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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

ROBERT E. DEUTSCH,

Defendant and Appellant.

2d Crim. No. B249663
(Super. Ct. No. F481515)
(San Luis Obispo County)

Appellant Robert E. Deutsch was charged with false imprisonment by violence (Pen. Code, § 236),¹ assault with force likely to produce great bodily injury (§ 245, subd. (a)(4)), petty theft with three priors (§ 666), criminal threats (§ 422), dissuading a witness from reporting a crime (§ 136.1, subd. (b)(1)), and battery against a person with whom he had a dating or engagement relationship (§ 243, subd. (e)(1)). It was alleged that Deutsch had suffered eight prior convictions for serious or violent felonies pursuant to the Three Strikes law (§§ 667, subds. (a), (d), (e), 1170.12, subds. (b), (c)) and two prior convictions resulting in prison terms (§ 667.5, subd. (b)).

The jury deadlocked on the false imprisonment and assault charges, which the trial court dismissed in the interest of justice (§ 1385), and convicted Deutsch on the remaining counts. Deutsch admitted the prior convictions but moved to strike them under

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

People v. Superior Court (Romero) (1996) 13 Cal.4th 497. Deutsch also moved for a new trial based on newly discovered evidence concerning the victim's psychological state when she reported the offenses. The trial court denied both motions.

Deutsch was sentenced as a third strike offender to an aggregate prison term of 30 years to life. The trial court imposed indeterminate terms of 25 years to life for the convictions for criminal threats and dissuading a witness but stayed the latter sentence pursuant to section 654. The court imposed concurrent determinate terms of four years for the petty theft conviction and one year for the battery conviction. Deutsch received a five-year sentence enhancement for one of the prior convictions. The court imposed a \$5,000 restitution fine (§ 1202.4, subd. (b)), a suspended \$5,000 parole revocation restitution fine (§ 1202.45), a \$40 court security fee (§ 1465.8), and a \$30 criminal conviction assessment (Gov. Code, § 70373). Deutsch was awarded 480 days of presentence custody credit.

Deutsch contends that the trial court erred in admitting expert testimony regarding intimate partner violence (IPV) and denied him the right to present a defense when it precluded the victim's detailed testimony about the abuse she suffered in a prior marriage. He also contends that the trial court erred by denying his new trial and *Romero* motions. We modify the amounts imposed in court security fees and criminal conviction assessments. Otherwise, we affirm.

FACTS

Prosecution Evidence

The Offense

After Deutsch was released from prison, he began dating victim Sonia Doe (Sonia). Prior to the instant offense, there were two instances in which he was violent towards her during their 11-month relationship.

On October 17, 2012, Sonia visited Deutsch at his apartment. She and Deutsch were in the process of breaking up but ended up having consensual sex. Afterwards, Sonia brought up the topic of the breakup. Deutsch "exploded" from the bed

and came down on top of her, choking her with both hands. Deutsch said he could kill Sonia and dispose of her body in a secluded area.

When Deutsch eventually let go of Sonia's throat, she started screaming. He started choking her again. He told her to be quiet because he did not want his mother, who was in the apartment, to hear her. Sonia could not breathe. She started banging her hands on whatever she could reach to create noise that would attract Deutsch's mother's attention. She then lost consciousness.

When she came to, Deutsch and his mother were arguing at the door. Sonia slid off the far side of the bed and tried to hide. Deutsch pushed his mother out of the bedroom, pulled Sonia up by the hair, and dragged her out into the hallway. He started to choke her again, but his mother pulled them apart. Deutsch grabbed Sonia's cell phone from the bedroom and walked out of the apartment. At Sonia's request, Deutsch's mother accompanied her to her vehicle so that she could safely leave.

As the two of them were walking to Sonia's car, Deutsch, who was hiding outside in some bushes, approached them and started screaming at Sonia again. Sonia was able to get into her car and drive off. She intended to go home. In the rearview mirror, she saw a car following her. The car pulled up alongside her vehicle. Deutsch, who was driving, yelled at her to stop. When she did not, he swerved his car in an effort to force her off the roadway. He told her he had nothing to lose because he was going back to prison and, if she ran off and called the police, he would kill her at her home. Sonia honked the horn to attract attention.

