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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE, Plaintiff and Respondent, v. KEVIN TRAVON LEONARD, Defendant and Appellant.	B271090 (Los Angeles County Super. Ct. No. BA434712)

APPEAL from a judgment of the Superior Court of Los Angeles County. Jose I. Sandoval, Judge. Affirmed.

Pamela J. Voich, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris and Xavier Becerra, Attorneys General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Margaret E. Maxwell and Nicholas J. Webster, Deputy Attorneys General, for Plaintiff and Respondent.

Kevin Travon Leonard (defendant) appeals from the judgment entered following a jury trial that resulted in his conviction of one count of battery with serious bodily injury. (Pen. Code, § 243, subd. (d).)[1] The trial court sentenced defendant to a total term of two years in state prison. On appeal, defendant argues the trial court committed reversible error by declining to instruct the jury on the right of self-defense, and in failing to instruct the jury on the lesser included offense of simple battery. We affirm the judgment of conviction.

FACTUAL BACKGROUND

On March 14, 2015, at around 9:00 p.m., William Leonard was at his house on his front porch when his nephew, defendant, approached him and asked him where his "stuff was at."[2] According to William,[3] he responded that he "didn't have [his] stuff whatever it is" and went inside the house. Defendant then approached William inside the house and said he wanted to speak with him on the back porch. When William stepped outside to the back porch, defendant again asked him where his "stuff" was at. William responded, "I ain't got nothing of yours." William then became angry because defendant "was in [his] face" so he told him to "get out of my face" and pretended that he had "something" by placing his hand underneath his shirt. Once William took his hand out of his shirt and defendant saw that he did not have a weapon, defendant grabbed William by his ankles and pulled him so that he fell backwards and hit his head. Defendant then dragged William

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1 All further statutory references are to the Penal Code.

2 Defendant stayed at the house "sometimes."

3 We refer to the victim and his family members by their first names in order to avoid any confusion because they share the same last name. We mean no disrespect.

part way down the back porch steps, which were cement, and asked him, again, where his "stuff" was at. William responded, "I ain't got nothing of yours." While William was laying on the steps, defendant punched him multiple times in the face. William told him to stop, but defendant continued to punch him in the face. Defendant eventually stopped and left the house. Although William was a "mess," he "tried to heal . . . [him]self" by cleaning off the blood. He remained inside the house; he did not go to the hospital or call the police that night.

William testified he was not under the influence of drugs or alcohol that night. However, his brother, Lister Leonard, who is also defendant's father, testified he had seen William that evening and observed William was under the influence of alcohol. Lister further testified William "is always angry when he starts drinking" and has "a lot of resentment for [defendant] being there at the house" and "he picks on him constantly and he creates arguments with him and he wants to argue."

On March 16, 2015, at around 8:30 p.m., Lister took William to the Los Angeles Police Department, Newton Division, to file a report and then to the hospital. At the police station, William told the police officer defendant got on top of him and punched him in the head and torso. According to William, the police officer noticed a footprint on his face. William then remembered he felt "something" other than a fist hit him in the face. The police officer took pictures of William's injuries.

William then went to California Hospital. The doctors took X-rays of his injuries, and he was admitted and stayed overnight. William had "a missing tooth, fractured nose, and bleeding in the brain, blood spots." He also suffered two black eyes, swelling around his face, and bruising on his

right shoulder and neck. When he was released from the hospital, he was given medication and told to relax and not to do anything strenuous.

On March 19, 2015, at around 7:20 p.m., Lister called the police to report the incident. Defendant was later arrested.

At trial, defendant called his aunt, Renee Leonard, William and Lister's sister. Renee testified that months prior to March 14, 2015, there was an incident in which William "[was holding] two knives at [defendant]." She believed William was under the influence of alcohol and drugs at that time. She also observed defendant holding a "little pocket knife." Lister called the police that day, but when the police arrived, everything was quiet, so the police left.

The jury convicted defendant of one count of battery with serious bodily injury in violation of section 243, subdivision (d). The trial court sentenced him to the midterm of two years in state prison. Defendant filed a timely notice of appeal.

