Filed 8/29/18 P. v. Turner CA2/2

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION TWO

THE PEOPLE, Plaintiff and Respondent, v. JOSE ROBERTO TURNER, Defendant and Appellant.	B283883 (Los Angeles County Super. Ct. No. GA096978)

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

Brad Kaiserman, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Joseph P. Lee and Jaime L. Fuster, Deputy Attorneys General, for Plaintiff and Respondent.

Jose Roberto Turner (defendant) appeals from a conviction of first degree murder following a jury trial. The victim was LaJoya McCoy, the mother of defendant's two young children. Defendant challenges the admission of evidence of his violent relationship with a former girlfriend pursuant to Evidence Code section 1109. We find no abuse of discretion in the trial court's decision to admit the evidence. We further find that even if the trial court had erred, such error is harmless in light of the other evidence presented at trial. Therefore, we affirm the judgment.

STATEMENT OF THE CASE

Defendant was charged in an information, filed March 30, 2017, with the murder of LaJoya McCoy, in violation of Penal Code section 187, subd. (a). It was also alleged that defendant used a rope or cord as a deadly and dangerous weapon pursuant to section 120.22, subdivision (b)(1). Defendant entered a plea of not guilty and denied the special allegation.

On June 19, 2017, a jury convicted defendant of first degree murder and found true the special allegation that he used a rope or cord as a deadly and dangerous weapon.

On July 11, 2017, the trial court denied probation and imposed the prescribed term of 25 years to life in prison, plus a one-year enhancement for the weapon use. Appellant received 685 days of presentence custody credit and was ordered to pay fines, fees, and restitution.

On July 11, 2017, appellant filed a notice of appeal.

STATEMENT OF FACTS

Defendant's relationship with McCoy

McCoy and defendant began dating when McCoy was 20 years old and in college. They had two children, James and Savannah. Their relationship lasted seven or eight years, and ended in 2012 or 2013. They shared custody of their two children after their separation.

Evidence of incidents between defendant and McCoy

In 2011, McCoy, who by then had a master's degree in accounting, was hired by the Los Angeles County Department of Public Health to conduct financial audits of private contractors. Around 2013, Jose Navarro (Navarro) became McCoy's immediate supervisor at work.

In April 2013, McCoy's uncle David Clark and his wife Alicia Bell lived in Pasadena, not far from McCoy. Late at night on April 7, 2013, McCoy arrived at Clark's house, crying hysterically, wearing only a short nightgown and no shoes, with her hair "all over the place." McCoy told Clark and Bell that she had run away from defendant, that she had enough of defendant's physical abuse and controlling behavior, and that she could not "do this anymore." McCoy told Bell that defendant had thrown her against a wall. Bell noticed bruising around McCoy's neck. McCoy stated that she had an argument with defendant, who put her on the ground and started choking her. She was able to get up and run out of the apartment. Although defendant chased her, she was able to run away to Clark's home. McCoy spent the night at Clark's home.

The next morning, Clark called the Pasadena police department and asked for help in going back to McCoy's apartment to gather some of her belongings. At McCoy's apartment, Clark, his two older sons, and McCoy met two police officers. Defendant was uncooperative and refused to give McCoy her purse and car keys although police officers repeatedly told him to do so. McCoy eventually moved to a different apartment in Monrovia.

Louis Reyes had worked with McCoy since 2011. They became close friends. In April 2012, Reyes first met defendant at a play defendant was starring in at the Pasadena Playhouse,

which had been produced and financed by McCoy. At the time, McCoy and defendant were still together.

In early June 2014, McCoy asked Reyes to help her change the locks at her Monrovia apartment. Around 9:00 p.m., after Reyes had been in McCoy's apartment for about 30 minutes, defendant knocked on the door and asked to be let in. He said he knew McCoy had a man inside, and threatened to "kick both [their] butts." Defendant's tone of voice was very angry. McCoy panicked and ran around making sure all the windows and doors were closed. She asked Reyes to go into the bathroom in order to avoid trouble if defendant entered. Reyes declined, but McCoy insisted.

