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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

RYAN ARANA,

Defendant and Appellant.

A134504

(Marin County
Super. Ct. No. SC173263)

Defendant was charged with felony vandalism after he and a roommate vandalized the apartment they had been sharing with a third roommate, defendant's former girlfriend. They also destroyed her personal property. (Pen. Code, § 594, subd. (b)(1).) The jury found defendant guilty of felony vandalism and further found true the allegation that he had caused more than \$400 in damages. He was sentenced to probation on various terms and conditions applicable to perpetrators of domestic violence pursuant to Penal Code section 1203.097.¹ The court suspended imposition of sentence and placed defendant on probation for three years on the conditions, among others, that he pay a fine of \$400 to the Domestic Violence Fund and successfully complete a domestic violence program for batterers. (Pen. Code, § 1203.097.) Defendant timely appeals.

On appeal, defendant contends the trial court erroneously admitted evidence defendant had previously vandalized his former girlfriend's personal property when he was angry with her and erroneously instructed the jury it could consider such prior acts as

¹ Unless otherwise indicated, all further statutory references are to the Penal Code.

propensity evidence. He also challenges the imposition certain probation conditions on the grounds that vandalism does not qualify as “domestic violence” under section 1203.097; if vandalism is domestic violence under the statute, then the statute is void for vagueness; and imposition of a \$400 domestic violence fine violates *Apprendi v. New Jersey* (2000) 530 U.S. 466 and its progeny. We affirm.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

In March 2010, Sarah Reynolds, defendant and a friend, James Stiles, signed a one-year lease for a two-bedroom apartment in Novato. Sarah shared a bedroom with defendant, her boyfriend of three and a half years. The rent was \$1,550 a month, which the original three roommates split more or less evenly, but Sarah paid the entire \$1,500 deposit. By November 2010, James had moved out and another friend, Arben Gogaj, had moved in, and the relationship between Sarah and defendant deteriorated to “[r]eally rocky.” That month, Sarah had received a three-day “pay or quit notice.” Since she knew neither defendant nor Arben were willing or able to pay the rent, she decided to move out and began packing.

Defendant was very angry Sarah was moving out and threatened to harm her cat and dog if she left. He also threatened to damage her car and “slash the tires.”

On Friday, November 5, Sarah packed some of her belongings and moved back to her mother’s house. When she returned on Saturday to move more of her things, she found that her packed possessions had been unpacked and strewn about the apartment. She repacked and moved more of her possessions on Saturday and Sunday, but some of her things remained at the apartment.

On Monday, November 8, she received a voicemail message from defendant saying she had “fucked up.” When she returned to the apartment that evening after work to remove the last of her possessions and ready the apartment for cleaning, she found that it smelled like a garbage dump and the foyer was covered in slippery protein powder.

In the kitchen, a box of utensils had been thrown around; there was ketchup and mustard on the walls and cabinets, and powder on the floor. Her clothes and a vacuum had been brought into the kitchen and covered in mustard and ketchup. A swastika and

lightning bolt had been drawn on a kitchen counter with nail polish. Sarah is Jewish. Glasses were broken.

In the living room, gifts from defendant to Sarah had been unpacked from a box, broken, and placed on her computer desk. Family pictures, a jewelry box, a hope chest and a sewing box had been soiled with condiments and the contents strewn about. A couch and a bed frame had been broken and soiled with wine, powder, barbeque sauce and hot sauce. Something had been smeared on the sliding glass doors and “Fuck you bitch” was written on the doors with a swastika drawn underneath it.

In the bathroom off the hallway, a towel had been stuffed in the toilet.

The spare bedroom was empty except for rice which had been thrown on the floor.

In the master bedroom, the things Sarah had packed were piled into the middle of the room and soiled in food products.

There were 12 or more empty glass beer bottles strewn around the apartment and cigarette butts had been put out on the desk and in the master bathroom sink. None of defendant’s belongings had been damaged.

The responding police officer described the scene as the worst case of vandalism he had ever seen. The property manager testified the unit was completely destroyed. She sent the tenants an invoice, which was admitted into evidence, for \$2,976.01 in repairs.

Sarah testified that on prior occasions, defendant had damaged her property after consuming alcohol and becoming angry with her. Once, he hit her car with a can, denting the hood. On another occasion, he had been drinking and they got into an argument during which defendant ripped the ceiling lining of her car several times. Another time, after she and defendant fought, defendant emptied the contents of her dresser drawers on the floor. She put them back and he did it again.

