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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE, Plaintiff and Respondent, v. ANTHONY JONES, Defendant and Appellant.	B231527 (Los Angeles County Super. Ct. No. BA340919)

APPEAL from a judgment of the Superior Court of Los Angeles County. Barbara R. Johnson, Judge. Affirmed.

Sarah A. Stockwell, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Steven D. Matthews and Peggy Z. Huang, Deputy Attorneys General, for Plaintiff and Respondent.

Anthony Jones appeals from the judgment entered after he was convicted of one count of corporal injury to a spouse, contending that the trial court erred by: (1) excluding evidence of his wife's drug conviction; (2) not declaring a mistrial when his wife and another witness volunteered testimony about his prior criminal history; and (3) allowing certain hearsay evidence. We reject these contentions and affirm the judgment.

FACTS AND PROCEDURAL HISTORY

On the morning of August 22, 2009, Anthony Jones attacked his estranged wife, Carol G., after seeing her outside of a Los Angeles tobacco shop. Jones and his girlfriend were seated in a car when Jones spotted Carol and came toward her. Jones followed Carol into the middle of the street as she tried to evade him, and then kicked and beat her so badly that she was hospitalized for three days with a fractured sinus and eye socket, along with other less serious injuries. The incident was witnessed by Jeff Davis, who ran to the scene and told Jones to stop. Jones got back in his car and drove off.

Jones was charged with one count of inflicting corporal injury to a spouse (Pen. Code, § 273.5, subd. (a)) in connection with this incident, along with an allegation that he personally inflicted great bodily injury (Pen. Code, § 12022.7, subd. (e)).[1] He was also charged with one count of making criminal threats (§ 422) based on Carol's report of a July 30, 2009, incident where Jones spotted her leaving a donut shop and said, "Bitch, I will kill yo ass." These charges were consolidated with others from a pending case: one count of inflicting corporal injury on a spouse from a March 27, 2008, incident where Jones punched Carol, then dragged her out of her car; and one misdemeanor count of battery upon a cohabitant (§ 243, subd. (e)(1)) from an April 4, 2008, incident where an

[1] All further undesignated section references are to the Penal Code.

argument over changing their door locks led Jones to punch Carol, then pull her hair and slam her head against a mattress.[2]

In addition to the testimony of Carol and Davis, Daisy Flores, who was married to Carol's brother, testified at trial. Flores knew that Jones and Carol had a troubled relationship. Flores said that Jones called her a few days after one of Carol and Jones's altercations and asked to meet at a restaurant. Flores agreed to the meeting, and Jones gave Flores four door locks that he said belonged to Carol. He also asked Flores to tell the police that Carol had acted crazy and injured herself.

Jones did not testify. Stephanie Williams, who was Jones's girlfriend and who was present during the August 2009 incident outside the tobacco shop, testified that Carol initiated the dispute, and that Jones had simply tried to fend her off.

Jones's primary defense turned on the assertion that Carol, who was from Belize and who had a "green card" authorizing her presence in the United States, was fabricating the charges in order to gain citizenship under what he contends is an exception to the federal immigration laws for victims of domestic violence. In connection with this theory, Jones wanted to introduce evidence that Carol had a 1990 conviction for possession of cocaine base for sale, which would have shown that she could not qualify for citizenship without resort to the domestic abuse exception, and which would have also served to impeach her because it was a crime of moral turpitude. The trial court excluded the evidence because the conviction was irrelevant and too old, and because Jones could introduce evidence concerning Carol's motive to obtain a domestic violence exemption without it.

Jones was convicted of inflicting corporal injury on Carol in connection with the August 2009 incident outside the tobacco shop, and the jury found true the allegation that he personally inflicted great bodily injury. He was acquitted of the criminal threat count.

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[2] These four counts also generated four misdemeanor contempt charges (§ 166, subd. (c)(1)) because Carol had a restraining order against Jones in place, which he violated by coming in contact with her on each occasion. Those four counts were dismissed before the jury was empanelled.

The jury deadlocked on the other two counts, and they were dismissed after a mistrial was declared.

Jones contends the trial court erred by excluding evidence of Carol's drug conviction. He also contends the trial court erred by not declaring a mistrial after Carol's and Flores's impromptu volunteering of testimony concerning his criminal past, and by admitting hearsay evidence about statements made to Carol by an immigration caseworker.

