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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.

PATRICK WILLIAMS,

Defendant and Appellant.

B277110

(Los Angeles County
Super. Ct. No. LA083157)

APPEAL from a judgment of the Superior Court of Los Angeles County. Thomas Robinson and Joseph A. Brandolino, Judges. Affirmed, as modified.

Susan Morrow Maxwell, 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, Scott A. Taryle, Supervising Deputy Attorney General, and Timothy L. O'Hair, Deputy Attorney General, for Plaintiff and Respondent.

* * * * *

A jury convicted Patrick Williams (defendant) of various crimes arising out of three instances of domestic violence. On appeal, he argues that (1) there was insufficient evidence that his acts in burning his girlfriend's chest and back *permanently* disfigured her, thereby precluding one of his two convictions for mayhem, (2) the trial court erred in imposing the enhancement for great bodily injury for the two mayhem counts because such injury is an element of mayhem, and (3) the abstract of judgment contains a clerical error. Only defendant's final contention has merit. Accordingly, we affirm his conviction and sentence, but order that the abstract of judgment be corrected.

FACTS AND PROCEDURAL BACKGROUND

I. Facts

By 2015, defendant and Cassandra G. (Cassandra) had been dating for six years.

Over Thanksgiving weekend in 2015, defendant strangled Cassandra's neck with his bare hands for a minute at a bus depot in North Hollywood.

Eleven days later, defendant and Cassandra were staying at a hotel in North Hills. They got into a verbal argument, in which Cassandra called defendant a "jackass." Defendant responded by slapping her and punching her in the face and ear with an open fist. Defendant then said, "I'm going to burn your hair" and proceeded to set her hair on fire with a lighter. When Cassandra tried to stamp out the fire with her bare hands, defendant said, "Oh no bitch," and then proceeded to strangle her for 10 minutes until she lost consciousness. From the incident, Cassandra suffered facial fractures, a torn ear, and burn injuries to her scalp.

Just shy of three weeks later, defendant and Cassandra were back together and staying in a hotel in North Hollywood. Defendant demanded that Cassandra perform oral sex. When her initial efforts did not cause defendant to become erect and she stopped, defendant told her, “You have two choices—give me head or die,” and began to slap and choke her. Defendant’s stranglehold on her was so hard that she lost consciousness. While she was unconscious, defendant placed a lighter against a spot on her back. Cassandra awoke to find defendant burning a spot on her bare chest with the lighter, which he said he did to see if she was still alive. Three days later, the burns to her chest and back had scabbed over and had a red “ridge around” them.

II. Procedural Background

The People charged defendant with crimes relating to each of the three incidents. Regarding the first incident, the People charged defendant with willful infliction of corporal injury to a cohabitant (Pen. Code, § 273.5).¹ Regarding the second incident, the People charged defendant with (1) willful infliction of corporal injury to a cohabitant (§ 273.5), (2) assault with a deadly weapon (§ 245, subd. (a)(1))—namely, the lighter, and (3) mayhem (§ 203). Regarding the third incident, the People charged defendant with (1) willful infliction of corporal injury to a cohabitant (§ 273.5), and (2) mayhem (§ 203).² The People further alleged that defendant personally inflicted great bodily injury when he willfully inflicted corporal injury during the first and second

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

² The People also charged defendant with failing to register as a sex offender (§ 290, subd. (b)), but later dismissed that count.

incidents and when he committed mayhem in the second and third incidents (§ 12022.7, subd. (e)). The People additionally alleged that defendant's 1992 Missouri conviction for forcible rape constituted a prior "strike" under our Three Strikes law (§§ 667, subds. (b)-(j) & 1170.12, subds. (a)-(d)) as well as a prior "serious" felony (§ 667, subd. (a)(1)).

The matter proceeded to trial by jury. Regarding the first incident, the jury acquitted defendant of willful infliction of corporal injury but convicted him of the lesser included offense of misdemeanor simple battery of a cohabitant (§§ 242 & 243). The jury convicted defendant of all of the charged offenses relating to the second and third incidents, and found true all of the allegations that defendant had personally inflicted great bodily injury. At a bifurcated hearing, defendant admitted his prior 1992 conviction.

