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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

JORGE FIGUEROA,

Defendant and Appellant.

B294149

(Los Angeles County
Super. Ct. No. BA456753)

APPEAL from a judgment of the Superior Court of
Los Angeles County, Renee F. Korn, Judge. Affirmed.

David Dworakowski, under appointment by the Court of
Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Lance E. Winters,
Assistant Attorney General, Paul M. Roadarmel, Jr. and
Stacy S. Schwartz, Deputy Attorneys General, for Plaintiff
and Respondent.

Defendant Jorge Figueroa was convicted of three crimes against his ex-girlfriend, Jerusalem. On appeal, he challenges the sufficiency of the evidence to support a great bodily injury enhancement alleged in connection with the crime of assault likely to cause great bodily injury. We conclude that evidence that defendant choked Jerusalem until she lost consciousness was sufficient to support the enhancement. We further reject defendant's argument that he is entitled to an ability to pay hearing before the trial court can impose restitution fines and court assessment fees. We affirm the judgment.

PROCEDURAL BACKGROUND

In a seven-count second amended information, defendant was charged with four counts of injuring a girlfriend, in violation of Penal Code¹ section 273.5, subdivision (a) (counts 1, 3, 5, and 6); assault likely to produce great bodily injury (§ 245, subd. (a)(4)), with an enhancement that defendant inflicted great bodily injury (§ 12022.7, subd.(e)) (count 2); second degree robbery (§ 211) (count 4); and dissuading a witness from prosecuting a crime (§ 136.1, subd. (b)(2)) (count 7). The victim identified in each count was Jerusalem.

Prosecution witnesses included Jerusalem, her best friend, officers to whom she reported defendant's conduct, and an expert who described the cycle of domestic violence. Numerous witnesses testified for the defense, including defendant. Defendant's former roommate testified that Jerusalem frequently discussed framing a boyfriend. Defendant's friend testified that Jerusalem punched her in the face and bit her arm.

¹ All statutory citations are to the Penal Code.

Jurors convicted defendant of a lesser included charge of battery on count 1. Jurors convicted defendant on count 2 of assault likely to produce great bodily injury with the great bodily injury enhancement. Those crimes occurred on the same day, and the prosecutor distinguished them during closing argument, explaining that the assault constituted defendant's choking Jerusalem to the point she lost consciousness.² The prosecutor argued that Jerusalem's loss of consciousness constituted great bodily injury.

In addition to counts 1 and 2, jurors convicted defendant of one count of injuring a girlfriend (count 3). The trial court dismissed the charge of dissuading a witness from testifying (count 7), and jurors acquitted defendant of the remaining charges.

The trial court sentenced defendant to an aggregate term of five years in prison and six months in county jail. The court ordered defendant to pay a \$750 restitution fine, \$120 in court security assessments, and \$90 in criminal conviction assessments.³ The court's order indicated that fees may be taken from state prison earnings. The court imposed and stayed a parole revocation fine. Defendant timely appealed from the judgment.

² The prosecutor earlier advocated the same theory with defense counsel and the trial court.

³ The restitution fine consisted of \$150 for the misdemeanor and \$300 for each felony. These are the minimum amounts required under section 1202.4, subdivision (b)(1). The court security assessment and criminal conviction assessment were \$40 and \$30, respectively, for each conviction.

FACTUAL BACKGROUND

Because defendant's challenge is to the sufficiency of the evidence, we describe the evidence in the light most favorable to the judgment. (*People v. Lindberg* (2008) 45 Cal.4th 1, 27.) We summarize only those facts relevant to the issues on appeal.

Defendant and Jerusalem dated for over a year and lived together for much of that time.

1. *Misdemeanor battery (lesser included offense injury to a girlfriend) (count 1)*

On April 24, 2017, after they argued, Jerusalem, who was in the kitchen, picked up a glass in an effort to protect herself from defendant. Defendant smashed the glass into Jerusalem's face and punched her in the face. Jerusalem suffered scratches and lacerations to her face. One of the lacerations resulted in a scar on Jerusalem's face. She did not seek medical treatment following the incident. Jerusalem was afraid that her eye had been damaged.

2. *Assault likely to cause great bodily injury and great bodily injury enhancement (count 2)*

On April 24, 2017, Jerusalem did not want to answer defendant's question about a phone call she received. Defendant became aggressive and strangled Jerusalem. He held his hands around her neck for a minute or two. Jerusalem lost consciousness, and she felt dizzy and numb. Afterwards, she told defendant, "[Y]ou can't keep doing this to me. You know, you're going to end up really hurting me."

3. *Injury to a girlfriend (count 3)*

On August 31, 2017, defendant and Jerusalem were walking back to their apartment. Defendant believed Jerusalem was dating another person and became jealous. Defendant punched Jerusalem in her face, and she fell to the ground. Defendant pulled Jerusalem's hair and dragged her on the ground holding her hair. Jerusalem cut her face and shoulder on the pavement.

4. *Imposition of fines and fees*

Without objection, at the sentencing hearing, the trial court imposed the fines and fees enumerated above. Defendant did not argue that he lacked the ability to pay and according to his testimony, he "always made a decent amount of money." Defendant testified that he had \$500 in his drawer at the time he was incarcerated. Additionally, defendant's mother testified that defendant regularly kept money in his drawer.

