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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

THE PEOPLE,

Plaintiff and Respondent,

v.

VERNON KARL MEDLER,

Defendant and Appellant.

C067114

(Super. Ct. No. 10F03544)

Following a jury trial, defendant Vernon Karl Medler was convicted of two counts of rape (Pen. Code, § 261, subd. (a)(2)),¹ two counts of criminal threats (§ 422), corporal injury to a cohabitant (§ 273.5, subd. (a)), false imprisonment (§ 236), assault with a deadly weapon (§ 245, subd. (a)(1)), and child endangerment (§ 273a, subd. (a)), with enhancements for personally using a deadly weapon (former § 12022, subd. (b)(1)). After initially sentencing defendant to 17 years in state

¹ Undesignated statutory references are to the Penal Code in effect at the time of defendant's sentencing on December 3, 2010.

prison, the trial court recalled the sentence to impose a 14-year term.

On appeal, defendant contends the suppression of a police video denied him a fair trial, and concurrent sentences on the corporal injury to a cohabitant, false imprisonment, and assault with a deadly weapon counts violated section 654. We shall affirm.

FACTUAL BACKGROUND

G.P. began a romantic relationship with defendant in February 2010. The couple, both in their 20's, had consensual sex after the second date, and defendant moved in with G.P. at her mother's house shortly thereafter. G.P. shared the house with her two children, ages two and four, her sister, her mother and her 20-year-old brother.

In May 2010, defendant told G.P. he was in love with her. To show his love, defendant got her name tattooed on the back of his neck for her birthday. G.P. did not share the feeling, as she had known defendant for only a few months.

On several occasions, defendant made threats to kill both G.P. and then himself if she ever left him. He made one such threat in early May, when G.P. was paying a traffic ticket at the courthouse on Power Inn Road. When she returned to the car, defendant had her cell phone, and displayed messages to G.P. from her ex-boyfriend Chris, the father of her two-year-old daughter.

Defendant was upset because he did not want G.P. seeing the man. He first punched the car radio and knocked the knob off. Defendant then put his hands around G.P.'s neck, pushed her up against the window, and shoved her full force in the chest. G.P.'s children, who were in the back seat of the car, cried and screamed. When G.P. asked if he wanted to do this in front of her children, defendant replied that he did not care about their feelings since she did not care about his. He then tossed G.P.'s new cell phone across the street, breaking it. Defendant said that he would snap her neck or cave in her face if she told anyone about the incident.

Another incident took place at a Wal-Mart parking lot about one to two weeks later. Defendant got very upset with G.P., grabbed her by the hair, hit her on the head, and slammed her head against the side window. He kept yelling at G.P. to shut up and stop crying or he would leave her black and blue and bloody all over the parking lot.

Defendant made similar threats at their home between the Wal-Mart incident and May 28, 2010. G.P. did not tell the authorities about these incidents because defendant had threatened to kill her, or himself, if she told. G.P. talked to defendant about having him move out, but defendant said he would kill G.P. or himself if she ever tried to make him leave.

On the evening of Friday, May 28, 2010, defendant confronted G.P. in the living room after finding an old Valentine's card from Chris in her bedroom drawer. After G.P.

told defendant she had forgotten it was there, he took a step back, balled up his fists, and took a swing at G.P., just missing her head, and then walked out of the house for a few minutes. On his return, defendant grabbed G.P. by the hair and threw her to the ground. Defendant told G.P. he would snap her neck in two if she was lying or cheating. He also told G.P. that he wanted her to acknowledge having sex with the man or he would cave her face in. G.P., crying, repeatedly begged defendant not to hurt her, and told him over and over that she had not cheated.

Defendant and G.P. walked to their bedroom after G.P.'s sister came out and asked what they were doing. The argument continued in the bedroom's bathroom while G.P.'s two-year-old daughter slept on their bed. Defendant reiterated his threats, and asked G.P. whether she cheated on him.

When defendant left the bathroom, he told G.P. that he wanted to have sex with her. When G.P. said "no," defendant replied he was going to have sex with her no matter what she said. G.P. repeatedly told defendant "no," and resisted as he pulled off her pants and underpants. G.P. covered herself with her hand, but defendant pushed her hand away, forced her onto the bed, and had intercourse with her. G.P. was crying and tried to cover herself, but defendant put his hands around her

throat and threatened to snap her neck in two if she did not shut up.²

Defendant stopped when G.P. said her stomach hurt and she needed to use the bathroom. He allowed her to get up and go to the bathroom; when she was done, defendant ordered G.P. back to bed after which he continued the assault. G.P. cried herself to sleep when defendant finished.

