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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.

ROD ANTHONY HUFF,

Defendant and Appellant.

E066149

(Super.Ct.No. FSB1502734)

OPINION

APPEAL from the Superior Court of San Bernardino County. Harold T. Wilson, Jr., Judge. Affirmed.

Rod Anthony Huff, in pro. per.; Sheila O'Connor, under appointment by the Court of Appeal, for Defendant and Appellant

No appearance for Plaintiff and Respondent.

On January 21, 2016, a jury convicted defendant and appellant Rod Anthony Huff of inflicting corporal injury resulting in a traumatic condition upon Jane Doe, his cohabitant and his child's mother. (Pen. Code,¹ § 273.5, subd. (a).) That same day, defendant admitted to a prior strike consisting of a residential burglary. (§§ 459, 1170.12, subds. (a)-(d), 667, subds. (b)-(i).) The People dismissed the remaining four prior allegations. (§§ 487, 459, 30305a, subd. (1), 667.5, subd. (b).) Defendant appeals.

FACTUAL AND PROCEDURAL HISTORY

A FACTUAL BACKGROUND

Jane Doe had been in a relationship with defendant for the previous eight years; they had three children together. At the time of the incident she was pregnant with the third child. She was also on felony probation for resisting a peace officer.

On August 8, 2015, officers were called to the residence of Jane Doe and defendant. When he arrived at the apartment complex, Officer Matthew Friesen saw a woman holding a cell phone pointing to an apartment. As he approached, he heard yelling and screaming coming from the apartment. Doe answered the door; she was crying; she was very emotional and upset and had bruising and swelling on her left temple. Officer Friesen taped his conversation with Doe with the recorder he carried on his belt. The officer took her outside to speak with her. Officer Pendery, who had arrived with Officer Friesen, went into the house. Doe also had redness on her back and neck, and bruising on her hip. Officer Friesen testified that he had never seen Doe prior

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

to the encounter. Doe told the officer that defendant had choked her and pushed her over the sink; she blacked out as a result. Based on Officer Friesen's experience, the signs on her neck were typical of someone who had been choked. Doe said that she and defendant had an argument, and that she felt disrespected because defendant had thrown money at her face. Doe stated that defendant pushed, socked her in the eye and hurt her, but that she did not want him to go to jail.

Officer Beck was the third officer who arrived at Doe and defendant's apartment complex the morning of August 8, 2016. Officer Beck also interviewed Jane Doe but did not record the interview. She told Officer Beck that she and defendant had gotten into a verbal argument that turned physical. Defendant is six feet tall; Doe is about five foot three or four inches. Doe told Officer Beck the same story that she told Officer Friesen.

Jane Doe testified at trial. She stated that in the morning of August 8, 2015, she got into a fight with another woman who lived across the alley from her apartment. The woman had been staring Jane Doe down in the wrong way, and they were always "mad-dogging" each other. Doe never told the police or defendant about this fight.

The police arrived at defendant and Doe's residence because they received a call about a domestic disturbance. Defendant had arrived home about 15 minutes before the police came. Because Doe had a scratch on her neck when she opened the door, the police assumed that defendant had hit her. The scratch, however, had been from her earlier fight. Doe denied having any new marks on her arms, stomach or back that day; although the police took a variety of photographs showing injuries. Doe also testified that any marks, like her black eye, came from the early morning fight or they were there

previously. Doe denied that she told the officer that defendant choked or punched her. After she heard the tape recording of her initial interview with the police, Doe claimed that she lied to the police that day. Doe testified that she lied about defendant choking her and holding her over the sink and metal rail. She lied to the police because she was mad at defendant and wanted to leave. However, Doe did not want defendant to get arrested or go to jail.

During her testimony, Jane Doe admitted that she was bipolar, and was not taking any of her medications on the date of the incident. She also stated that she was having pregnancy emotions, and both were causing her not to have a clear memory of the events of that day.

After the incident, defendant called Jane Doe from jail a couple of times. Doe only spoke to defendant a few seconds each time. After she heard the calls replayed, she stated that when she told defendant, "I'm not gonna say what you did to me," she meant that he hurt her emotionally. She also told defendant that he broke her ribs and that she needed five stitches only as lies to push defendant's buttons. She knew that defendant gets mad when she lies. Doe testified that she still wanted to be with defendant and loved him. Doe stated that she would never lie for him.

Jane Doe remembered talking to one of the officers outside her home and telling him that defendant did not do anything to her. She also remembered pushing and hitting defendant. She kicked him, hit him in the face, spit on him, and pulled his hair. Even after she hit defendant, he never hit her. Doe did not remember telling the officer that defendant pushed her off of him and that was how she got the scratch on her head. She

was trying to stop him from leaving; she was always frustrated with him. Doe was frustrated because he was working a lot and she was only seeing him two days a week. She told the officers that she did not care if she went to jail, she just did not want defendant to go to jail. Doe also did not want to testify against defendant because he did not do anything wrong. She wanted him home for the kids.

Richard Gillespie, an investigator for the public defender's office, was assigned to defendant's case. He interviewed Jane Doe regarding this incident. She told Gillespie that she started a fight with defendant, then began to push and shove him. She denied that defendant ever choked, hit or did anything to her. The only thing defendant did was to push Doe. After pushing her, she suffered a small scratch on her forehead. She also told the investigator that she did not want defendant to get arrested and had told the police the same thing.

