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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

ROCHASTA RENEE JONES,

Defendant and Appellant.

E053521

(Super.Ct.No. INF10000109)

OPINION

APPEAL from the Superior Court of Riverside County. David B. Downing,
Judge. Affirmed.

Suzanne G. Wrubel, under appointment by the Court of Appeal, for Defendant and
Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney
General, Julie L. Garland, Assistant Attorney General, James D. Dutton, and Sabrina Y.
Lane-Erwin, Deputy Attorneys General, for Plaintiff and Respondent.

I

INTRODUCTION¹

Defendant Rochasta Renee Jones was involved in a volatile relationship with Michael Harris-Neely.² During an altercation between them, Jones attacked Neely with a butcher knife.

Defendant was charged with three felonies—attempted murder, assault with a deadly weapon, and corporal injury to a cohabitant—and two misdemeanors—violating a protective order and obstruction of an officer. The jury did not reach a verdict on the attempted murder count, which the court dismissed on the prosecutor’s motion. The jury convicted defendant on the remaining four counts and the related enhancements. The court sentenced defendant to a total prison term of eight years.

On appeal, defendant argues she was denied her constitutional rights of due process and equal protection because the court would not order the jail to allow her to use a hair relaxer to straighten her hair during trial. She also challenges a sentence enhancement on count 3. We reject these contentions and affirm the judgment.

¹ All statutory references are to the Penal Code unless stated otherwise.

² Neely, formerly Michelle Neely, changed his name legally after undergoing gender reassignment.

II

FACTUAL BACKGROUND

A. Neely's Testimony

Defendant and Neely dated and lived together intermittently for about three years until January 2010.

When defendant and Neely were going through a temporary breakup in 2008, Neely and his daughter were packing things to move out. As Neely collected some DVD's, defendant yelled at Neely, made accusations, and threw a glass at him. Neely called the police who took statements from both of them.

A couple of days later, on September 2, 2008, Neely returned to retrieve his belongings and discovered defendant had damaged the pool's power system. When Neely confronted defendant, defendant disclosed that she had accessed Neely's email and other personal information. They wrestled over a laptop computer and defendant threatened to shoot Neely. Neely grabbed the laptop and ran outside to his car. Defendant jumped on Neely's back, choking him and biting his shoulder until Neely broke free and drove away. The fight continued at a friend's house where defendant obtained possession of the laptop and called the police. Neely sought a restraining order but the couple reconciled between January 2009 and October 2009.³

After October 2009, they stopped dating but lived together in separate bedrooms. In January 2010, Neely was recovering from gender reassignment surgery which had

³ Defendant also applied for a restraining order.

occurred a month before. Defendant had accompanied Neely to the hospital for the surgery.

On January 22, 2010, Neely invited defendant to go out for the evening before Neely left town the next day to visit his parents. They ate appetizers. Defendant had some drinks and Neely drank seltzer water. Neely was tired and drove them home. Neely went to his bedroom to relax. Eventually, defendant came into the bedroom wearing pajamas. Defendant was agitated and pacing. She demanded to know if Neely was taking someone with him to his parents. When Neely asked defendant to leave, she jumped on him, grabbing and scratching his face. Neely pushed defendant out of the room.

After Neely saw the scratches on his face, he decided to pack and leave while defendant continued screaming and yelling. As Neely approached the door to the garage, defendant rushed at him and stabbed him in the back with a butcher knife. When Neely turned around, defendant punctured him in the chest. Neely, who was a former peace officer, subdued defendant.

Neely ran out into the street, seeking help. Defendant came outside with another knife and ran towards Neely before turning away. Neely felt blood pouring down his back. He asked a passing couple to help him and they called the police.

The stab wound to the back was deep enough to expose the spinal cord. Neely had 22 to 30 stitches on his back. The puncture wound to the chest left a scar. Neely suffers ongoing pain and nerve damage.

On cross-examination, Neely admitted he owned a semi-automatic handgun that he kept in his bedroom.

Defendant resisted arrest and had to be forcibly detained.

B. Defendant's Testimony

Defendant recounted a different version of events. After defendant met Neely in 1998, they began dating in 2006 and living together in January 2008.

