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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

INDIGO FREEMANVIBE,

Defendant and Appellant.

F067520

(Super. Ct. No. F11906084)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Fresno County. W. Kent Hamlin, Judge.

Barbara A. Smith, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Michael P. Farrell, Assistant Attorney General, Kathleen A. McKenna and Leanne Le Mon, Deputy Attorneys General, for Plaintiff and Respondent.

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* Before Cornell, Acting P.J., Gomes, J. and Poochigian, J.

INTRODUCTION

Appellant Indigo Freemanvibe was charged in an information filed on November 10, 2011, with inflicting corporal injury on a child (Pen. Code, § 273d, subd. (a), count 1) (unless otherwise designated, all statutory references are to the Penal Code), and child abuse (§ 273a, subd. (a), count 2). At the conclusion of a jury trial on May 22, 2013, appellant was acquitted of the felony allegations in counts 1 and 2 but was found guilty of the lesser offenses of misdemeanor battery (§ 243, subd. (a)) on count 1 and misdemeanor child abuse (§ 273a, subd. (b)) on count 2.

On June 18, 2013, the trial court suspended imposition of sentence and placed appellant on formal probation for four years. Appellant was ordered to serve a term of 158 days in county jail on counts 1 and 2 and was given credit for time served. Appellant contends her convictions must be reversed because she was unduly prejudiced by the police officer's mention of one of appellant's aliases during testimony, in violation of a court pretrial order not to discuss appellant's aliases. We affirm the judgment.

FACTUAL AND PROCEDURAL SUMMARY

Motion in Limine

Appellant has several aliases that are listed in the caption of the information. The trial court granted a pretrial motion by the defense that witnesses would refer to appellant only as Indigo Freemanvibe, and the witnesses would not refer to appellant by any of her aliases. The court amended the information by interlineation to list only Indigo Freemanvibe as appellant's name. The trial court continued the case for several months and reconvened in May 2013. When the court and the parties reviewed the court's prior ruling on in limine motions, the court noted it had granted appellant's motion to exclude any reference to her aliases.

Trial Testimony

In October 2011, J.F. was a third-grade student.¹ Her teacher was Stephanie Blancarte. J.F. wrote in journals for Blancarte. J.F. wrote about times her mother, appellant, hurt her, including an incident in which appellant socked her in the eye and picked her up by the arm and threw her. Because Blancarte was a mandated reporter, she reported J.F.'s journal entry to child protective services. Initially, nothing was done in response to Blancarte's report.

On a different occasion, J.F. was at home doing her homework. When J.F.'s pencil broke, she could not find another one. This was bad for J.F. because appellant did not like J.F. to use pencils less than two inches long or appellant would beat J.F. When J.F. could not find a new pencil, appellant told J.F. she was just using an excuse not to do her homework. Appellant then beat J.F. with a belt. J.F. said appellant hit her 40 times with the belt. J.F. said she knew how many times she was hit because appellant counted each time J.F. was hit.

The following day J.F. told a friend at school about the incident and wrote about it in her journal for Blancarte's class. As a result of the beating, J.F. had purple and blue markings. Blancarte asked J.F. about the incident. J.F. told Blancarte the truth about what had happened. J.F. explained that this was scary because she knew Blancarte would call the police. J.F. was afraid of appellant finding out because appellant had told J.F. she was going to kill her.

Blancarte testified that on October 19, 2011, she read J.F.'s journal entry describing appellant's abuse. J.F. later came up to Blancarte and told Blancarte about her injuries. J.F. showed Blancarte the markings on her leg. Blancarte identified

¹ At the time of trial, J.F. was nine years old and attending the fourth grade.

photographs depicting the injuries on J.F.'s leg as accurate pictures of what Blancarte observed that day.

Fresno Police Officer Nicholas Ponomarenko was dispatched to J.F.'s school to investigate the report of possible child abuse. Ponomarenko read J.F.'s journal entry. When Ponomarenko examined J.F., he saw massive bruising around the upper thigh of her left leg just below her hip that extended down to her lower leg. Several pictures depicting these injuries were admitted into evidence. J.F. told Ponomarenko she received the injuries from her mother. When Ponomarenko later asked appellant about J.F.'s allegations, appellant replied that her daughter was a liar.

