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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.

JONATHAN EARL SAMUELS,

Defendant and Appellant.

E055845

(Super.Ct.No. FVA1101784)

OPINION

APPEAL from the Superior Court of San Bernardino County. Ingrid Adamson Uhler, Judge. Affirmed.

Brendan M. Hickey, 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, Meagan J. Beale and William M. Wood, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant and appellant Jonathan Earl Samuels was charged by information with corporal injury to a spouse. (Pen. Code, § 273.5, subd. (a).)<sup>1</sup> Following a jury trial, he was convicted of the lesser included offense of misdemeanor spousal battery. (§ 243, subd. (e)(1).) A trial court placed defendant on probation for a period of three years.

On appeal, defendant contends that: (1) the trial court erred in failing to instruct the jury with CALCRIM No. 358 with regard to alleged statements made by him; and (2) the court abused its discretion in admitting evidence of prior domestic abuse. We disagree and affirm.

#### FACTUAL BACKGROUND

Defendant and his wife (the victim) were married in December 2010, and they lived together with defendant's daughters, T.S. and C.S. On the afternoon of November 2, 2011, defendant and the victim got into an argument regarding some work she had done for him on a legal brief he was going to file. They were at home arguing upstairs in the office. They argued on and off, into the evening.

Both defendant and the victim testified at trial regarding the argument, but their testimonies differed significantly. The victim testified that, during the course of their marriage, defendant verbally abused her by "snapping" at her, yelling at her, and making disparaging comments to her. She testified that, on November 2, 2011, she and defendant were in the office, and defendant was making disparaging comments about her. They argued for a while, the victim walked out of the office, and she went downstairs to the

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<sup>1</sup> All further statutory references will be to the Penal Code, unless otherwise noted.

kitchen. Defendant started folding her clothes and packing them because he wanted her to move out. He took her clothes out to the car. Defendant then became irritated because the victim was ignoring him, so he started to yell at her. The victim ran upstairs and locked herself in the bedroom to get away from him. Defendant unlocked the bedroom door and entered the room yelling and screaming. He was furious by the time he got into the room. He pushed the victim in the stomach “really, really, really hard.” She said her “whole body flew up” in the air, and she fell onto the bed. The victim testified that she felt a lot of pain. Since she had previously been diagnosed with tumors in her stomach, that area of her body was sensitive. Defendant’s daughters came in the room at that point, right behind defendant and the victim. Defendant was standing over the victim, and his eyes were “crazy.” His daughters were screaming for him to stop, so defendant “snapped out of it” and backed away. The victim then locked herself in the bathroom and called 911 because she was afraid of what defendant might do next. The victim further testified that defendant was six foot four inches tall and weighed 220 pounds, and she was five foot two inches tall, and weighed 119 pounds. After being pushed by defendant, the victim had severe cramping and excessive vaginal bleeding, and she sustained bruises on her stomach and arm.

Defendant testified on his own behalf and said that the victim was arguing with him about giving her more credit for the help she gave him on his legal brief. However, he ignored her. The victim left the room and came back and started to argue again. Defendant testified that he was not angry with her, but just irritated. So, he told her to stop. He then got up, took the victim by both arms, and escorted her out of the office “as

a gentleman would” into the bedroom. Defendant testified: “I simply (indicating) on the bed, and she bounced on the bed for a soft landing.” He later clarified that he pushed the victim back onto the bed with his hands. He said his hands were positioned on her shoulders, and that he never put his hands on her stomach. Defendant went back into the office, and the victim followed him. The victim started complaining again. Defendant ignored her a little while longer, but then became upset. He went to the master bedroom and started taking the victim’s clothes out of the closet. He told her she had to leave because he could not take it anymore. Defendant testified that he threw the victim’s clothes in the car “in anger.” He then calmed down, took the clothes out of the car and started folding them and putting them in boxes. Defendant folded her clothes for about two hours. He took all the boxes and put them in the car because he was still adamant about the victim leaving. He realized that the victim had the car keys, so he went back in the house and started yelling for her. He went upstairs, and his daughter C.S. followed behind him. Defendant tried the bedroom door, but it was locked. So he unlocked the door with a screwdriver. He went into the bedroom and did not see the victim, but noticed that the bathroom door was closed and locked. He used the screwdriver to open that door, and his daughters said, “Dad, no. Dad, no.” Then the doorbell rang, as the police arrived on the scene. Defendant testified that he did not punch or kick the victim that day, and that the house “was peaceful for 2 hours.”