Arben Gogaj testified under a grant of immunity. After receiving the notice to vacate, he and defendant drank 18 to 24 bottles of beer and “mess[ed] up the apartment.” Defendant was angry with Sarah, said he did not want to be with her anymore, and did not care what happened to her belongings. He did not want Sarah to get her “whole deposit back.” He did not care about the lease, since “he had bad credit anyways.”

Arben drew the swastika, although he had nothing against Sarah's Jewish background, and defendant vandalized the bedroom he and Sarah shared. Both of them vandalized the living room and hallway. Defendant wrote the words "fuck you bitch."

Defendant testified in his own defense. He had been going out with Sarah for four years; they broke up when he began seeing someone else. He denied vandalizing the apartment with Arben. He admitted he dented Sarah's car, but denied damaging the ceiling of the car. He denied threatening to harm Sarah's pets or do damage to her car. He admitted emptying Sarah's dresser drawers and throwing her clothes on the bed. This was his way of telling her "she could pack her stuff and go because I wasn't trying to be with her . . . no more."

DISCUSSION

Evidence of Prior Misconduct

We review the trial court's evidentiary rulings for abuse of discretion. (*People v. Memro* (1995) 11 Cal.4th 786, 864 [Evid. Code, § 1101]; *People v. Ogle* (2010) 185 Cal.App.4th 1138, 1145 [Evid. Code, § 1109].)

Defendant contends the trial court erred in permitting Sarah to testify that on prior occasions, when he was intoxicated and angry with her, defendant damaged Sarah's car and emptied drawers of her clothing onto the floor. He argues the evidence was not admissible under either Evidence Code section 1101 or section 1109, and also complains the court should not have instructed the jury on the use of such evidence to show propensity, pursuant to CALCRIM No. 852, or common plan or scheme, pursuant to CALCRIM No. 375. We disagree. Defendant's conduct on prior occasions was sufficiently similar to the vandalism of Sarah's possessions in their apartment to permit the jury to infer that defendant engaged in the conduct alleged to constitute the charged offense. (*People v. Ewoldt* (1994) 7 Cal.4th 380, 393.) The trial court did not err in admitting the evidence of prior misconduct and instructing the jury on its relevance and proper use.

Likewise, the trial court did not abuse its discretion in concluding that the prior misconduct constituted "domestic violence" within the meaning of Evidence Code

section 1109.² Family Code section 6211 defines domestic violence to require abuse and Family Code section 6203 defines “abuse” to include “engag[ing] in any behavior that has been or could be enjoined pursuant to Section 6320.” Family Code section 6320 authorizes the court to enjoin a party from “destroying personal property” of the other party. Consequently, vandalism is domestic violence for purposes of Evidence Code section 1109 as defined by Family Code section 6211. “Section 1109 applies if the offense falls within the Family Code definition of domestic violence even if it does not fall within the more restrictive Penal Code definition.” (*People v. Ogle, supra*, 185 Cal.App.4th at p. 1144.) Accordingly, the court did not err in admitting the prior misconduct evidence under Evidence Code section 1109 or by instructing the jury on propensity evidence.

Domestic-Violence-Related Probation Conditions

Defendant challenges the court’s imposition of a \$400 fine and attendance at a 52-week batterer’s program—mandatory domestic-violence-related probation conditions pursuant to Penal Code section 1203.097, subdivision (a)—on the ground that vandalism is not a domestic violence crime, and if section 1203.097 is construed to apply to vandalism, then the statute is too vague to be constitutional.

Former Penal Code section 1203.097 provided in pertinent part: “(a) If a person is granted probation *for a crime* in which the victim is a person defined in Section 6211 of the Family Code, the terms of probation shall include all of the following: [¶] . . . [¶] (5) A minimum payment by the defendant of four hundred dollars (\$400) . . . [¶] (6)

² Evidence Code section 1109 provides in relevant part: “(a)(1) Except as provided in subdivision (e) or (f), in a criminal action in which the defendant is accused of an offense involving domestic violence, evidence of the defendant’s commission of other domestic violence is not made inadmissible by Section 1101 if the evidence is not inadmissible pursuant to Section 352. . . . [¶] (d)(3) ‘Domestic violence’ has the meaning set forth in Section 13700 of the Penal Code. Subject to a hearing conducted pursuant to Section 352, which shall include consideration of any corroboration and remoteness in time, ‘domestic violence’ has the further meaning as set forth in Section 6211 of the Family Code, if the act occurred no more than five years before the charged offense.”

