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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

CARLOS A. GOMEZ-ESTRADA,

Defendant and Appellant.

B240537

(Los Angeles County
Super. Ct. No. BA378668)

APPEAL from a judgment of the Superior Court of Los Angeles County. William C. Ryan, Judge. Affirmed.

Carlos A. Gomez-Estrada, in pro. per.; and Joy A. Maulitz, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

An information charged Carlos Gomez-Estrada with one count of corporal injury to a spouse in violation of Penal Code section 273.5, subdivision (a).

Maria Soto testified at trial. She and Gomez-Estrada married in 2008. On October 28, 2010, during an argument with Gomez-Estrada about money, Gomez-Estrada hit her on both cheeks with his fists and hit her on the forehead with his forehead. This occurred in the kitchen of their apartment. After hitting Soto, Gomez-Estrada left the kitchen and went to a bedroom to find Soto's brother. As he went, Gomez-Estrada was yelling that Soto had hit herself with a plate. Gomez-Estrada returned to the kitchen and lifted his hands as if he was going to grab Soto. Soto punched him on the mouth. Gomez-Estrada put his arm around Soto's neck and began squeezing Soto's neck. Soto bit his arm. Gomez-Estrada threw Soto to the ground.

Soto stated she sustained bruising and swelling on her cheeks and forehead as a result of Gomez-Estrada hitting her on October 28, 2010. The bruising and swelling lasted about two weeks. Soto's daughter (from a prior relationship) took photographs of her mother's injuries the same night as the incident and the following afternoon. The prosecutor showed the photographs to the jury. Two days after Gomez-Estrada hit Soto on the face and squeezed her neck, Soto reported the incident to the police. Soto testified Gomez-Estrada had harmed her physically on occasions prior to October 28, 2010, but she had not reported the prior incidents to the police.

Gomez-Estrada testified on his own behalf at trial. He stated, during his argument with Soto on October 28, 2010, she inflicted injuries on herself after he indicated he was going to write her a letter telling her he would divorce her. According to Gomez-Estrada, Soto punched her cheeks with her fists three or four times. She tried to take a phone out of Gomez-Estrada's hand and she hit him on the mouth. Gomez-Estrada left the kitchen to tell Soto's brother that Soto was hitting herself. When Gomez-Estrada returned to the kitchen, Soto took a plate and hit herself on the forehead. Gomez-Estrada asked Soto why she was hitting herself. She told him he "was going to remember her because she had her detective who would defend her." According to Gomez-Estrada, Soto was referring to a man named Detective Vargas. Gomez-Estrada testified, during arguments,

Soto would tell Gomez-Estrada she was going to call Detective Vargas and Detective Vargas “would come just like that if she called” and “have [Gomez-Estrada] put in jail.” Detective Vargas was the investigating officer on this case. He did not testify at trial.¹

On cross-examination, Gomez-Estrada denied he followed his wife in a car after the incident in an attempt to intimidate her before trial. On rebuttal Soto testified, three days before trial, she was driving to pick up her daughter from school when she saw Gomez-Estrada swerve his truck into her lane so that his truck ended up behind her car when she stopped at a red light. Soto looked in her rearview mirror. Gomez-Estrada was laughing and making faces like he wanted to talk to her. Soto picked up her cell phone and pretended she was talking to someone. According to Soto, Gomez-Estrada “was acting like a good person.” Soto drove straight and Gomez-Estrada turned left.²

Soto also testified on rebuttal about a prior occasion (after the incident) when she saw Gomez-Estrada while she was driving with her daughter. She was exiting an alley and she stopped at a stop sign behind two other cars. Gomez-Estrada stopped and allowed the two cars in front of Soto to exit the alley. Then he motioned for Soto to proceed in front of him. According to Soto, “very gentlemanly or lovingly, he gave [her] the right-of-way.” Soto was frightened when she saw him.

Over Gomez-Estrada’s objection, the trial court allowed the prosecutor to ask Gomez-Estrada if he had a 1996 conviction and a 1998 conviction for corporal injury to a spouse. The trial court ruled the prosecutor could impeach Gomez-Estrada’s credibility

¹ During cross-examination of Soto, defense counsel asked Soto if she saw Detective Vargas in the courtroom. Soto identified Detective Vargas, who was sitting at counsel table with the prosecutor. Defense counsel asked Soto if she knew Detective Vargas before the October 28, 2010 incident and she said she did. Soto denied she talked to Detective Vargas “often,” but agreed he would return her calls “because of the case.” When defense counsel asked her if she trusted Detective Vargas, Soto responded affirmatively. Soto denied telling Gomez-Estrada that Detective Vargas would “come just like that” if she called him.