DISCUSSION

Defendant argues (1) no substantial evidence supported the great bodily injury finding; and (2) the trial court had to conduct an ability to pay hearing before ordering defendant to pay the imposed fines and fees. His arguments are unpersuasive.

A. *Substantial Evidence Supported the Great Bodily Injury Enhancement*

Defendant challenges the sufficiency of the evidence to support the great bodily injury enhancement. "Whether the harm resulting to the victim . . . constitutes great bodily injury is a question of fact [Citation.] If there is sufficient evidence to sustain the . . . finding . . . , we are bound to accept it, even

though the circumstances might reasonably be reconciled with a contrary finding.’” (*People v. Wolcott* (1983) 34 Cal.3d 92, 107.) Here, substantial evidence supported the jury’s finding.

Section 12022.7, subdivision (f) describes great bodily injury as “significant or substantial physical injury.” (§ 12022.7, subd. (f).) Defendant admits that great bodily injury has the same meaning as serious bodily injury, which includes loss of consciousness.

Defendant’s admission is consistent with the law. Loss of consciousness is a serious bodily injury, which is “‘essentially equivalent’” to great bodily injury. (*People v. Wade* (2012) 204 Cal.App.4th 1142, 1149.) Although procuring medical treatment is relevant, it is not a prerequisite to a finding of great bodily injury. (*Id.* at p. 1150.) Based on evidence that Jerusalem lost consciousness when defendant was strangling her, jurors could have concluded she suffered great bodily injury.⁴

⁴ In challenging the sufficiency of the evidence, defendant misidentifies the relevant assault as the incident when he smashed a glass in Jerusalem’s face. He argues that the lacerations did not constitute substantial evidence to support the great bodily injury enhancement. According to defendant, Jerusalem “sustained moderate lacerations to her face, which did not require sutures or other medical care to treat or repair the injury.” As discussed above, the great bodily injury finding related to the incident when defendant strangled Jerusalem after she refused to give defendant information about a telephone call she had received.

B. No Hearing Is Necessary to Determine Defendant's Ability to Pay Fines and Fees

Citing *People v. Dueñas* (2019) 30 Cal.App.5th 1157 (*Dueñas*), defendant argues: The trial court erred in imposing “the restitution fine and other fees on due process grounds, because the court did not find he had a present ability to pay it.”

In *Dueñas*, an unemployed, homeless mother with cerebral palsy lost her driver’s license when she was unable to pay over \$1,000 for three juvenile citations. (*Dueñas, supra*, 30 Cal.App.5th at pp. 1160–1161.) Thereafter she received multiple convictions related to driving with a suspended license, each accompanied by jail time and additional fees she could not afford to pay. (*Id.* at p. 1161.) The trial court rejected Dueñas’s request to hold an ability to pay hearing despite undisputed evidence that she was indigent. (*Id.* at p. 1163.)

The appellate court reversed, holding that due process prohibited imposing the same assessments imposed in the current case and required the trial court to stay execution of the restitution fines until the trial court held an ability to pay hearing. (*Dueñas, supra*, 30 Cal.App.5th at p. 1164.) The court expressed concern for “the cascading consequences of imposing fines and assessments that a defendant cannot pay,” noting that Dueñas’s case “‘doesn’t stem from one case for which she’s not capable of paying the fines and fees,’ but from a series of criminal proceedings driven by, and contributing to, Dueñas’s poverty.” (*Id.* at pp. 1163–1164.) The court referenced “the counterproductive nature of this system and its tendency to enmesh indigent defendants in a cycle of repeated violations and escalating debt.” (*Id.* at p. 1164, fn. 1.)

Defendant's reliance on *Dueñas* is misplaced for three reasons. First, following *People v. Hicks* (2019) 40 Cal.App.5th 320, this court has held that *Dueñas* was wrongly decided because it misapplied due process precedents. (*People v. Kingston* (Oct. 21, 2019, B293920) __ Cal.App.5th __ [2019 Cal.App.Lexis 1038].) Second, this case is distinguishable from *Dueñas* because defendant does not face incarceration because of his inability to pay fines and fees. He is incarcerated because of his conduct towards Jerusalem. (See *People v. Caceres* (2019) 39 Cal.App.5th 917, 928 [declining to apply *Dueñas*'s "broad holding" beyond its "unique facts"].) Finally, defendant testified that he has made money and that he had \$500 in his drawer when incarcerated. In addition, he will earn wages while incarcerated. There is thus no support for defendant's assertion on appeal that he had an inability to pay the imposed fines and fees. (*People v. Kingston, supra*, __ Cal.App.5th __ at p. __ [2019 Cal.App.Lexis at p. *7] [no due process violation in part because record indicated defendant had the ability to pay fee].) In short, defendant fails to demonstrate the trial court erred in not conducting an ability to pay hearing.

DISPOSITION

The judgment is affirmed.

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BENDIX, J.

We concur:

ROTHSCHILD, P. J.

JOHNSON, J.