Defendant moved for a new trial on the ground that there was insufficient evidence to support the mayhem conviction relating to the third incident, and moved to strike his prior strike conviction. The trial court denied both motions.

The trial court sentenced defendant to state prison for 34 years and four months. The court used the mayhem count from the second incident as the principal term. For that crime, the court imposed a sentence of 26 years, comprised of a base term of 16 years (eight years, doubled due to the prior strike) plus five years for the personal infliction of great bodily injury plus five years for his prior serious felony. The court next imposed (1) a consecutive four-year sentence for the mayhem count from the third incident, comprised of a base sentence of 32 months (one-third the midterm of four years, doubled due to the prior strike) plus 16 months (one-third of the four-year enhancement) for the

personal infliction of great bodily injury; (2) a consecutive 40-month term for corporal injury on a cohabitant arising from the third incident, comprised of a base term of two years (one-third the three-year midterm sentence, doubled due to the prior strike) plus 16 months (one-third of the four-year enhancement) for the personal infliction of great bodily injury; and (3) a consecutive one-year sentence for the misdemeanor battery count. The court imposed, but stayed under section 654, a 40-month sentence for inflicting corporal injury during the second incident and a two-year sentence for assault with a deadly weapon during the second incident.

Defendant filed this timely appeal.

DISCUSSION

I. Sufficiency of the Evidence

Defendant contends that his conviction for mayhem relating to the third incident where he burned Cassandra's chest and back with a lighter rests on insufficient evidence—namely, the failure to prove that those injuries were permanent. We review this claim by asking whether the record contains enough evidence that is reasonable, credible, and of solid value for a reasonable trier of fact to find defendant guilty beyond a reasonable doubt. (*People v. Brooks* (2017) 3 Cal.5th 1, 57.)

A person is guilty of mayhem when he “unlawfully and maliciously” does one of six specified acts: “(1) dismembering or depriving a part of someone's body; (2) disabling or rendering useless a part of someone's body; (3) *disfiguring someone*; (4) cutting or disabling the tongue; (5) putting out an eye; [or] (6) slitting the nose, ear or lip.” (*People v. Santana* (2013) 56 Cal.4th 999, 1003-1004, italics added; § 203.) Disfigurement is actionable as mayhem only if it is permanent. (*Santana*,

at p. 1007; *People v. Newby* (2008) 167 Cal.App.4th 1341, 1347; *People v. Hill* (1994) 23 Cal.App.4th 1566, 1571.) Permanent injuries are actionable even if they can be remedied by cosmetic surgery. (*Newby*, at p. 1347.)

Substantial evidence supports the jury's implicit finding that the burns defendant inflicted upon Cassandra's body are actionable as mayhem. Cigarette burns to a woman's breasts constitute disfigurement. (*People v. Keenan* (1991) 227 Cal.App.3d 26, 33, 35-36.) More to the point, the disfigurement here was permanent because the testimony and photographs admitted into evidence showed wounds that were as large or larger than a cigarette burn, that were scabbed over, and that were surrounded by a red ring of marred skin. Although these observations were made mere days after the third incident, the jury could reasonably infer from the nature of those injuries that they were permanent. (E.g., *People v. Livingston* (2012) 53 Cal.4th 1145, 1166 ["the jury decides which reasonable inference or inferences, if any, to draw"]; see also *Keenan*, at p. 36, fn. 6 [jury could reasonably infer scars still visible three and a half months after injury were permanent].)

