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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

GEMMA JAYDE RAMIREZ,

Defendant and Appellant.

G045040

(Super. Ct. No. 08HF2221)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, James Patrick Marion, Judge. Affirmed.

Richard Schwartzberg, 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, Collette C. Cavalier and Steve Oetting, Deputy Attorneys General, for Plaintiff and Respondent.

* * *

A jury convicted defendant Gemma Jayde Ramirez of attempted murder (Pen. Code, §§ 187 & 664; all further statutory references are to this code) and domestic battery with corporal injury (§ 273.5, subd. (a)). As to count 1, it also found true allegations she used a deadly weapon (§ 12022, subd. (b)(1)) and personally inflicted great bodily injury (§ 12022.7, subd. (e)).

Prior to trial, defendant moved to suppress evidence, including the knife used in committing the crimes. The court denied the motion.

After the jury found her guilty of all charges, defendant, with new counsel, moved for a new trial on the basis the verdict was not supported by substantial evidence and she received ineffective assistance when trial counsel failed to present testimony from a Battered Women's Syndrome (BWS) expert. The court denied the motion and sentenced her to nine years in prison.

Defendant contends the court erred in denying her motion to suppress evidence and her counsel was ineffective because they did not present expert testimony on BWS. Finding no error, we affirm the judgment.

FACTS

After dating for about six months, Michael Jump moved in with defendant. The relationship soured and verbal, nonviolent, arguments ensued.

Following one argument, defendant caused Jump to be arrested for allegedly pulling a knife on her. When Jump returned to the apartment a week later after being released from jail, the relationship was tense and he told her he wanted to break up. Defendant became hysterical and Jump left the apartment. He returned shortly after midnight and found defendant lying outside in the street screaming hysterically.

Jump convinced defendant to go inside the apartment, where she remained hysterical and appeared drunk and medicated. Jump stated he did not want to fight anymore, walked to the bedroom and fell asleep.

Jump awoke to find a butcher knife protruding from his chest and defendant standing by the bed. Defendant said, "You are never going to leave me." Jump took the knife out and threw it on the ground. Feeling faint from the loss of blood Jump grabbed defendant to prevent her from stabbing him again and called 911.

Jump opened the door for police when they arrived, then collapsed on the floor. Defendant got up from the floor without assistance and was arrested. Police followed the trail of blood from the hallway into the bedroom searching for potential additional injured victims and found a bloody knife by the side of the bed, as well as blood on the bed sheets.

DISCUSSION

1. Warrantless Search

At the hearing on defendant's motion to suppress evidence, police officer Jason Hatton testified that upon responding to a domestic disturbance call at defendant's apartment, Jump opened the door with blood on the front of his shirt. Jump stated his girlfriend had stabbed him and was lying in the hallway and that the knife was somewhere in the apartment. Hatton had Jump lie down and checked on defendant's condition. Defendant told him she was not injured and that the blood on her was from Jump's injury, which occurred during a struggle in which she had grabbed the knife and stabbed him out of fear for her life.

Hatton followed the trail of blood from defendant to the bedroom to ensure no one else was injured in the apartment. The blood trail led around to the opposite side of the bed and to a knife lying in plain sight. The area next to the bed where Hatton

found the knife, approximately five feet wide, was large enough to conceal a person and he had to walk a few steps into the room before he saw the knife. He walked to the far side of the bed to check for other injured persons lying where he could not see.

During cross-examination, Hatton acknowledged he had been to the apartment a few weeks earlier and had no information additional adults or children lived there. On the night of the stabbing, he had arrested and handcuffed defendant before walking seven to eight feet into the bedroom to find the knife.

The court denied the motion to suppress. It reasoned the fact Hatton had been to the apartment a few weeks earlier and knew only defendant and Jump lived there did not mean no one else was present, as oftentimes other people are involved in domestic disputes. According to the court, it would be a dereliction of his duties for which Hatton could be fired if he had left without following the blood trail to see if anyone else was injured. Because “[a]nybody can be hiding under the bed or hiding hurt near the bed” and Hatton was unable to see from the doorway, the court found exigent circumstances justified walking around to the far side of the bed where Hatton saw the knife.

Defendant challenges this ruling, contending “the facts articulated by police at the hearing did not justify a ‘protective sweep’” because there was no evidence the officer “knew or even believed there were others in the house.” She notes Jump was being cared for, defendant was handcuffed in the hallway, and Hatton’s interviews with Jump and defendant a few weeks earlier disclosed no information anyone else lived there. The contention lacks merit.

