

CERTIFIED FOR PARTIAL PUBLICATION^{*}

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

RAY RONNIE GOVEA,

Defendant and Appellant.

B205715

(Los Angeles County
Super. Ct. No. MA033398)

APPEAL from a judgment of the Superior Court of Los Angeles County,
Patrick T. Meyers, Judge. Modified and affirmed.

Carlo Andreani, under appointment by the Court of Appeal, for Defendant and
Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant
Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, Linda C.
Johnson and Carl N. Henry, Deputy Attorneys General, for Plaintiff and Respondent.

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Under California Rules of Court, rules 8.1105 and 8.1110, only the first full
paragraph on page 2, part I of the Discussion, and the Disposition are certified for
publication.

Defendant Ray Ronnie Govea appeals from the judgment entered following his retrial and conviction by jury of attempted murder, assault by means likely to produce great bodily injury, aggravated mayhem, and the unlawful taking of a vehicle.¹ (Pen. Code, §§ 664/187, subd. (a), 245, subd. (a)(1), 205, Veh. Code, § 10851, subd. (a).) The jury also found that defendant inflicted great bodily injury upon the victim under circumstances involving domestic violence during the commission of the attempted murder and assault, and used a deadly and dangerous weapon during the commission of the attempted murder. (Pen. Code, §§ 12022.7, subd. (e), 12022, subd. (b)(1).)² He contends: (1) the trial court's failure to conduct a *Marsden*³ hearing violated his constitutional right to effective assistance of counsel; (2) the court erred by failing to grant his motion for a mistrial; (3) the court improperly instructed the jury; and (4) there is insufficient evidence to support the attempted murder and aggravated mayhem convictions. In the published portion of the opinion we conclude that there was no prejudicial *Marsden* error, and in the unpublished portion of the opinion we find the remainder of defendant's claims to be without merit. We noticed that the abstract of judgment does not accurately reflect the sentence ordered by the court. We direct the trial court to modify the abstract and, as modified, affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

In the early morning hours of October 11, 2005, defendant and his wife, Valerie Robles, were at his mother's apartment.⁴ Robles claimed she could not recall any of the

¹ In the first trial, the jury was unable to reach a verdict.

² All further undesignated statutory references are to the Penal Code.

³ *People v. Marsden* (1970) 2 Cal.3d 118.

⁴ Robles testified under a grant of immunity. The People agreed it would not prosecute her for using methamphetamine on the date of the offense.

events of that night due to her ingestion of methamphetamine. She had been under the influence of the drug for several days. She knew only that she suffered injuries and ended up in the hospital. At the time of trial, she had a scar under her eye and on her elbow, bicep, and breast. A bone under her eye had shifted and caused her to have problems with vision. Robles identified a number of photographs that were taken while she was in the hospital and said they depicted her injuries. She left the hospital with stitches and staples over several areas of her body, her eye, upper torso, arms, and thigh, and a sling that she wore for several months. She denied speaking to Los Angeles County Sheriff's Detective Elizabeth Sheppard regarding the events that led to her hospitalization.

Detective Sheppard interviewed Robles at the hospital on October 11. Robles told her that defendant had stabbed her. She said that just prior to the stabbing, defendant was pacing and acting strange. She told defendant to come to bed. Defendant left the room and returned. He struck her in the eye, and Robles felt blood on her face. Defendant hit her under the breast. Robles realized that defendant had a sharp weapon, and she raised her arms in an attempt to ward him off. Defendant continued to stab her. Fearing that she would be killed, Robles struggled to get up and leave the room. She screamed for defendant's mother to help her. With the assistance of a nurse, Sheppard took photographs of Robles's injuries.⁵

Priscilla Govea, defendant's mother, invited defendant and his wife to her apartment on the evening of October 10. They ate dinner together. When Govea went to bed at about 11:00 p.m., defendant and Robles were the only other people in her home. Govea was awakened by Robles, who was calling, "Priscilla." Govea went into the living room and saw Robles bleeding about the face and crying. Defendant was next to Robles. Govea saw Robles open the door to the apartment and walk outside. Govea did

⁵ The photographs and Robles's medical records were received into evidence.

not know where defendant went. She denied telling officers that he had taken her car keys.

