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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

DONALD EUGENE HALFORD,

Defendant and Appellant.

B258737

(Los Angeles County
Super. Ct. No. MA061252)

APPEAL from a judgment of the Superior Court of Los Angeles County,
Bernie C. Laforteza, Judge. Affirmed.

G. Martin Velez, under appointment by the Court of Appeal, for Defendant and
Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney
General, Lance E. Winters, Senior Assistant Attorney General, Victoria B. Wilson and
Jessica C. Owen, Deputy Attorneys General, for Plaintiff and Respondent.

INTRODUCTION

Appellant challenges the decision by the trial court to allow evidence regarding his commission of other acts of domestic violence against his former girlfriends. Appellant complains that the court ought to have excluded the evidence involving Eva Penny because the events were so dissimilar to the charged offenses that the evidence was more prejudicial than probative. In addition, he complains that the Court was unable to conduct a meaningful analysis under Evidence Code section 352 regarding the prior incident involving Lysett Villagrana.

As discussed below, there was no abuse of discretion. Accordingly, the judgment is affirmed.

FACTUAL AND PROCEDURAL BACKGROUND

On November 1, 2013, Maribel Martinez was in the process of leaving her boyfriend, Donald Halford, who was the father of her 11-month old daughter. An argument regarding the timing of her departure occurred and Halford locked Martinez outside of the house, with her daughter still inside. Martinez screamed to be allowed back inside. Halford agreed to allow her back inside if she would calm down.

Halford opened the door while holding a Maglite flashlight. Martinez came inside, telling Halford that she would call the police if he touched her. Halford attempted to grab Martinez's phone out of her hand. Martinez ran into the kitchen to get her daughter, who was in a bouncy chair. As she bent down for her daughter, Halford punched Martinez and caused her to fall down. While Martinez was on the ground, Halford struck her in the head with the Maglite. Halford kicked Martinez in the ribs. Martinez could feel blood running down her neck from the wound in the back of her head.

Halford then put Martinez in a chokehold and dragged her to the back of the house. In the back room, Halford began choking Martinez and told her that she was going to die that day. Halford then picked Martinez up and put her in the bathtub and told her to clean up. Halford started cleaning up the blood in the house and then got ready to go out.

When Martinez thought Halford was out of the house, she got out of the tub and went to get her daughter. She ran into the kitchen and grabbed her daughter and left, leaving behind her keys, wallet and phone.

Martinez ran to her neighbors' houses nearby. One of the neighbors applied pressure to Martinez's head wound, gave her some clean clothes and shoes and drove her to the hospital. At the hospital, Martinez's head wound was closed with seven staples. Martinez also had a large bruise behind her ear, bruised ribs and an injury to her cervix. Martinez explained her injuries to the hospital staff as having been caused by a slip in the shower because she was afraid that the authorities would take away her daughter if the true circumstances of the attack were known.

After being treated at the hospital and resting briefly, Martinez went to the Sheriff's Department. She reported the attack and returned with deputies to Halford's home to retrieve her belongings. At the house, deputies found a Maglite flashlight and saw what appeared to be bloodstains throughout the house.

On November 22, 2013, the Los Angeles County District Attorney's office filed a felony information charging Donald Eugene Halford with corporal injury to a cohabitant, Maribel Martinez, in violation of Penal Code section 273.5, subdivision (a). The prosecution alleged, as to count one, that Halford had inflicted great bodily injury upon Maribel M. and used a deadly and dangerous weapon, specifically a flashlight. The information also alleged a second count, charging Halford with cruelty to a child by endangering health, in violation of Penal Code section 273a, subdivision (b), a misdemeanor. The prosecution also alleged as to count 1 that Halford that had sustained a prior serious or violent felony conviction that qualified under the Three Strikes Law and a prior conviction pursuant to Penal Code section 667, subdivision (a)(1).

At trial, the prosecution introduced two prior acts of domestic violence by Halford pursuant to Evidence Code section 1109.

The first event involved Eva Penny, a former girlfriend with whom he had fathered a daughter. Penny testified that in March 2009, she was living with Halford at

the same address as was Martinez. She decided to leave Halford when she came home and found him with another woman. She began arguing with Halford and he attacked her. Halford took Penny's phone away from her and threw her into the walls and a glass door. Halford also choked Penny. Penny managed to get outside to her car and locked the doors. Her five month old daughter was in a car seat in the back of the car. Halford retrieved a sledgehammer from the garage and hit the car's windshield and front end. Penny drove her damaged vehicle to the police station and reported the attack.

The second event involved another domestic violence incident in which Halford attacked an ex-girlfriend. The prosecution introduced a certified minute order showing Halford's 2009 misdemeanor conviction against Lysett Villagrana on the same domestic violence charges at issue in the current case. In that instance, Halford hit Villagrana in the chest, causing bruising.

The jury convicted Halford of violating Penal Code section 273.5, subdivision (a), but found the allegations of great bodily injury and use of a deadly weapon to be untrue. The jury also convicted Halford of violating Penal Code section 273a, subdivision (b).

In a bifurcated proceeding, the defendant admitted having sustained two prior domestic violence convictions, a conviction for a serious or violent felony as defined in Penal Code section 667, subdivision (b) and Penal Code section 1170.12, subdivision (b), and a conviction of a serious felony pursuant to Penal Code section 667, subdivision (a)(1).