Successful completion of a batterer’s program” (Former Pen. Code, § 1203.097, subd. (a)(5), (6), italics added.)³

Family Code section 6211 defines “domestic violence” as “abuse perpetrated against” persons in certain types of relationships with the defendant, including “A person with whom the [defendant] is having or has had a dating or engagement relationship.” (Fam. Code, § 6211, subd. (c).)⁴ Significantly, Penal Code section 1203.097 does not limit the application of its provisions by the type of abusive conduct that was perpetrated against the victim here. The plain terms of section 1203.097 make it applicable to any defendant who has committed any crime against a person with whom the defendant shares or shared a statutorily defined domestic relationship. Put differently, the statute is not limited in its application to certain enumerated offenses; instead, it applies to a particular_type of *victim* against whom the defendant committed a crime: the victim of the crime must come within one of the classes of persons defined by Family Code section 6211. (See *People v. Cates* (2009) 170 Cal.App.4th 545, 550–551 (*Cates*).) If the defendant committed a crime, and the victim of the crime meets the statutory criteria of section 6211, then by definition the defendant’s crime constitutes “abuse perpetrated against” a victim of “domestic violence.” Based on the evidence presented at trial, including defendant’s own testimony, Sarah qualified as a person who had a dating relationship with defendant, and defendant does not argue otherwise. (“In the present case, there is no dispute regarding the fact that [Sarah’s] relationship with Arana[] places her within the class of people protected.”) As such, she meets the statutory definition of a victim of domestic violence within the meaning of Penal Code section 1203.097 and Family Code section 6211. Therefore, Penal Code section 1203.097 applies to defendant.

³ In 2012, the minimum fine was increased to \$500. (Stats. 2012, ch. 628, § 1.5.)

⁴ Family Code, section 6211 provides: “ ‘Domestic violence’ is abuse perpetrated against any of the following persons: [¶] (a) A spouse or former spouse. [¶] (b) A cohabitant or former cohabitant, as defined in Section 6209. [¶] (c) A person with whom the [defendant] is having or has had a dating or engagement relationship. [¶] (d) A person with whom the [defendant] has had a child, where the presumption applies that the male parent is the father of the child of the female parent under the Uniform Parentage Act (Part 3 (commencing with Section 7600) of Division 12).”

Citing a variety of statutory definitions of “domestic violence” used in the Penal and Family Codes, defendant argues that “the various [statutory] definitions of ‘domestic violence’ each have two parts, a description of the class of people protected (the ‘domestic’ part) and a description of the conduct that statute addresses (the ‘violence’ part.)” However, as we have seen, Penal Code section 1203.097 does not use the word “abuse” or the term “domestic violence.” It does *not* describe any particular criminal behavior. It does identify its application to a victim defined by Family Code section 6211 who suffers a criminal offense against himself or herself.

Family Code section 6211 defines “domestic violence” as “*abuse* perpetrated against any of the following persons,” but it does not otherwise define “abuse.” However, for the purposes of the Domestic Violence Prevention Act (Fam. Code § 6200 et. seq.), of which Family Code section 6211 is a part, “abuse” includes “any behavior that has been or could be enjoined pursuant to Section 6320.” (Fam. Code, § 6203, subd. (d).)⁵ Family Code section 6320, in turn, provides in relevant part that “[t]he court may issue an ex parte order enjoining a party from . . . destroying personal property . . . of the other party”⁶

However, the statute under review here, Penal Code section 1203.097, does not reference any statute other than Family Code section 6211 or any statutory definition of “abuse.” Instead, it used the word “crime.” “ ‘When interpreting a statute our primary task is to determine the Legislature’s intent. [Citation.] In doing so we turn first to the statutory language, since the words the Legislature chose are the best indicators of its

⁵ Family Code section 6203 provides: “For purposes of this act, ‘abuse’ means any of the following: [¶] (a) Intentionally or recklessly to cause or attempt to cause bodily injury. [¶] (b) Sexual assault. [¶] (c) To place a person in reasonable apprehension of imminent serious bodily injury to that person or to another. [¶] (d) To engage in any behavior that has been or could be enjoined pursuant to Section 6320.”