² Gomez-Estrada testified he was working three days before trial at the time Soto claimed he drove his truck behind her car. He stated he was at a pre-scheduled appointment with other people present.

with these crimes of moral turpitude. Gomez-Estrada testified he had sustained these two prior convictions.

The jury found Gomez-Estrada guilty of corporal injury to a spouse. The trial court sentenced him to the middle term of three years in prison.

Gomez-Estrada appealed. We appointed counsel to represent him on appeal. After examination of the record, counsel filed an opening brief raising no issues and asking this court to review the record independently pursuant to *People v. Wende* (1979) 25 Cal.3d 436. On September 21, 2012, we advised Gomez-Estrada that he personally had 30 days to submit any contentions or issues he wished us to consider. We also directed his appointed counsel to send the record and opening brief to Gomez-Estrada immediately. On October 1, 2012, Gomez-Estrada filed a handwritten letter brief.

Gomez-Estrada raises ineffective assistance of counsel. “To establish ineffective assistance of counsel, a [defendant] must demonstrate that (1) counsel’s representation was deficient in falling below an objective standard of reasonableness under prevailing professional norms, and (2) counsel’s deficient representation subjected the [defendant] to prejudice, i.e., there is a reasonable probability that, but for counsel’s failings, the result would have been more favorable to the [defendant]. [Citations.] “A reasonable probability is a probability sufficient to undermine confidence in the outcome.” [Citation.]’ [Citation.]” (*In re Jones* (1996) 13 Cal.4th 552, 566.)

Gomez-Estrada asserts his counsel “fail[ed] to press certain issues that were relevant to [his] defense” and these issues “helped to sway the jury against [him] and in [Soto’s] favor.” First, Gomez-Estrada faults his counsel for failing to explore Soto’s relationship with Detective Vargas, the investigating officer on the case. Gomez-Estrada states the issue as follows: “Thus making Detective Vargas and his testimony not only in conflict, but a possible manipulation of fact and testimony.” Detective Vargas did not testify at trial. The prosecutor did not present any evidence regarding Detective Vargas’s investigation. The jury heard Soto’s testimony and Gomez-Estrada’s testimony. The jury saw photographs of Soto’s injuries taken by Soto’s daughter before Soto reported the incident to the police. Any relationship between Soto and Detective Vargas was not

germane to the issues presented at trial. Accordingly, defense counsel's decision not to press Soto about her relationship with Detective Vargas does not constitute deficient representation.

Second, Gomez-Estrada faults his counsel for "weak cross examination" of Soto regarding her testimony about the two occasions after the incident when Gomez-Estrada drove behind her (discussed above). Gomez-Estrada does not explain what he would have liked his counsel to ask Soto on cross-examination. Based on our review of the record, we do not find counsel's performance to be deficient.

Third, Gomez-Estrada cites his counsel's "failure to even try in persuading the Judge" to exclude his 1996 and 1998 convictions for corporal injury to a spouse. The record demonstrates defense counsel objected to the admission of these prior convictions, arguing they were "highly prejudicial" and "remote in time." Counsel's representation was not deficient. Gomez-Estrada does not argue the trial court abused its discretion in admitting these prior convictions, and we find no error here.

Gomez-Estrada also makes a vague assertion his counsel was "unprepared." We have found nothing in the record supporting this assertion.

Gomez-Estrada's ineffective assistance of counsel claim fails. He has not shown his counsel's representation was deficient. Nor has he shown a reasonable probability that any of the things his attorney "failed" to do would have resulted in a more favorable outcome for him.

We have examined the entire record and are satisfied that Gomez-Estrada's counsel has fully complied with her responsibilities and that no arguable issues exist. (*People v. Kelly* (2006) 40 Cal.4th 106, 109-110; *People v. Wende, supra*, 25 Cal.3d at p. 441.)

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED.

CHANEY, J.

We concur:

MALLANO, P. J.

JOHNSON, J.