Defendant’s daughter (the victim’s stepdaughter), T.S., testified at trial that she was in the hallway working on a project. At some point, she heard the victim yell, so she ran over to see what was happening. T.S. saw defendant shove the victim and the victim

fall on the bed. She described it as a “firm” fall on the bed. She said defendant was not yelling, but seemed frustrated. T.S. told him to stop and calm down. The victim got up and ran to the restroom. T.S. said defendant started trying to unlock the door because he thought the victim had his car keys.

Defendant’s other daughter, C.S., testified that defendant and the victim got into an argument and both started yelling. C.S. was in the hallway, and she went to the master bedroom because she heard defendant and the victim “yelling really . . . loud.” Defendant’s back was toward C.S., but she saw him “firmly” push the victim on the bed. C.S. and her sister yelled at defendant to stop and “not . . . touch her.” On cross-examination, C.S. confirmed that she saw defendant push the victim with such force that the victim “flew” onto the bed. She said defendant pushed the victim by the shoulders. C.S. also said that defendant had a “pretty bad temper,” and that she had seen him lose his temper with the victim before.

Officer Christopher Wessman, who responded to the scene, also testified at trial. He said that defendant answered the door. Officer Wessman went into the house, noticed boxes in the living room, and thought it looked like somebody was moving. Officer Wessman talked to the victim and observed that she looked “Very frightened.” He observed injuries on her and testified that the victim’s bruises appeared to be fresh. The victim did not initially mention anything about pain in her stomach area, but she was holding her stomach as if she had been hit. She eventually complained of severe pain, so Officer Wessman called an ambulance. Officer Wessman took pictures of the victim’s

stomach, which were shown to the jury at trial. The pictures showed bruising and red marks on her stomach and a bruise on her arm.

## ANALYSIS

### I. The Court Did Not Err by Failing to Instruct the Jury With CALCRIM No. 358

Defendant argues that the court erred in failing to instruct the jury with CALCRIM No. 358. He claims that the prosecutor elicited testimony from the victim about certain “out-of-court statements purportedly made by [him].” We find no error.

#### A. *Relevant Law*

CALCRIM No. 358 provides:

“You have heard evidence that the defendant made [an] oral or written statement[s] (before the trial/while the court was not in session). You must decide whether the defendant made any (such/of these) statement[s], in whole or in part. If you decide that the defendant made such [a] statement[s], consider the statement[s], along with all the other evidence, in reaching your verdict. It is up to you to decide how much importance to give to the statement[s]. [Consider with caution any statement made by (the/a) defendant tending to show (his/her) guilt unless the statement was written or otherwise recorded.]”

“When evidence is admitted establishing that the defendant made oral admissions, the trial court ordinarily has a sua sponte duty to instruct the jury that such evidence must be viewed with caution. [Citation.] We have explained, however, that ‘the purpose of the cautionary instruction is to assist the jury in determining if the statement was in fact made. [Citation.]’ [Citation.]” (*People v. Slaughter* (2002) 27 Cal.4th 1187, 1200.)

“The cautionary language instructs the jury to view evidence of an *admission* with caution. By its terms, the language applies only to statements which tend to prove guilt and not to statements which do not.” (*People v. Vega* (1990) 220 Cal.App.3d 310, 317.)

“A trial court has a *sua sponte* duty to instruct the jury to view a defendant’s oral admissions with caution if the evidence warrants it. [Citations.] To determine prejudice, ‘[w]e apply the normal standard of review for state law error: whether it is reasonably probable the jury would have reached a result more favorable to defendant had the instruction been given.’ [Citation.]” (*People v. Wilson* (2008) 43 Cal.4th 1, 19.)

