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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.

JUAN FERNANDO LOPEZ, SR.,

Defendant and Appellant.

E057945

(Super.Ct.No. RIF1104584)

OPINION

APPEAL from the Superior Court of Riverside County. Gary B. Tranbarger,  
Judge. Affirmed.

Sharon M. Jones, 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, Lynne G. McGinnis, and Warren  
Williams, Deputy Attorneys General, for Plaintiff and Respondent.

INTRODUCTION<sup>1</sup>

Defendant Juan Fernando Lopez, Sr., and his two sons attacked Dario Morales who had a brief affair with defendant's wife, Laura Higuera. A jury convicted defendant of one count of attempted murder (§§ 664/187 subd. (a)); one count of assault by means of force likely to cause great bodily injury (§ 245 subd. (a)(1)); one count of torture (§ 206); and one count of misdemeanor resisting arrest (§ 148, subd. (a)(1)). The jury also found true the allegations of great bodily injury on the attempted murder and assault counts. The court sentenced defendant to an indeterminate prison term of seven years to life and an enhancement of three years.

Defendant's only argument on appeal is that the trial court erred in not instructing the jury that the testimony of the three accomplices must be corroborated. The People concede there was error but contend it was harmless. We agree the instructional error was harmless and affirm the judgment.

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<sup>1</sup> All statutory references are to the Penal Code unless stated otherwise.

## II

### STATEMENT OF FACTS<sup>2</sup>

Defendant has two sons, Juan, Jr., and Jose,<sup>3</sup> who were 19 and 16 years old, on August 22, 2011. Defendant had a 10-year relationship with Higuera with whom he had three younger children between the ages of four and 10.

In June or July, 2011, Higuera briefly became involved sexually with Morales, a coworker at the Sun Rich company. The relationship ended when Morales learned Higuera was married.<sup>4</sup> A few days later, Morales received a threatening phone call in the middle of the night from someone who told him to stay away from Higuera. Higuera stopped working at Sun Rich, and Morales never saw her again.

When Higuera was working at Sun Rich, she and defendant argued a great deal. Higuera eventually told defendant that Morales had forced himself on her instead of confessing she had a consensual sexual relationship with Morales.

Jose, defendant's younger son, testified that, on August 22, 2011, defendant told Jose and his brother that they were going to go beat up the man who had had sexual intercourse with Higuera. Jose, defendant, Higuera, Juan, Jr., and the three younger

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<sup>2</sup> In accord with established rules of appellate review, the statement of facts resolves all conflicts in the evidence in favor of the prevailing party. (*People v. Johnson* (1980) 26 Cal.3d 557, 576; *In re Pratt* (1999) 69 Cal.App.4th 1294, 1315, fn. 17.)

<sup>3</sup> We use their first names for ease of reference.

<sup>4</sup> Higuera testified they were never legally married.

siblings travelled in a van to the Sun Rich plant. When the workers began leaving the plant, Higuera pointed out Morales as he got into a truck which drove away. Defendant followed the truck to an apartment complex. When Morales left the truck, Juan, Jr., and Jose approached Morales and punched and kicked him twice. Defendant told Jose to hold Morales down while defendant slashed him with a box cutter. Defendant accidentally cut Jose on his hand. Afterwards, defendant and his sons returned home and disposed of their bloody clothes.

Juan, Jr., defendant's older son, testified somewhat differently that Morales had telephoned him earlier in the week and "called [him] out" to "handle the situation" concerning Higuera. Only he, Jose, and Higuera went in the van to find Morales, and defendant was not with them at all. After following Morales to the apartment complex, there was a physical confrontation. Juan, Jr., and Morales punched each other and Jose kicked Morales. Then Morales walked away and the brothers left. The brothers changed their clothes and discarded them. Juan further testified that, after being arrested, he lied to the police, implicating his father because he wanted to protect himself and his brother.

Morales testified that he was attacked by three people who hit him, beat him, and slashed his face and back until he lay still and played dead. He collapsed trying to get to his apartment and lost consciousness. His right ear was nearly severed and his back was sliced about six inches. Morales was hospitalized and given blood transfusions for extensive blood loss; the cuts on his face and back were stapled and stitched.

A video surveillance camera captured footage of a small truck followed by a green van pulling up outside the apartment complex. After parking the van, two individuals followed Morales on foot. A few seconds later, the two individuals returned to the van and it left the area at an accelerated speed. The surveillance film did not show a third person.

The police located the van parked in front of defendant's residence. The police questioned Juan, Jr., and Higuera and arrested them. Juan Jr. had fresh wounds on his right arm. In a trash dumpster outside defendant's home, the police found some articles of discarded, bloody clothing. Defendant's van was seized and impounded. Blood traces were found in the van and swabs were taken from the steering wheel, the driver's seat, and the right front passenger door handle.

After the police arrested Jose at his high school, they followed his grandparents to a store parking lot. Defendant emerged from the store, disguised in a hat and large sunglasses. When the officers made eye contact with defendant, he fled on foot, pursued by the officers who used a Taser to apprehend him. After a struggle, defendant was finally handcuffed and taken into custody.