DISCUSSION

1. *The Trial Court Did Not Abuse Its Discretion By Excluding Evidence of Carol's 20-Year-Old Drug Conviction*

Jones contends that the trial court erred when it denied his request to question Carol about her 1990 conviction for possession of cocaine base for sale. According to Jones, the evidence was admissible for two purposes: (1) for general impeachment purposes because it involved a crime of moral turpitude; and (2) to show that Carol was fabricating the domestic violence incidents in order to obtain citizenship because her drug conviction otherwise prevented her from doing so. The trial court excluded the evidence because it was remote, irrelevant, and, under Evidence Code section 352, its prejudicial value outweighed any probative effect. According to the trial court, Jones could still pursue his fabrication theory without the drug conviction evidence.

Jones contends the trial court violated his Sixth Amendment constitutional right to confront and cross-examine witnesses when it excluded the evidence of Carol's conviction. We disagree.[3]

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[3] Respondent contends that Jones waived this issue by failing to first raise it in the trial court. Jones's contention does not invoke facts or legal standards different from those the trial court was asked to apply, and merely asserts that in addition to being wrong for the reasons actually raised with the trial court, the court's ruling had the additional legal consequence of violating the Constitution. As a result, the issue is not waived. (*People v. Gutierrez* (2009) 45 Cal.4th 789, 809.)

Although the right to confront and cross-examine witnesses is essential to a fair trial, not every restriction on this right amounts to a constitutional violation. Instead, the right must sometimes give way to other legitimate interests in the criminal trial process. (*People v. Ardoin* (2011) 196 Cal.App.4th 102, 118.) A proper application of the statutory rules of evidence does not ordinarily violate a defendant's due process rights, and the trial courts have wide latitude to impose reasonable limits on cross-examination based on such concerns as harassment, prejudice, confusion of the issues, witness safety, or interrogation that is repetitive or only marginally relevant. (*Id.* at p. 119.) This is especially so where Evidence Code section 352 is properly applied. (*Ibid.*)

The remoteness or staleness of a prior conviction is a proper factor to consider as part of an Evidence Code section 352 analysis. (*People v. Harris* (1998) 60 Cal.App.4th 727, 739.) Although there is no bright line rule for determining whether a prior conviction is too remote to warrant its introduction in evidence, 20 years is clearly enough time to meet any reasonable threshold of remoteness. (*Ibid*, quoting *People v. Burns* (1987) 189 Cal.App.3d 734, 738.) Therefore, the trial court acted within its discretion in excluding the evidence for general impeachment purposes.

The trial court also reasonably concluded that the conviction had little bearing on Jones's theory that Carol had fabricated the domestic violence incidents in order to qualify for citizenship. Jones was still able to question Carol about her immigration status, and she admitted that: she encountered a problem with her application; the immigration officer told her she could still get citizenship through the domestic violence victim exception; she did not report any incidents of domestic violence until after that conversation; and she applied for citizenship pursuant to that exception. Because Jones was able to pursue this theory even without evidence of the stale conviction, we hold that no confrontation clause violation occurred.

2. *No Error In Denying Jones's Mistrial Motion*

Jones contends we must reverse the judgment because three instances of volunteered testimony concerning other criminal conduct by him merited a mistrial. The

first occurred when Carol was asked on direct examination why she had not called the police after the March 2008 incident of domestic violence. Carol answered that Jones "just came out of jail after he beat up his baby momma. So I didn't want him to go to – ." This prompted a defense objection, a motion to strike, and a motion for mistrial. The trial court struck the testimony, denied the mistrial motion, and said it would admonish Carol during the next break not to volunteer such information.

The second occurred soon after, when Carol was asked on redirect examination about the August 2009 incident outside the tobacco shop. Asked whether Jones caught her after coming towards her, Carol gave a rambling answer that concluded with the statement that she held on to Jones "just to pray for somebody to call the police or the police just passing by for them to see him, for them to pick him up because police was looking for him. He was on the run." This prompted another defense objection and motion to strike, but not a mistrial motion. The trial court granted the motion to strike. It then excused the jury and told Carol: "Okay. Ma'am, I'm admonishing you now, you don't want to have to do this trial again, not to volunteer any information like the defendant is on the run or he just beat up his ex-baby momma or something like that. That question was not asked of you. You volunteered the information. You're not to volunteer any further information." The court asked Carol whether she understood this, and she said she did.

