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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

JAMES ROBINSON,

Defendant and Appellant.

B275642

(Los Angeles County
Super. Ct. No. YA092888)

APPEAL from a judgment of the Superior Court of
Los Angeles County, Alan B. Honeycutt, Judge. Affirmed.

Cynthia L. Barnes, for Defendant and Appellant.

Kathleen A. Kenealy, Acting Attorney General, Gerald A.
Engler, Chief Assistant Attorney General, Lance E. Winters,
Assistant Attorney General, and Mary Sanchez, Deputy Attorney
General, for Plaintiff and Respondent.

INTRODUCTION

Defendant James Robinson, Jr. was convicted of corporal injury to his girlfriend after he punched her and grabbed her arms, causing bruises. On appeal, he argues there was insufficient evidence to sustain his conviction, and the trial court erred by failing to instruct the jury on battery as a lesser included offense. We find no error and affirm.

FACTUAL AND PROCEDURAL BACKGROUND

The Los Angeles District Attorney charged defendant with felony corporal injury of a person with whom the offender is in a dating relationship (Penal Code, § 273.5, subd (a),¹ count 1) and felony false imprisonment by violence (§ 236, count 2). Defendant pleaded not guilty.

The evidence at trial consisted only of the testimony of the victim, the testimony of defendant, and photographs of the victim's injuries. Victim N.A.² testified that she was in a relationship with defendant. On the evening of August 13, 2015, she gave defendant a ride to his residence, and she went to his room with him. N.A. was seven months pregnant. Defendant tried to take a picture of N.A.'s stomach with his phone, and she did not want him to take the picture. She pushed the phone and his hand into his stomach, and the two began to laugh and "play fight." Defendant hit N.A. in the stomach with the back of his open hand. But the play fighting escalated, and defendant got mad. Defendant then hit the lower right side of N.A.'s abdomen with a closed fist. N.A. began to cry.

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

² We refer to the victim by her initials to protect her privacy. (See Cal. Rules of Court, rule 8.90(b)(4).)

N.A. testified that she walked out onto the balcony for a few minutes. She went inside, and discovered that defendant had taken her wallet from her purse. Defendant told her to leave without her wallet, but N.A. began looking through drawers to find her wallet. She found her wallet and then tried to call her sister, but defendant took her wallet and cell phone. When N.A. tried to get her wallet, defendant grabbed her arms. Defendant pushed N.A. down on the bed and strangled her with his hands for a few seconds. N.A. had trouble breathing and pushed defendant off of her. At some point during the incident, defendant also pushed N.A. down so she fell on her rear end, and her glasses broke. When N.A. tried to leave, defendant told her she could not leave and made her stay in the room for about another hour.

N.A. testified that once she left defendant's residence at about 1:00 or 2:00 a.m., she went home and then went to the hospital. She testified that she was not hurt, but she was afraid because the baby was not moving.

Photographs taken at the hospital were shown to the jury. One photograph showed a bruise on the side of N.A.'s stomach caused by defendant hitting her. Two photographs showed bruising on N.A.'s neck from defendant strangling her. Another photograph showed bruising on N.A.'s arm caused when defendant grabbed her. The baby was not harmed.

Defendant testified that on the night of August 13, 2015, N.A. picked him up from work. He said they were play fighting and he hit her on the leg, but she did not cry. Later they started arguing, and he pushed her. Defendant testified that N.A. fell "towards the bed, got up, and then she became hysterical. Like, you could have hurt the baby." He testified that N.A. attacked

him by scratching him, and he held her arm to stop her. He told her to calm down, and she went out onto the balcony. While she was outside, defendant took her wallet out of her purse and put it in a drawer. When N.A. came back inside, she noticed her wallet was missing from her purse and began to look for it. After she found the wallet in the drawer, defendant took the wallet and N.A.'s cell phone. He said he did not stop her from leaving when she wanted to, but he told her to dry her face before she left. Defendant said the bruise in the photo of N.A.'s right side really only showed a red mark on her leg, lower than her hip. Defendant also testified that he never put his hands on N.A.'s neck.

On cross-examination, defendant agreed that he caused the bruise on N.A.'s right abdomen/hip area by hitting her with a closed fist. Defendant said the marks on N.A.'s neck looked "more like a scratch. It's a red – I don't know. Like a hickey or something." Defendant agreed that he told the police that he caused physical injury to N.A. Defendant also admitted that he re-latched the door as N.A. tried to leave the room, thus stopping her from leaving. Defendant testified that he is 6'1" or 6'2" and weighs 200 pounds; N.A. is about 5'5".

The jury found defendant guilty on count 1, and not guilty on count 2. The court sentenced defendant to the high term of four years in prison, and assessed various fines and fees.

Defendant timely appealed.

DISCUSSION

A. Sufficiency of the evidence

Defendant argues there was insufficient evidence presented at trial to support his conviction. "To determine the sufficiency of the evidence to support a conviction, 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 that the elements of the crime were established beyond a reasonable doubt.” (*People v. Tripp* (2007) 151 Cal.App.4th 951, 955.)

Section 273.5, subdivision (a) states that anyone who “willfully inflicts corporal injury resulting in a traumatic condition” upon a person in a dating relationship with the offender is guilty of a felony. “[T]raumatic condition’ means a condition of the body, such as a wound, or external or internal injury, including, but not limited to, injury as a result of strangulation or suffocation, whether of a minor or serious nature, caused by a physical force.” (§ 273.5, subd. (d).) Bruising and redness may qualify as traumatic conditions under this statute. (See, e.g., *People v. Beasley* (2003) 105 Cal.App.4th 1078, 1085-1086; *People v. Wilkins* (1993) 14 Cal.App.4th 761, 771.)

