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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE,

Plaintiff and Respondent,

v.

ROBERTA BENSON,

Defendant and Appellant.

B240319

(Los Angeles County
Super. Ct. No. BA384041)

APPEAL from a judgment of the Superior Court of Los Angeles County.

Stephen A. Marcus, Judge. Affirmed.

Pamela J. Voich, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Kenneth C. Byrne and William N. Frank, Deputy Attorneys General, for Plaintiff and Respondent.

A jury convicted Roberta Benson of assault with a deadly weapon. (Pen. Code, § 245, subd. (a)(1).) On appeal, Benson contends the evidence is insufficient to support her conviction and that the trial court erred in excluding relevant character evidence of the victim, denying her due process. We affirm the judgment.

FACTS

Benson and Oliver Ramillate lived in the same condominium complex for many years and participated on the homeowner's association board together. Since 2007, Ramillate also served as the complex's manager. Benson often complained about his performance to the board.

One day in May 2011, at around 3:00 a.m., Ramillate awoke to sounds from the lobby. He got up to investigate, and found cut roses and spilled coffee by his door. When he walked into the lobby of the third level where his unit was, the chairs had been turned over and magazines strewn over the floor. Ramillate continued his investigation onto the first floor where he found Benson, alone in the courtyard area, cutting roses with an eight-inch kitchen knife.

Ramillate told Benson to stop cutting the roses he had planted. He was about six to nine feet from Benson when she told him, "Don't say anything to me, bad boy. Did you see this knife?" and raised the knife up to head level. Ramillate began to retreat after the exchange because he felt worried. He grabbed a chair to create a buffer between himself and Benson. Benson stood up and moved toward the building's interior while making a jabbing motion with the knife towards Ramillate. With only a foot between Benson and the chair Ramillate was holding to defend himself, she continued to jab at him. Benson then began to push the chair with her left hand, while jabbing at Ramillate with her right. The altercation ended when Benson walked into the building.

Ramillate immediately returned to his unit and called the police. Ten minutes later, police arrived and retrieved two knives from Benson's unit. Ramillate identified an eight-inch kitchen knife that smelled like cut roses as the weapon she jabbed at him.

Benson sought to impeach Ramillate's character for truthfulness at trial by the testimony of Helga Gordon. Before trial, Benson's counsel offered a typed statement from Gordon that included this statement: "[Ramillate] does not make things up, but he exaggerates wildly." The court deferred a ruling on whether Gordon would be allowed to testify. During trial, the court held an Evidence Code section 402 hearing. Gordon testified she lived at the complex with Benson and Ramillate for 14 years, but did not know Ramillate personally. Gordon said that Ramillate once accepted money from Gordon for keys but never delivered the keys. Gordon similarly testified that Ramillate mistreated a particular employee of the building. As consolation, Gordon gave the employee a job, alleging that it saved the homeowners' association about \$4,000. Gordon testified that when Ramillate found out, he accused her of diverting funds. Gordon also testified that Ramillate asked her to make requests at board meetings but then told a previous manager that the requests were unnecessary.

The trial court stopped Gordon's testimony and ruled the evidence would be excluded under Evidence Code section 352. The court found her testimony largely irrelevant, and that the confusing effect of Gordon's testimony outweighed its probative value. The jury convicted Benson of assault with a deadly weapon.

Benson filed appeal.

DISCUSSION

I. Sufficiency of the Evidence

Benson contends the evidence was insufficient to support her conviction for assault with a deadly weapon. We disagree.

Our role in determining the sufficiency of the evidence is limited. 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 the defendant guilty beyond a reasonable doubt." [Citations.]” (*People v. Tafoya* (2007) 42 Cal.4th 147, 170.) We do not reweigh the evidence or redetermine the credibility of the witnesses (*People v. Ochoa* (1993) 6 Cal.4th 1199, 1206), and “[w]e draw all reasonable inferences in support of the judgment” (*People v.*

Wader (1993) 5 Cal.4th 610, 640). “If the circumstances reasonably justify the [trier of fact’s] findings, reversal is not warranted merely because the circumstances might also be reasonably reconciled with a contrary finding. [Citations.] The test on appeal is whether there is substantial evidence to support the conclusion of the trier of fact; it is not whether guilt is established beyond a reasonable doubt.” (*People v. Redmond* (1969) 71 Cal.2d 745, 755.)