In December 2014, McCoy's mother, Summer Jackson, stayed with defendant for about a week. One night around 2:00 a.m., Jackson woke up to use the restroom. Defendant was sitting in the living room, and asked Jackson to come look at a photograph, which was on McCoy's Facebook page. It was of McCoy and a man sitting at a dinner table. Defendant appeared bitter and angry. On two other occasions, defendant showed Jackson photographs of McCoy with other men. The photos were upsetting to defendant. Jackson tried to calm him down.

Brandon Washington met McCoy in October 2014. They started out as friends and continued as business partners in a mobile application venture. In January 2015, Washington and McCoy tried to date for one or two weeks. It did not work out because, based on McCoy's stories, Washington was afraid that if he encountered defendant, the situation could turn violent.

In March 2015, McCoy's friend Eva Mendoza attended a makeup class at McCoy's boutique. At the end of the class, McCoy told Mendoza about the things defendant had done. McCoy played a voicemail left for her by defendant. The voice mail contained yelling and cursing and statements that the

children were only going to be with him, that he was going to make sure she had no contact with them, and that women like her deserved to go to hell. McCoy cried while playing the voicemail.

One night in May 2015, McCoy called Washington around 1:00 a.m. She was afraid because her "kids' dad" and "ex" was outside, trying to get into her home. McCoy asked Washington to stay on the phone with her. Washington suggested that she call the police, but McCoy did not want to cause any problems because of the children. They were on the phone together for about 15 minutes, until defendant left.

McCoy changed her name on Facebook to "Kamiel McCoy" because Kamiel was her middle name and someone was hacking her Facebook page. On May 31, 2015, McCoy posted a photograph of her and her new boyfriend on Facebook along with the phrase "This one is a keeper." She also posted a photograph of herself with the man and wrote "I can see myself married to this guy." The last post was deleted before McCoy's body was found.

Teshale Wesene became involved in McCoy's business venture in January 2015. On June 3, 2015, Wesene attended a meeting about the business venture. Around 10:00 p.m., while McCoy and Wesene were working at the kitchen table, McCoy received a text message. Immediately after, McCoy began to act strangely and seemed scared. She told Wesene to move to the living room. She closed the shades and turned off the lights, and made sure the front door was locked. Wesene did not know what was going on and felt "really scared." They waited quietly in the dark for about 30 to 45 minutes. Then, McCoy woke up her children and told Wesene she was going to give him a ride home. At her car, McCoy noticed that one of her tires was flat. Wesene told McCoy that he would find a nearby hotel room, which he did.

The following day, Wesene called McCoy and told her that he was very scared by the incident and had decided not to work with her on the mobile application any more.

Around June 2, 2015, one of McCoy's neighbors, Marie Carrasco, observed defendant coming from the back of her apartment complex at about 7:30 a.m. Defendant walked away down the street.

On June 4, 2015, at 6:10 a.m., Navarro received a text message from McCoy stating that she would not be coming to work that day. She stated that she believed her children's father had flattened her car tire the previous night, that she was too scared to walk her children to school and then walk home alone, that she was going to stay home with her children and get her tire fixed.

Events of June 9, 2015

On June 9, 2015, McCoy arrived at work around 8:20 a.m., left at noon, returned at 12:45 p.m., and left at 5:05 p.m. McCoy let Navarro know that she had an appointment with the Employee Assistance Program on June 10, 2015, at 10:00 a.m.

At 11:07 a.m., McCoy sent a text message to her next door neighbor, Kwaku Koampa, stating, "I get this feeling that my ex may come in my apartment today. Can you please keep an eye on my apartment? My ex drives a white old car now."

Around noon, Carrasco observed McCoy unloading children's stuff out of her car in front of the building. McCoy was with her daughter and a black male. Carrasco could not see the man's face, but did not believe it was defendant.

