

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.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 SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

JAVIER ISAIS CHAVEZ,

Defendant and Appellant.

2d Crim. No. B271074
(Super. Ct. No. 1461333)
(Santa Barbara County)

Javier Isais Chavez appeals from the judgment after a jury convicted him of assault with a deadly weapon (Pen. Code, § 245, subd. (a)(1))¹ and corporal injury to his girlfriend, Jane Doe 1 (§ 273.5, subd. (a)). The jury also found true the allegation that Chavez personally inflicted great bodily injury (§ 12022.7, subd. (e)).

¹ Further unspecified statutory references are to the Penal Code, unless otherwise indicated.

Chavez argues the trial court erred by admitting evidence of a prior domestic violence offense and by giving inadequate responses to a jury question. We affirm.

BACKGROUND

Prosecution Evidence

Chavez and Doe 1 were in a four-year relationship. Towards the end of their relationship, the couple started using drugs together, which led to frequent arguments. They decided to break up in a public place to keep their conversation civil, so they drove to a public park.

During their conversation, Chavez noticed the van keys were not in the ignition and accused Doe 1 of stealing the keys. Chavez yelled and lunged at Doe 1 while she searched her bag for the keys. She threw a water jug at him, hitting him in the legs. Chavez kicked the water jug towards her, causing her to fall back. Doe 1 started kicking her legs in the air. Chavez lunged at her again and stabbed her with scissors on her thigh and ankle.

Doe 1 “tried to get out of the van,” but remained inside when she realized there were people nearby in the park. She told Chavez to leave before the police arrived, and he did so. Doe 1 was taken to the hospital and received several stitches for her injuries.

A witness was eating lunch at the park at the time of the assault. She heard a woman yelling “Stop it; don’t do this to me. Stop it.” The witness walked over and saw a man beating up a woman, who was laying down on the floor. The man straddled the woman and punched and kicked her. The witness also saw the man yank the woman’s hair and push her into the van.

The witness called “911.” While she was on the phone, she saw two police officers in the park. She flagged down the officers, and they followed her to the parking lot. One of the officers chased the man, and the other officer attended to the woman.

Prior Domestic Violence Conviction

Jane Doe 2 dated Chavez from 2004 to 2010. Their relationship was nice in the beginning, but things changed once they started using drugs together. One night, they got into an argument when she came home late. Chavez blocked her from leaving the house. He pushed her and threw her to the floor. He sat on top of her and punched her head multiple times and bit her cheek. He curled his fingers around the bottom row of her teeth and dragged her around the house. Photographs of her injuries were presented to the jury.

Defense Evidence

Chavez denied accusing Doe 1 of stealing the keys. He stated that she became upset and verbally aggressive. He denied lunging at her and stated that she “tripped over, fell and began screaming and kicking.” He denied punching or kicking her or grabbing her by the hair.

When he tried to get out of the van, Doe 1 started kicking her feet in the air. He blocked her kicks with his hands while holding scissors that he had been using to create a collage before the incident. He said that he accidentally stabbed Doe 1.

Chavez admitted attacking Doe 2 and being convicted of a crime for that incident.

DISCUSSION

Evidence Code section 1109

Chavez contends the trial court erred by admitting evidence of his prior conviction, which included Doe 2's testimony and photographs of her injuries. We disagree.

Generally, evidence of a defendant's prior criminal act is inadmissible to show he committed the current offense. (Evid. Code, § 1101, subd. (a).) Evidence Code section 1109 is an exception to this rule. Under that section, when the defendant is accused of an offense involving domestic violence, evidence of the defendant's commission of other domestic violence is admissible if the evidence is not inadmissible under Evidence Code section 352. (Evid. Code, § 1109, subd. (a)(1).)

A court may exclude evidence under Evidence Code section 352 if its probative value is substantially outweighed by the probability that its admission will lead to undue consumption of time or create a "substantial danger of undue prejudice." In determining the admissibility of evidence of prior domestic violence, the trial court weighs a variety of factors including the similarity of the prior and current offenses, the nature of the prior acts and whether they are more inflammatory than the current offense, the likelihood of confusing or misleading the jury, the prejudicial impact on jurors, and the availability of less prejudicial alternatives. (*People v. Falsetta* (1999) 21 Cal.4th 903, 917.)

We review the trial court's admission of domestic violence evidence under Evidence Code section 1109 for abuse of discretion. (*People v. Poplar* (1999) 70 Cal.App.4th 1129, 1138.) Such a decision will not be disturbed on appeal unless there is a showing that the trial court exercised its discretion in an

arbitrary, capricious, or patently absurd manner that resulted in a miscarriage of justice. (*People v. Rodriguez* (1994) 8 Cal.4th 1060, 1124.)