The parties stipulated at trial that Higuera, Jose, and Juan, Jr., all had pleaded guilty to attempted murder and received five-year prison sentences.

### III

#### THE TESTIMONY OF THE ACCOMPLICES

Morales could not identify his attackers. The only witnesses to the assault upon Morales were defendant's accomplices, his sons and Higuera. Higuera claimed she could not remember anything about the assault. Jose testified that defendant instigated the assault and wielded the box cutter. Juan, Jr., initially told the police defendant had driven the van and used the box cutter. At trial, Juan, Jr., changed his story to claim that he and his brother had acted alone and defendant was not involved.

The parties agree that Higuera and defendant's sons were accomplices "liable to prosecution for the identical offense charged against the defendant on trial in the cause in which the testimony of the accomplice is given." (§ 1111.) The parties also agree that, as a matter of law, the trial court had a sua sponte duty to instruct the jury to view the testimony of accomplices with caution and that, in order to consider the testimony at all, it must be corroborated. (*People v. Gonzales and Soliz* (2011) 52 Cal.4th 254, 303-304; *People v. Brown* (2003) 31 Cal.4th 518, 555; *People v. Guiuan* (1998) 18 Cal.4th 558, 570; *People v. Zapien* (1993) 4 Cal.4th 929, 982; *People v. Verlinde* (2002) 100 Cal.App.4th 1146, 1161; *People v. Valerio* (1970) 13 Cal.App.3d 912, 924.) The trial court should have given CALCRIM No. 335, concerning how the jury should view the testimony of accomplices.

Caution and corroboration are required because an accomplice has a natural incentive to minimize his or her own guilt and to enlarge that of others charged with the

offense. (*People v. Brown, supra*, 31 Cal.4th at p. 555.) However, “[c]orroborating evidence may be slight, may be entirely circumstantial, and need not be sufficient to establish every element of the charged offense.” (*People v. Hayes* (1999) 21 Cal.4th 1211, 1271; CALCRIM No. 335.) Corroborating evidence is “sufficient if it tends to connect the defendant with the crime in such a way as to satisfy the jury that the accomplice is telling the truth.” (*People v. Fauber* (1992) 2 Cal.4th 792, 834.) As the California Supreme Court observed: “The corroborating evidence may be slight and entitled to little consideration when standing alone. However, it must tend to implicate the defendant by relating to an act that is an element of the crime. It need not by itself establish every element, but must, without aid from the accomplice’s testimony, tend to connect the defendant with the offense.” (*People v. Nelson* (2011) 51 Cal.4th 198, 218.) Even if there is insufficient corroboration, “reversal is not required unless it is reasonably probable a result more favorable to the defendant would have been reached.” (*People v. Miranda* (1987) 44 Cal.3d 57, 101; *People v. Gonzales, supra*, 52 Cal.4th at p. 304.)

Here, sufficient corroborating evidence supported defendant’s convictions for attempted murder, assault, and torture. The green van observed in the video surveillance recording was registered to defendant. In his statement to the police, defendant denied that his son had driven the van that night. Furthermore, after investigators interviewed defendant and arrested Higuera and Juan, Jr., defendant and Jose disappeared for about two months. After Jose was finally arrested and defendant tried to meet Jose’s grandparents in a parking lot, defendant disguised himself with a large hat and oversized

glasses. Defendant fled the police despite shouts to stop and strenuously resisted arrest. Additionally, Morales testified that he received threats after he learned Higuera was involved with someone else. Defendant's disappearance, his use of a disguise, and his flight from the police all provided circumstantial evidence, even if slight, that tended to implicate defendant in the crimes against Morales.

Even if the corroboration of the accomplice testimony was insufficient, it was not reasonably probable that defendant would have received a more favorable result had the trial court given CALCRIM No. 335. When a trial court instructs the jury to view testimony with sufficient care and caution, this is an additional and alternative basis for concluding that any error in failing to give the accomplice instructions was harmless. (*People v. Gonzales, supra*, 52 Cal.4th at p. 304.) The jury in this case had good reason to view the accomplices' testimony with distrust. The accomplices all pleaded guilty. The trial court instructed the jury with CALCRIM No. 226 that it should consider whether any witness was biased or prejudiced, whether any witness was promised leniency in exchange for his or her testimony, and whether any witness had been convicted of a felony. The trial court also instructed the jury with CALCRIM No. 316 that it could consider a witness's commission of a crime in evaluating the credibility of his or her testimony. Thus, the jury was on notice that it should treat the accomplices' testimony with caution. Accordingly, it was not reasonably probable that defendant would have achieved a different outcome had the trial court instructed the jury with CALCRIM No. 335.

IV

DISPOSITION

The failure to give CALCRIM No. 335 was harmless. We affirm the judgment.

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CODRINGTON  
J.

We concur:

RAMIREZ  
P. J.

MILLER  
J.