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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

CARROLL ELI PEGERON,

Defendant and Appellant.

A130485

(Sonoma County
Super. Ct. No. SCR585789)

Defendant Carroll Eli Pegeron appeals a judgment entered upon a jury verdict finding him guilty of assaulting a former cohabitant and unauthorized entry of a dwelling. He contends the trial court erred in denying his request for a jury instruction on the application of the reasonable doubt standard to circumstantial evidence. We affirm the judgment.

I. BACKGROUND

Defendant was charged with felony inflicting corporal injury on a cohabitant (Pen. Code,¹ § 273.5, subd. (a)) (count one); felony false imprisonment (§ 236) (count two); and misdemeanor unauthorized entry of a dwelling (§ 602.5, subd. (a)) (count four).²

Mark Battersby testified that the victim, Jane Doe, rented a room in his house. Defendant was Doe's former boyfriend. Battersby had asked defendant several times not to come to the house. At about 3:30 on the morning of June 6, 2010, Battersby heard

¹ All statutory references are to the Penal Code.

² Count three of the amended information was dismissed.

Doe scream, “help me, Mark.” He ran to Doe’s room, and saw defendant there, close to her. Doe was upset and frantic, and was asking defendant to leave. Defendant was holding onto Doe and seemed to be overpowering her and preventing her from getting away, but did not appear to be hurting her. Battersby did not see defendant hit Doe. She looked as if she was in discomfort, but not in pain. Defendant kept calling Doe his girlfriend, and Doe responded that she was not his girlfriend and she wanted him to leave her alone. Doe and Battersby tried to push defendant out the front door, although he resisted. Defendant left after Battersby called the police and told defendant the police were on the way.

Officer John Whitten of the Santa Rosa Police Department testified that when he came to the house, Doe was shaking and appeared distressed and upset. Doe told him she had been in her bedroom when defendant entered through her window, grabbed her by her wrists, and began strangling her, so that she could not breathe or swallow. Doe said that, as defendant was strangling her, he pressed his head against hers, causing swelling and redness, then locked his arms around her back, squeezing her. He told her several times that he was going to kill her. She was in pain from the assault, and became dizzy after he let go of her neck. At one point, she scratched him on the face. Whitten took pictures of Doe’s neck, face, and arms where she told him she was injured. The injuries appeared to be fresh. He did not see any signs of a struggle in the bedroom.

Doe testified at trial that she thought the charges in the police report were “twisted around.” She testified that defendant was still her boyfriend. She invited defendant to visit her on the night in question, and let him in the window. They began to argue, and after the argument ended, they started “roughhousing . . . playing around because everything was okay.” While they were “horse playing,” he tried to grab her shoulder, and accidentally “looped around [her] neck.” He never strangled her, restrained her, or threatened to kill her. She denied having screamed for help. She said the police officer asked if she had any injuries, and she showed him an old cut. She said the redness on her neck was from “playing around” with defendant. She did not recall telling the officer that

defendant grabbed her and forced her onto the bed, strangled her, pressed his head against her face, or squeezed her.

Doe testified that she knew defendant was not allowed in the house, and when she heard Battersby come downstairs, she told defendant to go out the window and knock on the front door. Battersby came downstairs as Doe answered the door. While Battersby was trying to kick defendant out, Doe told defendant to go. She testified that she was not truthful with the officer who came to the house because she was afraid that if she said she had let defendant in, Battersby would not let her stay in the house.

At trial, Doe was asked about the testimony she gave at the preliminary hearing on July 30, 2010. At the preliminary hearing, Doe had testified she had told the officer the truth about her injuries; that defendant held her waist to stop her when she tried to leave the room; that she asked for help from Battersby because defendant was “ ‘putting force on [her], wouldn’t let [her] out the door’ ”; that, as he restrained her, defendant told her to be quiet; that defendant used both hands to strangle her, and that afterwards she had pain in her throat; and that defendant wrapped his arms around her torso, squeezing her hard and causing pain in her back. At trial, Doe denied recalling these questions and answers.

Doe also testified that on the night of the incident she had had two or three glasses of wine and was feeling the effects of the alcohol. She suffered from short-term memory loss as a result of an automobile accident in 1993.