CONTENTIONS

Defendant contends the trial court committed reversible error in declining to instruct the jury on self-defense with CALCRIM No. 3470[4] because "he only hit William because he believed William was once again physically assaulting him with a weapon." He also contends the undisputed evidence establishes William was the initial aggressor, physically confronting defendant in an angry manner, and while pretending he had a "weapon," warning defendant to get out of his face. Defendant argues William also had

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[4] CALCRIM No. 3470 states in pertinent part: "The defendant acted in lawful self-defense if: [¶] 1. The defendant reasonably believed that he was in imminent danger of suffering bodily injury; [¶] 2. The defendant reasonably believed that the immediate use of force was necessary to defend against that danger; [¶] AND [¶] 3. The defendant used no more force than was reasonably necessary to defend against that danger."

a history of assaulting and threatening defendant with weapons. Under these circumstances, defendant contends he was the victim of assault and was permitted to defend himself against an imminent battery.

Defendant further contends the trial court should have instructed the jury on the lesser included offense of simple battery because the evidence supported such an instruction. He argues "[t]here was no definitive showing made of the injuries that were in fact caused by the altercation with [defendant], or the amount of force [defendant] used, let alone . . . that the force used was excessive to defend against the undisputed threat of imminent battery by William." Thus, according to defendant, "it should have been the responsibility of the jury to evaluate all of the evidence relating to William's claimed bone fracture and any other injuries and to determine if the greater or lesser offense had been committed."

DISCUSSION

A. Standard of Review

"On appeal, we review independently the question whether the trial court failed to instruct on defenses and lesser included offenses." (*People v. Oropeza* (2007) 151 Cal.App.4th 73, 78.) ""It is settled that in criminal cases, even in the absence of a request, the trial court must instruct on the general principles of law relevant to the issues raised by the evidence. [Citations.] The general principles of law governing the case are those principles closely and openly connected with the facts before the court, and which are necessary for the jury's understanding of the case." [Citation.] That obligation has been held to include giving instructions on lesser included offenses when the evidence raises a question as to whether all of the elements of the charged offense were present [citation], but not when there is no evidence that the offense was less than that charged. [Citations.]"" (*People v. Breverman*

(1998) 19 Cal.4th 142, 154.) "The obligation also applies . . . to instruction on defenses when they are supported by substantial evidence." (*People v. Oropeza*, *supra*, 151 Cal.App.4th at p. 78.) Evidence is substantial if it is "sufficient to 'deserve consideration by the jury,' not 'whenever *any* evidence is presented, no matter how weak.'" (*People v. Williams* (1992) 4 Cal.4th 354, 361, original italics.)

B. The Trial Court Did Not Err in Declining to Instruct the Jury on Self-Defense under CALCRIM No. 3470

After the prosecution rested, the parties briefly discussed jury instructions, and the trial court stated that he did see any evidence to support a self-defense instruction. After both sides rested, the trial court again stated he did see any evidence to support a self-defense instruction. The court then heard argument from defense counsel in support of the self-defense instruction, and allowed defense counsel the opportunity to conduct research on the issue during the lunch break. After hearing further argument from defense counsel, the trial court ruled that although William pretended to have something underneath his shirt, because William showed defendant his hand, indicating that he "didn't have anything," the evidence did not justify a jury instruction on self-defense.

Defendant contends the trial court's decision was wrong. Relying on *People v. Lemus* (1988) 203 Cal.App.3d 470, 477 (*Lemus*), he argues that in denying his request for a self-defense instruction, the trial court determined that William's testimony was credible which was improper because it "was the exclusive function of the jury to determine William's credibility."

