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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

SAMUEL JOSE MARTINEZ,

Defendant and Appellant.

2d Crim. No. B235120
(Super. Ct. No. 1252626)
(Santa Barbara County)

Samuel Jose Martinez appeals his conviction, by jury, of torture (Pen. Code, § 206)¹ and assault by means of force likely to produce great bodily injury. (§ 245, subd. (a)(1).) The trial court sentenced appellant to seven years to life on the torture conviction and an additional enhancement term of seven years for his prior prison terms. It stayed the sentence imposed for the assault conviction pursuant to section 654. Appellant contends there is no substantial evidence to establish the elements of torture. He further contends the trial court erred when it allowed appellant's ex-wife to testify that he regularly beat her during their marriage. We affirm.

Facts

Two homeless men were sleeping in a Santa Barbara park when they were awakened by the sound of someone being beaten. They saw a man standing over a

¹ All statutory references are to the Penal Code unless otherwise stated.

woman, punching her and calling her a "bitch," and a "whore." One of the bystanders described the man as being "in a rage." They tried to intervene, but he responded in a way that they found threatening, so the bystanders left the area to avoid being beaten themselves.

At about 6:30 a.m. on July 22, 2006, a homeless man walking through the park discovered Laurel Riley lying on the ground near some garbage cans, in a large pool of blood. Riley was unconscious and very badly beaten. She was naked from the waist up and her pants had been pulled down around her ankles. The man who found her called 911. A police officer who responded to the call testified that Riley's face was "incredibly swollen and disfigured," her eyes were "swollen shut" and her face and head were covered in blood. She had a cloth gag in her mouth that was tied in knot at the back of her head.

Riley suffers from paranoid schizophrenia and alcoholism. Prior to her beating, the then 53-year old Riley had been living on the streets of Santa Barbara for some time. The beating left her with numerous internal and external injuries for which she was hospitalized for nearly two weeks. Her nose was broken in several places and she had multiple rib fractures as well as extensive internal and external bruising over her entire body. In addition to numerous facial lacerations and bruises, Riley had a large bloody, open wound on the top of her head and bruises covering her breasts, thighs and pelvic area. Blood and air had also built up between her lungs and her chest wall, a potentially fatal injury that required the placement of a chest tube. A sexual assault examination was performed on Riley, but neither semen nor sexual trauma were discovered. There was no alcohol present in her blood when it was drawn for testing on her arrival at the emergency room.

After she was released from the hospital, Riley went to live with her elderly mother. The parties stipulated that Riley was not competent to testify. Her mental illness remains untreated and she has no memory of the assault, other than that it happened at a park and a man was involved.

A few days after the beating occurred, the bystanders gave police officers a description of the man they saw beating Riley. They both later identified a photograph of appellant's brother, Benjamin, as that man. Benjamin was arrested and interviewed but released because he did not describe any facts indicating that he was involved in the crime. An officer familiar with the family mentioned that Benjamin had a brother, appellant, who resembled Benjamin. Officers were not able to locate appellant, so they contacted his parole officer. In September 2006, appellant was arrested for a parole violation, while attending the funeral of another brother.

One of appellant's sisters, Stephanie Mendoza, told the officers that she had information about his involvement in an attack on a woman. As Mendoza explained at trial, appellant "told me that he had seen a woman, her pants were halfway down, he got aroused by it. He wanted to go ahead and clean her off. He said that she was dirty, and he tried to pull her to go ahead and clean her by a sprinkler, but he said that he had seen lots of blood and it got him really angry and really mad, and he started hitting her and beating her. And then he was going to go ahead and pull her over this fence, but she was too big, too heavy."

Mendoza cooperated with the police by recording three subsequent conversations she had with appellant. During these lengthy conversations, appellant admitted that he "beat the shit" out of a homeless woman and tried to throw her over a short fence so the sprinklers would "wash her down so she'll be clean." He dragged her a short distance and then stopped when he saw "all that blood[,] " from beating her. Appellant said, after he was finished hitting the woman, his "hands weren't hurt, nothing, but [he] had blood all over [his] clothes, all over [himself], [he] had blood, shoes, all over [his] shoes." He put the bloody clothes and shoes in a bag, gave them to their brother Benjamin and had Benjamin throw the bag away. Appellant told Mendoza that he kicked the victim "in the face and in the head" and then said to her, " 'look what you made me do.' "

In another conversation, appellant told Mendoza, " if [the victim] got anything . . . from me it was an ass whipping. That's all she got from me. Why'd she get

her ass whipped, I don't know. But, she got it whipped, she got it whipped pretty good." During a third conversation, appellant took Mendoza to the spot where the beating occurred and showed her some spots of the victim's blood on a planter. He explained, "when I see all that blood dried up, that's from the last time I kicked her, and I said, see what you made me do. I - I kicked her and I left." In that same conversation, appellant again said that he "kicked the shit" out the victim and left. Mendoza asked if appellant cared whether the victim was going to die. He answered, "I didn't know. I didn't care. I was mad. I was gone. She paid the piper whatever the reason. So she ended up paying the piper and she took it." Appellant later explained, "I was going to drag her and I was going to [throw] her over that fence so she could shower, into the sprinklers But when I dragged her, there was a bunch of blood and everything coming with her see. . . . [¶] And that's when I got mad. I said see what you fucking made me do, and I kicked her in the fucking face, her head And I walked off."