She pulled into the San Luis Obispo Food-4-Less driveway "really fast," parked in front of the store entrance, and got out of the car. She yelled "Help[!] Call 9-1-1[!]" She asked two strangers entering the store, Kevin Valencia and Adolfo Chairez, if they had a phone she could borrow to call 9-1-1.

Sonia was shaking, breathing heavily, and crying. Her hair was "messed up" like she had just been in a fight. She appeared "really frightened" and "really jumpy." She told Valencia and Chairez that she was being followed. Every time she heard a car, she would turn around as if she were looking out for someone who was going

to harm her. She was so terrified that Chairez became scared himself of what Sonia's boyfriend might do if he showed up and saw them helping her.

Chairez offered to call the police. Sonia, who was afraid that her boyfriend would return, wanted to leave. Chairez called 9-1-1 and then handed the phone over to Sonia, who spoke with the operator.

When the police arrived, Sonia was still shaking and crying and looked very upset and nervous. She had red marks at the base of her neck consistent with someone grabbing her there. She told Officer Kevin Phillips: "He choked me." Sonia then told the police what had transpired. She had a hard time getting her words out. She continued to look around, explaining that her boyfriend's typical behavior when encountering law enforcement was to hide somewhere and watch from a distance. The police offered to help Sonia get a restraining order, but she told them it would not work.

Expert Testimony

Richard Ferry, a marriage and family therapist, testified regarding IPV. Formerly known as battered women's syndrome, IPV refers to emotional and physical abuse within the context of an intimate relationship. It differs from post-traumatic stress disorder (PTSD), although there can be some overlap. IPV behavior includes financial exploitation, isolation of the victim, verbal and emotional abuse, threats, harassment or stalking, physical violence, and sexual violence. A common tactic used to isolate the victim is to take her phone away, thereby preventing her from reaching out to others or the police. Strangulation is a common type of physical violence.

Victims of IPV often believe that the abuse is normal, that they can control it if they are nice enough, that it is justified because they have done something to deserve it, or that there is some rational reason for it. They are often unable to take action on their own behalf, such as calling the police, going to stay with family, getting a restraining order, and following through with prosecution. In 75 percent of IPV cases, the victim recants her claim of abuse. The victim might recant because she feels a need to rescue the abuser or out of fear, believing that a recantation will forestall later violence. A recantation would occur after an incident of acute violence when there has

been some sort of reconciliation between the victim and abuser. Prosecution of the abuser can hasten the reconciliation.

In some circumstances, a battered woman can be so affected by the abuse that she suffers flashbacks from a prior victimization. For this to occur there would have to be significant similarities between the precipitating circumstances and the original traumatic event. A victim of prolonged, severe abuse in two prior relationships would be unlikely to experience flashbacks in a new relationship where there is no trauma in the new relationship. For many victims, the effects of IPV disappear when they have been out of the abusive relationship for a period of time, in some cases as little as six months and in some as much as a couple of years.

Defense Evidence

At trial, Sonia recanted her earlier statements to the police. She and Deutsch testified about a different version of events:

On the night of the incident, Deutsch and Sonia got into a fight because he wanted to break up with her. He wanted to know why she gets mad at everything and stops communicating. She did not want to talk about it. She lied and said she wanted to go home in the hope that he would ask her to stay. When he did, she said she was going to go. He touched or grabbed her arm, and she "exploded with anger" because she does not like to be touched.

Sonia jumped out of bed and started to leave. Deutsch told her she should not leave and they should talk. She told him that if he did not let her leave, she would call the police. He told her, "[t]hen get the fuck out." When Deutsch's mother came to the door and asked if everything was okay, Deutsch said "she's leaving," referring to Sonia. He walked out and Sonia left behind him. After he stormed out, Deutsch headed to the bank but came back when he realized he had Sonia's phone instead of his.

Sonia asked Deutsch's mother to accompany her on her way to the car because it was dark. When she was in the car, Deutsch came to the window and showed her the phone. He said: "Don't you want your phone?" She said no. When Sonia drove

off, Deutsch pulled up beside her and held up the phone. She did not hear him say anything. She sped off.