Around 4:30 p.m., McCoy spoke to Jackson. McCoy seemed anxious and wanted her sister L'Jadia to visit her that same day. Jackson suggested L'Jadia could take a bus early the following day. McCoy seemed frustrated. McCoy paid for L'Jadia's bus

fare and requested that L'Jadia arrive the next day at the bus station in Monterey Park, which was close to McCoy's job.

Between 5:00 and 6:00 that evening, McCoy met her friend Bernadette Stephenson at a restaurant in Monrovia. When Stephenson arrived at the restaurant, she saw McCoy talking to Jason Pimintel, who was sitting at the next table. Pimintel exchanged business cards with McCoy. The women left around 10:00 p.m. Pimintel had left about 15 minutes earlier.

At 11:20 p.m., Luther Wauls, a friend and former boyfriend of McCoy, sent her a text message asking what she was doing. Within two minutes, McCoy replied, "Home chillin. Went out with my girlfriend after work." This was the last known communication between McCoy and anyone else.

McCoy's disappearance

On June 10, 2015, Jackson took L'Jadia to a bus station and called McCoy several times to confirm that McCoy still wanted L'Jadia to visit. McCoy did not answer her phone or return Jackson's numerous messages. Jackson then instructed L'Jadia to take the train from the bus station to Pasadena and arranged for her to be picked up by Clark.

Later, defendant returned Jackson's call. Although Jackson asked him several times if he had seen or spoken to McCoy, defendant would not answer her. He noted that his children would be happy to see L'Jadia. Prior to this conversation, defendant had never failed to respond to Jackson's questions.

McCoy failed to show up for her meeting with the Employee Assistance Program on June 10, 2015, at 10:00 a.m. She also failed to show up for work that day.

On June 11, 2015, defendant and his two children were outside of Clark's apartment building. Defendant was talking on his cell phone. The children came inside Clark's apartment.

Defendant finally got off the phone and starting talking about sports with Clark. Defendant had never before come over to Clark's apartment without McCoy.

On June 11, 2015, Jackson called defendant and asked him for the telephone number of the Monrovia Police Department, since she had not yet heard from McCoy. Defendant replied that he could not do that. Jackson then asked if he could help her find the name of McCoy's apartment building because she wanted to contact the management company. Defendant again told Jackson that he could not do that.

On June 12, 2015, Jackson called the Monrovia Police Department. She was told that officers would go to McCoy's home and call her back. Navarro and Stephenson also called police and asked them to conduct a welfare check on McCoy.

Around 7:00 p.m., Monrovia Police Officers David Andrew and Fred Hirigoyen were dispatched to McCoy's apartment. They knocked on the door of the apartment, but no one responded. Officer Andrew called defendant and asked him when he last saw or heard from McCoy. Defendant said he last heard from her on June 5 or 6, 2015, when he dropped the children at her home. Defendant stated that he had prearranged with McCoy to pick up the children at the Boys and Girls Club and that he did not speak with McCoy often. Jackson later called the Monrovia Police Department and filed a missing person report.

Evidence obtained from search of McCoy's home

On June 15, 2015, Detectives Chad Harvey and Kevin Oberon were dispatched to McCoy's home. They knocked on the door and yelled out McCoy's name, but received no response. The officers entered the apartment. In the master bedroom, there were bloodstains on the carpet and wall. There were also bloodstains on the mattress and back wall. There were no sheets

or comforter on the bed. The detectives exited the residence and called the Los Angeles Sheriff's Department (LASD).

On June 15, 2015, James Nieman, a senior criminalist with the LASD, went to McCoy's apartment. There were no obvious signs of forced entry. Strands of McCoy's hair were on the headboard of her bed. DNA testing showed that McCoy was the sole source of most of the bloodstains. However, defendant was a major contributor of the DNA mixture in a transfer-type bloodstain on a bedroom wall. McCoy was a possible minor contributor of the DNA. Defendant was also a major DNA contributor of the bloodstain on the light switch cover. As to each of these two bloodstains, there was a 15-marker match for the major DNA contributor, and the random match probability was one out 210 quadrillion. A random match probability is a statistical estimate about the rarity of the profile.[1]

