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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.

JOHN ALBERTO SOTO,

Defendant and Appellant.

2d Crim. No. B268708
(Super. Ct. No. 14C-26684)
(San Luis Obispo County)

John Alberto Soto appeals a judgment following conviction of infliction of corporal injury to a spouse, with findings that he suffered a prior serious felony strike conviction and served a prior prison term. (Pen. Code, §§ 273.5, subd. (a), 667, subds. (b)-(i), 1170.12, subds. (a)-(d), 667.5, subd. (b).)¹ We affirm.

FACTUAL AND PROCEDURAL HISTORY

Shortly before midnight on July 19, 2014, San Luis Obispo Police Officer Michael L'Heureux responded to a report of domestic violence occurring in the 700 block of Higuera Street.

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

He parked his patrol vehicle and approached the area on foot; a bystander pointed to Soto and his wife, J., who were standing on the corner of Higuera Street and Bubblegum Alley.

L'Heureux approached the couple and was joined by a second police officer. J. appeared to be intoxicated; her eyes were watery and bloodshot and her speech was slurred. She was "solemn," did not make eye contact with the officers, and was reluctant to speak.

As L'Heureux spoke with J., he noticed that she favored her left hand. In response to his inquiry, J. stated that she had injured her hand while dancing at a nearby restaurant and bar, "Mother's Tavern." Soto was calm and cooperative during L'Heureux's questioning.

After interviewing Soto and J. separately, L'Heureux concluded that there was insufficient evidence to support a charge of domestic violence. L'Heureux then completed a field interview card regarding the incident. Before leaving, L'Heureux encouraged J. to seek medical attention if necessary or if her pain increased.

Within an hour, the police dispatcher directed L'Heureux to respond to the local hospital emergency room regarding a possible domestic violence incident. At the hospital, L'Heureux spoke with Doctor Rushdi Cader, the physician on duty, Erica Guzman, the emergency room nurse, and J. Soto was in a nearby waiting room.

L'Heureux again questioned J., who was upset and crying. She stated that she did not know how the injury to her hand occurred and that she did not "want to make trouble for her husband." L'Heureux now noticed several bruises on J.'s left arm. Another police officer entered the room and took

photographs of J.'s bruises. At trial, the prosecutor introduced the photographs into evidence.

Doctor Cader informed Nurse Guzman that "something wasn't right" with J.'s demeanor. Guzman then suggested that she speak with J. alone. L'Heureux and Cader agreed, and the two women spoke privately.

At trial, Guzman described J. as distraught and upset. J. informed Guzman that she had injured her left thumb but did not know how the thumb injury or her arm bruises occurred. Later, following an X-ray of her left hand, J. stated, "He did it. He did it all." J. explained that she and Soto had argued and that he had pulled her left hand and left arm. She also stated that she felt in danger "every day of her life."

Guzman informed Cader and L'Heureux that J. stated that Soto caused her injuries. L'Heureux then arrested Soto. When informed of Soto's arrest, J. became upset and called Guzman "a bitch."

J.'s Trial Testimony and Recantation

J. testified that she suffers from reflex sympathetic dystrophy, is in continual pain, and experiences frequent falls. She stated that during the evening of July 19, 2014, she and Soto attended the theater and then went to Mother's Tavern where she consumed several alcoholic drinks. She and Soto danced, and an inebriated female patron wrote a telephone number on J.'s hand. When they left the bar, J. realized that her left thumb hurt. As Soto assisted her outside with her shawl and handbag, an intoxicated bystander inexplicably shouted, "Leave her alone." J. denied that she and Soto argued or that he abused her.

J. testified that she went to the hospital at L'Heureux's direction, but considered it unnecessary because "there was nothing wrong with [her]." J. also denied informing the hospital

doctor or emergency room nurse that she had been abused. She stated that Guzman persisted in asking if Soto had injured her. J. explained that her bruises were the result of an earlier fall.

