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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THE PEOPLE, Plaintiff and Respondent, v. JAMES W. MENEFIELD, JR., Defendant and Appellant.	B229784 (Los Angeles County Super. Ct. No. BA370169)

APPEAL from a judgment of the Superior Court of Los Angeles County, Judith L. Champagne, Judge. Affirmed.

Alan Stern, 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, Victoria B. Wilson and Jonathan J. Kline, Deputy Attorneys General, for Plaintiff and Respondent.

James W. Menefield, Jr. appeals from the judgment entered after a jury convicted him of one count of assault and one count of infliction of corporal injury on a cohabitant. Menefield contends there was insufficient evidence of injury to support the conviction of corporal injury to a cohabitant and the trial court erred in failing sua sponte to instruct the jury on proximate cause. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

1. *The Assault*

On March 26, 2010 Menefield was living in a tent near a downtown Los Angeles freeway exit. That afternoon Ruby Crump, Menefield's ex-girlfriend with whom he had lived on occasion during the past four years, came to Menefield's tent and asked him for money because she was out of food and cigarettes. Menefield gave Crump an iPod, which she sold for $30. She bought food and liquor, which she and Menefield consumed at her apartment. Crump then asked Menefield to help her collect recyclables from fraternities near the University of Southern California (USC) campus. Menefield was resistant but agreed to accompany her. Crump and Menefield were well known to students along the route; someone gave Menefield a full bottle of alcohol, which the couple drank. They became drunk and started to bicker. At a local pizza parlor, Menefield began arguing with students who had teased him because his pants were torn. USC campus police were called; they responded and talked to Menefield. While the officers were talking to him, Crump left the pizza parlor and returned to Menefield's tent.

Although witnesses differed on the sequence of events, they agreed Menefield was angry with Crump for leaving the pizza parlor. When he returned to the tent, he pushed Crump down, kicked her "like he was kicking a field goal" and then beat her with a broomstick. Crump testified she was scared but the blows did not hurt very much at the time because she was wearing two coats and two pairs of pants. The driver of a car passing along the street saw Menefield kicking and punching someone on the ground and called the police. By the time the police arrived, Crump had crawled away. The police found Menefield, who was agitated and still angry, standing in the street. He was bleeding profusely from a wound to his head, and he had a knife in his back pocket,

which the officers removed. Menefield claimed he had been attacked by two other men. The officers took Menefield to the hospital, where he was treated for the cut and a fractured cheekbone.

After fleeing Menefield, Crump approached some USC campus police officers a block from Menefield's tent. Because she was in pain, they told her to lie down, called for an ambulance and notified the police officers with Menefield they had found another possible assault victim a block away. One of the officers came to Crump who complained of pain in her abdomen, chest and legs. Paramedics took Crump to the hospital, where she again complained of pain in her stomach and side, as well as vision problems because Menefield had "smacked" her in the face. An officer attempted to interview her, but she was still drunk. She claimed that Menefield had threatened her with the knife and struck himself in the face with a broken bottle. Tests failed to disclose any internal injuries or fractures, and Crump was released from the hospital within hours.

2. *The Charges Against Menefield*

Because she continued to experience pain, Crump went to a second hospital 10 days after the assault; doctors there determined an old rib fracture aggravated in the attack could be causing the pain. About this same time, Crump saw Menefield at a local recycling center. Menefield told Crump he had been released with a misdemeanor citation and again threatened her, saying he should have killed Crump when he had the chance. Upset and angered by the confrontation Crump contacted Los Angeles Police Detective Christine Jackson, the investigating office on the case. In a meeting with Crump, Detective Jackson saw darkened circles on Crump's body that looked like bruises. Crump's right eye was also swollen and watering. Based on this interview, Jackson decided to charge Menefield with a felony.

In an amended information Menefield was charged with one count of assault by means likely to produce great bodily injury (Pen. Code, § 245, subd. (a)(1)),[1] one count of infliction of corporal injury on a cohabitant (§ 273.5, subd. (a)) and one count of

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[1] Statutory references are to the Penal Code.

making a criminal threat (§ 422). As to all three counts, it was alleged Menefield had suffered 18 prior convictions of serious or violent felonies within the meaning of sections 667, subdivisions (a) through (d), and 1170.12, subdivisions (a) through (d), the "Three Strikes" law.

3. *Trial, Verdict and Sentence*

Menefield represented himself at trial. Although he did not testify, Menefield cross-examined at length Crump, Earle Buchanan (his friend who had witnessed the assault) and Detective Jackson. The jury found Menefield not guilty of assault by means likely to produce great bodily injury but guilty of the lesser included offense of assault. Menefield was also convicted of inflicting corporal injury on a former cohabitant, but found not guilty of making a criminal threat. In a bifurcated proceeding the trial court found the prior conviction allegations true.