Defendant's reliance on *Lemus* is misplaced. In *Lemus*, the issue before the Court of Appeal was whether there was evidence to support the defendant's version of the case substantial enough to warrant his requested

instruction on self-defense. (*Lemus*, *supra*, 203 Cal.App.3d at p. 476.) At trial, the defendant's testimony was in direct conflict with the evidence submitted by the prosecution. (*Ibid.*) The trial court ruled that defendant's testimony was not "'substantial'" and did not warrant a self-defense instruction. (*Id.* at p. 477.) The Court of Appeal reversed, finding the trial court's determination was based on its assessment that the defendant's testimony was not credible, however, it was the exclusive function of the jury to assess the credibility of a witness and not the trial court. (*Ibid.*)

Here, in refusing to instruct the jury with CALCRIM No. 3470, the trial court did not base its ruling on William's credibility; rather, on the circumstance that there was no evidence adduced that defendant reasonably believed he was in "imminent danger of suffering bodily injury" before he grabbed William and repeatedly punched him in the face. Instead, it was defendant who initially confronted William and continually asked him about his "stuff" despite the fact that William told him "I don't have your stuff." Although William pretended he had "something" under his shirt, there was no evidence he told defendant he had a weapon or that he initiated any physical contact with defendant. Thus, once William showed defendant his hand, which was empty, any apparently threatened danger defendant perceived ceased to exist, and there was no right to use force in self-defense. (CALCRIM No. 3470 ["Belief in future harm is not sufficient, no matter how great or how likely the harm is believed to be."]; *People v. Hardin* (2000) 85 Cal.App.4th 625, 635 ["Once [the victim] was disarmed, defendant . . . could no longer entertain the belief that she constituted an *imminent* and *deadly* peril to him. His right to use deadly force in self-defense ended at that moment."]; *People v. Parrish* (1985) 170 Cal.App.3d 336, 352 ["assuming that the initial encounter may have conceivably given appellant the right to

exercise self-defense, that defense in nowise justified the recurrent attacks upon the victim while he lay on the ground helpless and unconscious"].) Accordingly, the trial court did not err in declining to instruct the jury on self-defense.

C. The Trial Court Did Not Err in Not Instructing the Jury on the Lesser Included Offense of Simple Battery

Defendant contends the trial court had a sua sponte duty to instruct the jury on the lesser included offense of simple battery because "the nature and extent of injuries attributable to the altercation [was] speculative at best." We disagree.

Section 242 defines battery as "any willful and unlawful use of force or violence upon the person of another." (§ 242.) "'If, however, the batterer not only uses unlawful force upon the victim but causes injury of sufficient seriousness, then a *felony* battery is committed. For this second category of battery, "serious bodily injury" is required. (§ 243, subd. (d).)' [Citation.]" (*People v. Wade* (2012) 204 Cal.App.4th 1142, 1147.) "'Serious bodily injury' means a serious impairment of physical condition, including, but not limited to, the following: loss of consciousness; concussion; bone fracture; protracted loss or impairment of function of any bodily member or organ; a wound requiring extensive suturing; and serious disfigurement." (§ 243, subd. (f)(4).)

Here, William testified that as a result of being hit multiple times by defendant, he suffered "a missing tooth, fractured nose, and bleeding in the brain, blood spots." In addition, the prosecution submitted into evidence pictures taken of William's injuries at the Los Angeles Police Department which showed two black eyes, swelling around his face, and bruising on his

right shoulder and neck, and medical records obtained by a subpoena duces tecum from California Hospital.[5]

"[U]nless the testimony is physically impossible or inherently improbable, testimony of a single witness is sufficient to support a conviction." (*People v. Young* (2005) 34 Cal.4th 1149, 1181.) There is nothing in the record that shows William's injuries would have been physically impossible for defendant to commit. Thus, William's testimony alone was sufficient to support the conviction of simple battery with serious bodily harm. Moreover, given the nature and severity of William's injuries, including a fractured nose and a missing tooth, the jury could not have reasonably found defendant guilty of simple assault. (§ 243, subd. (f)(4) ["'Serious bodily injury' means a serious impairment of physical condition, including . . . bone fracture"]; *People v. Belton* (2008)168 Cal.App.4th 432, 440 [broken tooth supported conviction for battery with serious bodily injury].) The trial court did not err by not instructing the jury on the lesser included offense of simple battery.

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[5] There was no testimony at trial regarding the substance of the medical records.

DISPOSITION

The judgment of conviction is affirmed.

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GOODMAN, J.*

We concur:

CHAVEZ, Acting P.J.

HOFFSTADT, J.

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* Retired judge of the Los Angeles Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.