Subsequent Domestic Violence

In the early morning of September 22, 2014, J., her daughter, and her granddaughter returned from a birthday celebration at Disneyland. Her daughter took J. home and then drove to her own home. Her daughter soon received a telephone call from J. stating that she and Soto had a disagreement. Her daughter returned to J.'s home. There she found J. crying, and with bruises and a scratch mark on her chest. J. informed her that Soto had "nudge[d]" her against a bedpost.

Arroyo Grande Police Officer Dustin Phillips responded to the domestic violence call. He saw a red mark on J.'s upper right arm. J. stated that the injury occurred when Soto pushed her against a bedpost. When J. attempted to summon police assistance, Soto took her cellular telephone and threw it. Phillips believed that "something happened" between J. and Soto, but he did not know if it involved domestic violence. Phillips did not arrest Soto, nor was Soto charged with domestic violence regarding this incident.

The following day, J. telephoned the Arroyo Grande Police Department and requested a follow-up. Officer Jeffery Smith visited J. and photographed a bruise on her right wrist. He also saw a scratch on her right shoulder.

J. then telephoned the defense investigator and stated that "she wasn't going to help any longer and . . . wanted Mr. Soto to go to jail for what he did" Approximately seven months later, however, J. informed the investigator that Soto had not injured her and that she accidentally fell against the bedpost.

Conviction, Sentencing, and Appeal

The jury convicted Soto of infliction of corporal injury to a spouse. (§ 273.5, subd. (a).) In a separate proceeding, the trial court found that Soto suffered three prior serious felony strike convictions and served a prior prison term. (§§ 667, subds. (b)-(i), 1170.12, subds. (a)-(d), 667.5, subd. (b).) The court then granted Soto's motion pursuant to *People v. Superior Court (Romero)* (1997) 13 Cal.4th 497, 529-530, and struck two of the three felony strike convictions.

The trial court sentenced Soto to the upper term of four years, which it then doubled as a second strike conviction. The court added a consecutive one-year term for the prior prison term served, for a total sentence of nine years. The court imposed a \$2,700 restitution fine, a \$2,700 parole revocation restitution fine (suspended), a \$40 court security assessment, and a \$30 criminal conviction assessment; ordered victim restitution; and awarded Soto 213 days of presentence custody credit. (§§ 1202.4, subd. (b), 1202.45, 1465.8, subd. (a); Gov. Code, § 70373.)

Soto appeals and raises three claims of evidentiary error. He asserts that the trial court erred by: 1) allowing evidence of his subsequent domestic violence against J. for which he was neither arrested nor charged; 2) allowing evidence that he was a parolee; and 3) precluding evidence of Guzman's bias as a witness.

*DISCUSSION*²

I.

Soto argues that the trial court erred by permitting evidence that he committed a subsequent act of domestic violence against J. for which he was neither arrested nor prosecuted. He

² All further statutory references are to the Evidence Code.

asserts that the prejudicial effect of the evidence substantially outweighed its probative value. Moreover, he contends that J.'s allegation of the subsequent domestic violence was not credible, supported by physical evidence of injury, or established by a preponderance of the evidence.

Section 1109, subdivision (a)(1) provides that evidence of defendant's other acts of domestic violence is admissible to prove that the defendant had a propensity to commit domestic violence when he is charged with a domestic violence offense. The trial court has the discretion to exclude the evidence if its probative value is outweighed by a danger of undue prejudice or jury confusion, or would result in an undue consumption of time. (*Ibid.*; § 352.) A court's ruling admitting evidence of other crimes is reviewable for an abuse of discretion. (*People v. Homick* (2012) 55 Cal.4th 816, 859 ["We review the trial court's rulings on the admission of evidence for abuse of discretion"].)

