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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Shasta)

THE PEOPLE,

Plaintiff and Respondent,

v.

PATRICK JAMES FARMER,

Defendant and Appellant.

C069548

(Super. Ct. No. 11F3057)

A jury convicted defendant Patrick James Farmer of criminal threats, recidivist corporal injury to a spouse, spousal rape, and felony false imprisonment. It deadlocked on a count of assault with a deadly weapon and an enhancement for personal use of a deadly weapon during the criminal threats, both of which the trial court dismissed in the interests of justice on the prosecutor's motion. The court also sustained a recidivist allegation. The court sentenced defendant to state prison,

awarding conduct credits limited to 15 percent of presentence custody. (Pen. Code, §§ 2933.1; 667.5, subd. (c)(3).)¹

On appeal, defendant challenges the admission of “profile” testimony from a prosecution investigator to the effect that defendant’s conduct was typical of methods abusers use to gain control over a victim, and the exclusion of evidence of the victim’s prior felony conviction for welfare fraud. He also argues there is insufficient evidence to support the convictions for spousal rape or felony false imprisonment. Finally, he argues he was entitled to stayed execution of sentence on the three subordinate counts pursuant to section 654, because all four offenses were committed with only a single objective. We shall affirm the judgment as modified.

FACTUAL AND PROCEDURAL BACKGROUND

Defendant and the victim married in 2006. It was a tempestuous marriage, which involved violence and multiple separations. In June 2008, defendant entered a guilty plea to misdemeanor domestic battery of the victim.

Three weeks into their latest separation in February 2010, the victim began texting defendant on her daughter’s cell phone. She had belongings and a dog at defendant’s residence; she also testified that she was missing him and giving thought to living with him again.

¹ Undesignated statutory references are to the Penal Code.

On February 23, 2010, the victim both texted defendant and spoke with him on the phone. She told him that she wanted to come home and retrieve some of her belongings and her dog, and to talk with him, but she did not want to stay.

The victim had been staying overnight at the house of a childhood friend. The friend's younger sister gave the victim a ride to the motorhome that the victim and defendant had shared on his father's property. They stopped off at homes of two other people en route, the victim leaving her purse and phone behind at some point in order to prevent defendant from seizing them.

The younger sister thought the victim seemed apprehensive. Although it was a cold and rainy night, the victim had planned on walking back with her dog and belongings, and did not ask the younger sister to stay (the latter having school in the morning).

When defendant answered the door, he already appeared to be angry. He grabbed both sides of her head and threw her on the bed, pressing down on her neck with his hands. He called her a bitch and complained about her humiliation of him. At some point he stopped strangling her; while he had her pinned down with his leg, he told her that he would kill her. She saw defendant grab a knife from the sofa; he said he should cut her throat. The victim feared for her life. Defendant repeatedly hit her head, complaining about the victim spending Valentine's

Day with her teen daughter's friend; he intimated some sort of sexual liaison, which the victim told him was not true.

Defendant stopped his physical assaults. He began to talk with the victim about how she "wasn't being right as a wife," asserting that she "belong[ed] to him" as her husband and she was "humiliating him in front of his family." He told her that he would not let her leave him again: "[H]e would blow his head off and blow [hers] off and [they]'d both live in hell." She was attempting to calm him down. After about a half-hour, they "ended up having sex together." Telling her that he knew she had left him because he was insufficiently attentive to her sexual needs, defendant pulled down her pants and began to have oral sex with her. This disgusted her, but she lay there and let it happen because she did not want to trigger any further physical abuse. Defendant then had intercourse with her. Sensing her tenseness, he told her she did not need to be afraid. Again, she did not resist these further intimacies because she was indeed afraid she would "start getting hit again."

The victim spent a sleepless night with defendant at her side. In the morning, defendant told her he needed to get some cigarettes. He warned her not to forget what he had told her, or try to leave because he would find her wherever she went and shoot her regardless of who was present. She lay there afraid to move until she heard him drive off down the hill (which was after he had walked to his father's house to ask for a ride).

She then fled the motorhome and knocked on doors. The second home let her in to use the phone. She told them that her husband had been holding her against her will until she took this opportunity to escape. She called a close friend, who then called the sheriff. While she waited in the home, she and the homeowners could see defendant outside walking up and down the road in an apparent search for her.

When a sheriff's deputy arrived, she showed him her injuries and described defendant's threats and physical attacks. She did not say anything about the sex acts in her initial report to the deputy about the incident because it was "embarrassing," and did not think it was a crime; she also thought the deputy "would not believe it anyway." She changed her mind after hearing that defendant had been claiming an all-night sexual encounter with her, and later told a prosecution investigator about the rape while reviewing her previous statement.