Under the Three Strikes law the court sentenced Menefield to an indeterminate term of 25 years to life in state prison for infliction of corporal injury on a cohabitant and imposed a six-month term on the assault conviction to run concurrently with the life term.

CONTENTIONS

Menefield contends his felony conviction for infliction of corporal injury on a cohabitant should be reduced to battery (see § 243, subd. (e)(1)) because the evidence was insufficient as a matter of law to establish Crump suffered "corporal injury resulting in a traumatic condition." He also contends the trial court committed prejudicial error by failing to instruct the jury sua sponte on proximate cause with respect to the corporal injury charge.

DISCUSSION

1. *Substantial Evidence Supports Menefield's Conviction of Infliction of Corporal Injury on a Former Cohabitant*

Section 273.5, subdivision (a), states, "Any person who willfully inflicts upon his or her . . . former cohabitant . . . corporal injury resulting in a traumatic condition, is guilty of a felony . . . ." Subdivision (c) of section 273.5 defines "traumatic condition" as "a condition of the body, such as a wound or external or internal injury, whether of a

minor or serious nature, caused by a physical force." Courts have further defined a traumatic condition as "a wound or other abnormal bodily condition resulting from the application of some external force" (*People v. Stewart* (1961) 188 Cal.App.2d 88, 91) and "'an abnormal condition of the living body produced by violence'" (*People v. Cameron* (1975) 53 Cal.App.3d 786, 797). A high degree of physical harm is not required. (See *People v. Abrego* (1993) 21 Cal.App.4th 133, 137.) By extending culpability to situations involving minor injury, "'the Legislature has clothed persons . . . in intimate relationships with greater protection by requiring less harm to be inflicted before the offense is committed.'" (*Ibid.*) The physical manifestation of a traumatic condition is satisfied by the victim's bruises (e.g., *People v. Beasley* (2003) 105 Cal.App.4th 1078, 1085-1086) or redness (e.g., *People v. Wilkins* (1993) 14 Cal.App.4th 761, 771) that results from the defendant's physical force. However, evidence of soreness or tenderness, without more, is inadequate. (*Abrego*, at p. 138.)

Menefield contends there was insufficient evidence Crump suffered the required "traumatic condition" on the day of the attack because neither the responding police officers nor the hospital workers noted any injuries suffered by Crump in the attack. Menefield argues Detective Jackson's assessment of Crump's injuries nearly two weeks later was too remote to constitute proof of any injury suffered in the attack. According to Menefield, at most the evidence supported his conviction of the lesser included misdemeanor crime of battery against a former cohabitant.[2]

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[2] To assess a claim of insufficient evidence in a criminal case, "we review the whole record to determine whether *any* rational trier of fact could have found the essential elements of the crime or special circumstances beyond a reasonable doubt. [Citation.] The record must disclose substantial evidence to support the verdict—i.e., evidence that is reasonable, credible, and of solid value—such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. [Citation.] In applying this test, we review the evidence in the light most favorable to the prosecution and presume in support of the judgment the existence of every fact the jury could reasonably have deduced from the evidence. [Citation.] 'Conflicts and even testimony [that] is subject to justifiable suspicion do not justify the reversal of a judgment, for it is the exclusive province of the trial judge or jury to determine the credibility of a witness and the truth or falsity of the facts upon which a determination depends. [Citation.] We resolve neither credibility

The jury, however, viewed Detective Jackson's testimony in light of eyewitness accounts of the beating Menefield inflicted on Crump, as well as Crump's own testimony. As described by those witnesses, Menefield was enraged and was kicking Crump "like he was kicking a field goal" and beating her with a broomstick. Crump complained of abdominal and chest pain as well as a swollen eye that night when interviewed by the police and hospital personnel, even though medical tests revealed no interior injuries or broken bones. The existence of bruising on Crump's body was not noted by hospital personnel, but Crump was released within hours, possibly before bruising became evident. The jury was made aware of the absence of any report of bruising but was evidently persuaded by Jackson's testimony she saw bruises on Crump's legs and back when she examined her on April 8, 2010.

Thus, even if Detective Jackson's testimony was not necessarily as probative as an eyewitness report of bruising on the night of the attack, it was still relevant evidence and not unduly speculative. It is well settled that the testimony of a single witness, if believed by the finder of fact, is sufficient to support a conviction. (See *People v. Richardson* (2008) 43 Cal.4th 959, 1030-1031 ["the testimony of a single witness is sufficient for the proof of any fact"]; *People v. Young* (2005) 34 Cal.4th 1149, 1181 ["unless the testimony is physically impossible or inherently improbable, the testimony of a single witness is sufficient to support a conviction"].)