Sonia had a telephone conversation with Deutsch sometime in the early morning on October 19, 2012. Later that morning, the police came to her home. She did not retract any of the previous statements she had made to them. She told the police that Deutsch had strangled her during sex because she likes the way it feels. He did not want to do it, and she had to make him. She informed the police about her earlier conversation with him. She said she was no longer afraid of him and did not want him to be prosecuted. Sonia and Deutsch were married three days after the incident.

DISCUSSION

Expert Testimony on IPV

Deutsch contends that the trial court erred in admitting expert testimony on IPV given that there was no evidence of a cycle of violence in his relationship with Sonia. We review for abuse of discretion. (*People v. Riggs* (2008) 44 Cal.4th 248, 290.)

A trial court generally may admit relevant "expert testimony . . . regarding intimate partner battering and its effects, including the nature and effect of physical, emotional, or mental abuse on the beliefs, perceptions, or behavior of victims of domestic violence." (Evid. Code, § 1107, subd. (a).) Deutsch concedes that *People v. Brown* (2004) 33 Cal.4th 892 upheld the admission of such testimony "even though the evidence showed only one violent incident" but asserts that *Brown* was wrongly decided. We, however, must follow our Supreme Court's opinions. (E.g., *People v. Johnson* (2012) 53 Cal.4th 519, 528.)

In an attempt to distinguish *Brown*, Deutsch argues that the expert testimony in that case was limited to the recantation and reconciliation aspects of domestic violence. Yet the expert testimony's scope need not be so circumscribed. A qualified expert on IPV may testify for any relevant purpose other than "to prove the occurrence of the act or acts of abuse which form the basis of the criminal charge." (Evid. Code, § 1107, subd. (a).) Ferry explained that he had not interviewed Sonia, did not know what had happened to her, and was "only talking about the common

experiences" of abused women. The jurors were instructed that they could consider his testimony "only in deciding whether or not [Sonia's] conduct was not inconsistent with the conduct of someone who has been abused, and in evaluating the believability of her testimony."

Ferry's testimony was not, as Deutsch would have it, "the core of the prosecution's case." The prosecution's case rested on Sonia's statements to the police and the bystanders at the Food-4-Less. The jury, faced with two inconsistent versions of events from the victim, was bound to accept one over the other. Ferry's testimony merely offered a scientific explanation for why Sonia's earlier statements could be more credible than her later conflicting statements to the police and at trial. (See *People v. Brown*, *supra*, 33 Cal.4th at pp. 895-896.)

As in *Brown*, there was an adequate foundation for the expert's testimony. Evidence at trial suggested the possibility that Sonia and Deutsch were in a "cycle of violence" of the type suggested by Ferry. Sonia told the police that she had tried to break up with Deutsch on the evening of the battery and that he "exploded," strangling her until she passed out. There is evidence that when she awoke and tried to leave, he grabbed her by the hair, stole her phone, and threatened to kill her if she left him and reported the crime. Sonia told the police that there had been two other incidents of violence between the two of them. A day after this incident, he contacted her. Shortly thereafter, they reconciled and were married. The trial court properly admitted the expert testimony to assist the jury in evaluating this evidence. (*People v. Brown*, *supra*, 33 Cal.4th at p. 907.)

Testimony on Sonia's Prior Abusive Relationship

Deutsch contends that the trial court improperly excluded Sonia's testimony about her severely abusive prior marriages and that this error denied him the right to present a defense. We disagree.

Sonia was not prevented from testifying about her prior abusive relationships—the trial court merely limited the extent to which she could discuss details of the abuse. She testified that she was in two abusive relationships before she met Deutsch. The first lasted from 1990 to 2003. It began when she was 13 years old. When

she was 16, they got married. In that relationship, she was chased in a car,² held against her will, and beaten. Her second marriage, which lasted from approximately 2007 to 2009, ended in divorce. There was one abusive incident in that relationship. She pressed charges. On four to six occasions she experienced flashbacks of the abusive incidents in her first marriage.

The trial court's decision to limit the extent of Sonia's testimony about the abuse she suffered at the hands of her ex-husbands was within its discretion under section 352 of the Evidence Code. It did not prevent Deutsch from presenting a defense. (See *People v. Cunningham* (2001) 25 Cal.4th 926, 999 ["Although the complete exclusion of evidence intended to establish an accused's defense may impair his or her right to due process of law, the exclusion of defense evidence on a minor or subsidiary point does not interfere with that constitutional right"].)