On September 5, 2014, the court sentenced Halford to ten years. Halford filed a timely notice of appeal.

DISCUSSION

A. Standard of Review

On appeal, the admissibility of prior act evidence is reviewed under an abuse of discretion standard. (See *People v. Wesson* (2006) 138 Cal.App.4th 959, 969.) A trial court abuses its discretion when its ruling “ ‘falls outside the bounds of reason.’ ”

(Ibid.)

B. *The Assault on Eva Penny Was Similar to the Attack on Martinez*

Where a defendant is accused of an offense involving domestic violence, additional evidence of the defendant's commission of other acts of domestic violence may be admitted if otherwise admissible under Evidence Code section 352. Evidence Code section 1109. Evidence of past violent acts has been found to be particularly relevant in the area of domestic abuse, where a single charged incident is often part of a cycle of abuse which may continue to escalate if not addressed. (*People v. Hoover* (2000) 77 Cal.App.4th 1020, 1027-1028.)

Under Evidence Code section 352, otherwise admissible evidence of prior acts of domestic violence may be excluded if its probative effect 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 misleading the jury. The principal factor affecting the probative value of the uncharged act is its similarity to the charged offense. (*People v. Johnson* (2010) 185 Cal.App.4th 520, 532.)

Appellant complains that the testimony elicited from his former girlfriend, Eva Penny, regarding domestic violence was so dissimilar from those actions alleged to have occurred against Martinez that its probative value was substantially outweighed by the substantial danger of undue prejudice. Specifically, Halford notes a number of factual distinctions in the two events -- absence of alcohol in one of the two events, use of a sledgehammer in only one situation and infidelity as a reason for an argument in only one instance.

Halford's claim of dissimilarity, however, fails in the face of the remarkable number of common factors in the two incidents. (See, e.g., *People v. Morton* (2008) 159 Cal.App.4th 239, 246-247.) Halford's attack on Martinez occurred within four years of his attack on Penny. Both incidents were triggered by his partner leaving him and taking his infant daughters with them, strongly suggesting that Halford had a problem with anger management when he felt rejected. In both cases, Halford attacked his partners with a heavy object -- in one case a Maglite flashlight and, in the

other, a sledgehammer. Halford punched both Martinez and Penny. Both attacks took place in front of his child and placed that child in immediate danger. In both instances, Halford choked his victims and either attempted to or did take the victim's phone away. Further, the evidence of the assaults came from independent sources, were separated in time and, with Penny, the defendant was convicted of the prior offense. These facts corroborate the prior event and demonstrate little danger of fabrication. There was no confusion associated with these events and the past conduct was arguably less egregious and inflammatory than the conduct involved in the present case.

As the uncharged act against Penny was very similar to the charged offenses, it was highly relevant and probative because it created a strong inference that appellant had a propensity to commit the acts Martinez described. As the Penny testimony was more probative than prejudicial, the trial court did not abuse its discretion in allowing this evidence to be admitted.

C. *The Facts Contained in the Written Record of the Villagrana Case Were Sufficient*

Halford also complains that the trial judge failed to conduct a "meaningful analysis" under Evidence Code section 352 with regard to his misdemeanor conviction for domestic violence against another ex-girlfriend, Lysette Villagrana. Appellant contends that the trial court could not appropriately balance the evidence without more information than what was provided by way of the certified minute order.

Appellant's contention the trial judge's 352 analysis in this case was uninformed is without merit. The issue regarding the admissibility of these prior acts was litigated extensively by way of written *in limine* motions and oral argument. The prosecution cited *People v. Wesson* (2006) 138 Cal.App.4th 959 to support the use of a certified record of conviction to establish admissible prior bad acts. In *Wesson*, the trial court allowed an information and abstract of judgment to be admitted in lieu of live testimony. In that case, the prior assaults were similar because both involved the offense of the same class's nature – forcible sexual offenses against adult women -- "and thus . . . were probative as to defendant's propensity." (*Id.* at p. 969.) Moreover,

the court asserted, had the defendant wanted to emphasize the dissimilarity of the events, he was free to subpoena the victim. (*Ibid.*) Finally, the court noted that the documentary evidence removed much of the inflammatory details of the prior offenses. (*Id.* at p. 970.)

As in *Wesson*, the trial court here was able to conduct a sufficient 352 analysis based on the documentary record. Halford's misdemeanor conviction, which also took place in 2009, was for the exact same offense charged in the instance case -- corporal injury on a cohabitant. This conviction further established an escalating pattern of domestic violence by Halford. Halford hit his girlfriend, Villagrana, on the chest with sufficient force to cause bruising. As with the Martinez, the Villagrana incident demonstrated that Halford could not control his anger and struck his female intimate partners. The similarities are sufficient to make this prior act probative as to defendant's propensity to commit acts of domestic violence in the present case. It cannot be concluded, therefore, that the trial judge abused his discretion by failing to conduct a meaningful analysis under Evidence Code section 352.

DISPOSITION

The judgment is affirmed.

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JONES, J.*

WE CONCUR:

KITCHING, Acting P. J.

ALDRICH, J.

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.