The third occurred earlier, when Flores testified that her husband did not want her to meet with Jones because of what Jones had done to Carol. The trial court sustained a defense hearsay objection and a motion to strike the answer. No mistrial motion was made.

Setting aside whether Jones waived the mistrial issue as to the two incidents where no such motion was made, we hold that no error occurred. A mistrial should be granted if the trial court becomes aware of prejudice that it concludes cannot be cured by admonition or instruction. We review the trial court's ruling under the abuse of discretion standard. (*People v. Cox* (2003) 30 Cal.4th 916, 953, disapproved on another ground in *People v. Doolin* (2009) 45 Cal.4th 390, 421, fn. 22.) The trial court's direct

admonishment to Carol reflected the trial court's unhappiness with the witness trying to testify to subjects the court had excluded. Although the trial court might have reasonably granted a mistrial for the repeated violation, we cannot say it was required to do so. Instead, the trial court took the reasonable approach of sustaining the objections to the volunteered testimony, striking it, and instructing the jury that stricken testimony was to be disregarded. We presume that the jury followed this instruction, and therefore hold that the trial court did not err by concluding that any prejudice from the volunteered statements had been cured. (*People v. Guerra* (2006) 37 Cal.4th 1067, 1148, disapproved on another ground in *People v. Rundle* (2008) 43 Cal.4th 76, 151; *People v. Navarette* (2003) 30 Cal.4th 458, 496-497.)

3. *No Error In Admitting Immigration Officer's Hearsay Statement*

On cross-examination, Carol was asked about her conversation with an immigration officer, and whether that officer told her she might qualify for citizenship under the exception for victims of domestic violence. Carol answered yes. On redirect examination, Carol was asked whether she had been upset by something on the day she saw the immigration officer. After answering yes, Carol was asked what had upset her. Carol said she could not recall, but then said she and Jones did not have a husband-and-wife relationship. She said that Jones left the meeting to retrieve some papers from his car. Carol was then asked what happened after she was alone with the immigration officer. She answered, "The immigration man tell me, 'look like you getting abused.' " This prompted a defense hearsay objection, which the trial court overruled without specifying the ground for its ruling. Jones contends the trial court erred by not striking her account of the immigration officer's statement that she looked as if she was being abused.

Respondent contends the evidence was admissible under Evidence Code section 356, which provides that where part of an act, declaration, conversation or writing is put in evidence by one party, the other party may inquire about the whole subject matter. The purpose of this section is to prevent creating a misleading impression by

using only selected portions of an act or conversation. (*People v. Arias* (1996) 13 Cal.4th 92, 156.)[4] We review the trial court's ruling under the abuse of discretion standard. (*People v. Parrish* (2007) 152 Cal.App.4th 263, 274.)

In *People v. Wright* (1990) 52 Cal.3d 367, disapproved on another ground in *People v. Williams* (2010) 49 Cal.4th 405, 458-459, the Supreme Court considered the admissibility of evidence during the penalty phase of a murder trial where the prosecution sought the death penalty. On cross-examination by the defense, a police officer was questioned about the circumstances surrounding one of defendant's prior convictions, and confirmed that the defendant's accomplice told him the defendant had tried to comfort his victim during the commission of a burglary. On redirect, the prosecution was allowed to question the officer about another part of his conversation with the accomplice, where the accomplice told the officer that he was constantly reminding the defendant not to harm the victim. This evidence was admissible under Evidence Code section 356 because "the prosecutor was entitled to inquire into the remainder of the conversation . . . ." (*Id.* at p. 433.)

The same rationale applies here. On cross-examination, Jones testified that she met with an immigration officer who told her about the citizenship exception for domestic violence victims. The prosecution was allowed to fill in the gaps in this conversation on redirect by having Jones explain statements by the immigration officer that might have prompted him to make that comment. Accordingly, we see no error.

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4 Jones does not challenge respondent's reliance on Evidence Code section 356, perhaps in recognition of the rule that the trial court's stated reason for admitting evidence is irrelevant on appeal so long as the evidence was properly admissible under some other theory. (*People v. Williams* (1988) 44 Cal.3d 883, 911.)

DISPOSITION

The judgment is affirmed.

RUBIN, J.

WE CONCUR:

BIGELOW, P. J.

GRIMES, J.