G.P. did not tell her mother, sister or brother about the assault before they left the house on the following morning, May 29, 2010, because of defendant's threats. While she was in the bathroom getting ready to shower, defendant told G.P. he was going to get some sex and did not care how. Defendant got very upset when G.P. told him no; he grabbed G.P. by the hair, put his other hand around her throat, and began yelling at her. Overcoming G.P.'s resistance, defendant pulled her bottoms down and put her hands on the toilet. When G.P. tried to push defendant away, he pushed her against the wall heater, burning her.

As G.P. screamed, her two-year-old daughter tried to get into the room.³ Defendant told the child that her mommy was fine and to close the door, sit down, and watch cartoons. He then

² This assault took place while G.P.'s two-year-old daughter slept on the same bed.

³ The record does not indicate the whereabouts of G.P.'s four-year-old daughter. The child endangerment allegation refers to G.P.'s two-year-old daughter, who was fully alert and awake during the events of May 29, 2010.

told G.P. to shut up or he would hold her face against the wall heater.

As defendant pulled G.P.'s hair and bent her back over, he called her dirty, a "hoe," and said he was disgusted with her. G.P. cried, told defendant "no," and tried to block him, but defendant had intercourse with G.P. against her will. G.P. was bent over the toilet with her hands on the toilet seat as defendant raped her. Since the shower was running throughout the assault, the bathroom became very steamy and slippery, causing G.P. to bang her head against the toilet. Defendant grabbed G.P. by the arm and threw her in the shower when he finished.

When G.P. got out of the bathroom, defendant was lying face down on the bed, crying. G.P. got her computer from the living room, and returned to the bedroom to be with her daughter. She did not try to escape because her brother had taken the only available car.

G.P. heard defendant rummaging in the kitchen and then he entered the bedroom with a kitchen knife in his hand. He grabbed G.P. by the hair and threw her on the floor, into a corner of the bedroom. Holding the knife to her neck, defendant told G.P. he would kill her if he found she was lying to him, and that he should kill her right now. G.P. screamed and cried for defendant to stop, while her two-year-old daughter screamed and cried, and said, "Friend, stop."

Defendant swore at G.P.'s daughter and told her to shut up. He told G.P. that if her daughter did not shut up he would make the girl shut up. G.P. begged for her life, telling defendant over and over that she was not lying to him. Defendant eventually stood up, swore, and punched a picture of G.P.'s daughters on the wall, cutting his hand. He said that he could not stand the sight of G.P.'s daughters because they looked like their fathers.

Defendant then sent text messages to G.P.'s mother. Defendant's texts included the messages: "You a f[-ing] hater. But try me today because I got something ready for you and whoever," and "You want problems? Okay. Im'a show you problems." When he finished, defendant asked G.P. to call her mother. He said that if G.P.'s mother said anything about the text he sent her, there would be a bloodbath in the house, he would beat her mother's face bloody and blue, and cave it in.

G.P. then tried to call her mother from outside the house. When she failed to contact her mother, defendant came outside with the knife and told G.P. to get inside. G.P. then went inside and called her mother, telling her not to respond to the text defendant had sent. G.P. next talked to her father, answering a series of yes or no questions as defendant looked on. Defendant then picked up the phone, and told G.P.'s father that "if the situation escalated at all that . . . things were going to get worse" and he would kill G.P., the two-year-old

child, and himself. G.P.'s family reacted by calling 911 and Chris.

A few minutes after the phone call, G.P. heard Chris and several other people at the door. When Chris told defendant to open the door, defendant ordered G.P. to make the man leave or he would kill G.P. and her daughter. Chris kept banging on the door, and defendant dragged G.P. by the hair as she held her sleeping daughter in her arms. He threw G.P. on the floor, took her by the neck, and threatened a bloodbath if she did not get Chris to leave. Defendant then called 911 and told the operator he would kill "everyone in here" and there would be "dead bodies if you don't get here in about 2.9 seconds."

Sacramento Police officers arrived at 4:55 p.m. and saw several very upset people outside the house yelling and banging on the door. Inside the house, defendant yelled back: "There's about to be a murder in here if you don't go away." An officer unsuccessfully ordered defendant to open the front door. While trying to pry open a security door at the back of the house, the officer looked through a window and saw defendant holding a knife. The officer drew his firearm and ordered defendant to drop the knife. Defendant retreated, and G.P. opened the door and fled. The officer entered and found defendant, kneeling on the floor.

Defendant testified that he broke the cellular phone after discovering text messages from Chris, but denied assaulting G.P. He denied any altercation took place at Wal-Mart. He was upset

when he discovered the Valentine's Day card from Chris, but did not threaten or sexually assault G.P. Instead, G.P. initiated the sexual activity, and they engaged in consensual sex while her younger daughter slept on the bed. G.P. got angry at defendant the following morning when he said that he was going to Reno.