In exercising its discretion pursuant to section 352 to admit or exclude evidence of other acts of domestic violence, the trial court must balance the probative value of the evidence against: 1) the inflammatory nature of the uncharged conduct; 2) the possibility of confusion of the issues; 3) remoteness in time of the uncharged offenses; and 4) the amount of time involved in introducing and refuting the evidence of uncharged offenses. (*People v. Branch* (2001) 91 Cal.App.4th 274, 282.) The prejudice referred to in section 352 is evidence tending to evoke an emotional bias against the defendant as an individual and which has little effect on the issues. (*People v. Rucker* (2005) 126 Cal.App.4th 1107, 1119.)

The trial court did not abuse its discretion by admitting evidence of the subsequent domestic violence. (*People v. Bryant, Smith and Wheeler* (2014) 60 Cal.4th 335, 405 [standard of

review regarding evidence of other crimes]; *People v. Brown* (2011) 192 Cal.App.4th 1222, 1233 [standard of review regarding uncharged acts of domestic violence].) The incident occurred close in time to the present offense, was a brief event against the same victim, and involved a minor injury, thus decreasing the potential for prejudice. (*People v. Ewoldt* (1994) 7 Cal.4th 380, 405 [prejudice less likely where testimony describing defendant's uncharged acts is no stronger and no more inflammatory than testimony concerning the charged offense], superseded by statute as stated in *People v. Robertson* (2012) 208 Cal.App.4th 965, 991.)

The prosecutor also sufficiently established the uncharged subsequent domestic violence act; J. had a red mark or bruise on her upper arm and she telephoned police officers for a follow-up investigation. She later informed the defense investigator that she would not help Soto any longer and that she wanted him to go to jail. (*People v. Brown, supra*, 192 Cal.App.4th 1222, 1233 [evidence of domestic violence may be introduced as propensity evidence even if defendant was acquitted of criminal charges based thereon].)

II.

Soto contends that the trial court erred by permitting evidence that he suffered a prior felony conviction and was a parolee when he committed the present offense. He argues that the prejudicial effect of the evidence outweighed its probative value, and other methods were available to impeach J.'s credibility. Soto asserts that the error denied him a fair trial and due process of law pursuant to the Sixth and Fourteenth Amendments.

Prior to receiving evidence of Soto's parole status, the trial court instructed that Soto's prior conviction was not a domestic violence offense and that the jury should not speculate regarding

its nature. The court also instructed that the jury was to consider the witness's response "for the limited purpose[] of evaluating her credibility and for no other purpose." The prosecutor then questioned J. whether her admitted reluctance to testify at trial concerned her knowledge that Soto "is currently on parole and that he has been convicted of a nondomestic-violence-related incident, and . . . a conviction here would be detrimental to his record." J. responded, "Yes."

Relevant evidence is evidence "having any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the action." (§ 210.) The trial court is vested with wide discretion to determine the relevancy of evidence. (*People v. Alexander* (2010) 49 Cal.4th 846, 904.) In reviewing a relevancy contention, we consider whether the challenged evidence satisfied the requirements of section 210, and whether the trial court abused its discretion pursuant to section 352 in finding that the probative value of the evidence was not substantially outweighed by the substantial danger of undue prejudice. (*Alexander*, at pp. 903-904.)

The trial court did not abuse its discretion by permitting this evidence of Soto's parole status. The "existence or nonexistence of a bias, interest, or other motive" on the part of a witness is relevant to the truthfulness of the witness's testimony. (§ 780, subd. (f).) Here Soto's parole status and the possibility of his return to custody tended to explain J.'s recantation of her earlier complaints. As such, it was relevant evidence that was not unduly prejudicial. Moreover, the court instructed that the jury was to consider the evidence only for the limited purpose of evaluating J.'s credibility. We presume jurors understand and follow the court's instructions. (*People v. Espinoza* (2016) 1 Cal.5th 61, 79; *People v. Romero and Self* (2015) 62 Cal.4th 1, 28.)

Soto may have preferred that the prosecutor employ other methods to attack J.'s credibility. However, the prosecutor may use any methods in his discretion that are lawful and result in admissible evidence subject to the trial court's discretion pursuant to sections 210 and 352, among other statutes. Here the brief evidence of Soto's parole status was relevant and not unduly prejudicial.