When defendant threw the glass in 2008, she was aiming at the fireplace, not Neely. Defendant did not threaten Neely with a gun and she is afraid of guns. Defendant had read Neely's email to confirm some suspicions. They battled over the laptop computer until Neely gained control of it. Defendant admitted she bit Neely. Neely drove away with defendant partly in the car and stopped at a friend's house. Defendant gained possession of the computer again and called 911. Defendant sought a restraining order because she was afraid of Neely.

Neely and defendant reconciled in November 2008. In January 2009, Neely began treatment for gender reassignment.

When they broke up in October 2009, Neely initiated another incident by smashing dishes in the kitchen and talking to herself while defendant hid in a closet. They argued about the state of the kitchen and defendant took refuge in the bathroom. Neely entered the bathroom and punched defendant, causing her to fall against the commode and break it. Then they slugged at one another in the bedroom. Defendant was five feet, five and one-half inches tall and weighed 118 pounds. Neely was taller and 230 pounds.

On January 22, 2010, they still shared a bedroom. When they went to dinner, defendant had three Cosmopolitans but Neely did not drink. After they came home, defendant was in good spirits. She took a shower and dressed in pajamas. She asked Neely if he was taking someone to San Diego. Neely would not answer. Neely became angry and tried to eject defendant physically from the bedroom. Defendant yelled and grabbed Neely's face, scratching him unintentionally. Neely broke away and ran into the bathroom.

Defendant and Neely proceeded fighting, with Neely dragging defendant to the top of the staircase. Their arguing continued downstairs until Neely started to grab defendant and defendant grabbed a knife to defend herself. Defendant warned Neely but defendant "nicked" Neely in the chest because he came too close. Neely became enraged and charged at defendant who stabbed Neely in the back although she had intended to strike Neely's buttocks.

Neely ran outside and defendant followed. Realizing she looked crazy holding a knife, defendant tossed the knife away. Defendant went to a neighbor's house "to think" until the police arrived.

Defendant was photographed after her arrest. She had abrasions on her arms, knees, and left elbow.

III

CONSTITUTIONAL RIGHT TO USE HAIR RELAXER

Defendant filed a pretrial motion, explaining that she is African American with "typical curly or kinky hair." While in jail, she could not obtain hair products and her

hair “resemble[d] that of a homeless or transient person” with “crack head hair.” She asked that she be allowed to use a hair relaxer before trial to “appear presentable to the jury.” Defendant explained to the court that a hair relaxer is a cream that chemically straightens hair.

The court acknowledged that hair straightening is an issue in the Black community (and the subject of an “Oprah” episode). The court made an order allowing defendant to use a hair relaxer. Subsequently, the court had a meeting with the captain of the jail who said the jail’s regulations would not permit the use of a hair relaxer although the captain did not explain the reason for the ban.⁴ The court and the prosecution discussed the fact that defendant was nicely dressed and wearing her hair in a bun and did not look freakish. Rather than delay the case, the court ordered the trial to proceed.

Defendant argues the denial of use of a hair relaxer impaired her constitutional rights. Defendant relies on a line of cases involving defendants being tried in prison garb: “To compel a defendant to go to trial wearing jail clothing violates his constitutional rights to a fair trial, due process, and equal protection. It creates an unacceptable risk of undermining the presumption of innocence in the jury’s eyes. Furthermore, it does not serve any essential state interest, and it is imposed discriminatorily on those who cannot afford to make bail. (*Estelle v. Williams* (1976) 425

⁴ State prison differs. Section 3190 of the California Code of Regulations (CCR) governs the type and amount of personal property that state prison inmates may possess. See 15 CCR section 3190; see also California Department of Corrections and Rehabilitation (CDCR) Department Operations Manual (DOM). Female inmates may possess certain personal care items, including a hair relaxer kit (no lye). See DOM section 54030.21.3, page 476.

U.S. 501, 503-505[]; *People v. Taylor* (1982) 31 Cal.3d 488, 494-495[.]¹) Nevertheless, the error is not reversible per se, but may be found harmless beyond a reasonable doubt under the *Chapman* standard (*Chapman v. California* (1967) 386 U.S. 18, 21-22). (*Estelle, supra*, 425 U.S. at pp. 507-508; *Taylor, supra*, 31 Cal.3d at pp. 499-500; *People v. Pena* (1992) 7 Cal.App.4th 1294, 1305-1306.)” (*People v. Meredith* (2009) 174 Cal.App.4th 1257, 1262-1263.)