Defendant armed himself with a knife for protection against Chris, who tried to fight him a few months before the incident. He called 911 so the police would save him from Chris; he told the operator he would kill G.P. and her daughter to ensure the police arrived quickly.

DISCUSSION

I. The Excluded Recording

Defendant contends he was denied his due process right to a fair trial when the trial court excluded a police recording from his capture. We disagree.

A. Background

Defendant testified that on May 29, 2010, he armed himself with a knife and threatened to kill G.P. and her two-year-old daughter to prevent Chris (the child's father) and a group of people outside the house from assaulting him. On cross-examination, defendant said he dropped the knife when the police entered the house because he now felt safe. The prosecutor then asked defendant if he told the officers that he dropped the knife because he felt safe, and defendant admitted he did not. Next, the prosecutor asked defendant whether he told the

officers: "I went to the back door to make sure it was locked. That is when I looked and saw the gun pointed at me and [the] badge. That is why I dropped the knife." Defendant admitted he did not say he felt safe, but that "It was just a brief statement, sir, but I did feel safe at that point."

In response to the prosecutor's questions regarding whether he was a victim, defendant said, "I felt like a victim, yes, when those people were coming and attacking me I felt under attack. So I did feel like a victim, yes." The prosecutor asked defendant that if he felt like a victim, why he got on his knees and put up his hands to the officer. Defendant said: "Because he was pointing a gun at me." Next, the prosecutor asked: "Did you tell him immediately, officer, you got the wrong person, I'm the victim here?" Defendant replied, "No. It was through the sliding door, sir." The prosecutor asked defendant whether he told the officers they have the wrong person, that defendant was the victim, when they entered with guns pointed at him. Defendant said: "Yeah, I tried to let—I tried to let the officers know that there—I'm under attack and such things like that, but they kept telling me to shut up, and don't talk, and don't say nothing."

During redirect examination, the defense sought to introduce a recording consisting of a video from the dashboard camera of one of the police cars at the scene and an audio recording from an officer's microphone. Defense counsel asserted that the recording showed defendant telling officers

there were people coming at him and he was acting in self-defense. Counsel argued this statement contradicted what the prosecutor said defendant did not do. Although the parties previously agreed not to play the tape, counsel argued the prosecution opened the door by "insinuating" that defendant "did not say anything to those first arriving officers." The prosecutor replied that he asked defendant whether he said he was a victim "immediately when the officer came in," and that some time had passed between the officer's entry and defendant's statement on the tape.

The recording was played for the trial court. Defense counsel described the statement in greater detail, relating that defendant told the officers: "She had her baby dad so—her baby dad was there so I grabbed the knife. He came over and baby dad had come over before. I didn't rape her." The trial court ruled that defendant never referred to himself as the victim in the recording, and that the audiotape would not be admitted.

B. Analysis

Defendant argues the recording was admissible because it supported his claim that he armed himself with a knife out of fear from Chris, and tended to impeach G.P.'s account. He asserts the trial court's failure to admit the recording violated his due process right to present evidence.

Defendant has the constitutional right to present evidence on his own behalf. (*Crane v. Kentucky* (1986) 476 U.S. 683, 690 [90 L.Ed.2d 636, 645].) However, defendant's right to present

evidence contemplates the presentation of evidence that has significant probative value. "[T]he ordinary rules of evidence do not impermissibly infringe on the accused's [constitutional] right to present a defense. Courts retain . . . a traditional and intrinsic power to exercise discretion to control the admission of evidence in the interests of orderly procedure and the avoidance of prejudice." (*People v. Lawley* (2002) 27 Cal.4th 102, 155.) A defendant does not have the right to an unfettered presentation of any possible relevant evidence without regard to the mandate of Evidence Code section 352. (*People v. Reeder* (1978) 82 Cal.App.3d 543, 553.)

Evidence Code section 352 states: "The court in its discretion 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's ruling based on Evidence Code section 352 "will not be disturbed except on a showing the trial court exercised its discretion in an arbitrary, capricious, or patently absurd manner that resulted in a manifest miscarriage of justice." (*People v. Rodriguez* (1999) 20 Cal.4th 1, 9-10.)

Having watched and listened to the recording in question, we conclude the trial court did not abuse its discretion in declining to admit it. The recording begins at 16:56:22 on May 29, 2010, with officers clearing onlookers from the front of

the house. At 16:56:57, G.P. is heard screaming and her young child crying, as an officer yells at defendant to open the door. An officer states that defendant has a knife at 16:57:15. At 16:57:40, an officer says to search him, and G.P. is seen in front of the house at 16:57:52. Defendant gives the statement counsel sought to introduce at 17:02:26, in response to an officer asking him what happened.