Discovery of McCoy's body and further evidence obtained

On June 16, 2015, around 4:30 a.m., Monrovia Police Officer John Jefferson found McCoy's car parked about one mile from her home. Officer Jefferson looked through the front passenger side window and saw a blanket and a child's seat covering a deceased Black woman. He secured the crime scene and waited for other officers to arrive. Witnesses had seen the car parked at that same location since the previous Friday, June 12, 2015. The car had a parking ticket, which was issued on June 15, 2015. LASD Detective Toni Martinez had the car towed to the coroner's office before it was opened.

Anselmo Casas, a LASD senior criminalist, examined McCoy's car. McCoy's unclothed body was in the front passenger

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[1] Nieman testified that, for example, if the random match probability were one in one thousand, he would need one thousand individuals who were random and unrelated before seeing that profile one other time.

seat area, with her knees bent on the floor and her upper body resting on the seat bottom. There were several items on top of her body, including a child's car seat.

Casas collected blood on the rear exterior passenger side door and on the running panel below the front passenger door. Casas took samples on the door handles, steering wheel, levers, gearshift, and trunk lid to check for "touch DNA." DNA testing showed that McCoy was a major contributor of a DNA mixture on the driver's interior door handle and defendant was included as a minor contributor, with a random probability of one out of 140 individuals. The bloodstains on the car exterior also belonged to McCoy.

The car contained several papers. One paper was under McCoy's body on the passenger seat. The writing on the paper was McCoy's handwriting. It read: "May 2015, Jewelry and birth certificates/SSC are missing from my house. May 2015, all my insurance policies are missing from my house. June 15, I got a flat tire after he says he's in my area. He text me at 12:14 and 12:45 in the morning. Tire guy says it was intentionally done. Sends me disturbing text messages."

On June 20, 2015, Yulai Wang, a deputy medical examiner with the Los Angeles County Coroner, performed McCoy's autopsy and concluded that her injuries were consistent with strangulation. There was no evidence of sexual trauma. The cause of death was strangulation. A stab wound behind her left ear was not fatal.

Blood was detected in McCoy's fingernails. DNA testing of a sample from her right hand showed a DNA mixture of which McCoy was the major contributor and defendant was a possible minor contributor, with a random probability of one out of 990,000. There was no male DNA in the left hand sample.

Searches of defendant's car and home

On June 29, 2015, Detective Martinez searched defendant's car. On the rear seat, he found a black briefcase that contained several items, including one page of yellow notebook paper and a green spiral notebook. On the yellow page, defendant had written, "Kids mom always bothering us" and that he "have to get her out of the way." On a page of the green notebook, defendant had written: "Time to pay for your evil deeds! I'm tired. I have given enough time, and I've been patient. I'm tired of being mocked. I'm tired of this girl playing games and think it is okay. She has no conscience as to her wrongs. She hurts my children, and I will hold her accountable. I have been gravely disrespected in every way that a woman can disrespect a man that she has been with during and after the relationship. [¶] I will get great pleasure in tearing her apart. This bitch has to be held accountable. She is not going to stop in her attacks, never; and I am not going to tolerate it. She has to pay! [¶] She said herself you're going to be the one to kill me in '08. She is prophetic. [¶] There is no way in hell that she could have ever thought that I would let her get away with this bullshit. She lived with me for ten years. She knew better than anyone."

Defendant's fingerprint was lifted from one of the pages of the notebook.

The briefcase also contained birth certificates for McCoy and her two children, social security and medical cards for the children, one of McCoy's utility bills, and one of McCoy's 2014 paystubs.

On August 27, 2015, defendant was arrested for McCoy's murder. His Pasadena apartment was searched. A note found in his bedroom read: "For the sanity of myself and my children, I need to have very little contact with LaJoya. She has betrayed us as a family, and there is no good that will ever come out of me

communicating with her. My children, safety and mental state, along with their happiness, is the most important thing with me moving forward. I have to stop being weak and engaging with her via text or any other conversation for myself and my children, James and Savannah." This note was written by defendant.