Two principal reasons have been articulated for the prison garb rule: “One is equality before the law. A defendant who can afford bail appears for trial in the best array he can muster. He may be a veritable satyr clad like Hyperion himself. Imposition of jail clothing on a defendant who cannot afford bail subjects him to inferior treatment. He suffers a disadvantage as a result of his poverty. Our traditions do not brook such disadvantage.[] The second consideration is psychological. Some defendants may be callous; others confused and embarrassed by prison garb to the point where they may be handicapped in presenting or assisting their defense. Presumed to be innocent, the prisoner is entitled to as much dignity and respect as safety allows. As one court tersely put it: ‘The presumption of innocence requires the garb of innocence, . . .’ (*Eaddy v. People*, 115 Colo. 488 [174 P.2d 717, 718].)” (*People v. Zapata* (1963) 220 Cal.App.2d 903, 911; *Taylor*, at p. 495.)

The first consideration does not apply in this case because defendant was permitted to wear street clothes that did not carry the stigma of a prison uniform which has been characterized as a “brand of incarceration” (*United States v. Dawson* (5th. Cir.

1977) 563 F.2d 149, 152) or the badge of a criminal. (*United States v. Forrest* (5th. Cir. 1980) 623 F.2d 1107, 1116.)

Instead, defendant relies on the embarrassment factor. Defendant was self-conscious about appearing before the jury with a hair style she regarded as unacceptable. Although we acknowledge that defendant's subjective concern was authentic, there is no judicially-acknowledged stigma attached to hair style like there is for prison garb. Furthermore, both the court and the prosecutor observed that defendant's appearance was acceptable. Defendant may have been embarrassed and self-conscious but objectively there was no reason for her discomfort. On this point, the trial court's findings, express or implied, are supported by substantial evidence. (*People v. Maury* (2003) 30 Cal.4th 342, 384.)

Additionally, although the record does not offer an explanation for prohibiting hair relaxers, we can assume the jail had safety concerns about allowing inmates to possess toxic or corrosive substances. (*People v. Zapata, supra*, 220 Cal.2d at p. 911.) The court properly decided not to delay the trial to accommodate defendant. (*People v. Meredith, supra*, 174 Cal.App.4th at pp. 1261-1262.) In summary, we conclude defendant had no constitutional right to use a hair relaxer for trial.

Even if the court had erred, there is no indication whatsoever that the jury did not find defendant to be a credible witness. On the contrary, the jury did not convict her of the most serious charge of attempted murder. Apparently the jury concluded that, in the context of her contentious relationship with Neely, defendant was the more serious aggressor. Defendant's minor injuries were more likely attributable to resisting arrest

than to Neely. Defendant's efforts to explain Neely's injuries as accidental and justifiable self-defense are inconsistent, implausible, and unpersuasive. In summary, it is not reasonably possible that any error in denying the use of hair relaxer influenced the jury. Instead, the error, if any, was harmless beyond a reasonable doubt. (*People v. Taylor, supra*, 31 Cal.3d at pp. 499-500.)

IV

SECTION 654

Defendant was convicted on count 3 for willful infliction of corporal injury on a cohabitant (§ 273.5, subd. (a)) with related enhancements for using a deadly weapon (§ 12022) and infliction of great bodily injury during circumstances involving domestic violence. (§ 12022.7, subd. (e).) The court sentenced defendant to the middle term of three years on count 3, a consecutive one-year term on the weapon enhancement, and another four-year term on the domestic violence enhancement.

Defendant argues the court should not have sentenced defendant to four years under section 12022.7, subdivision (e) because the domestic violence enhancement was based on the same circumstances that gave rise to the underlying offense for count 3, violating the dual punishment proscription of section 654. In light of *People v. Ahmed* (2011) 53 Cal.4th 156, we reject defendant's arguments.