It is clear that the recording does not contradict what the prosecutor sought to elicit from defendant on cross-examination. The prosecutor got defendant to admit he did not tell officers he was the victim immediately after they entered the home and found him. Defendant first encountered the officers at 16:57:40, when an officer gives the command to search him. The statement he sought to admit comes at 17:02:26, nearly five minutes later.

Although it does not contradict the prosecutor's line of cross-examination, the statement has some minimal probative value as a prior consistent statement to defendant's trial testimony that he was a victim. However, this minimal probative value is outweighed by the recording's strong potential for prejudice and confusion. The audio quality of the recording is poor—there are extended segments with no audio and other portions are difficult to understand. It is also potentially confusing to the viewer, who sees a static shot from the patrol car, while hearing intermittent audio from an officer who is usually off screen. Most importantly, the recording contains

highly inflammatory material—G.P.'s and her child's screams, officers yelling and using profanities to get defendant to open the door, and G.P. running from the house with her child in her arms.

The best tool for addressing an item containing both relevant and prejudicial evidence—redaction—is unlikely to be effective here. Showing no more than defendant's statement takes that statement out of context, thus depriving the jury of knowing when it was made in relation to defendant's initial encounter with the police. In light of the minimal probative value of the recording and the clear risk of prejudice and confusion, the trial court was well within its discretion to exclude it.

It is true that a ruling correctly excluding evidence under Evidence Code section 352 can violate a defendant's due process right to present evidence. Evidence Code section 352 "must yield to a defendant's due process right to a fair trial and to the right to present all relevant evidence of *significant* probative value to his or her defense." (*People v. Cunningham* (2001) 25 Cal.4th 926, 999.) The evidence here was not of significant probative value, and was not critical to the defense, since defendant already testified that he was the victim. Not allowing defendant to use a potentially confusing and inflammatory recording to buttress this point does not violate due process.

II. Section 654

Defendant asked the trial court to stay sentence on counts four (corporal injury on a cohabitant), five (false imprisonment), and six (assault with a deadly weapon-knife) pursuant to section 654. The trial court imposed concurrent sentences on all three counts.

Defendant contends the trial court should have stayed sentence on counts four through six. He argues that these crimes arise from an indivisible course of conduct—keeping G.P from leaving the home—and the trial court therefore should have stayed sentence on all three counts. He is wrong.

Subdivision (a) of section 654 provides, in pertinent part: "An act or omission that is punishable in different ways by different provisions of law shall be punished under the provision that provides for the longest potential term of imprisonment, but in no case shall the act or omission be punished under more than one provision."

Section 654 prohibits multiple punishments for a single act or indivisible course of conduct. (*People v. Hester* (2000) 22 Cal.4th 290, 294.) "The purpose of this statute is to prevent multiple punishment for a single act or omission, even though that act or omission violates more than one statute and thus constitutes more than one crime. Although . . . distinct crimes may be charged in separate counts and may result in multiple verdicts of guilt, the trial court may impose sentence for only one of the separate offenses arising from the single

act or omission—the offense carrying the highest punishment.”
(*People v. Hutchins* (2001) 90 Cal.App.4th 1308, 1312.)

As the California Supreme Court has explained, “Whether a course of criminal conduct is divisible and therefore gives rise to more than one act within the meaning of section 654 depends on the intent and objective of the actor. If all of the offenses were incident to one objective, the defendant may be punished for any one of such offenses but not for more than one.” (*People v. Rodriguez* (2009) 47 Cal.4th 501, 507, italics omitted.)

In reviewing whether the trial court erred in failing to apply section 654 to a case involving multiple punishments, we are mindful that “the law gives the trial court broad latitude in making this determination. Its findings on this question must be upheld on appeal if there is any substantial evidence to support them.” (*People v. Hutchins, supra*, 90 Cal.App.4th at p. 1312.)

Defendant does little more than make the bare assertion that the three offenses were committed with one objective—to prevent G.P. from leaving the home.⁴ The three crimes have separate objectives. Defendant’s jealousy and anger at G.P. for having contact with Chris was clearly one intent behind his

⁴ Defendant also misstates the law by asking for a stayed sentence on all three counts. If the three crimes were part of an indivisible course of conduct, we would stay sentence only on the two offenses with the lesser sanctions.

choking her in count four. Thus one objective of this crime was to inflict pain on G.P. for her alleged unfaithfulness to defendant. Count six, the assault on G.P. with a knife, had an additional objective, deterring Chris and his cohorts from entering the house. One objective of the false imprisonment in count five is to keep G.P. from reporting the rapes.

Since the counts had different objectives, substantial evidence supports the trial court's finding.

DISPOSITION

The judgment is affirmed.

_____ BUTZ _____, J.

We concur:

_____ ROBIE _____, Acting P. J.

_____ MAURO _____, J.