B. *The Court Had No Sua Sponte Duty to Instruct the Jury with CALCRIM No. 358*

Defendant’s argument concerning CALCRIM No. 358 is misplaced. First, none of the evidence that defendant complains about falls within the purview of CALCRIM No. 358. CALCRIM No. 358 concerns evidence of actual statements made by a defendant. Here, defendant cites the following portion of the victim’s testimony: “Sometimes he would say—um, he would just start snapping at me, and I would ask him what was wrong and he would say, um, things. Like, he would just, like, look at me from, you know, top to bottom, you know, with disgust, like, you know, ‘You disgust me,’ you know?” Here, the victim did not testify as to any actual statements that defendant made. Rather, she testified that he was looking at her *as if* she disgusted him. Defendant also cites to the portion of the victim’s testimony where she stated, “[H]e told me that he felt like, um, I needed to stop running my mouth so much and I needed to be in subjection [*sic*] to him.” Again, these do not appear to be actual statements that

defendant made. In fact, most of defendant's examples do not concern actual statements he made. For example, he asserts that the victim testified that he told her the only reason he married her was because she was driving a Mercedes at the time.

Defendant further complains that the victim testified that she wanted to forget about their argument concerning the legal brief, but he "kept bringing it back up." Moreover, the victim testified that their bickering became more heated as the day went on, that defendant was "'putting [her] . . . in [her] place,'" and that they were in a heated argument at the time of the alleged shove. Finally, defendant complains the victim testified that, at the preliminary hearing, he told her it was important that she make it clear that he had no intention of actually harming her. These portions of the victim's testimony concern things defendant *did*, or the circumstances surrounding their argument on the night of the incident, not statements he made.

Furthermore, CALCRIM No. 358 instructs the jury to view evidence of *admissions* with caution. CALCRIM No. 358 "applies only to statements which tend to prove guilt and not to statements which do not." (*People v. Vega, supra*, 220 Cal.App.3d at p. 317.) None of the alleged "statements" defendant cites are admissions of his guilt. He was charged with corporal injury to a spouse, and the People had to prove that: (1) defendant willfully inflicted a physical injury on his spouse; and (2) the injury inflicted by him resulted in a traumatic condition. The citations from the victim's testimony are not statements that tend to prove these elements. Although the jury found defendant guilty of the lesser included offense of spousal abuse, the evidence defendant

cites does not tend to show his guilt of that offense either. Thus, the court had no sua sponte duty to instruct the jury with CALCRIM No. 358.

In any event, any failure on the part of the court to instruct the jury with CALCRIM No. 358 was harmless. There was ample evidence of defendant's guilt, aside from the evidence he complains about. For spousal abuse, the jury had to find that: (1) defendant willfully touched the victim in a harmful or offensive manner; and (2) the victim was defendant's spouse. It was undisputed that defendant and the victim were married. The victim testified that they were in an argument that went on through the afternoon and into the evening, that defendant was upset and started yelling at her, that she became concerned for her safety and wanted to get away from him, that she locked herself in the room, and that he was furious by the time he got into the room. She further testified that defendant forcefully pushed her in the stomach, that she felt pain, and that her "whole body flew up" in the air and fell onto the bed. Defendant's daughters corroborated the victim's testimony. C.S. said that defendant and the victim were arguing and yelling at each other. She and T.S. both testified that they saw defendant shove the victim onto the bed. Furthermore, Officer Wessman testified that the victim looked frightened when he arrived on the scene, and that she was holding her stomach as if she had been hit. He observed fresh bruises on her stomach and took pictures. The jury was shown pictures of the victim's injuries. The pictures were consistent with the victim's testimony.

In addition, the trial court gave another instruction that would have assisted the jury in determining the credibility of the victim's testimony (i.e., CALCRIM No. 226).

This instruction minimized any possibility the jurors did not view the victim’s testimony with caution.

We conclude it is not reasonably probable defendant would have received a more favorable result had the trial court instructed the jury with CALCRIM No. 358. (*People v. Wilson, supra*, 43 Cal.4th at p. 19.)

## II. The Evidence of Prior Domestic Violence Was Properly Admitted

Defendant next contends that the trial court erred in admitting evidence of allegations of his prior acts of domestic violence. He urges that the uncharged prior incidents were “substantially more severe than the incident in this case,” and that he was prejudiced by the introduction of this evidence. He contends that the evidence should have been excluded under Evidence Code section 352. Defendant further contends that the evidence of the prior domestic violence was “so highly prejudicial and of such minimal probative value that it rendered the trial fundamentally unfair.” We disagree.