After retrieving the cell phone she had left in her purse, the victim found that defendant had left four voice mails after her last conversation with him and before her arrival that night. They were threatening in nature. Had she heard them, she never would have gone to the motorhome.

The prosecutor questioned the victim about her status as a welfare recipient and the fact that she received cash income for cleaning houses that she gave to defendant and never reported. She asserted that she was not afraid of prosecution for welfare

fraud for this incidental income, and denied any concern that defendant might have reported her. However, she had received immunity from prosecution for any testimony related to this issue.

DISCUSSION

I. Admission of Testimony Regarding the “Power and Control” Wheel

Although it is difficult to pin down the exact contours of his argument, defendant generally contends it was error to allow a prosecution investigator to testify regarding the existence of categories of methods of abuse as summarized in a “Power and Control” wheel, and then to answer hypothetical questions as to whether conduct reflected in the facts in the present case came within these categories. We first relate the facts relevant to this argument, which we have not included in our summary above.

A. Background

A prosecution investigator attested to his experience with domestic violence in his present role and in his former position as a peace officer, an issue on which he had focused in his career. This included contacts with “hundreds if not thousands” of victims of domestic violence and investigations in more than 140 cases of domestic violence while working in the prosecutor’s office. He had participated in various victim-oriented training opportunities. He had testified previously as an expert on the topic of the “[d]omestic violence power and control . . . wheel” and other issues arising in prosecutions for domestic violence.

After questioning the investigator about his interviews with the victim, the prosecutor asked about the "Power and Control" wheel. The investigator described it as a summary of conduct present in cases of domestic violence, collected from victims in 1990 and 1991 in the course of "a domestic violence community effort" (making clear later in his testimony that this was a product of a joint effort between law enforcement and victims' representatives).

Before allowing the investigator to proceed with this testimony, defense counsel objected that there was not any evidence that this summary (appearing in a visual aid that the investigator/witness had brought) had ever been subjected to any validation. The trial court ruled that it was admissible as a visual aid to the investigator's testimony on the subject. The prosecutor noted that she was not seeking to broach the subject of battered-partner syndrome, but to discuss "ways that power is kept in [a] domestic violence relationship" in order for the jury to understand "why [the victim is] acting certain ways and saying certain things," in the course of which she would be asking hypothetical questions. The prosecutor specifically mentioned the need to explain why a person would stay in a relationship with an abuser and return to that person, or fail to protest having intercourse against her will.

The investigator testified generally that the eight spokes of the wheel in the picture represented different techniques by which an abuser gains control of a victim of domestic violence,

and briefly summarized each of them. The prosecutor then asked hypothetically about the effect when an abuser "would not allow [a victim] to have any of [her] own money," "call[ed] [her] . . . mean words," made "mean looks and gestures," used "jealousy to justify [his] actions," and asked "[the] victim to lie about the abuse that had happened." In each instance, the investigator expressed his opinion that these actions were in accord with the wheel's summary of common methods for gaining control over a victim. The investigator noted on cross-examination that the wheel represented a summary of past cases and did not purport to be a diagnostic tool for use in a criminal prosecution to determine whether domestic violence had occurred.

B. Analysis

After a lengthy summary of these facts, defendant asserts the wheel did not purport to dispel any common misperceptions about victims of domestic violence, as does properly introduced evidence of rape trauma syndrome (see *People v. Bledsoe* (1984) 36 Cal.3d 236, 247-248; cf. *People v. Sandoval* (2008) 164 Cal.App.4th 994, 1000, 1002 [ostensible "make-up sex" phenomenon does not dispel common misperceptions]), nor was it to rehabilitate an inconsistent domestic violence victim (e.g., *People v. Brown* (2004) 33 Cal.4th 892, 895-896, 907). Defendant contends it was instead only inadmissible profile evidence—which invites a jury to find a defendant guilty if he satisfied equivocal criteria attributed to criminal behavior. (*People v. Robbie* (2001) 92 Cal.App.4th 1075, 1085-1087; see *People v.*

Smith (2005) 35 Cal.4th 334, 357-358.) Defendant thus argues that "[w]ith hypothetical questions and answers based squarely on the evidence [at trial], the jury was led to conclude that [he] was a chronic spousal abuser," which he asserts supported the victim's veracity and negated any claim of his reasonable and subjective belief in the consensual nature of the act of intercourse. He also suggests in passing that if indeed a jury needed expert testimony on the methods in which an abuser gains control over a victim, then the investigator was not a qualified expert.