Testimony of Adriane Dawson

In 1993, Adriane Dawson met defendant at a play in South Carolina. She started dating him three months later. She was 23 years old at the time. Appellant was very controlling as to all aspects of the relationship. He demanded that Dawson report to him her daily activities. About three weeks after they started dating, defendant became physically abusive on a daily basis. He usually punched her below the neck and choked her. He also slapped her face. Dawson reported the abuse to the police but allowed defendant back into her home. She believed him when he said he would change.

Strangling or choking Dawson was one of defendant's acts of abuse. He was very strong and could lift her off the floor with one hand around her neck. At least once, she passed out because of the strangulation. She thought she was going to die. Twice, he suffocated her with a pillow because he was angry about something. During these two episodes, she almost passed out and was gasping for air. Once, defendant flattened Dawson's tires so she could not go to work.

The relationship lasted about one year. Dawson thought defendant had moved to Detroit, but then she saw him working at a convenience store back in South Carolina. She asked him why he was back, and he did not answer. Dawson moved to a new home for a fresh start, without telling defendant her new address. However, defendant showed up at her place unannounced. Dawson did not allow defendant in her home, and threatened to call the police if he did not leave.

Defendant later approached Dawson when she was working at her sister's store. Dawson asked him to leave and pulled out a pistol that was kept behind the counter. Defendant persisted and did not want to leave. Dawson pointed the gun at defendant and walked him out of the store. She never saw him again.

Testimony of Chalfonte McWilliams

In June 2015, Chalfonte McWilliams was one of McCoy's neighbors. She saw defendant at McCoy's place many times, usually dropping off the children. After the police searched McCoy's apartment, McWilliams saw defendant and his children in front of the apartment building. McWilliams asked defendant if he knew McCoy's whereabouts. Defendant said he did not know, and that McCoy was supposed to be home.

McWilliams's testimony was contradicted by Monrovia Police Officer Harvey, who stated that McWilliams told him about her conversation with defendant on June 12. At that time, defendant told McWilliams that he was there to get some games for the children, and that he was aware that McCoy was missing. Defendant appeared calm and unconcerned.

DISCUSSION

Defendant's sole contention on appeal is that the trial court erred in admitting evidence regarding his 1993 domestic violence against Adriane Dawson pursuant to Evidence Code section 1109 (section 1109).

I. Applicable law and standard of review

Evidence of a person's character is generally not admissible at trial when offered to prove his or her conduct. (Evid. Code, § 1101, subd. (a).) However, section 1109 provides an exception to this rule for cases involving domestic violence. Section 1109 provides that, "in a criminal action in which the defendant is accused of an offense involving domestic violence, evidence of the defendant's commission of other domestic violence is not made

inadmissible by Section 1101 if the evidence is not inadmissible pursuant to Section 352." (§ 1109, subd. (a)(1).) Evidence Code section 352 provides that "[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."

Section 1109, subdivision (e) establishes a presumption that evidence of past acts of domestic violence occurring more than 10 years before the charged offense is inadmissible unless "the court determines that the admission of this evidence is in the interest of justice."

Admission of evidence "in the interests of justice" requires "a more stringent standard of admissibility" than the standard for admissibility pursuant to Evidence Code section 352. (*People v. Johnson* (2010) 185 Cal.App.4th 520, 538-539 (*Johnson*) ["By including a specific 'interest of justice' requirement under subdivision (e), the Legislature must have intended to require a more rigorous standard of admissibility for remote priors"].) The *Johnson* court held that the trial court did not abuse its discretion in an attempted murder trial by admitting evidence that the defendant had, more than 10 years before, fired a gun at a woman he was dating or had dated. (*Id.* at pp. 524-526, 530-531.) The charged attempted murder similarly involved the defendant's act of firing a gun at a woman he was involved with. The *Johnson* court noted that ""'[t]he principal factor affecting the probative value of an uncharged act is its similarity to the charged offense.'" [Citation.]" (*Id.* at p. 531.) Section 1109, subdivision (e) was not intended to "present an insurmountable obstacle" to the admission of more remote prior conduct. (*Johnson*, at p. 539.) The trial court properly concluded that the

"'interest of justice'" standard was met after engaging "in a balancing of factors for and against admission" and concluding the evidence was "'more probative than prejudicial.'" (*Id.* at pp. 539-540.)