### A. *Evidence of Prior Domestic Violence*

Prior to trial, the court addressed the admissibility of evidence offered under Evidence Code section 1109—specifically, an incident that occurred three weeks before the charged crime, involving defendant beating and attempting to choke the victim. Defense counsel objected pursuant to Evidence Code section 352 on the grounds that such evidence was more prejudicial than probative, and there was no police report or corroborating evidence. The court found that the prior incident was not too remote in time. It also noted that the greater the number of domestic violence acts, the greater likelihood of a predisposition to commit such crimes. Therefore, although the court

acknowledged that there was no police report, the evidence was still probative, and the prior incident was not so inflammatory that it would prejudice the jury. Finally, the court noted that there would not be an undue consumption of time since the victim was the only witness that would testify about the prior incident. Thus, the court ruled that the victim would be allowed to testify to acts of prior misconduct under Evidence Code section 1109.

At trial, the victim testified that approximately three weeks prior to the incident on November 2, 2011, she was running from defendant and fell down on the stairs. He then hit her with his fists and choked her. She testified that her face was “bruised and cut,” and that she had a “slash” across her nose. The victim did not report that incident to the police because she blamed herself for it. Defendant had said he was disappointed in her, that she could not do anything right, and that she had gained weight. The victim felt that maybe she deserved to be hit. The victim testified that, prior to that incident, there had been less than five incidents of physical abuse. The victim also testified that, on the night of the current incident, defendant had “that same look in his eyes” as when “the incident a few weeks prior” occurred.

*B. The Court Properly Allowed the Prior Domestic Violence Evidence*

Evidence Code section 1109 provides in relevant part: “(a)(1) Except as provided in subdivision (e) or (f), in a criminal action in which the defendant is accused of an offense involving domestic violence, evidence of the defendant’s commission of other domestic violence is not made inadmissible by Section 1101 if the evidence is not inadmissible pursuant to Section 352.”

Defendant's claim of improperly admitted evidence is reviewed under the abuse of discretion standard. (*People v. Poplar* (1999) 70 Cal.App.4th 1129, 1138.)

The trial court properly employed the balancing test, assessing the prejudicial value of the evidence against its probative value. The court also gave a limiting instruction, advising the jury that it could not consider the prior act of domestic violence unless it found by a preponderance of the evidence that defendant had committed the prior act. In addition, the jury was instructed it was not required to infer from the evidence that defendant had the disposition to commit another act of domestic violence, or that defendant was likely to commit the crime charged in the instant case.

Defendant claims the trial court abused its discretion under Evidence Code section 352, in that the prior act of domestic violence was of minimal probative value and was highly prejudicial since it was "far more severe" than the current incident. We disagree. The victim's testimony describing defendant's prior act of domestic violence was no more inflammatory than her testimony describing the current incident. In the prior incident, the victim said she was running from defendant, she fell on the stairs, and he hit her with his fists, and choked and threatened her. The victim sustained bruises and a cut. In the current incident, the victim was also running away from defendant and locked herself in the bedroom. Defendant entered the room and forcefully pushed her in the stomach, causing her body to fly into the air and fall onto the bed. The victim was in severe pain due to the sensitivity in her stomach area, and she sustained bruises on her stomach and arm.

We further note that there was no probability of confusing the jury with the evidence of the prior act of domestic violence. The testimony was brief, requiring but five pages of trial transcript. (See *People v. Poplar, supra*, 70 Cal.App.4th at p. 1139.) The incident was recent, and the evidence was extremely probative, showing defendant's propensity for violence against domestic partners. (*Ibid.*)

In any event, the record establishes that the admission of the prior domestic violence evidence was not prejudicial under any standard. The jury found defendant guilty of spousal abuse. There was more than enough evidence to support a finding that defendant willfully touched the victim in a harmful manner. The victim's testimony that defendant shoved her so hard that she fell back onto the bed, suffered severe pain, and sustained injuries, was corroborated by the testimonies of defendant's daughters and Officer Wessman, as well as the pictures of her injuries. (See *ante*, § I.)

We conclude that the trial court did not abuse its discretion in admitting the evidence of defendant's prior acts of domestic violence, and that such evidence did not render the trial fundamentally unfair.

DISPOSITION

The judgment is affirmed.

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HOLLENHORST  
Acting P. J.

We concur:

KING  
J.

CODRINGTON  
J.