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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

MATTHEW ALLEN RAWSON,

Defendant and Appellant.

A133302

(Sonoma County Super. Ct.  
No. SCR-593155)

Defendant Matthew Allen Rawson appeals from the seven-year prison sentence imposed upon his conviction for one count of infliction of corporal injury resulting in a traumatic condition on Jane Doe, his spouse (Pen. Code, § 273.5, subd. (a)),<sup>1</sup> which was accompanied by a finding that he personally inflicted great bodily injury against Doe under circumstances involving domestic violence. (§ 12022.7, subd. (e).) Defendant argues the trial court erred in presuming he was ineligible for probation without first making the requisite finding that he *willfully* inflicted great bodily injury on Doe (§ 1203, subd. (e)(3)). Defendant further claims he received ineffective assistance of counsel because his trial counsel did not object to the statement in the probation department report that he was presumptively ineligible for probation.

Defendant’s conviction followed his entry of a no contest plea pursuant to a plea agreement. The People argue he waived the need for the finding at issue by agreeing that he was presumptively ineligible for probation, forfeited his appellate claim by not

<sup>1</sup> All further statutory references herein are to the Penal Code unless otherwise stated.

objecting below, and did not receive ineffective assistance of counsel. The People also assert the trial court *did* make the requisite finding.

We conclude the trial court made the requisite finding and affirm the judgment. Therefore, we do not further address the parties' other arguments.

### **BACKGROUND**

In November 2010, a four-count complaint was filed in Sonoma County Superior Court against defendant alleging that he attacked Jane Doe. A preliminary hearing followed in January 2011.

#### ***The Proceedings Leading to Defendant's Conviction***

Jane Doe was the sole testifying witness at the preliminary hearing. She testified that she and defendant had been married for eight years. As of November 13, 2010, the two were antagonists in court proceedings; Doe was staying with another man when she began receiving voice mails and text messages from defendant asking her to meet with him. Defendant indicated that if she did not meet with him he would make sure she lost one of her children, and that he knew where her older son was located. Around 6:00 a.m., Doe went to meet defendant at his trailer.

Doe testified that defendant immediately attacked her as she walked through the front door of the trailer. He either pushed or grabbed her, causing her to fall and land on her right side. Defendant fell on top of Doe, repeatedly punching her on her head, and causing her sharp pain on her face and left eye. He then punched her in the hip bone, where she had previously told him she suffered a sciatic nerve problem because of her pregnancies, then resumed punching her in the head. During the attack, Doe clearly remembers defendant repeated, "I'm going to kill you bitch," and demanded to know with whom she was staying. There was some conversation and at one point, when the pain was "really, really bad," defendant said "I'm sorry, my hand slipped."

Doe further testified that she was not sure if she began struggling, but defendant ceased punching her and began choking her with both hands instead, demanding to know the name of the man with whom she was staying. Doe, who thought she was going to die, could not respond at first because she had "no air in her lungs," but after defendant

eased up told him she didn't care if he killed her and that she could not take it anymore. Defendant was then less intense, as if the "power just kind of went away." Doe did not recall how long the attack took place or what happened afterward, and thought she might have passed out.

According to Doe, after the attack her face was puffy and "really black," she could barely open her eyes from the swelling, and she was in a lot of pain. She could not use her left eye and suffered diminished vision, had pain in her ear, and suffered some hearing loss. She also experienced roughness in her throat and noticed blood spots in her eyes when she looked in the mirror. She did not seek medical attention on the day of the attack.

Doe testified that defendant took her to the hospital a few days later, where she told hospital personnel that a table and television had fallen on her in a storage unit, a story concocted by defendant and one of his friends. Doe lied because she was fearful of defendant, who told her he did not want to get in trouble for what he did, that she was going to make him go to jail for the rest of his life, and that she "shouldn't be doing that to him." He also told her she was going to lose her son and, Doe testified, "several other things that he made sure I knew he was capable of."

Doe said that she and defendant left the hospital and returned to defendant's trailer. Defendant was upset because a neighbor had seen Doe's black eye and refused to allow her children around him. He opened all the windows and began screaming at Doe. Doe told defendant that he needed help for what he did to her, that she needed to call the police, and that he needed to go to jail. Defendant left the trailer and locked the front door from the outside, leaving Doe alone in the trailer; she was collecting her belongings when police officers arrived some time later.

Doe had surgery to repair a facial fracture, a face plate being inserted, and her damaged eye muscle. At the time of the hearing, she still had vision problems, memory loss, and a hard time eating.

In late January 2012, a four-count information against defendant was filed, which included in count one the allegations for which he was convicted. Defendant pleaded not

guilty, but subsequently sought pursuant to a plea agreement to enter a no contest plea to count one and admit the accompanying special allegation. The plea form filled out by defendant and approved by the court listed “consequences” of the no contest plea understood by defendant; one of them was “presumptive prison.” The preliminary hearing transcript was stipulated as the factual basis of the plea.