In contrast, where a prior act of domestic violence is not sufficiently similar to the charged act, it does not meet the "interests of justice" standard and should not be admitted as evidence at trial. (*People v. Disa* (2016) 1 Cal.App.5th 654, 673 (*Disa*).) In *Disa*, the defendant admitted to killing his girlfriend but denied that he meant to kill her. On appeal, he contended there was insufficient evidence of premeditation and deliberation. While the charged offense was strangulation, the trial court admitted prior evidence involving the defendant lying in wait and stabbing his former girlfriend and her new partner with a knife. The trial court acknowledged that the prior incident "involved 'totally different' acts." (*Id.* at p. 673.) The Court of Appeal found that there was a "serious risk the jury would improperly use the specific facts of defendant's past conduct to find premeditation and deliberation in the current matter." (*Id.* at p. 673.) Although the defendant's propensity to do violence to a partner was admissible, the trial court abused its discretion in admitting the evidence of premeditation and lying in wait. "This evidence was highly inflammatory and was not specifically relevant to the purpose for which the past incident of domestic violence was admitted, that is, to show a propensity to do violence to a partner or former partner." (*Id.* at p. 674.) The error was prejudicial because the evidence of premeditation in the charged offense "paled in comparison" to the evidence of premeditation in the previous offense. (*Ibid.*)

The trial court's rulings regarding the admission of evidence are reviewed under the abuse of discretion standard. (*People v. Jablonski* (2006) 37 Cal.4th 774, 805.) Under this

standard, "'"a trial court's ruling will not be disturbed, and reversal is not required, unless the trial court exercised its discretion in an arbitrary, capricious, or patently absurd manner that resulted in a manifest miscarriage of justice." [Citation].'" (*People v. Lewis* (2009) 46 Cal.4th 1255, 1286.) "'The admission of relevant evidence will not offend due process unless the evidence is so prejudicial as to render the defendant's trial fundamentally unfair.' [Citation.]" (*Jablonski*, at p. 805.) Prejudice is reviewed under the standard set forth in *People v. Watson* (1956) 46 Cal.2d 818. As set forth in that case, we consider whether it is reasonably probable that, but for the erroneous admission of the evidence, the defendant would have received a more favorable verdict. (*Id.* at pp. 835-836.) Assessment of prejudice stemming from federal constitutional violations are conducted by determining whether the error was harmless beyond a reasonable doubt. (*Chapman v. California* (1967) 386 U.S. 18, 24.)

II. The trial court did not abuse its discretion in admitting the evidence of prior domestic violence

Dawson's allegations stemmed from acts that occurred over 20 years prior to the charged offense. Due to its remoteness in time, this evidence was presumptively inadmissible absent a determination that admission of the evidence was "in the interest of justice." (§ 1109, subd. (e).) Defendant argues that the evidence was inadmissible under this "more stringent" standard of admissibility. (*Johnson, supra,* 185 Cal.App.4th at pp. 538-539.) Specifically, defendant argues that the actions against Dawson were not sufficiently similar to the charged offense to warrant admission. Instead, defendant argues, the evidence was similar to that presented in *Disa*, and should have been excluded as inflammatory and irrelevant.

We find that the trial court did not abuse its discretion in admitting the evidence pursuant to section 1109, subdivision (e) due to the substantial similarities between the acts described by Dawson and the evidence against appellant at trial. For example, Dawson described defendant as controlling and physically abusive. Dawson also provided evidence that defendant flattened her tires when he was angry with her. There was similar evidence at trial that defendant acted in a way that was controlling and physically abusive to McCoy, and that he had flattened McCoy's tires when he was angry with her. After each woman ended her relationship with defendant, defendant stalked her and caused her to live in fear. Most significantly, Dawson described abuse including choking and strangulation at the hands of defendant. McCoy was strangled to death.

