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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
(Sacramento)

<p>THE PEOPLE,</p> <p style="padding-left: 40px;">Plaintiff and Respondent,</p> <p style="padding-left: 40px;">v.</p> <p>CHARLES SYLVESTER EATON,</p> <p style="padding-left: 40px;">Defendant and Appellant.</p>	<p>C067422</p> <p>(Super. Ct. No. 10F02074)</p>
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This appeal raises one issue -- did the trial court abuse its discretion in denying a mistrial motion following a witness's testimony that mentioned defendant had been in prison? The answer is no: the comment was brief and isolated, the court gave an appropriate curative instruction, and the comment was insignificant compared to the facts at trial.

FACTUAL AND PROCEDURAL BACKGROUND

A jury found defendant Charles Sylvester Eaton guilty of criminal threats and two counts each of corporal injury to a cohabitant and penetration with a foreign object. The facts behind these verdicts were as follows:

Defendant began dating the victim, J., in 2007 when both were homeless. They broke up later that year, and J. began dating other men.

In 2010, J. and defendant resumed their relationship and moved into a tent by a bridge. To be upfront, J. told defendant she had dated other men while they had been broken up. Defendant became upset at this revelation, and when he and J. were out together, he would order her to point out the men she had dated. When she complied, defendant would wait until he and J. got back to the tent and then would beat her up. One time he head-butted her, leaving a knot on her forehead. Defendant's violence came as a surprise to J. because he had not been violent with her in 2007.

About a week after the head-butting incident, defendant physically and sexually assaulted J. and threatened her because he thought she was lying when she said she presently was not seeing other men. He strangled her for 15 seconds, hit her with a bat, made her stick a banana into her vagina, and forced a bat up her rectum. He told her, "'When I'm done with you, you're going to be listening to me or you'll be dead.'"

The following morning, defendant made J. accompany him to a homeless shelter so he could sell marijuana. While there, defendant said he was hungry and demanded J. retrieve food for him from a part of the shelter reserved for women and children. While seemingly complying with his demand, J. told one of the shelter workers what defendant had done to her. The worker called police.

A Sacramento police officer responded to the call. When the officer was asked at trial by the prosecutor what J. had told the officer about why defendant assaulted J., the officer testified as follows: "[J.] stated that during the time [defendant] was in prison she had dated other men, and that when they reunited as a relationship shortly before the incident approximately two weeks prior, he would continuously ask her about the men she had dated."

Immediately following this testimony, defense counsel moved for a mistrial because this testimony violated an in limine ruling precluding disclosure of defendant's prior prison term. The court denied the motion, "given the overall context of this case and the totality of the evidence presented as to other aspects of the defendant's character." The court then instructed the jury as follows: "the last question and answer have been stricken by the Court. The responses are to be disregarded. You are to assume that the question and response were not made during the course of this proceeding. It is not evidence before you."

DISCUSSION

Defendant contends the court abused its discretion by denying the mistrial motion. He argues the disclosure of his prior prison term was "highly prejudicial" evidence that suggested he "was a very dangerous person." He contrasts this evidence with the evidence of the sex offenses, which he claims was "thin to nonexistent."

A trial court should grant a motion for mistrial only when a party's chances of receiving a fair trial have been "irreparably damaged.'" (*People v. Welch* (1999) 20 Cal.4th 701, 749.) Whether a particular incident is incurably prejudicial is speculative, and the trial court is vested with considerable discretion in ruling on mistrial motions. (*People v. Haskett* (1982) 30 Cal.3d 841, 854.) "Accordingly, we review a trial court's ruling on a motion for mistrial for abuse of discretion." (*People v. Avila* (2006) 38 Cal.4th 491, 573.)

There was no abuse here. Our Supreme Court has repeatedly held that the fleeting mention of similar evidence does not require a mistrial. (See, e.g., *People v. Valdez* (2004) 32 Cal.4th 73, 124, 128 [because a witness's reference to the defendant having been at "Chino Institute" was brief and isolated, the trial court properly denied the motion for mistrial]; *People v. Avila, supra*, 38 Cal.4th at p. 574 [the trial court did not abuse its discretion in denying a mistrial motion because the court admonished the jury to disregard the witness's testimony that the defendant was recently in prison]; *People v. Bolden* (2002) 29 Cal.4th 515, 554-555 [a witness's reference to obtaining the defendant's address from the "parole office" was "not significant in the context of the entire guilt trial"].)

This case is similar to these. The reference to defendant's prior prison term was brief and isolated -- the only witness who mentioned it was the police officer and that too, only one time in passing. The court noted (when the parties

were litigating the mistrial motion) it initially had not even caught the police officer's reference to defendant's prison term. Moreover, the court instructed the jury to disregard the testimony in a way that did not draw attention to it -- namely, the court did not repeat the damaging testimony. Finally, the reference to defendant's prison term was insignificant in the context of the entire trial. The People presented compelling physical evidence defendant had sexually assaulted J. with a banana and a bat and had beaten her. There were injuries on J.'s head, eye, neck, lip, and breast. There was swelling and red bits of debris on J.'s anus. Vaginal smear slides taken from J.'s vagina had starchy material similar to that found in bananas. The police found the bat and the banana at the campsite, and the bat had fecal matter on it. In comparison with this evidence, the fleeting mention of defendant's prior prison term was inconsequential.

DISPOSITION

The judgment is affirmed.

ROBIE, Acting P. J.

We concur:

BUTZ, J.

MAURO, J.