David Boffi, a criminal investigator with the Sonoma County District Attorney’s Office, testified as an expert in domestic violence. He testified that domestic violence occurs on an ongoing, recurring basis, and that the aim of the abuser is to control the victim. It is common for victims of domestic violence to recant reports of abuse. He testified that bruising might take several hours after a blow to appear. In order to confirm that a purported victim’s story was accurate, it would be appropriate for an investigator to look at physical evidence, review statements of other witnesses, and visit two or three days later to see if there was any bruising or if the purported victim had sought medical attention for injuries.

The jury found defendant not guilty of inflicting corporal injury on a former cohabitant, but guilty of the lesser included offense of misdemeanor battery on a former cohabitant. (§ 243, subd. (e)(1)); not guilty of false imprisonment; and guilty of misdemeanor unauthorized entry of a dwelling.

II. DISCUSSION

Defendant's sole contention on appeal is that the trial court erred in denying his request that the jury be instructed on the sufficiency of circumstantial evidence pursuant to CALCRIM No. 224.³ We review this claim de novo. (*People v. Manriquez* (2005) 37 Cal.4th 547, 581; *People v. Waidla* (2000) 22 Cal.4th 690, 733.)

“The trial court is required to instruct the jury on the general principles of law relevant to the issues raised by the evidence. [Citation.] CALCRIM No. 224 states such a principle that must be given sua sponte on those occasions when it is applicable. [Citations.] It is applicable only when the prosecution substantially relies on circumstantial evidence to establish any element of the case. [Citations.] The instruction should not be given where circumstantial evidence is incidental to and corroborative of direct evidence. [Citations.]” (*People v. Samaniego* (2009) 172 Cal.App.4th 1148, 1171 (*Samaniego*); accord *People v. Zurica* (1964) 225 Cal.App.2d 25, 34 (*Zurica*).) As explained by our Supreme Court, “where circumstantial inference is not the primary means by which the prosecution seeks to establish that the defendant engaged in criminal

³ CALCRIM No. 224 instructs the jury: “Before you may rely on circumstantial evidence to conclude that a fact necessary to find the defendant guilty has been proved, you must be convinced that the People have proved each fact essential to that conclusion beyond a reasonable doubt. [¶] Also, before you may rely on circumstantial evidence to find the defendant guilty, you must be convinced that the only reasonable conclusion supported by the circumstantial evidence is that the defendant is guilty. If you can draw two or more reasonable conclusions from the circumstantial evidence, and one of those reasonable conclusions points to innocence and another to guilt, you must accept the one that points to innocence. However, when considering circumstantial evidence, you must accept only reasonable conclusions and reject any that are unreasonable.”

conduct, the instruction may confuse and mislead, and thus should not be given.”
(*People v. Anderson* (2001) 25 Cal.4th 543, 582 (*Anderson*).)⁴

Defendant contends the case against him relied substantially on circumstantial evidence, and the instruction should therefore have been given. He argues that (1) the evidence that defendant did not appear to be hurting Doe and that she pushed him to the door was circumstantial evidence that she received her scratches while trying to eject defendant; (2) Doe’s testimony that she and defendant were roughhousing was circumstantial evidence of a non-criminal cause for her injuries; (3) the lack of signs of a struggle was circumstantial evidence that Doe’s injuries might have been caused by roughhousing; and (4) Boffi’s testimony that a purported victim’s claim of domestic violence may be verified by physical and medical evidence was circumstantial evidence that Doe’s injuries did not arise from a battery.

We agree with the trial court that it had no duty to instruct the jury under CALCRIM No. 224. The evidence in this case was primarily direct, relying on the eyewitness observations of Battersby and Doe’s own statements. As was the case in *Zurica*, the convictions “did not depend upon inferences drawn from a pattern of circumstances but rather the credibility to be given the testimony of eyewitnesses.” (*Zurica, supra*, 225 Cal.App.2d at p. 34.) The evidence defendant points to is at most incidental to or corroborative of the direct evidence (see *Samaniego, supra*, 172 Cal.App.4th at p. 1171), and by no stretch could be viewed as the “primary means by which the prosecution [sought] to establish that the defendant engaged in criminal conduct” (*Anderson, supra*, 25 Cal.4th at p. 582). There was no error.

III. DISPOSITION

The judgment is affirmed.

⁴ The court in *Anderson* discussed CALJIC No. 2.01, which is similar to CALCRIM No. 224. (*Anderson*, 25 Cal.4th at pp. 581–582 and fn. 12.)

RIVERA, J.

We concur:

RUVOLO, P. J.

REARDON, J.