In *Ahmed*, the Supreme Court held that section 654 applies to enhancements that go to the "nature of the offense." (*People v. Ahmed, supra*, 53 Cal.34th at pp. 161-162.) If a defendant is convicted under two statutes for one act or indivisible course of conduct, section 654 requires that the sentence for one conviction be imposed, and the other

imposed and then stayed. (*People v. Deloza* (1998) 18 Cal.4th 585, 591-592; *People v. Alford* (2010) 180 Cal.App.4th 1463, 1469, 1471-1472.) Before its decision in *Ahmed*, our Supreme Court had not determined whether section 654 applies to enhancements. In *Ahmed* (which involved two enhancements, firearm use and great bodily injury), the Supreme Court outlined the approach for determining whether multiple sentence enhancements may be imposed. First, a court should examine the specific sentencing statutes. If they provide the answer, the court should stop there, and need not consider the more general provisions of section 654, because a specific statute prevails over a more general one. (*Ahmed*, at pp. 160-161, 162, 164.)

Second, if the specific sentencing statutes do not resolve the issue, section 654 does apply to enhancements. (*People v. Ahmed, supra*, 53 Cal.4th at pp. 161, 164.) However, it applies differently to enhancements than to substantive crimes. (*Id.* at pp. 161, 164-165.) While provisions defining substantive crimes generally define criminal acts, enhancement provisions increase the punishment for those acts by “focus[ing] on *aspects* of the criminal act that are not always present and that warrant additional punishment.” (*Id.* at p. 163.) “[W]hen applied to multiple enhancements for a single crime, section 654 bars multiple punishment for the same *aspect* of a criminal act.” (*Id.* at p. 164.) Applying this approach, the Supreme Court concluded that a specific sentencing statute permitted imposition of dual enhancements. (*Id.* at pp. 165-167, 169.) Because section 1170.1 resolved the issue, the *Ahmed* court did not consider section 654. (*Ahmed, supra*, at p. 169.)

The present case does not involve dual enhancements but involves overlap of an enhancement and the underlying offense. Defendant argues that the trial court should not have imposed the domestic violence enhancement because it overlapped with the underlying offense of corporal injury to a cohabitant. Defendant attempts to distinguish *People v. Chaffer* (2003) 111 Cal.App.4th 1037, 1044-1045, holding that section 654 does not bar punishment for both (1) an offense and (2) a great bodily injury enhancement.

The *Ahmed* court did not consider a claim that section 654 limited the application of an enhancement because it overlapped with the underlying offense. *Ahmed* requires, however, that we begin our analysis of this claim by considering the specific sentencing statute at issue – section 12022.7. (See *People v. Ahmed, supra*, 53 Cal.4th at pp. 160-161, 162, 164.) Subdivisions (a) through (e) of section 12022.7 provide enhancements for great bodily injury inflicted under various specified circumstances. The enhancement in subdivision (e) is for great bodily injury under circumstances involving domestic violence. Subdivision (g) of section 12022.7 provides that “[s]ubdivisions (a), (b), (c), and (d) shall not apply if infliction of great bodily injury is an element of the offense”; subdivision (g) does not specify such a limitation on the enhancement applicable under subdivision (e), for great bodily injury under circumstances involving domestic violence. Accordingly, although a section 12022.7 enhancement generally may not be applied where great bodily injury is an element of the offense, “[t]he enhancement may be applied . . . if the crime is committed under circumstances involving domestic violence.” (See *People v. Hawkins* (2003) 108 Cal.App.4th 527, 530-531.)

Here defendant inflicted great bodily injury under circumstances involving domestic violence. Accordingly, section 12022.7, subdivisions (e) and (g), permit imposition of a great bodily injury enhancement. Because section 12022.7 resolves this question, we need not consider the more general provisions of section 654. (See *People v. Ahmed, supra*, 53 Cal.4th at pp. 160-161, 162, 164, 169.) Although defendant’s offense of corporal injury involved domestic violence, that could not provide a basis for holding the enhancement under section 12022.7, subdivision (e), is inapplicable as defendant proposes. To the contrary, the existence of “circumstances involving domestic violence” is what triggers that enhancement.

V

DISPOSITION

Defendant did not have a constitutional right to use a hair relaxer at trial. The court properly sentenced defendant to a four-year enhancement for committing great bodily injury under circumstances involving domestic violence. (§ 12022.7, subd. (e).)

We affirm the judgment.

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CODRINGTON
J.

We concur:

RAMIREZ
P.J.

MILLER
J.