We tackle the latter point first. The cursory manner in which defendant has raised this argument, without any effort to establish that the trial court's decision to qualify the witness was unreasonable on the facts before it, forfeits our plenary consideration of it. (*Imagistics Internat., Inc. v. Department of General Services* (2007) 150 Cal.App.4th 581, 592, fn. 8, 593.) We therefore confine ourselves to noting that the investigator had sufficient experience with victims of domestic violence for the trial court reasonably to conclude he had expertise in common attributes of abuse in such cases that resulted in surrender of control to the abuser.

As for the testimony itself, it did not amount to improper profile testimony. The witness did not specifically tie the methodology of abusers to defendant, nor assert at any point that a defendant would be guilty of the *charged offenses* of criminal threats, corporal injury, spousal rape, or false

imprisonment if he engaged in these behaviors. (*People v. Prince* (2007) 40 Cal.4th 1179, 1226.) His responses to the five hypothetical questions also did not amount to an opinion on defendant's guilt of the charged offenses, or whom to believe, or invite a conclusion as to any element of the charged offenses (including consent). (*Id.* at pp. 1226-1227.) They only provided an explanation for why a victim might return to an abuser or fail to protest an unwanted act of intercourse. Finally, we cannot discern any possibility of prejudice to defendant. Testimony regarding the types of abusive behavior leading to the exercise of control over a victim was brief, and the five hypothetical questions were general rather than connected directly with defendant. The investigator witness abjured any connection between the wheel and the truth-finding function of a trial. The prosecutor did not even reference this testimony in closing argument. Most importantly, despite the victim's undisputed testimony regarding defendant's employment of a knife, there were jurors willing to acquit him of assault with a deadly weapon and use of a deadly weapon, indicating the witness did not ineluctably draw the jury as a whole to a conclusion that defendant was guilty as charged. Accordingly, we reject this argument.

II. Exclusion of Evidence of Victim's 1992 Welfare Fraud Conviction

Before trial, defense counsel noted his intent to explore evidence of the victim's recent commission of welfare fraud (in support of a theory that she fabricated her account of what had

happened as a preemptive strike against defendant reporting her for welfare fraud). Defendant also sought to introduce evidence of the victim's 1992 felony conviction for welfare fraud (in opposition to the prosecutor's motion in limine seeking to exclude this conviction as remote), as demonstrating her appreciation of the potential consequences of welfare fraud and on the issue of the victim's veracity. The court agreed that defendant could fully question the victim about her recent behavior, but found a 1992 conviction to be too stale to have any probative value in the balancing required under Evidence Code section 352. The court adhered to this ruling in a subsequent pretrial discussion, finding the conviction too remote for impeachment and less probative on the question of the victim's awareness of the consequences of welfare fraud than the warnings in her present welfare application. During trial, the court concluded that her testimony claiming blithe indifference to the possibility of a prosecution for welfare fraud was not a basis for admitting the 1992 conviction.

Defendant argues, "[The victim's] motivation to falsely accuse [him] was much greater than she acknowledged. For [this] reason, the prior conviction was highly relevant to her state of mind, regardless of how old it was." He asserts the exclusion was prejudicial.

We will not belabor the issue of whether the 1992 felony conviction had such overwhelming probative value that the trial court abused its discretion in excluding it. We cannot discern

a reasonable probability of a more favorable result to defendant had it been admitted. The circumstance of the victim's recent welfare fraud was before the jury. That was sufficient to apprise the jury that the victim's veracity generally was a checkered thing (which was the gist of defense counsel's closing argument). The evidence of the grant of immunity from the prosecution (and the warnings in the victim's welfare applications) were more than sufficient to establish that the victim was indeed aware of the consequences of welfare fraud without introducing the 1992 conviction, and would have allowed defense counsel to pursue the theory in closing argument (which he did not) that the victim fabricated the claim of rape in order to discredit any effort on defendant's part to report it. In any event, this theory of motive to lie on the victim's part was a weak reed on which to lean in the defense case: Whether or not defendant was accused of these crimes, the welfare agency and the district attorney could still have been alerted to the need to investigate potential welfare fraud had defendant chosen to tell them. We reject this argument as a result.

III. Sufficiency of the Evidence

Defendant asserts there is insufficient evidence to support the convictions for spousal rape and felony false imprisonment. His arguments are unpersuasively tethered to his reading of the evidence favorable to himself rather than to the verdicts.

A. Spousal Rape

Defendant argues, "[The victim] came to [the] motorhome with the apparent intent to spend the night and resume marital relations. Although there was substantial evidence of violent conduct by defendant earlier in the evening, none of that conduct was connected directly to the intercourse." He also points to testimony in which the victim acknowledged having "make-up" sexual relations with defendant after prior arguments where he had hit her, though "not right afterwards" as in the charged incident, and points to her delay in reporting defendant's sexual offense.