There was no abuse of discretion because the trial court properly weighed several factors under Evidence Code section 352 in admitting evidence of Chavez's prior domestic violence offense. Here, Doe 2's testimony and the photographs of her injuries are especially probative in light of Chavez's arguments that Doe 1's injuries were the result of an accident and self-defense. Moreover, the prior and current offenses involve similar circumstances—both victims were in long-term relationships with Chavez, drug use led to the end of both relationships, and both incidents of domestic violence occurred following an argument.

Chavez claims that the probative value of the evidence is substantially outweighed by its "highly prejudicial nature" and that there were less prejudicial alternatives available. But the prior offense is no more serious or inflammatory than the current offense. (See *People v. Brown* (2000) 77 Cal.App.4th 1324, 1338 [evidence of past domestic violence was not unduly prejudicial where it was "less serious than the charged act"].) Chavez stabbed Doe 1 with scissors twice and a great bodily injury enhancement was found true. In contrast, the prior offense did not involve the use of weapons or a great bodily injury enhancement.

Even if we assume error, it was harmless under any standard. (*Chapman v. California* (1967) 386 U.S. 18, 24; *People v. Watson* (1956) 46 Cal.2d 818, 836.) Chavez's guilt is supported by other compelling evidence, including Doe 1's testimony, Chavez's admission that he stabbed Doe 1 with scissors,

photographic evidence and the treating physician's testimony of the stab wounds, independent eyewitness testimony, and Chavez's flight.

Jury Instruction

Chavez contends that the trial court erred when it did not provide an adequate response to the jury's questions regarding terms defining great bodily injury. It matters not that Chavez failed to object below.

The trial court instructed the jury on the special allegation for "great bodily injury." The instruction included a definition of great bodily injury as a "significant or substantial physical injury. It is an injury that is greater than minor or moderate harm." (CALCRIM No. 3163.)

During deliberation, the jury sent a question to the judge asking: "What is moderate harm defined as?" The court indicated that it "had counsel on the phone and provided an answer to the jury regarding use of the word in its ordinary and everyday meaning."

The jury sent a second question asking: "From the court's position, what is the difference between 'harm' and 'injury?'" The court conferred with counsel before responding. Defense counsel agreed with the prosecution that the instructions "are to be taken as their ordinary and plain meaning" and that the jurors should also refer to CALCRIM Nos. 200 and 222. The court gave the following response: "The words 'harm' and 'injury' should be used in their ordinary and everyday meaning. You may consider any and all evidence related to the issue. Please review instruction 200 regarding Duties of Jury and 222 regarding Evidence for further direction if needed."

The jury sent a third question asking: “If we agree on a guilty verdict for Counts #1 and #2, and are hung on ‘great bodily injury,’ does it effect [sic] #1, #2[?]” After conferring with counsel, the court instructed that the jurors were to “consider the crimes in Counts I and II and the special allegation separately. In the event that you have found the defendant guilty as to Counts I and/or II then consider the special allegation for that count.” The court also instructed that if the jury could not agree on the special allegation “sign the appropriate verdict forms and inform me only that you cannot reach an agreement about that allegation.”

A trial court has a duty under section 1138 to instruct a deliberating jury on “any point of law arising in the case.” (§ 1138.) This duty includes helping the jury understand the legal principles it is asked to apply and to “clear up any instructional confusion expressed by the jury.” (*People v. Gonzalez* (1990) 51 Cal.3d 1179, 1212, superseded by statute on other grounds in *In re Steele* (2004) 32 Cal.4th 682, 691.) But “[t]his does not mean the court must always elaborate on the standard instructions. Where the original instructions are themselves full and complete, the court has discretion under section 1138 to determine what additional explanations are sufficient to satisfy the jury’s request for information. [Citation.] Indeed, comments diverging from the standard are often risky.” (*People v. Beardslee* (1991) 53 Cal.3d 68, 97.) Words that are “‘commonly understood by those familiar with the English language and of ordinary intelligence’ . . . need not be further defined by the court. [Citation.]” (*People v. Ryan* (1999) 76 Cal.App.4th 1304, 1319.) We review the trial court’s

determination to provide additional explanations for abuse of discretion. (*People v. Waidla* (2000) 22 Cal.4th 690, 745-746.)

Chavez does not contest that CALCRIM No. 3163 was a full and complete instruction on “great bodily injury.” Here, the trial court acted within its discretion when it responded to the jury’s question with additional explanation on applying ordinary and everyday meaning to the terms at issue and referring them to other instructions for further direction. There was no abuse of discretion.

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED.

TANGEMAN, J.

We concur:

GILBERT, P. J.

PERREN, J.

John F. McGregor, Judge

Superior Court County of Santa Barbara

Elizabeth K. Horowitz, 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, Victoria B. Wilson, Supervising
Deputy Attorney General, Lindsay Boyd, Deputy Attorney
General, for Plaintiff and Respondent.