Although ““searches and seizures inside a home without a warrant are presumptively unreasonable,”” “the warrant requirement is subject to certain exceptions.” (*Brigham City, Utah v. Stuart* (2006) 547 U.S. 398, 403 [126 S.Ct. 1943, 164 L.Ed.2d 650].) One such exigency allowing police to enter a home without a warrant exists ““when they have an objectively reasonable basis for believing that an occupant is

seriously injured or imminently threatened with such injury.’ [Citation.] “‘The need to protect or preserve life or avoid serious injury is justification for what would be otherwise illegal absent an exigency or emergency.’” [Citation.] “‘‘There is no ready litmus test for determining whether such circumstances exist, and in each case the claim of an extraordinary situation must be measured by the facts known to the officers.’” [Citation.] On appeal, we uphold the trial court’s factual findings if they are supported by substantial evidence, but review independently its determination that the search did not violate the Fourth Amendment. [Citation.]” (*People v. Troyer* (2011) 51 Cal.4th 599, 605.)

“The “‘emergency aid exception’” to the warrant requirement ‘does not depend on the officers’ subjective intent or the seriousness of any crime they are investigating when the emergency arises.’ [Citation.] Rather, the exception ‘requires only “an objectively reasonable basis for believing” [citation] that “a person within [the house] is in need of immediate aid.’” [Citation.] ‘We are to approach the Fourth Amendment . . . with at least some measure of pragmatism. If there is a grave public need for the police to take preventive action, the Constitution may impose limits, but it will not bar the way.’ [Citation.]” (*People v. Troyer, supra*, 51 Cal.4th at pp. 605-606.)

Here, the trail of blood from defendant to the bedroom provided Hatton with an objectively reasonable basis for believing someone else might be injured and in need of emergency aid. (See *People v. Troyer, supra*, 51 Cal.4th at pp. 607-608, 611 [holding bloodstains on door plus other circumstances justified search; also citing cases finding “blood on the landing in front of the apartment and on the door constituted ‘some reasonable basis . . . to associate the emergency with the inside of apartment 3L’” and “while blood on the defendant’s shirt could have been his own, a reasonable officer could also have inferred that another party had been injured after some sort of struggle with the defendant”]; *Tamborino v. Superior Court* (1986) 41 Cal.3d 919, 923 [search held justified where officers saw blood stains outside apartment and defendant covered in

blood, and heard strange noises coming from within]; *People v. Hill* (1974) 12 Cal.3d 731, 755, overruled on another ground in *People v. Devaughn* (1977) 18 Cal.3d 889, 896, fn. 5 [warrantless entry justified where officers knew of one victim of gunshot wound and saw bloodstains on fence and porch of house and what appeared to be bloodstains on the floor inside the house].)

Because the officer's warrantless entry in this case was justified under the emergency aid doctrine, we need not address defendant's argument the facts did not support a "protective sweep" to ensure the safety of the responding officers. As a result, the cases she relies on are inapposite. (See *Maryland v. Buie* (1990) 494 U.S. 325 [110 S.Ct. 1093, 108 L.Ed.2d 276]; *People v. Celis* (2004) 33 Cal.4th 667; *People v. Ormonde* (2006) 143 Cal.App.4th 282.)

Defendant maintains the prosecution's opposition to the motion to suppress "was predicated on the protective sweep doctrine." But her citation to the record shows the written opposition argued both that the search was proper to "look around for additional victims as well as to make a protective sweep to look for possible hidden assailants" In any event, at the hearing on the suppression motion the prosecutor focused on the officer's decision to look for possible victims based on the blood trail into the bedroom.

2. *Ineffective Assistance of Counsel*

Defendant argues her counsel was ineffective because they failed to call an expert on BWS. To prevail on this claim, defendant must show counsel's performance, when viewed objectively, fell below prevailing professional standards and was prejudicial. (*Strickland v. Washington* (1984) 466 U.S. 668, 687 [104 S.Ct. 2052, 80 L.Ed.2d 674].) "Reviewing courts defer to counsel's reasonable tactical decisions in examining a claim of ineffective assistance of counsel [citation], and there is

a “strong presumption that counsel’s conduct falls within the wide range of reasonable professional assistance.” [Citations.]” (*People v. Weaver* (2001) 26 Cal.4th 876, 925.)

““[I]f the record on appeal sheds no light on why counsel acted or failed to act in the manner challenged[,] . . . unless counsel was asked for an explanation and failed to provide one, or unless there simply could be no satisfactory explanation,” the claim on appeal must be rejected.’ [Citations.] A claim of ineffective assistance in such a case is more appropriately decided in a habeas corpus proceeding. [Citations.]” (*People v. Mendoza Tello* (1997) 15 Cal.4th 264, 266-267.)

Defendant concedes the record does not disclose the reason why counsel did not call a BWS expert. Accordingly, we reject the claim on appeal. Although defendant filed a petition for writ of habeas corpus, it has been severed from the appeal and we do not address it.

DISPOSITION

The judgment is affirmed.

RYLAARSDAM, ACTING P. J.

WE CONCUR:

ARONSON, J.

FYBEL, J.