Moreover, the flashbacks were irrelevant to Deutsch's defense. On appeal, Deutsch describes his defense as being that he "did not assault Sonia, steal her cell phone of [*sic*], choke her unconsciousness [*sic*], or threaten to kill her, and that Sonia's having accused him thereof was a result of her PTSD-induced flashbacks to her prior abusive husband." But this is no defense at all because it relies on an unexplained and illogical connection between Sonia's flashbacks and her purported lies to the police. Critically, Deutsch fails to explain *how* the alleged flashbacks caused her to lie to the police about the events in question. They had already ended by the time she arrived at the Food-4-Less.

When asked at trial why she lied to the police, Sonia testified that "all [she] thought about was just [the] revenge [that] was boiling in [her] head" after Deutsch tried to break up with her. She knew her flashback of being choked involved her ex-husband, not Deutsch. She told the officers at the Food-4-Less that Deutsch had choked her

² Defense counsel asked Sonia if in her relationship with her first husband she "had . . . been chasing a car," and Sonia answered, "Yes." Presumably, this is a transcription error and defense counsel actually said "had . . . been chased in" a car.

because she "hated him" and wanted to "[p]ut him away in prison," reasoning that "if he wasn't going to be with [her], there was no way in hell [she] was going to let him be with anyone else."

At best, the flashbacks provided an explanation for why Sonia was initially scared when she arrived at the Food-4-Less.³ As to the sole issue relevant to Deutsch's defense—whether Sonia was lying to the police when she told them he abused her—the flashbacks were collateral. The details of her prior abusive relationships were thus immaterial to Deutsch's defense.

It is true that Sonia testified that she had participated in the prosecution of her second husband and that defense counsel used this testimony to argue to the jury that she was aware of how to frame Deutsch. But the jury had no reason to disbelieve it. Had she been lying about pressing charges in a past domestic violence case, it would have been a simple matter for the prosecution to impeach her. Furthermore, the flashbacks stemmed from the abuse inflicted by her first husband and were unrelated to the single incident of abuse by her second husband. For Sonia to have delved into the details of that incident would have done little to bolster her own credibility and nothing for Deutsch's defense. "A fact may bear on the credibility of a witness and still be collateral to the case. [Citations.]" (*People v. Contreras* (2013) 58 Cal.4th 123, 152.) The trial court's exclusion of irrelevant details about the history of abuse Sonia suffered in prior relationships was not an abuse of discretion.

³ Even on that point she was inconsistent. In explaining why she wanted the police to come, she testified both that she was scared of what she had been hearing and seeing and that she was mad at Deutsch. After the prosecution played the recording of her 9-1-1 call at trial, she admitted that she was "pretty scared" while talking to the operator. Yet later she testified that she was *not* fearful when asking Valencia or Chairez for help calling 9-1-1. She was "extremely afraid" after the police arrived only because she feared they would realize that she had been driving while under the influence of pain killers and was lying about what Deutsch had done to her. She was unable to explain why she was looking around as if somebody was coming to hurt her.

Newly Discovered Evidence

Deutsch contends that the trial court erred in denying his motion for a new trial based on newly discovered evidence. We review the decision under a deferential abuse-of-discretion standard.⁴ (*People v. McCurdy* (2014) 59 Cal.4th 1063, 1108.)

The motion for new trial was properly denied because it was based on inadmissible and irrelevant evidence. (See, e.g., *People v. Sattiewhite* (2014) 59 Cal.4th 446, 487 [new trial motion based on "irrelevant and inadmissible" evidence was "properly denied"].) Defense counsel merely attached an unsworn letter and "treatment plan" from Marian Willingham, a licensed marriage and family therapist, stating that she was treating Sonia for "PTSD symptoms." There was no statement that Willingham had definitively diagnosed Sonia with PTSD and no description of her qualifications to make such a diagnosis. Moreover, as we have discussed, Sonia's flashbacks were irrelevant to Deutsch's defense. That they may have been caused by PTSD from Sonia's prior abusive relationship is likewise irrelevant.