⁶ Family Code section 6320, subdivision (a) provides: “The court may issue an ex parte order enjoining a party from molesting, attacking, striking, stalking, threatening, sexually assaulting, battering, harassing, telephoning, including, but not limited to, making annoying telephone calls as described in Section 653m of the Penal Code, destroying personal property, contacting, either directly or indirectly, by mail or otherwise, coming within a specified distance of, or disturbing the peace of the other party, and, in the discretion of the court, on a showing of good cause, of other named family or household members.”

intent.’ [Citations.]” (*People v. Acosta* (1996) 48 Cal.App.4th 411, 420.) “ ‘In interpreting that language, we strive to give effect and significance to every word and phrase.’ [Citations.] ‘We give the words of a statute their ordinary and usual meaning and construe them in the context of the statute as a whole.’ [Citations.] ‘We must presume that the Legislature intended “every word, phrase and provision . . . in a statute . . . to have meaning and to perform a useful function.” ’ [Citation.]” (*People v. Mays* (2007) 148 Cal.App.4th 13, 29 (*Mays*).

The ordinary meaning of “crime” is not ambiguous in the context of Penal Code section 1203.097. The statute decrees that if a defendant committed a crime against a person with whom the defendant shared a statutorily defined (Fam. Code, § 6211) domestic relationship, he or she must accept certain terms of probation. If the language of the statute is not ambiguous, “ ‘ “then the Legislature is presumed to have meant what it said, and the plain meaning of the language governs.” ’ [Citation.]” (*Mays, supra*, 148 Cal.App.4th at p. 29.) “ ‘ “[T]he ‘plain meaning’ rule does not prohibit a court from determining whether the literal meaning of a statute comports with its purpose Literal construction should not prevail if it is contrary to the legislative intent apparent in the statute.” [Citation.] “ ‘ “Statutes should be construed so as to be given a reasonable result consistent with the legislative purpose.” [Citations.] . . . “The court should take into account matters such as context, the object in view, the evils to be remedied, the history of the times and of legislation upon the same subject, public policy, and contemporaneous construction.” ’ ” ’ [Citations.]” (*Id.* at pp. 29–30.) We have no trouble concluding, in light of all the above factors, that when the Legislature proscribed certain probationary terms for persons who commit crimes against domestic partners, it meant exactly that. “It is the Legislature’s prerogative to define crimes and set punishments for crimes.” (*People v. Albritton* (1998) 67 Cal.App.4th 647, 660 (*Albritton*)). The Legislature is not required to define crimes of domestic violence by reference to predicate crimes and, for the purposes of this probation statute, the Legislature has chosen not to do so.

Defendant argues essentially that absent some limitation on the type of conduct that qualifies as “abuse,” or “domestic violence,” section 1203.097 is “void for vagueness.” We disagree. “[D]ue process requires a criminal statute to (1) ‘be definite enough to provide a standard of conduct for those whose activities are proscribed,’ and (2) ‘provide definite guidelines for the police . . . to prevent arbitrary and discriminatory enforcement.’ [Citation.] [¶] However, ‘[t]he starting point of our analysis is “the strong presumption that legislative enactments ‘must be upheld unless their unconstitutionality clearly, positively, and unmistakably appears. [Citations.] A statute should be sufficiently certain so that a person may know what is prohibited thereby and what may be done without violating its provisions, but it cannot be held void for uncertainty if any reasonable and practical construction can be given to its language.’ ” [Citation.]’ [Citation.]” (*Albritton, supra*, 67 Cal.App.4th at p. 657.) In our view, the statute at issue here is sufficiently clear to put a person on notice if he or she is placed on probation for a crime committed against a person with whom he or she shares or shared a domestic relationship, the probationer will be required to accept particular conditions of probation. Section 1203.097 is not constitutionally infirm.