The court accepted defendant’s plea, and found him guilty of count one and the special allegation to be true. The remaining counts filed against defendant were dismissed.

### ***The Felony Presentence Report***

Prior to the sentencing hearing, a felony presentence report was prepared by the probation department. The report summarized defendant’s attack on Jane Doe from a sheriff’s office report and the preliminary hearing transcript, much of which we have already summarized.

The report also indicated defendant and Doe were the subject of numerous prior domestic violence-related reports and that defendant was on formal probation for felony child endangerment, with a condition that he maintain peaceful contact with Doe. Defendant had not started community service work or year-long parenting classes required by his probation.

The report further indicated that defendant was taken into custody on November 18, 2011. While in custody, he said that he had not seen Doe for “a while,” and that Doe might be making false accusations, told him to lock her in the trailer and could have exited through a window, said she was injured when a television and table fell on her face in her storage unit, later said her “ex-boyfriend struck her,” was abusing Norco medication, and was suicidal due to losing custody of their children.

The report recited defendant’s version of events, which he gave in an interview. According to defendant, he consumed alcohol and Norco pills on the day of the incident, and did not recall arguing with Doe. He found out the next day that he struck Doe. He was “in shock” and could not believe he acted in a violent manner. He apologized to

Doe, promised he would not hit her again and stop drinking, and tried to convince her to seek medical attention, but she refused.

Defendant further stated in the interview that four or five days later, Doe was still experiencing facial pain and finally agreed to be seen by a physician. Defendant was fine with Doe saying that he struck her, but Doe told the physician that tables and a television had fallen on her instead. Defendant locked Doe inside the trailer that day because Child Protective Services (CPS) was watching them, and they were not allowed to live together. Defendant believed Doe could have easily exited through a second door in the back in an emergency. Doe lied at the preliminary hearing to avoid putting information on the record that CPS could use against them. Defendant professed his continued feelings for Doe, said they only applied for divorce to appease CPS, and stated that he had “made a religious commitment to change [his] life.” However, the report stated that defendant, while he stated that he “ ‘felt bad’ ” about injuring Doe the day after the offense, “failed to express remorse at present” and “downplayed the seriousness of the incident and the impact on [Doe], both emotionally and physically.”

Among other things, the report also stated, “The defendant is limited from being granted probation pursuant to Penal Code section 1203[, subdivision] (e)(3) as he willfully inflicted great bodily injury upon Jane Doe during the commission of the crime.” It was recommended that probation be denied and defendant be sentenced to a term of eight years and four months.

### ***The Sentencing Hearing***

At the subsequent sentencing hearing, the court stated that it had reviewed the felony presentence report in its entirety, along with its attachment, and other documents submitted. The court then stated, “Now, under the circumstances, what we have here, I know there are limitations as to a grant of probation in that he willfully inflicted great bodily injury on Jane Doe; it appears to be under the terms of the agreement that the court’s indication of the midterm lid of seven years would be appropriate in this case.”

After counsel debated whether or not defendant should receive probation, or a mitigated term, the court stated:

“While I’m shocked by the level of violence in this case, extremely unfortunate. And I note the respective comments throughout the [p]robation report about the defendant, who’s now, apparently, remorseful for the fact he’s been caught. And I also note that regarding the prior conviction he had not started the mandated one-year parenting classes, as required under the term of the probation grant. It appears to me he has failed miserably, if out of custody he represents a danger to others.

“Based on the limitations set forth in California Rules of Court, Rule 4.413, the defendant is limited from being granted probation pursuant to 1202(e) [*sic*] for inflicting great bodily injury upon Jane Doe . . . during the commission of the subject crime. And as such, probation is going to be denied.”

The court imposed a midterm sentence of three years, and added four years for the enhancement allegation.

Defendant filed a timely notice of appeal.

#### **DISCUSSION**

Defendant argues that the trial court erroneously applied section 1203, subdivision (e)(3), without making the required factual determination that he willfully inflicted great bodily injury on Doe. We disagree.

Section 1203, subdivision (e)(3) states that: “Except in unusual cases where the interests of justice would best be served if the person is granted probation, probation shall not be granted to . . . [a]ny person who willfully inflicted great bodily injury or torture in the perpetration of the crime of which he or she has been convicted.” (Pen. Code, § 1203, subd. (e)(3).)

The language of section 1203, subdivision (e)(3) indicates that a person must intend to inflict great bodily injury, the conclusion reached in the case primarily relied on by defendant in this appeal. “The word ‘willfully’ in section 1203, subdivision (e)(3) . . . refers merely to a result, i.e., the infliction of great bodily injury. Given this structure of the section, . . . the only reasonable reading of it is the word ‘willful’ requires the defendant’s intent to cause great bodily injury or torture, not merely that the crime resulted in great bodily injury or torture.” (*People v. Lewis* (2004) 120 Cal.App.4th 837,

853 (*Lewis*.) Furthermore, the required factual determination under section 1203, subdivision (e)(3), need not be pleaded or found by a jury. “When the issue is whether a defendant is presumptively ineligible for probation under section 1203, the trial court may make the factual determination necessary for application of the restriction.” (*Lewis*, at p. 854.)