After his arrest, appellant was interrogated by the investigating detective. Appellant admitted that he beat Riley. He did not explain why he beat Riley, other than saying that he was mad.

Appellant's former wife testified at trial that, during their marriage, appellant regularly beat her when she refused to have sex with him. He would punch her in the face and kick her, causing injuries that required medical treatment. It seemed to the ex-wife as if appellant enjoyed hurting her. She did not report to the police every incident that occurred because appellant threatened her and continued to hit her.

Contentions

Appellant contends there is no substantial evidence that he acted with the requisite specific intent to "cause cruel or extreme pain and suffering for the purpose of revenge, extortion, persuasion, or for any sadistic purpose" (§ 206.) He further contends the trial court erred when it permitted his ex-wife to testify regarding prior, uncharged acts of domestic violence.

Discussion

Substantial Evidence of Torture

To determine whether a conviction is supported by substantial evidence, we review the entire record in the light most favorable to the prosecution "to determine whether it contains evidence that is reasonable, credible, and of solid value, from which a rational trier of fact could find the defendant guilty beyond a reasonable doubt." (*People v. Silva* (2001) 25 Cal.4th 345, 368.) In applying this test, we do not resolve credibility issues or evidentiary conflicts. Instead, we presume in support of the judgment the existence of every fact the jury could reasonably have deduced from the evidence. (*People v. Boyer* (2006) 38 Cal.4th 412, 480.) "A reversal for insufficient evidence 'is unwarranted unless it appears "that upon no hypothesis whatever is there sufficient evidence to support" ' the jury's verdict." (*People v. Zamudio* (2008) 43 Cal.4th 327, 357, quoting *People v. Bolin* (1998) 18 Cal.4th 297, 331.)

The crime of torture occurs when a person, "with the intent to cause cruel or extreme pain and suffering, for the purpose of revenge, extortion, persuasion, or for any sadistic purpose, inflicts great bodily injury as defined in Section 12022.7 upon the person of another" (§ 206.) This offense "focuses on the mental state of the perpetrator and not the actual pain inflicted." (*People v. Hale* (1999) 75 Cal.App.4th 94, 108.) The defendant must act with the "intent to inflict extreme or severe pain. [Citation.] Absent direct evidence of such intent, the circumstances of the offense can establish the intent to inflict extreme or severe pain." (*People v. Burton* (2006) 143 Cal.App.4th 447, 452.) Circumstances relevant to this issue include the severity of the wounds inflicted, the presence of scarring or disfigurement, whether the defendant made earlier threats to the victim and whether the defendant focused his attack on a particularly vulnerable area, such as the face or a previously injured part of the victim's body. (*Id.* at p. 452; see also *People v. Hamlin* (2009) 170 Cal.App.4th 1412, 1429-1430.)

Substantial evidence supports the jury's finding that appellant committed torture. Riley sustained numerous, serious injuries over her entire body, including multiple fractured ribs. Appellant placed a gag in Riley's mouth to keep her from yelling

for help. He hit and kicked Riley's head until both of her eyes were swollen shut, her nose was broken, her lips were cut and swollen, and she had a large, open wound on the top of her head. Riley's breasts, thighs and pelvic area were also bruised. She was unconscious and unresponsive when she was discovered the next morning and had developed potentially fatal internal injuries.

These injuries were not incurred during a brief outburst of violence. They were the product of a sustained, brutal attack during which appellant repeatedly hit and kicked Riley's head and torso, fracturing her nose and ribs and causing internal injuries. Appellant admitted that he was the person who assaulted Riley. He had no explanation for beating her; he said only that she made him mad so he "kicked the shit out of her." In appellant's words, Riley "ended up paying the piper[.]" because appellant was angry. The homeless men who were awakened by the sound of appellant attacking Riley testified that he was calling her vile names like, "bitch," and "whore" while he was kicking and punching the defenseless Riley. A reasonable jury could infer from these facts that appellant intended inflict extreme pain and suffering on Riley. The conviction of torture is, therefore, supported by substantial evidence.

Evidence of Uncharged Acts

Appellant contends the trial court erred when it allowed his ex-wife, Joann Gomez, to testify that appellant beat her many times, often after she refused to have sex with him. The testimony was admitted under Evidence Code section 1101, subdivision (b). Appellant contends Gomez should not have been allowed to testify because his violent conduct with her was not sufficiently similar to the charged acts. We are not persuaded.

At trial, the prosecution contended Gomez should be permitted to testify concerning the domestic violence she had endured while married to appellant because appellant was violent with Gomez when she refused to have sex with him. This was similar to the attack on Riley, the prosecution argued, because Riley was partially naked when she was discovered, she had been repeatedly hit and kicked on her breasts and pelvic areas, and appellant was overheard insulting her with sexual terms such as

"whore." According to the prosecution, appellant's prior conduct toward Gomez was relevant to prove that appellant beat Riley out of revenge for refusing to have sex with him or for the sadistic purpose of taking pleasure in the pain he was inflicting. Gomez's testimony would show the jury, the prosecutor argued, "how [appellant] views women and sex and his entitlement to sex and being able to get it through coercive – through violence. That's what is the relevant piece."