Thus, the evidence provided by Dawson shows that defendant engaged in a similar pattern of abuse against both women. As in *Johnson*, where the defendant undertook similar violent acts against previous female partners, such evidence meets the "more stringent" standard of admissibility under section 1109, subdivision (e).

The Legislature has recognized that "'[t]he propensity inference is particularly appropriate in the area of domestic violence . . . [n]ot only is there a great likelihood that any one battering episode is part of a larger scheme of dominance and control, that scheme usually escalates in frequency and severity. Without the propensity inference, the escalating nature of domestic violence is often masked.'" (*People v. Johnson* (2000) 77 Cal.App.4th 410, 419, quoting Assem. Com. Rep. on Public Safety (June 25, 1996) pp. 3-4.) The evidence provided by Dawson serves this purpose of showing a larger scheme of dominance and control, and escalating violence to the point where defendant

committed "'the ultimate form of domestic violence,'" murder. (*People v. Brown* (2011) 192 Cal.App.4th 1222, 1225.)

Disa does not support defendant's position that the trial court erred in admitting Dawson's evidence. The *Disa* court made it clear that section 1109 "permits the admission of a defendant's other acts of domestic violence for the purpose of showing a propensity to commit such crimes. [Citation.]" (*Disa, supra*, 1 Cal.App.5th at p. 672.) Accordingly, the *Disa* court found "no abuse of discretion in either the trial court's finding that defendant's 'propensity to do violence to a partner or former partner [was] extremely relevant,' or its concomitant ruling that defendant's past conduct was admissible to some extent to show propensity to commit domestic violence." (*Ibid.*) However, the issue in *Disa* was not who killed the victim, but the circumstances of such killing. Specifically, the defendant challenged the charge that the murder was planned and premeditated. Thus, "it was incumbent upon the trial court to exclude evidence of defendant's extensive planning and waiting in the prior incident."[2] (*Id.* at p. 673, fn. omitted.)

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[2] In his reply brief, defendant relies heavily on, and cites extensively from, *People v. Williams* (2018) 23 Cal.App.5th 396 (*Williams*). In *Williams*, as in *Disa,* there was no dispute that the defendant killed the victim, his wife. The issues at trial concerned only the defendant's state of mind and sanity. (*Williams*, at p. 400.) Evidence of the defendant's 23-year-old conviction of shooting with intent to kill his former wife's mother was admitted at trial pursuant to Evidence Code section 1101, subdivision (b) [permitting evidence of a previous crime when relevant to prove a fact other than the defendant's disposition to commit a crime]. The prosecutor argued in closing argument that the killing was not an accident or done in the heat of passion in part because the defendant acted with intent to kill when he committed the prior crime. (*Williams*, at p. 407.) The Court of

Here, in contrast to *Disa,* the issue was who killed the victim. The trial court did not abuse its discretion in admitting Dawson's evidence of abuse showing significant similarities to the abuse McCoy suffered.

Defendant parses through Dawson's testimony, picking out dissimilarities. For one, Dawson testified that "[i]f I did not want to have sex, I would get choked." Defendant argues that this amounted to an accusation of rape against him, even though no similar allegation was raised regarding McCoy. Because cases involving sex crimes generally arouse passion and prejudice in the minds of jurors, defendant argues, this alone could have caused the jury to find him guilty. (Citing *People v. McKerney* (1967) 257 Cal.App.2d 64, 66.) Further, defendant points out that Dawson described multiple acts of abuse, whereas there was evidence of only one prior incident of defendant choking McCoy.