Defendant resists this conclusion, asserting that there was no affirmative proof that Cassandra's scars were lasting (e.g., *People v. Newble* (1981) 120 Cal.App.3d 444, 448, 453 [doctor's testimony regarding permanence]) and that Cassandra herself testified that she was "healed now" and that the burns left "no . . . big scars or anything like that." However, affirmative proof is not required; as noted above, a conviction may rest on reasonable inferences. Further, Cassandra's testimony at trial consisted mostly of denials of her contemporaneous statements regarding defendant's acts and assertions of lack of memory; the

jury was entitled to—and did—find her not to be credible, and we must defer to its credibility finding. (*People v. Jackson* (2014) 58 Cal.4th 724, 749 [“it is the exclusive province of the . . . jury to determine the credibility of a witness”].) Thus, even if we construe Cassandra’s somewhat ambiguous testimony as an assertion that she suffered no permanent injury, the jury’s credibility finding precludes us from giving any weight to that testimony.

II. Error in Applying Great Bodily Injury Enhancement to Mayhem Counts

Defendant next asserts that the trial court erred in applying the great bodily injury enhancement set forth in section 12022.7, subdivision (e), to his two mayhem counts. This assertion requires us to construe section 12022.7, and we do so independently. (*B.H. v. County of San Bernardino* (2015) 62 Cal.4th 168, 189.)

Section 12022.7 specifies five different circumstances—in five different subdivisions—under which an additional term of imprisonment must be imposed if the defendant “personally inflict[ed] great bodily injury” in the commission of his crime(s). (§ 12022.7, subds. (a)-(e).) As to four of those five circumstances (namely, those listed in subdivisions (a) through (d)), the enhancement may not be applied “if infliction of great bodily injury is an element of the [underlying] offense.” (*Id.*, subd. (g).) The remaining circumstance—set forth in subdivision (e)—provides for an enhancement when the defendant “personally inflicts great bodily injury under circumstances involving domestic violence in the commission of a felony.” (*Id.*, subd. (e).)

The trial court correctly applied the personal infliction of great bodily injury enhancement to the mayhem convictions in this case. Defendant’s mayhem convictions rested on his assaults

against Cassandra, his oft-time cohabitant and longtime girlfriend; as a result, his mayhem convictions involved “domestic violence,” which is defined as “abuse committed against an adult . . . who is a . . . cohabitant . . . or is having . . . a dating . . . relationship.” (§ 13700, subd. (b); § 12022.7, subd. (e) [adopting section 13700’s definition of domestic violence].) Because the statute’s carve-out for crimes having an element of “great bodily injury” does not apply to crimes involving domestic violence, a court may impose the enhancement to the mayhem convictions in this case.

Defendant contends that *People v. Pitts* (1990) 223 Cal.App.3d 1547 dictates a different result. *Pitts* held that a section 12022.7 enhancement could not be applied to a sentence for mayhem (*id.* at pp. 1559-1560), but *Pitts* was interpreting a prior version of section 12022.7 that did not have the carve-out for domestic violence crimes set forth in the current version. (*Pitts*, at pp. 1559-1561; see also *People v. Hawkins* (2003) 108 Cal.App.4th 527, 530-531 [setting forth prior version].) *Pitts* is therefore irrelevant. To the extent defendant invites us to construe the current language to incorporate *Pitts*’s holding, we respectfully decline. Doing so would require us to rewrite the statute’s plain language, and this is something we are not allowed to do. (*People v. White* (2017) 2 Cal.5th 349, 371 [“It is not our role to rewrite statutes, especially criminal statutes”].)

III. Abstract of Judgment

Defendant finally argues that the abstract of judgment contains a clerical error: It states that the trial court imposed but stayed the conviction for corporal injury regarding the second incident, but imposed (but did not stay) the personal infliction of great bodily injury enhancement attendant to that conviction.

However, when the court orally imposed sentence, it stayed *both* the conviction *and* the enhancement. The People concede the need to correct the abstract. The abstract of judgment should therefore be modified. (*People v. Vega* (2015) 236 Cal.App.4th 484, 506.)

DISPOSITION

The clerk of the trial court is directed to correct the abstract of judgment to reflect that the section 12022.7 enhancement as to count two was stayed and to forward the amended abstract of judgment to the Department of Corrections and Rehabilitation. As modified, the judgment is affirmed.

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_____, J.
HOFFSTADT

We concur:

_____, Acting P. J.
CHAVEZ

_____, J.*
GOODMAN

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