Traci Morales, a social worker with the Department of Social Services, was assigned to J.F.'s case on October 19, 2011. When Morales spoke to appellant the next day about the allegation that appellant used a belt to spank J.F., appellant admitted she used a belt to spank J.F. eight times, once for each year of her age. Appellant said she spanked J.F. because she had lied about completing her homework.

Dr. Philip Hyden, medical director and attending pediatrician for prevention of child abuse at Children's Hospital Central California, examined J.F. on October 20, 2011. J.F. told Dr. Hyden she had been struck on her leg by her mother with a belt. Dr. Hyden observed a series of oblique and parallel lines on J.F.'s left thigh and leg that were purple-red in color and tender to the touch. Dr. Hyden identified photographs of J.F.'s injuries as accurately depicting what he observed. The photographs were admitted into evidence.

Dr. Hyden explained that J.F.'s injuries were consistent with being caused by a belt. Dr. Hyden believed the injuries also were consistent with multiple hits, at least three but possibly more. The injuries were consistent with the history J.F. gave of the incident.

Defense Case

Appellant testified that J.F. had begun to tell lies. Sometimes J.F. would tell appellant she had finished her homework when it was not completed. On October 18,

2011, appellant was making plans to enroll J.F. in another school. Appellant was aware that J.F. had homework due the next day and wanted J.F. to have it finished before she went to school.

J.F. wanted to use the computer; appellant asked J.F. if she had finished her homework. Appellant wanted J.F. to finish her homework before using the computer. J.F. was “on restriction.” J.F. was under two weeks of punishment and could not ride her scooter or use the computer. Appellant wanted J.F. to write sentences stating that J.F. would be truthful.

When appellant asked J.F. if she had completed her homework, J.F. replied that she had done so. Appellant found out, however, that J.F. had not completed her homework. Appellant was concerned that if J.F. kept crossing boundaries and failed to follow the rules, she would be kicked out of school.

Although she did not want to use corporal punishment on J.F., appellant said she was advised by her father and the school principal to use such punishment. Appellant tried other means of discipline. After J.F.’s repeated lies, appellant decided to follow the advice of her father and the principal. Appellant spanked J.F. a few times, one time for each year of J.F.’s life. Appellant denied telling the social worker that she hit J.F. eight times with a belt.

Violation of Court Order

During his testimony, Ponomarenko stated that appellant used the name Latraz Thompson. Ruling on defense counsel’s objection, the trial court stated: “Strike the question and answer as not relevant.” When Ponomarenko was asked if he knew appellant’s name, he replied, “I know she has multiple names.”

After defense counsel objected to this comment, the trial court told Ponomarenko in the presence of the jury that “The background of these various names is not nefarious, and it’s not relevant, so the Court excluded any reference to those names.” The court noted that the prosecutor should have notified Ponomarenko of the court’s prior ruling.

Ponomarenko apologized and told the court that the prosecutor had given him prior notice of the court's ruling.

The trial court advised the jury that there were hearings prior to taking testimony in which it was determined what was and was not relevant. The court continued, "[T]his whole issue of other names is—is not the least bit nefarious. It has nothing to do with, you know, criminal aliases or anything like that. It's an issue completely unrelated to this case, and because of that I directed that witnesses weren't to make mention of it. And I did that because I didn't want you to think there was something nefarious about these various other names. So I'm directing you to disregard any mention of them and to understand that that was not to be in front of you."

Outside the jury's presence, defense counsel made a motion for mistrial on the ground that the trial court's limiting instruction did not cure the prejudice to appellant and her constitutional right to a fair trial had been violated. The court, however, further explained to the parties that the reason appellant had aliases was because she had been the victim of domestic violence. The court said it would advise the jury as to why appellant had aliases and invited defense counsel to propose language for the admonition. The prosecutor stipulated to the court's proposal.