This argument utterly ignores the victim's own testimony that she did *not* intend to spend the night (even in light of her testimony that she had wanted to *talk* with defendant because she missed him and was interested in returning to him), and that she submitted to the acts of oral copulation and intercourse (even though these disgusted her) only because she feared a refusal would trigger additional violence from defendant. The victim's acknowledgement of previous incidents of "make-up sex" and her delay in reporting the offense simply went to the *weight* of her testimony that the act of intercourse was not consensual, and not its *sufficiency* to establish that element. We therefore reject defendant's claim of insufficient evidence for this conviction.

B. Felony False Imprisonment

With respect to this count, defendant argues the victim "promptly left" after he had told her to stay. He contends this

demonstrated that his threat to hunt her down and shoot her did not result in any effective menace, and there was an absence of evidence of an appreciable confinement before he left.

False imprisonment (the elements of which are identical for either the tort or the offense) requires the confinement to be for an *appreciable* period of time, however short that may be. (*Molko v. Holy Spirit Assn.* (1988) 46 Cal.3d 1092, 1123.)

Again, defendant disregards the victim's testimony that she lay where she was as a result of defendant's threat (which made her "[s]uper scared"), and did not attempt to move until the sound of his father's truck disappeared in the distance. Since defendant first had to go to his father's home to ask for the ride before the truck even began to drive away, this is more than sufficient evidence of a brief but appreciable period of confinement resulting from defendant's menace. We thus reject this argument.

IV. Section 654

The trial court concluded the subordinate counts all involved separate acts from the spousal rape with separate objectives, and accordingly imposed consecutive sentences for all of them. Defendant argues the spousal rape was accomplished by means of the criminal threats and the corporal spousal injuries, and the other offenses provided the necessary menace for felony false imprisonment. Therefore, under section 654 the trial court could not impose additional punishment for the other three convictions.

Section 654 precludes multiple punishment where an act or course of conduct violates more than one criminal statute but a defendant has *only* a single intent and objective; on the other hand, if the evidence discloses multiple independent criminal objectives that were not incidental to each other, each of the objectives may incur punishment even if they share common acts or formed part of an indivisible course of conduct. (*People v. Liu* (1996) 46 Cal.App.4th 1119, 1135.) Furthermore, even if there is but a single objective for a course of conduct, a temporal discontinuity between individual acts subjects them to multiple punishment. (*People v. Andra* (2007) 156 Cal.App.4th 638, 640.) On this issue, we review the trial court's explicit factual resolutions for substantial evidence. (*Liu, supra*, at p. 1136; *People v. Coleman* (1989) 48 Cal.3d 112, 162.)

To rehash in a nutshell, defendant both threatened and physically abused his wife after her arrival at the motorhome. After a period of lecturing her, he began to have sex with her. The following morning, defendant threatened to hunt her down and shoot her if she left while he went out to buy cigarettes.

The People do not identify any principled manner in which to find substantial evidence that the criminal threats and the corporal injuries inflicted contemporaneously could have been the product of any independent objectives on defendant's part.²

² Neither party suggests the conviction for criminal threats had any connection with the events of the following morning. In closing argument, the prosecutor explicitly premised the count of criminal threats on the actions during the previous

The trial court did not give a basis for its conclusion to the contrary, nor does the probation report contain one. The court's decision to impose sentence for the criminal threats (the less severe punishment)—count 1, accordingly lacks substantial evidence in support, and we will modify the judgment to stay imposition of sentence on this count. (*People v. Flowers* (1982) 132 Cal.App.3d 584, 588-589.)

However, it was reasonable for the trial court to infer that the intent to have sexual relations with the victim arose *independently* after the threats and abuse ceased, and thus that these antecedent crimes had not been defendant's intended means of facilitating this goal. In addition, the act of spousal rape happened after a significant temporal break during which there was a reasonable period for defendant to have chosen to break off a unified course of conduct (a factor even more applicable to the felony false imprisonment on the following morning after defendant's slumbers). It was thus proper for the court to impose additional punishment for both the antecedent corporal injury to a spouse and the subsequent felony false imprisonment.

DISPOSITION

Imposition of sentence on the conviction for criminal threats (count 1) is stayed; as thus modified, the judgment is

evening (specifically, defendant's professed desire while wielding the knife to slit the victim's throat). The prosecutor relied on the conduct on the following morning to establish the menace element of felony false imprisonment.

affirmed. The trial court shall prepare an amended abstract of judgment and forward a certified copy to the Department of Corrections and Rehabilitation.

BUTZ, J.

We concur:

RAYE, P. J.

HULL, J.