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

THE PEOPLE,

Plaintiff and Respondent,

v.

MATTHEW ETHAN BURDYSHAW,

Defendant and Appellant.

C072393

(Super. Ct. No. F1200368)

Following a jury trial, defendant Matthew Ethan Burdyslaw was convicted of assault by means likely to produce great bodily injury (Pen. Code, § 245, subd. (a)(4)) and inflicting great bodily injury on his victim in violation of Penal Code section 12022.7, subdivision (a). On appeal, defendant contends the trial court erred in refusing his request for a pinpoint instruction on the corpus delicti rule, which he argues “highlighted” his only defense at trial. We conclude the proposed pinpoint instruction was duplicative and thus there was no error. We do note, however, a clerical error in the

abstract of judgment and order the abstract of judgment corrected. The judgment is affirmed.

BACKGROUND

On May 25, 2012, while responding to a call regarding a “disturbance,” law enforcement officers found James Keffer lying face down on the road, near an undamaged bicycle. Keffer was unresponsive and it appeared to the officers Keffer had suffered extensive injuries. Initially, the officers believed Keffer was injured in a vehicle accident, but after talking to witnesses learned Keffer had been assaulted.

Keffer was taken to the hospital. He had missing teeth, several loose teeth, and blood on his upper jaw and in his mouth. Keffer suffered deep lacerations to his lip and gum that extended into his upper jaw, and had a broken upper jaw bone. The treating physician described Keffer’s injuries as “substantial.”

Earlier that same night, Keffer was at a party with defendant and several others drinking alcohol and using drugs. Keffer, who had been drinking shots of tequila, was so intoxicated he could not remember how he was injured (his blood-alcohol concentration was recorded by the hospital at .316 percent). Ryan Welch, who lived near the house where the party took place, had seen Keffer fighting with defendant and another man (Paul Duckett). He saw Keffer get knocked to the ground, get up and run away. Defendant and Duckett chased Keffer out of Welch’s view but when defendant and Duckett returned, Welch overheard defendant say, “I beat his ass again.”

Another witness, who was also intoxicated that night, remembered defendant coming into her bedroom and telling her, “I don’t know if I killed him. I’m so sorry.” She also told the officers defendant said he “had pushed [the victim’s] head into the fucking cement and [was] afraid he killed the guy.”

Defendant was arrested and charged with assault by means likely to produce great bodily injury. While he was being held in county jail, defendant was visited by Melissa Hughes (who was at that same party). During their conversation, which was recorded, defendant said, "I guess I beat him up pretty bad."

At trial, defendant argued the prosecution failed to prove he caused Keffer's injuries, that it was equally likely Keffer "grabbed his bicycle and, being [intoxicated] ran into the street with it and landed on his face." Defendant requested that the trial court give the following pinpoint instruction: "You have been given evidence of alleged statements by the defendant; in order to find defendant guilty of the charges, that evidence must be supported by some proof of the corpus delicti of the crime aside from, or in addition to, such statements."

The trial court refused to give the instruction with the following explanation: "I believe that instruction [CALCRIM No.] 359 does exactly what this does, so I intend to give 359, which is basically the corpus delicti instruction and not give your instruction. Would you like to be heard?"

"[Defense counsel]: I think *Alvarez* -- this is a quotation from *Alvarez* as a matter of fact, and I think the rest of the quotation was that the instruction has to be given by the court. I think it's stated in a way that's more correct than the 359 corpus delicti, and I'll submit it.

"THE COURT: All right. I'm going to give 359."

Defendant was convicted as charged and sentenced to serve an aggregate term of six years in state prison. Defendant appeals.

DISCUSSION

Defendant's only claim on appeal is that the trial court erred in refusing to give the pinpoint instruction he requested on the corpus delicti rule. Defendant argues the

requested instruction is a correct statement of the law and “highlighted the very theory of the defense case, that absent [defendant’s] admissions, the evidence pointed to a traffic accident as the cause for Keffer’s injuries.” Thus, the trial court’s refusal to give his requested instruction was prejudicial error. We disagree.

The trial court instructed the jury with CALCRIM No. 359: “The defendant may not be convicted of any crime based on his out-of-court statements alone. You may only rely on the defendant’s out-of-court statements to convict him if you conclude the other evidence shows that the charged crime or a lesser included offense was committed. That other evidence may be slight and need only be enough to support a reasonable inference that a crime was committed.”

CALCRIM No. 359 is a correct statement of the corpus delicti rule. (*People v. Reyes* (2007) 151 Cal.App.4th 1491, 1498.) Defendant, nevertheless, proposed an additional instruction on the corpus delicti rule in order to highlight the “only defense theory” at trial. A criminal defendant generally is entitled, on request, to instructions that pinpoint the defense theory of the case. (*People v. Gutierrez* (2002) 28 Cal.4th 1083, 1142.) A trial court, however, “is not required to give pinpoint instructions that merely duplicate other instructions.” (*People v. Panah* (2005) 35 Cal.4th 395, 486; *People v. Jones* (2012) 54 Cal.4th 1, 82.)

Nonetheless, defendant argues he was entitled to the duplicative instruction because it was a correct statement of the law and highlighted his defense theory. Defendant’s argument has no merit. Here, the trial court did not err because defendant’s requested instruction on the corpus delicti rule was duplicative of CALCRIM No. 359.

We note a clerical error in the abstract of judgment. Defendant was convicted of assault by means likely to produce great bodily injury (Pen. Code, § 245, subd. (a)(4)).

The abstract of judgment cites the wrong Penal Code section. We order the abstract of judgment corrected.

DISPOSITION

We direct the trial court to correct the abstract of judgment to reflect the judgment imposed and forward a certified copy of the corrected abstract of judgment to the Department of Corrections and Rehabilitation. The judgment is affirmed.

_____HOCH_____, J.

We concur:

_____BLEASE_____, Acting P. J.

_____MURRAY_____, J.