Assault with a deadly weapon is an unlawful attempt, coupled with a present ability, to commit a violent injury on the person of another with a deadly weapon. (Pen. Code, §§ 240, 245, subd. (a)(1).) The mens rea for assault requires “actual knowledge of the facts sufficient to establish that the defendant’s act by its nature will probably and directly result in injury to another.” (*People v. Williams* (2001) 26 Cal.4th 779, 782.) It is a general intent crime without a requisite specific intent to injure the victim. (*Id.* at p. 784.) Indeed, “ [t]here need not be even a direct attempt at violence; but any indirect preparation towards it, under the circumstances mentioned, such as drawing a sword or bayonet, or even laying one’s hand upon his sword, would be sufficient.” [Citation.]” (*People v. Chance* (2008) 44 Cal.4th 1164, 1172.)

Benson contends that at “no time” during her “brief encounter” with Ramillate did she commit a willful and intentional act that was “likely to result in any physical force on him.” Benson argues there was never any likelihood of any resulting force being applied to Ramillate. We disagree. The evidence shows that Benson brought Ramillate’s attention to the knife when he first approached her in the courtyard. Next, she made repeated jabs with the knife in his direction while trying to push the chair he used to defend himself out of the way. This evidence was sufficient to establish the offense of assault with a deadly weapon.

Benson further contends that the distance between Ramillate and herself during the incident defeats the “present ability” element of the assault statute. Not so. Ramillate was only three feet away from Benson as she jabbed an eight-inch kitchen knife in his direction. Benson certainly had the present ability to commit a violent injury on

Ramillate. Three feet is a mere step and an arm's length away from contact with a person, especially with a weapon such as a long kitchen knife.

Benson argues unpersuasively that the testimony submitted at trial should be given less weight because Ramillate was the only witness and he had a contentious relationship with Benson. However, the testimony of a single witness is sufficient to support a conviction unless it is physically impossible or inherently improbable. (*People v. Young* (2005) 34 Cal.4th 1149, 1181.) There is no indication Ramillate's testimony fits either category. Further, long-standing precedent dictates that a reviewing court resolves neither credibility nor evidentiary conflicts, as these issues are for the trier of fact. (*Ibid.*)

II. Exclusion of Character Evidence

Benson next contends the trial court erred in excluding Gordon's testimony about Ramillate, resulting in a denial of due process. We find no error and no due process violation.

We first note that Benson waived any federal due process claim because she did argue that exclusion would deny her constitutional rights. (*People v. Raley* (1992) 2 Cal.4th 870, 892; *People v. Benson* (1990) 52 Cal.3d 754, 786, fn. 7.) Moreover, as a general rule, evidentiary rulings do not create constitutional issues. (*People v. Lawley* (2002) 27 Cal.4th 102, 155.)

We do not find any error in excluding the evidence pursuant to Evidence Code section 352. That section provides a trial court "may exclude evidence if its probative value is substantially outweighed by the probability that its admission will (a) necessitate undue consumption of time or (b) create substantial danger of undue prejudice, of confusing the issues, or of misleading the jury." A trial court is given broad discretion in weighing the probative value of particular evidence with the concerns of undue prejudice, confusion or consumption of time. (*People v. Rodrigues* (1994) 8 Cal.4th 1060, 1125.) Here, the trial court was well within its discretion to find that Gordon's testimony was less probative than confusing and time consuming. The trial court noted:

"[S]he will bring in the whole politics of this board, the issue of whether or not she was properly raising the opinions of [Ramillate]. . . .

“I further think that it would -- and I should look at 352 -- but basically it would extend the trial, and it would confuse the jury. It would require the other side to have a chance to counteract this, and it would bring up all of these minor disagreements and tiffs and whatever you want to call them in this little housing complex to the floor, and it has nothing to do with this case”

In essence, the trial court found that admission of Gordon’s testimony would result in a minitrial on issues that were tangential at best. Further, that the prosecution would have to investigate the issues and find rebuttal witnesses in the midst of trial if the testimony were admitted. These reasons demonstrate the trial court did not abuse its discretion.

Finally, any error in excluding the evidence was harmless. (*People v. Watson* (1956) 46 Cal.2d 818, 836.) Benson was allowed to bring in evidence that she made numerous complaints about Ramillate’s work performance as manager of the complex. She used this evidence to attempt to persuade the jury that Ramillate had a motive to falsely accuse her of the assault. We find no reasonable probability that the evidence of Gordon’s testimony would have changed the result.

DISPOSITION

The judgment is affirmed.

BIGELOW, P. J.

We concur:

RUBIN, J.

FLIER, J.