Still outside the presence of the jury, the defendant explained to the trial court that not all the aliases she used were to protect herself from a former domestic abuser. Appellant explained that some of the names were stage names she used when she worked for the film industry in Hollywood several years ago, and she had other names because she was the victim of identity theft. The court had a lengthy discussion with appellant concerning her use of aliases and her perception that the charges against her were made because of animus toward her from the prosecutor. The trial court concluded it would advise the jury that appellant used aliases because she was the victim of identity theft.

With the jury back in session, the trial court gave the jury the following instruction:

“Folks, before the break former Fresno Police Department Officer Ponomarenko stated that [appellant] had several names. That statement and his earlier statement about one of those names was in direct violation of this Court’s pretrial order. Because he did so, and even though I have stricken that testimony from the record, I believe you are owed an explanation. [Appellant] was a victim of identity theft. A person or persons with access to her personal identifying information created these various aliases to allow them or to enable them to steal from her and from others through no fault of her own. Because aliases, alternative identities, generally have a negative connotation, I confirmed before trial that those aliases had nothing to do with this case, and I ordered that no one make any mention of them during this trial. I trust you will accept this explanation, and I apologize for the delay caused by that witness’ violation of my pretrial order. Please disregard any mention of alternative identities, and please accept that they in no way reflect upon [appellant] or her integrity.”

DENIAL OF MISTRIAL MOTION

Appellant contends the trial court erred in denying her mistrial motion because the court’s advisement to the jury did not cure the prejudice. Appellant argues that the trial court’s curative instructions themselves bespoke extreme prejudice. We disagree and affirm the judgment.

The California Supreme Court has recognized that the reading of a defendant’s aliases to the jury may be prejudicial if the aliases are irrelevant or point to obvious criminal conduct by the defendant. (*People v. Pensinger* (1991) 52 Cal.3d 1210, 1253-1254.) A motion for mistrial should be granted only if the defendant will suffer prejudice that is incurable by admonition or instruction from the trial court (*People v. Gonzales and Soliz* (2011) 52 Cal.4th 254, 291-292), or if the party’s chances for receiving a fair trial have been irreparably damaged (*People v. Avila* (2006) 38 Cal.4th 491, 573). A trial court’s ruling on a motion for mistrial is reviewed for abuse of discretion. (*Ibid.*; *People v. Valdez* (2004) 32 Cal.4th 73, 128.)

Here, the police officer referred to appellant’s alias, Latraz Thompson, and later to the fact that appellant used other names. We initially note that there is nothing inherently criminal sounding with the name Latraz Thompson or reference to appellant’s use of

other names. There is no obvious reference to criminal conduct. More importantly, the trial court twice advised the jury that there was nothing nefarious in appellant's use of aliases. In its expanded admonition to the jury, the trial court told the jury (1) appellant used aliases because she had been the victim of identity fraud, (2) the officer violated the court's pretrial order, (3) the officer's reference to the use of aliases was irrelevant to the issues before the jury, to disregard reference to the use of aliases, and (4) not to infer anything negative about appellant's integrity.

The prejudicial effect, if any, was overcome by the trial court's careful admonition to the jury. The jury was further instructed with CALCRIM No. 222, stating that the jury was to ignore questions if the court sustained an objection and must disregard testimony stricken from the record. The jury is presumed to be reasonable and to have followed the trial court's instructions and advisements. (*People v. Anzalone* (2013) 56 Cal.4th 545, 557; *People v. Thomas* (2012) 54 Cal.4th 908, 940; *People v. Harris* (1994) 9 Cal.4th 407, 426.)

There is no indication in this record that appellant's reputation was irreparably damaged by Ponomarenko's reference to aliases, in violation of the trial court's pretrial order. The trial court's explanation for appellant's use of one or more aliases because of identity fraud was innocuous and in no way suggested criminality or bad character. The jury appeared to have weighed the evidence carefully, and, although appellant was not acquitted of the allegations, the jury determined that her conduct did not rise to that of a felony.²

DISPOSITION

The judgment is affirmed.

² Appellant admitted that she struck J.F. with a belt a couple of times. The issue resolved by the jury was whether appellant's conduct amounted to a felony, or a lesser misdemeanor offense. Had the officer not mentioned appellant's aliases, there is little, if any, probability of a more favorable outcome.