Romero Motion

Deutsch challenges the trial court's denial of his *Romero* motion. "[A] court's failure to dismiss or strike a prior conviction allegation is subject to review under the deferential abuse of discretion standard." (*People v. Carmony* (2004) 33 Cal.4th 367, 374.)

In reviewing the trial court's ruling, we "must consider whether, in light of the nature and circumstances of his present felonies and prior serious and/or violent

⁴ Deutsch suggests that we should independently review the issue because it involves the denial of his fundamental right to due process. He conflates the standard of review for assessing *error* with that for evaluating *prejudice*. (See *People v. Ault* (2004) 33 Cal.4th 1250, 1262, italics omitted ["Before ordering a case retried, the trial court must make its independent determination . . . both that error occurred, and that the error prevented the complaining party from receiving a fair trial"].) Prior to determining whether Deutsch's fundamental rights are implicated, we must first determine whether there was error at all. In that regard, we will not disturb the trial court's ruling unless there is "manifest or unmistakable" abuse of its discretion. (*People v. Lewis* (2006) 39 Cal.4th 970, 1063.) If not, due process is not implicated. (See *People v. Hall* (2010) 187 Cal.App.4th 282, 297-300.)

felony convictions, and the particulars of his background, character, and prospects, the defendant may be deemed outside the scheme's spirit, in whole or in part, and hence should be treated as though he had not previously been convicted of one or more serious and/or violent felonies." (*People v. Williams* (1998) 17 Cal.4th 148, 161.) A trial court's failure to strike constitutes an abuse of discretion only in an "extraordinary case" where "its decision is so irrational or arbitrary" and the relevant factors so "manifestly support the striking of a prior conviction" that "no reasonable minds could differ." (*People v. Carmony, supra*, 33 Cal.4th at pp. 377-378.)

Deutsch claims that the trial court abused its discretion by relying on the violent nature of the current offense as one factor in its decision. Although he is correct that the counts on which he was convicted are not "violent" felonies within the meaning of the Three Strikes law, there is no requirement that they be so. The battery and criminal threats for which Deutsch was convicted were "violent" as that word is ordinarily used, placing him within the spirit of the law. (See *People v. Williams, supra*, 17 Cal.4th at p. 164 ["[T]he misdemeanor of spousal battery . . . is plainly a 'crime[] involving actual violence' [for *Romero* purposes]"].) Not only did Deutsch strangle his girlfriend and threaten to kill her, he violently abused her on two prior occasions. This type of recidivistic behavior is exactly what the Three Strikes law serves to punish.

As the trial court observed, the "extremely violent" nature of Deutsch's past crimes further supports its decision. In a home invasion robbery Deutsch committed in 1994, he robbed an elderly couple at gunpoint and threatened to kill them. In another robbery, involving a jewelry store, either Deutsch or his accomplice fired a gun. The fact that Deutsch claims to have had a difficult childhood does not ameliorate his decades-long streak of violent crime. (See *People v. Williams, supra*, 17 Cal.4th at p. 165, fn. omitted (conc. & dis. opn. of Baxter, J.) [agreeing with majority that "defendant's criminal record establishes beyond question that he is a person who comes within the spirit of the 'Three Strikes' law" because "[h]is criminal activity has continued unabated since his childhood except for those periods when he has been incarcerated" and "he has

committed a recent crime of violence, spousal battery"].) The trial court did not abuse its discretion in denying the *Romero* motion.

Additional Fees and Assessments

The trial court erred to the extent it imposed only a single \$40 court security fee and \$30 criminal conviction assessment rather than one of each for each count on which Deutsch was convicted. We therefore modify the judgment to reflect a \$160 court security fee and a \$120 criminal conviction assessment. (See *People v. Crabtree* (2009) 169 Cal.App.4th 1293, 1328.)

DISPOSITION

The June 20, 2013, minute order is modified to reflect a court security fee of \$160 and a criminal conviction assessment of \$120. The clerk of the superior court is directed to prepare an amended abstract of judgment reflecting these modifications and forward a copy to the California Department of Corrections and Rehabilitation. As modified, the judgment is affirmed.

NOT TO BE PUBLISHED.

PERREN, J.

We concur:

GILBERT, P. J.

YEGAN, J.

Barry T. La Barbera, Judge
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