Before Gomez testified, the trial court instructed the jury that the prosecution was going to introduce evidence of appellant's conduct that was not charged in the case. It further instructed the jury: "You may consider this evidence only if the People prove by a preponderance of the evidence that the defendant, in fact, committed the uncharged acts. [¶] Proof by a preponderance of the evidence is a different burden of proof than proof beyond a reasonable doubt. A fact is proven by a preponderance of the evidence if you conclude that it is more likely than not that the fact is true. If the People do not meet this burden, you must disregard this evidence entirely. [¶] If you decide that the defendant committed the uncharged acts, you may, but are not required to, consider that evidence for the limited purpose of deciding whether or not, when inflicting the injuries on Laurel Riley, the defendant acted with the intent to cause cruel or extreme pain for the purpose of suffering, revenge, persuasion, or any sadistic purpose in this case. [¶] In evaluating this evidence, consider the similarity or lack of similarity between the uncharged acts and the charged offenses. Do not consider this evidence for any other purpose. [¶] Do not conclude from this evidence that the defendant has a bad character or is disposed to commit the crime. [¶] If you conclude that the defendant committed the uncharged acts, that conclusion is only one factor to consider along with all the other evidence. It is not sufficient by itself to prove that the defendant is guilty of the crime of torture in violation of Penal Code section 206. The People must still prove the charge beyond a reasonable doubt."

Gomez then testified that, while they were married, appellant punched her in the face and kicked her almost every week. The beatings occurred when she refused to have sex with him. Appellant punched her in the face and kicked her. She sometimes

needed medical attention. It seemed to Gomez as if appellant enjoyed hurting her. The couple had been divorced for about 10 years.

Appellant contends the testimony should have been excluded because his conduct toward Gomez was not sufficiently similar to the charged crimes. As our Supreme Court has explained, "The admissibility of other crimes evidence depends on (1) the materiality of the facts sought to be proved, (2) the tendency of the uncharged crimes to prove those facts, and (3) the existence of any rule or policy requiring exclusion of the evidence." (*People v. Carpenter* (1997) 15 Cal.4th 312, 378-379.) For example, evidence may be excluded where its prejudicial effect substantially outweighs its probative value. (Evid. Code, § 352.) "Because substantial prejudice is inherent in the case of uncharged offenses, such evidence is admissible only if it has substantial probative value. [Citation.] This determination lies within the discretion of the trial court." (*People v. Kelly* (2007) 42 Cal.4th 763, 783.)

Evidence of uncharged acts has substantial probative value where it is relevant to show a material fact such as intent. "To be admissible, there must be some degree of similarity between the charged crime and the other crime The least degree of similarity is needed when, as here, the evidence is offered to prove intent." (*People v. Jones* (2011) 51 Cal.4th 346, 371.) When used to establish intent, evidence of uncharged misconduct need only be sufficiently similar to the charged offenses to support the inference that the defendant " ' " probably harbored the same intent in each instance." ' " (*People v. Kelly, supra*, 42 Cal.4th at p. 783.)

Here, Gomez testified that appellant hit and kicked her when she refused to have consensual sex with him. Appellant admitted that he wanted to have sex with Riley; he beat her when he found that he could not have sex with her because he was unable to clean her off in the sprinklers. The trial court determined appellant's uncharged assaults on Gomez were sufficiently similar to the charged torture of Riley because in both instances, appellant became violent after he could not have sex with the victim. Appellant's violence toward Gomez was relevant to prove that he harbored the same

intent when he assaulted and tortured Riley. The trial court did not abuse its discretion when it permitted Gomez to testify.

Nor can we conclude the evidence of appellant's prior, uncharged acts was inflammatory or otherwise unfairly prejudicial to him. Gomez's testimony was brief and did not describe appellant's violence in detail. She stated that he frequently beat her when she refused to have sex with him. Sometimes, the beatings were so severe she required medical attention. Although Gomez testified that appellant seemed to enjoy inflicting pain on her, the conduct she described was no more severe than the violence inflicted on Riley. She described nothing so perverse or depraved as to " 'inflamm[e] the emotions of the jury, motivating them to use the information, not to logically evaluate the point upon which it is relevant, but to reward or punish one side because of the jurors' emotional reaction.' " (*People v. Branch* (2001) 91 Cal.App.4th 274, 286, quoting *Vorse v. Sarasy* (1997) 53 Cal.App.4th 998, 1008-1009.)

Finally, any error in admitting Gomez's testimony was harmless. Appellant admitted to his sister, and later to the investigating officer, that he mercilessly beat Riley. That testimony alone was overwhelming evidence of his guilt. (*People v. Watson* (1956) 46 Cal.2d 818, 834.)

The judgment is affirmed.

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YEGAN, J.

We concur:

GILBERT, P.J.

PERREN, J.

Frank J. Ochoa, Judge
Superior Court County of Santa Barbara

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