B. PROCEDURAL BACKGROUND

Prior to trial, defendant objected to any reference to Jane Doe's pregnancy status at the time of the incident. The People argued that the evidence was intrinsic to the case to show the pictures of the injuries to the abdominal area. The court stated, "I'm not going to make a direct order with respect to mentioning of the victim's status with respect to pregnancy; however, [prosecutor] no specific questions or no—court doesn't want to hear anything attempting to elicit that information. If it come out as part of the conversation, that would be okay with the court, but agreeing with [defense counsel] at this time, it's not relevant with respect to a specific line of questioning."

Defense counsel reiterated her motion to exclude any evidence of Doe's pregnancy status right before she testified. The court again ruled, "[t]he previous order stands. However, note that the issue of the alleged victim's pregnancy is not relevant. The court will entertain any relevancy-type objections. Again, I don't want to hear anyone trying to elicit that type information for any type of sympathy for the jury, but again, the Court will not make a specific order."

Defense counsel also objected to the introduction of two of the jail calls that were made between Doe and defendant, where some of her alleged injuries were described in detail, under foundational grounds. The court rejected the argument and allowed the calls to be played for the jury.

During the cross-examination of Doe, the court held an unrecorded sidebar and when it returned, stated, "Back on the record. Non-reported sidebar conferences. The one dealt with the issue of the questioning along the lines of pregnancy questions for Jane Doe." Both sides submitted on the non-reported bench conference. After the sidebar, defense counsel continued questioning Doe regarding her mental health status, her condition, and how much she could remember about what happened that day. At that point, the victim spoke about her pregnancy emotions. Then, when the People re-examined her, the prosecutor followed up with questions that related to the victim's pregnancy and how that affected her ability to fight back on the day of the incident. The victim testified that she did not look like she was pregnant and that she was able to fight; she "wasn't heavy." The officer who arrived at the scene also testified to Jane Doe's

“obviously” pregnant status when she opened the door to him, when she was crying and bruised.

After the jury’s guilty verdict on May 25, 2016, the trial court denied defendant’s motion for a new trial, based on the introduction of evidence regarding the victim’s pregnancy. The court denied defendant’s motion. The court then sentenced defendant to three years in state prison, doubled as a result of his prior strike, for a total term of six years. The court also awarded credits and imposed fines and fees.

DISCUSSION

After defendant appealed, and upon his request, this court appointed counsel to represent him. Counsel has filed a brief under the authority of *People v. Wende* (1979) 25 Cal.3d 436 and *Anders v. California* (1967) 386 U.S. 738 setting forth a statement of the case, a summary of the facts, and potential arguable issues, and requesting this court to undertake a review of the entire record. We offered defendant an opportunity to file a personal supplemental brief, and he has done so. On October 7, 2016, defendant filed a two-page handwritten brief (first supplemental brief), and on October 12, 2016, he filed a three-page handwritten brief (second supplemental brief). In his supplemental briefs, defendant essentially argues that the trial court erred in admitting evidence regarding Jane Doe’s pregnancy. Defendant, in essence, seems to be arguing that the probative value of the evidence of Doe’s pregnancy was not outweighed by the prejudicial effect of the jury learning about the alleged abuse while she was pregnant.

“Under Evidence Code section 352, the trial court enjoys broad discretion in assessing whether the probative value of particular evidence is outweighed by concerns

of undue prejudice, confusion or consumption of time. [Citation.] Where, as here, a discretionary power is statutorily vested in the trial court, its exercise of that discretion ‘must not be disturbed on appeal *except* on a showing that the court exercised its discretion in an arbitrary, capricious or patently absurd manner that resulted in a manifest miscarriage of justice.’” (*People v. Rodrigues* (1994) 8 Cal.4th 1060, 1124-1125.) “That discretion is only abused where there is a clear showing the trial court exceeded the bounds of reason, all of the circumstances being considered.” (*People v. Martinez* (1998) 62 Cal.App.4th 1454, 1459.)

Here, the jury heard testimony about Doe’s pregnancy as it related to Doe’s injuries and her state of mind at the time of the incident. The reference to the pregnancy was brief and was not discussed in detail. Therefore, the evidence was probative. Moreover, the evidence was not unduly prejudicial. “““The ‘prejudice’ referred to in Evidence Code section 352 applies to evidence which uniquely tends to evoke an emotional bias against the defendant as an individual and which has very little effect on the issues.””” (*People v. Miller* (2000) 81 Cal.App.4th 1427, 1449.) Here, the reference to Doe’s pregnancy was not so inflammatory that it might have caused the jurors to be distracted from their main task of evaluating guilt. In this case, there was ample testimony from officers at the scene and Doe’s own statements on the day of the incident regarding defendant’s guilt. The evidence was introduced by Doe to explain her actions on the date of the incident. In balancing the probative versus the prejudicial value of the admitted evidence, we find that the trial court did not abuse its discretion.

We have examined the entire record and are satisfied that no arguable issues exist, and that defendant has, by virtue of counsel's compliance with the *Wende* procedure and our review of the record, received adequate and effective appellate review of the judgment entered against him in this case. (*People v. Kelly* (2006) 40 Cal.4th 106.)

DISPOSITION

The judgment is affirmed.

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MILLER
J.

We concur:

RAMIREZ
P. J.

CODRINGTON
J.