1393 is not yet ripe given the legislation’s effective date, and two, because the trial court’s statements at sentencing “clearly indicated” it would not exercise its newly conferred discretion in defendant’s favor. Neither reason is convincing.

Under *Estrada* retroactivity principles, Senate Bill 1393’s change in law will apply to defendant so long as his conviction is not legally “final” before Senate Bill 1393 takes effect on January 1, 2019. (*People v. Vieira* (2005) 35 Cal.4th 264, 305-306 (*Vieira*); *Estrada, supra*, 63 Cal.2d at p. 744.) Defendant’s conviction will not be final until the time for seeking certiorari in the United States Supreme Court expires. (*Vieira, supra*, at p. 306.) Thus,



as the Attorney General acknowledges, there is no chance defendant's conviction will be final before Senate Bill 1393 takes effect—the time to file a petition for certiorari would expire only after 90 days from the date our Supreme Court enters judgment in this case or denies discretionary review. (28 U.S.C. § 2101(d); U.S. Supreme Ct. Rules, rule 13(1).) In our view, that means the issue is sufficiently ripe. There is no profit in denying relief on ripeness grounds just to have the matter sent back to us later by a higher court or re-raised by a post-dispositional motion.

The Attorney General's second argument for averting a remand, that it would be pointless, is also unconvincing. The trial court sentenced defendant to the middle term, not the high term, for the offense of conviction. The court also made no statements revealing how it would proceed if it had additional sentencing discretion it did not have at the time, and both the prosecutor and defense counsel made express reference during the sentencing hearing to the (then-)mandatory nature of the section 667, subdivision (a)(1) enhancement. A remand is therefore appropriate because the record provides no "clear indication" that the trial court would decline to exercise its recently conferred discretion to reduce defendant's sentence. (Cf. *People v. McDaniels* (2018) 22 Cal.App.5th 420, 423.)

*C. A Minor Modification of the Judgment Is Necessary*

Defendant argues, and the Attorney General agrees, that the trial court incorrectly imposed a domestic violence fine of \$400 under section 1203.097. We concur—the fine is only authorized when a defendant is granted probation, and defendant here was not. (§ 1203.097, subd. (a); *People v. Kirvin* (2014) 231 Cal.App.4th 1507, 1520.)

## DISPOSITION

The judgment is modified to strike imposition of the \$400 section 1203.097 domestic violence fund fee. The cause is remanded to the trial court to consider, after January 1, 2019, whether to exercise its discretion to strike the section 667, subdivision (a)(1) enhancement under section 1385. In all other respects, the judgment is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

BAKER, Acting P. J.

We concur:

MOOR, J.

JASKOL, J.\*

---

\* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.