2. *The Trial Court Did Not Prejudicially Err in Failing To Instruct on Proximate Cause*

The trial court in a criminal case has a duty to instruct on general principles of law applicable to the case (*People v. Blair* (2005) 36 Cal.4th 686, 745), that is, """"those principles closely and openly connected with the facts before the court, and which are necessary for the jury's understanding of the case."""" (*People v. Valdez* (2004) 32 Cal.4th 73, 115.) "In assessing a claim of instructional error, 'we must view a

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issues nor evidentiary conflicts; we look for substantial evidence. [Citation.]' [Citation.] A reversal for insufficient evidence 'is unwarranted unless it appears "that upon no hypothesis whatever is there sufficient substantial evidence to support"' the jury's verdict." (*People v. Zamudio* (2008) 43 Cal.4th 327, 357.)

challenged portion "in the context of the instructions as a whole and the trial record" to determine "'whether there is a reasonable likelihood that the jury has applied the challenged instruction in a way' that violates the Constitution."'" (*People v. Jablonski* (2006) 37 Cal.4th 774, 831.)

With respect to the charge of infliction of corporal injury on a cohabitant, the trial court instructed the jury with CALCRIM No. 840. As given that instruction stated, "'"The defendant is charged in count 2 with inflicting an injury on former cohabitant that resulted in a traumatic condition in violation of Penal Code section 273.5[, subd.](a). To prove that the defendant is guilty of this crime, the People must prove the following: [¶] One, the defendant willfully and unlawfully inflicted a physical injury on his former cohabitant; [¶] Two, the injury inflicted by the defendant resulted in a traumatic condition. Someone commits an act willfully when he or she does it willingly or on purpose. A traumatic condition is a wound or other bodily injury, whether minor or serious, caused by the direct application of physical force."

Menefield contends the court erred by failing to instruct the jury sua sponte on the issue of proximate cause. According to the bench notes accompanying CALCRIM No. 840, when causation is at issue, the court should additionally instruct the jury: "A traumatic condition is the *result* of an injury if: [¶] 1. The traumatic condition was the natural and probable consequence of the injury; [¶] 2. The injury was a direct and substantial factor in causing the condition; [¶] AND [¶] 3. The condition would not have happened without the injury. [¶] A *natural and probable consequence* is one that a reasonable person would know is likely to happen if nothing unusual intervenes. In deciding whether a consequence is natural and probable, consider all of the circumstances established by the evidence. [¶] A *substantial* factor is more than a trivial or remote factor. However, it does not need to be the only factor that resulted in the traumatic condition."

Menefield claims this additional instruction was required because Crump's complaint of pain on the night she was attacked did not establish he caused her to suffer a traumatic condition under section 273.5. He contends Crump may have suffered an

intervening injury when she stumbled away from him on the night of the attack or injured herself separately during the two weeks before she showed her bruises to Detective Jackson.

However, there was no issue of proximate cause in this case, that is, whether Menefield's brutal attack set in motion a chain of events that led to Crump's injuries in an unusual but nonetheless foreseeable manner. (See, e.g., *People v. Schmies* (1996) 44 Cal.App.4th 38, 49 [an independent intervening act of a third person or other force "'may be so disconnected and unforeseeable as to be a superseding cause; i.e., in such a case the defendant's act will be a remote, and not the proximate cause'"]; *People v. Sanchez* (2001) 26 Cal.4th 834, 848–849 [superseding cause is one that is "'so far beyond the risk the original [wrongdoer] should have foreseen that the law deems it unfair to hold him responsible'"] (conc. opn. of Kennard, J.).) The question for the jury was simply whether Crump's bruising was the direct result of Menefield's beating. Consequently, there was no legitimate issue of *proximate* cause for which the omitted portion of the instruction was necessary. (See generally *People v. Avila* (2009) 46 Cal.4th 680, 704-705 [trial court must sua sponte instruct jury on general principles of law that are closely and openly connected with substantial evidence at trial].)

Moreover, the jury was instructed not only with CALCRIM No. 840 but also with CALCRIM No. 841, which addresses the lesser included offense of battery against a former cohabitant. (See § 243, subd. (e)(1).) If the jury had harbored any doubts whether Menefield caused Crump to suffer a traumatic condition, it could have found him guilty of the lesser offense of battery. It did not. Thus, even assuming the trial court should have included the natural and probable consequences language from the CALCRIM No. 840 instruction, there was no prejudicial error because there is no reasonable probability the jury would have reached a result more favorable to defendant had the court inserted the recommended language. (See § 1259; *People v. Watson* (1956) 46 Cal.2d 818, 836.) The evidence at trial was susceptible of only one interpretation—Crump suffered a traumatic condition as the direct result of her beating by Menefield. (See *People v. Jackson* (2000) 77 Cal.App.4th 574, 580.)

DISPOSITION

The judgment is affirmed.

PERLUSS, P. J.

We concur:

WOODS, J.

ZELON, J.