Defendant argues that other than the evidence that N.A. and defendant were play fighting, “no further evidence was offered by the prosecution to prove that the red marks or mild bruising on [N.A.’s] neck, arm, and lower side were inflicted willfully and unlawfully.” To the contrary, N.A.’s testimony was sufficient to show that defendant inflicted the wounds willfully. N.A. testified that defendant first hit her abdomen playfully, but he later got mad and hit her hard with a closed fist. The jury saw photographic evidence that the punch was hard enough to leave a lasting mark. N.A. also testified that defendant grabbed her arms, and pushed her onto the bed and choked her. The jury also saw evidence that these actions caused bruising on N.A.’s arms and neck. Moreover, N.A. testified that they were no longer play

fighting at this time; she was crying, asking to leave, and trying to get out of the door.

Unless testimony is physically impossible or inherently improbable, the testimony of a single witness is sufficient to support a conviction. (*People v. Young* (2005) 34 Cal.4th 1149, 1181.) Here, N.A.'s testimony was sufficient to support the jury's finding that defendant willfully inflicted corporal injury upon N.A.

B. Jury instructions

Defendant asked the court to instruct the jury on a lesser included offense for count 1. He argued that because section 273.5, subdivision (a) is a wobbler, the jury should be instructed that it could find defendant guilty of a misdemeanor. The court denied the request, saying, "[T]here's a lack of substantial evidence to support the lesser included instruction." The court noted that both N.A. and defendant testified that defendant caused N.A.'s bruising on her right side, although they disagreed about the location of the marks. And although defendant denied touching N.A.'s neck, she nonetheless had marks on her neck that she said were caused by defendant. The court also noted that section 243, subdivision (e) (battery against a person in a dating relationship) was another potential lesser included offense, but it does not apply where there has been a traumatic condition, and "I don't believe there's any dispute that the traumatic condition was inflicted in this particular case." The court therefore denied the request to instruct the jury on a lesser-included offense for count 1.

On appeal defendant that the court should have instructed the jury that battery under section 243, subdivision (e) was a lesser included offense. "On appeal, we review independently the

question whether the trial court improperly failed to instruct on a lesser included offense.” (*People v. Souza* (2012) 54 Cal.4th 90, 113.)

Section 243, subdivision (e)(1) makes it a crime to commit battery against a person with whom the defendant is in a dating relationship. Defendant was convicted under section 273.5, subdivision (a), willful infliction of a corporal injury on a person with whom the defendant is in a dating relationship. Section 243, subdivision (e)(1) is a lesser included offense of section 273.5, subdivision (a). (*People v. Jackson* (2000) 77 Cal.App.4th 574, 580.) Battery requires only the “willful and unlawful use of force or violence upon the person.” (§ 242.) Section 273.5, subdivision (a) includes the additional element of “corporal injury resulting in a traumatic condition.” (§ 273.5, subd. (a).)

A trial court “must instruct on a lesser offense necessarily included in the charged offense if there is substantial evidence the defendant is guilty only of the lesser.” (*People v. Birks* (1998) 19 Cal.4th 108, 118.) “Substantial evidence in this context is evidence from which a reasonable jury could conclude that the defendant has committed the lesser, but not the greater offense.” (*People v. Shockley* (2013) 58 Cal.4th 400, 403.) The court is therefore required to instruct the jury on a lesser included offense only when there is substantial evidence that an element of the charged offense is missing, but that the accused is guilty of the lesser offense. (*Id.* at p. 404.)

As the Attorney General points out, there was no evidence presented at trial that defendant struck N.A. but did not injure her. N.A. testified that defendant caused the bruises on her abdomen, neck, and arms. Defendant agreed that he caused the bruise or mark on N.A.’s right abdomen or hip area by hitting her

with a closed fist. As noted above, bruising and redness are traumatic conditions. There was no evidence by which the jury could have found that defendant committed battery on N.A., but not willful infliction of a corporal injury.

Defendant does not dispute that there was evidence of traumatic conditions, but argues that the “very minor traumatic conditions described in this case by the victim certainly could have been the result of the couple’s prior, playful fighting.” Defendant’s argument therefore seems to challenge the willfulness element—not the traumatic condition element. Willfulness is also an element of battery under section 243, subdivision (e)(1). Defendant does not explain how lack of evidence of willfulness constitutes substantial evidence that he committed battery rather than infliction of a corporal injury upon N.A. Defendant’s argument therefore does not support his contention that the court should have instructed the jury that battery was a lesser included offense.

Even if the court erred by not instructing the jury on battery under section 243, subdivision (e)(1), any such error was harmless. The failure to instruct sua sponte on a lesser included offense in a noncapital case not subject to reversal unless an examination of the entire record establishes a reasonable probability that the error affected the outcome. (*People v. Breverman* (1998) 19 Cal.4th 142, 165.) Here, there is no reasonable probability that the asserted error affected the outcome of the case. There was uncontradicted evidence that defendant hit N.A. with a fist and caused the mark on her abdomen/hip area. Defendant also testified that he grabbed N.A.’s arm, although he testified that he did it in self-defense. The jury saw photographs depicting bruising on N.A. from this

contact. There was no evidence to support defendant's contention that he committed battery, but not infliction of corporal injury. If there was an error in the instruction, it was harmless.

DISPOSITION

Affirmed.

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COLLINS, J.

We concur:

EPSTEIN, P. J.

MANELLA, J.