We decline to find an abuse of discretion due to these technical dissimilarities. The similarities between defendant's actions against Dawson and his action against McCoy were sufficiently similar to bring them well within the purpose of section 1109. Any allegation of a prior rape was not so inflammatory as to overshadow the strong evidence of murder in this case. Further, the fact that Dawson was alive to testify as to a greater number of incidents of abuse than were documented against McCoy does not render Dawson's testimony inadmissible. No abuse of discretion occurred.

Appeal determined that the evidence of the prior crime was admitted in error, due to "the real likelihood that the jury . . . would use the prior incident to improperly shore up the thin case for premeditation and deliberation." (*Id.* at p. 421.) Because *Williams* involved a different statute and a different issue -- premeditation and deliberation, not guilt -- we do not find it persuasive.

III. Any error would be harmless

Even if we had concluded that the evidence was improperly admitted, we would find that the error was not prejudicial. A trial court's rulings may not be disturbed on appeal unless the defendant can show a miscarriage of justice. (*People v. Rodrigues* (1994) 8 Cal.4th 1060, 1124.) A miscarriage of justice occurs only where it is reasonably probable that, but for the erroneous admission of the evidence, the defendant would have received a more favorable result. (*People v. Watson, supra*, 46 Cal.2d at pp. 835-836.) Under the federal constitutional standard, we must determine whether the error was harmless beyond a reasonable doubt. (*Chapman v. California, supra*, 386 U.S. at p. 24.) Given the strong evidence presented against the defendant, there was no prejudice under either standard.

The prosecution presented compelling evidence of defendant's motive and intent to kill McCoy, as well as his presence at the crime scene. Defendant wrote about his anger at McCoy and his intent to kill her shortly before the murder. He had displayed stalking behavior and jealousy when McCoy was in the presence of other men. He slashed her tires and took documents from her apartment. Significantly, forensic evidence connected him to the murder, since his DNA was present at the crime scene and he was a possible contributor to the DNA mixture in her fingernails. Furthermore, he displayed consciousness of guilt when he failed to help McCoy's family and police. In light of this evidence, it is not reasonably probable that the defendant would have received a more favorable verdict had the Dawson testimony been excluded.

The Dawson testimony was not a significant aspect of the prosecution's case. Unlike the lying-in-wait testimony presented in *Disa*, the Dawson testimony was not inflammatory and did not present stronger evidence of guilt than the other evidence

presented at trial. Further, Dawson did not present the only evidence that defendant had previously committed acts of domestic violence. There was evidence that defendant had previously choked McCoy and that she had run away to her uncle's home. The evidence of defendant's violent and threatening acts against McCoy were far more compelling than the evidence that Dawson presented.

In arguing that the admission of Dawson's testimony was prejudicial, defendant focuses on the forensic evidence in the vehicle. Defendant was excluded from the DNA samples on much of the vehicle, with a minor exception. Further, as to the forensic analysis of McCoy's body, defendant points out that the only potential match for defendant's DNA was under McCoy's fingernail. As to the DNA matching defendant that was found in McCoy's bedroom, defendant argues that there is no indication how long it had been there. While the remaining evidence shows a troubled relationship between defendant and McCoy, defendant argues, it does not point to defendant as a cause of McCoy's death. Thus, defendant argues, the evidence introduced by Dawson allowed the jury to speculate that if defendant had been violent with Dawson over 20 years ago, that he likely caused McCoy's death.

We disagree. As set forth above, this is not a case, like *Disa*, where the evidence on the contested issue "paled in comparison" to the evidence of prior domestic violence. (*Disa, supra,* 1 Cal.App.5th at p. 674.) The prosecution put on a comprehensive case showing defendant's controlling behavior, his jealousy, and his stalking and threatening of McCoy which caused her to live in fear. His intent to kill her was also documented, as well as his presence in her blood-strewn apartment.

In sum, we see no reasonable possibility of a verdict more favorable to defendant in the absence of Dawson's testimony. Thus, even if there had been error in the admission of her testimony, any such error would be harmless beyond a reasonable doubt.

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

_____, J.
CHAVEZ

We concur:

_____, Acting P. J.
ASHMANN-GERST

_____, J.
HOFFSTADT