Defendant correctly argues that his no contest plea and admission do not necessarily establish that he admitted to *willfully* inflicting great bodily injury on Doe. By pleading no contest to willful infliction of corporal injury on a spouse, resulting in traumatic condition (§ 273.5, subd. (a)), defendant admitted only that he intentionally inflicted corporal injury on Doe, and that the injury resulted in traumatic condition; and by admitting the enhancement (§ 12022.7, subd. (e)) defendant admitted only that the result of the act was great bodily injury to Doe. Therefore, his change of plea, by itself, does not establish he was presumptively ineligible for probation pursuant to section 1203, subdivision (e)(3).

However, defendant does not establish that the trial court failed to make the requisite factual finding at the sentencing hearing. Defendant contends the trial court improperly followed the purportedly mistaken assumption in the felony presentence report that defendant was presumptively ineligible for probation or, if one of the People’s theories is correct, wrongly relied on defendant’s statement on the plea form that a consequence of his plea was presumptive probation ineligibility. He argues the present circumstances are analogous to those in *Lewis*, and require that we vacate his sentence and remand for further proceedings.

In *Lewis*, the jury was not asked to make a finding as to whether Lewis intended to inflict great bodily injury on his son, and both parties agreed at the sentencing hearing that Lewis was presumptively ineligible for probation. (*Lewis, supra*, 120 Cal.App.4th at p. 851.) The record indicated that the trial court believed Lewis was presumptively ineligible as well, but made statements suggesting it did not necessarily think Lewis intentionally inflicted great bodily injury. “[T]he trial court noted [Lewis] had not been convicted of murder and there was no finding [Lewis] intended to kill [the victim]. It

concluded [Lewis] was not a bad man and he had strong support from his friends and family. The court believed [Lewis] would do well on probation and would not be a danger to the community. The court also believed the jury properly found [Lewis] guilty. The court believed [Lewis] had ‘snapped’ under the stress and abused his child.” (*Ibid.*) The court, rather than indicate whether defendant had acted willfully, spoke only to the question of mitigation, stating that “the circumstances were not such it could find [its] case an unusual one for the purposes of section 1203, subdivision (e)(3).” (*Ibid.*)

Under these circumstances, the appellate court in *Lewis* concluded that “[i]t seems to have been assumed by both parties, the probation officer and the trial court that [Lewis] was presumptively ineligible for probation. The trial court was not asked to find and did not state on the record [Lewis] intended to inflict great bodily injury on [the victim.]” (*Lewis, supra*, 120 Cal.App.4th at p. 854.) Accordingly, the court remanded the matter to the trial court for a new hearing. (*Ibid.*)

We conclude that *Lewis* is inapposite based on the court’s statements at defendant’s sentencing hearing, which indicate the court *did* make the requisite factual determination that defendant willfully inflicted great bodily injury on Doe. The trial court began the hearing by indicating that it had reviewed the materials submitted to it, including the felony presentence report, which contained an extensive summary of Doe’s testimony at the preliminary hearing, stipulated to by the parties as the factual basis for defendant’s no contest plea and admission. As indicated by our summary of Doe’s testimony *ante*, Doe’s testimony provided ample evidence that defendant willfully inflicted great bodily injury on Doe. The court then stated that “under the circumstances, what we have here, I know there are limitations as to a grant of probation in that he willfully inflicted great bodily injury on Jane Doe.” Then, after hearing argument by the parties, the court further stated that it was “shocked by the level of violence in this case . . . [that defendant was] now, apparently, remorseful for the fact he’s been caught . . . [and] if out of custody [defendant] represents a danger to others.” It then denied probation.

The court's statements indicated that it made, and stated, the factual finding required by section 1203, subdivision (e)(3). Although the court could have been more artful in its language, it expressly stated that defendant "willfully inflicted great bodily injury on Jane Doe." Its later statements made clear that it reached this conclusion based on a thorough review of the materials submitted to it and not just based on the statement of presumptive ineligibility contained in the felony sentence report. Therefore, *Lewis* is inapposite.

Furthermore, there is no indication in the record that the court merely followed the felony presentence report's statement that defendant was presumptively ineligible for probation (assuming for the sake of argument defendant is correct that the report's statement was an assumption, rather than a factual conclusion), nor that the court presumed defendant's admission to personally inflicting great bodily injury on Doe was an admission that he intended that result. It is, of course, presumed that official duty has been regularly performed. (*Ross v. Superior Court* (1977) 19 Cal.3d 899, 913.) In the absence of evidence of contrary evidence, we are entitled to presume the trial court properly followed established law. (*Ibid.*) We do so here.

#### **DISPOSITION**

The judgment and sentence are affirmed.

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Lambden, J.

We concur:

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Kline, P.J.

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Haerle, J.