Our conclusion is consistent with those of other courts addressing similar arguments. For example, in *Cates*, the defendant was charged with vandalism and other crimes against his former girlfriend arising out of an altercation in which defendant pushed and kicked the victim and broke all the windows of her car except her windshield after she locked herself inside to escape him. The vandalism and other charges were dismissed pursuant to a plea bargain in which defendant pleaded no contest to a “generic” crime of felony assault under Penal Code section 245, subdivision (a)(1). Naturally this is a crime that can be committed against any person, not only against a person in a domestic relationship with the defendant. (*Cates, supra*, 170 Cal.App.4th at pp. 548–550.) On appeal, *Cates* argued that Penal Code section 1203.097 concededly applied to domestic violence crimes such as battery on a former cohabitant or rape of a spouse, but was ambiguous with respect to its application to generic crimes such as felony assault. (*Cates, supra*, at p. 550.) *Cates* urged the court to cure the ambiguity by limiting its

application to crimes that target victims of domestic violence. (*Ibid.*) The *Cates* court found that Penal Code section 1203.097 was not ambiguous and applied its terms to so-called generic crimes “so long as the facts underlying the assault involve a victim defined in Family Code section 6211.” (*Cates, supra*, at p. 550.)

People v. Brown (2001) 96 Cal.App.4th Supp. 1 (*Brown*), which the *Cates* court found “instructive” (*Cates, supra*, 170 Cal.App.4th at p. 550), involved a probationer who was convicted of vandalizing his wife’s car following a domestic argument. (*Brown, supra*, at pp. 39–40.) *Brown* challenged the trial court’s imposition of a probation condition requiring his participation in a 52-week counseling program for batterers, on the ground that the provisions of Penal Code section 1203.097 did not apply to him because vandalism is not a domestic violence crime, and the victim of his vandalism was not his wife but her *car*. The *Brown* court found that argument “inconsistent with common sense, as well as the language and purpose of the relevant statutes.” The court noted Family Code section 6203 defines “abuse” in relevant part as “[t]o engage in any behavior that has been or could be enjoined pursuant to Section 6320,” which statute, in turn, provides in relevant part that “[t]he court may issue an ex parte order enjoining a party from . . . destroying personal property . . . of the other party.” (*Brown, supra*, at p. 39, fn. 6; Fam. Code, §§ 6203, subd. (d), 6320.)

***Apprendi v. New Jersey* (2000) 530 U.S. 466 (*Apprendi*)**

Defendant argues that “because the question of whether [Sarah] was a victim of domestic violence was not tried to a jury, the \$400 domestic violence fine violated [his federal constitutional] rights under the Fifth, Sixth and Fourteenth Amendments” as interpreted in *Apprendi, supra*, 530 U.S. 466 and *Blakely v. Washington* (2004) 542 U.S. 296 (*Blakely*). “The *Apprendi* rule requires that ‘other than the fact of prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt.’ 530 U.S. at 490, 120 S.Ct. at 2362–63; see also *Southern Union Co. v. United States*, ___ U.S. ___, ___, 132 S.Ct. 2344, 2348, 183 L.Ed.2d 318 (2012) (extending the rule of *Apprendi* to the imposition of criminal fines.)” (*Robinson v. Thomas* (M.D.Pa. June 24, 2013, Civ. No.

3:CV-13-0276) 2013 U.S. Dist. WL 3209366, *1, fn. 1.) *Blakely* holds that the “ ‘statutory maximum’ for *Apprendi* purposes is the maximum sentence a judge may impose solely on the basis of the facts reflected in the jury verdict or admitted by the defendant.” (*Blakely, supra*, at p. 303.)

Defendant was charged with and convicted by a jury of a crime, felony vandalism, in violation of Penal Code section 594. Felony vandalism “is punishable by imprisonment pursuant to subdivision (h) of Section 1170 or in a county jail not exceeding one year, or by a fine of not more than ten thousand dollars (\$10,000)” (§ 594, subd. (b)(1).) We note defendant admitted in his trial testimony the victim was his former girlfriend. Moreover, under its broad statutory authority to impose probation conditions under section 1203.1, subdivision (j), the court had the discretion to impose the domestic violence fund fee. (*Brown, supra*, 96 Cal.App.4th Supp. 1, 30–32, 39–40 [whether or not § 1203.097 applied, trial court had discretion to impose payment of domestic violence fund fee pursuant to § 1203.1.]) Accordingly, the \$400 domestic violence fund fee did not exceed the maximum sentence defendant could have received for violating section 594 and the principles expressed in *Apprendi* and its progeny were not violated.

DISPOSITION

The judgment is affirmed.

Dondero, J.

We concur:

Margulies, Acting P. J.

Banke, J.