III.

Soto argues that the trial court erred by precluding evidence that Guzman was a biased witness because she had been a victim of domestic violence. (§ 780, subd. (f); *People v. De Leon* (1968) 260 Cal.App.2d 143, 156 [proper to cross-examine witness regarding bias toward a party].) He points out that the jury asked for a readback of Guzman's testimony. Soto contends that the error denied him the right to confront witnesses, to present a defense, and to a fair trial pursuant to the Sixth Amendment and due process of law.

Prior to trial, the trial court granted the prosecutor's motion to preclude cross-examination of Guzman regarding domestic violence she may have suffered in 2009. The court determined that the evidence was marginally relevant to establishing Guzman's bias in favor of domestic violence victims but outweighed by the danger of jury confusion and consumption of time. The trial judge stated: "[A]ny testimony that her past history would affect her ability to recall the events and relay them accurately to the jury is entirely speculative"

The trial court did not abuse its discretion by precluding cross-examination concerning any domestic violence Guzman may have experienced in 2009. Such evidence would require the speculative inference that Guzman would be biased in favor of domestic violence victims and, therefore, would fabricate false

domestic violence complaints. (*People v. Cornwell* (2005) 37 Cal.4th 50, 81 [exclusion of evidence that produces only speculative inferences is not an abuse of discretion], overruled on other grounds by *People v. Doolin* (2009) 45 Cal.4th 390, 421, fn. 22.) Guzman, an emergency room nurse and a statutory mandated reporter of abuse, knew neither J. nor Soto, and was performing her employment duties when she treated and questioned J.

As a general rule, a defendant has no constitutional right to present all relevant evidence in his favor. (*People v. Guillen* (2014) 227 Cal.App.4th 934, 1019.) Application of the ordinary rules of evidence does not impermissibly infringe on the defendant's right to present a defense. (*People v. Lucas* (2014) 60 Cal.4th 153, 270, overruled in part by *People v. Romero and Self*, *supra*, 62 Cal.4th 1, 53, fn. 19; *People v. Gonzales* (2012) 54 Cal.4th 1234, 1258.) Thus, constitutional principles are not offended by rulings that exclude evidence that is repetitive, marginally relevant, or that poses an undue risk of prejudice or confusion of the issues. (*People v. Pearson* (2013) 56 Cal.4th 393, 454 [trial court has broad discretion to prevent criminal trials from "degenerating into nitpicking wars of attrition over collateral credibility issues"]; *Gonzales*, at p. 1259.) In order for a defendant's constitutional rights to override the application of the ordinary rules of evidence, the proffered evidence must have more than slight relevancy to the issues and must be of substantial and significant value. (*Guillen*, at p. 1019.)

Moreover, the trial court's ruling here was not a "blanket exclusion" that stripped Soto of his defense of attacking Guzman's credibility. (*People v. Page* (1991) 2 Cal.App.4th 161, 185.) Soto questioned Guzman regarding inconsistencies between her testimony and her written statements. J. testified

that she felt pressured by Guzman’s repeated questions to claim that her husband had abused her. Soto thus had other means of attacking Guzman’s credibility as a witness. “Generally speaking, the Confrontation Clause guarantees an *opportunity* for effective cross-examination, not cross-examination that is effective in whatever way, and to whatever extent, the defense might wish.” (*Delaware v. Fensterer* (1985) 474 U.S. 15, 20.)

IV.

Soto argues that cumulative prejudice arising from the asserted erroneous rulings compels reversal of the judgment. We have concluded that the trial court’s evidentiary rulings discussed herein were proper. (*People v. O’Malley* (2016) 62 Cal.4th 944, 1017 [statement of general rule regarding cumulative error].) There is no prejudicial error, cumulative or otherwise.

The judgment is affirmed.

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GILBERT, P. J.

We concur:

YEGAN, J.

PERREN, J.

Rita C. Federman, Judge

Superior Court County of San Luis Obispo

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