At approximately 4:00 a.m. on October 11, Steven Lord was in his apartment when he heard a woman screaming for help. He looked out of his window, saw a woman lying on the ground, and called 911. After making the call, Lord walked outside with a flashlight and approached the woman. Although it was cold outside, she was wearing only a shirt and underpants.

Los Angeles County Sheriff's Deputy Keith Greene received a call at about 4:30 a.m. on October 11, informing him that a person was screaming in an apartment complex. He responded to that location, arriving in approximately four minutes. As he walked toward the courtyard, he could hear a woman screaming that she had been stabbed. Deputy Greene approached the woman, later identified as Valerie Robles, who was lying on the ground. He noticed that she was bleeding from her torso and face. He asked her what had happened, and she said, "Ronnie stabbed me."

After paramedics took Robles from the scene, Greene searched unsuccessfully for a weapon. He walked to one of the nearby apartments after noticing that the front door was open and a window was broken. He looked into the apartment and noticed "a blood-splattered trail in the entryway." He entered the unit and saw Priscilla Govea. The deputy noticed blood in several areas of the apartment and took photographs.

Govea told him that she was awakened at about 4:25 a.m. by Robles's screaming. She came out of her room and saw Robles bleeding. As Govea picked up the phone to call 911, she saw defendant grab her car keys and leave the apartment. Govea said she did not give defendant permission to take her car. She filed a stolen vehicle report and told a deputy sheriff that her son, Ronnie Govea, had taken her car.

Defendant called no witnesses.

On December 11, the jury returned the verdict as set forth above. On January 30, 2008, defendant admitted that he had suffered one prior serious felony conviction and had served four prior prison terms. (§§ 667, subd. (a), 1170.12, subds. (a)-(d), 667.5, subd. (b).) The court denied defendant's motion to strike the prior serious felony conviction

and sentenced him to life in prison, ordering that he serve a minimum of 14 years before becoming eligible for parole due to his prior serious felony conviction, and a consecutive determinate term of nine years, which included five years for his prior serious felony conviction. This appeal followed.

DISCUSSION

I. The Failure to Hear Defendant's *Marsden* Motions

Defendant contends that the trial court erred when it refused to hear his *Marsden* motions during the period when criminal proceedings were suspended. While we conclude that the court should have conducted a hearing even though defendant's competence to stand trial was undetermined, the error was harmless.

On December 28, 2005, defendant was arraigned on the information and entered not guilty pleas. He requested that a *Marsden* hearing be conducted on the next court date scheduled for January 5, 2006. On January 5, his *Marsden* motion was denied and he entered a plea of not guilty by reason of insanity. Two doctors were appointed to prepare psychological reports.

On March 21, 2006, defendant moved to relieve counsel and asked that he be allowed to represent himself. After a long discussion in open court, during which defendant made it clear that he wanted to withdraw his plea of not guilty by reason of insanity, the court reserved its ruling on defendant's motion until March 29.

On March 29, defendant's attorney declared a doubt as to defendant's competence pursuant to section 1368, and criminal proceedings were suspended. Defendant announced he would not speak to doctors appointed to examine him (he had already refused to speak to the psychiatrists who were appointed after he entered a plea of not guilty by reason of insanity) and complained that he and his attorney had a conflict. The court appointed two experts and set the matter for a competency hearing.

The hearing was continued several times as the parties awaited the receipt of the experts' reports and certain records. On October 23, 2006, defendant filed a written request for a *Marsden* hearing. Two brief continuances were granted until November 2.

On November 2, 2006, defendant, who continued to refuse to speak to the appointed doctors, reiterated in open court that he wished to proceed with his *Marsden* motion. The court refused to hold a hearing pending a determination of defendant's competency. The court asked defendant to speak to the appointed experts.

At a hearing on January 8, 2007, the court learned that defendant still refused to speak to doctors. The court explained to defendant that once he was found competent to stand trial, it could entertain his *Marsden* and *Faretta*⁶ motions. Defendant maintained that he would not speak to the experts and repeated his demand for a *Marsden* hearing. Again, the court declined his request.

On January 15, 2007, defendant filed another written request to proceed with his *Marsden* motion. He claimed his attorney had no basis to declare a doubt as to his competence to stand trial.

On February 8, 2007, the court heard and denied defendant's *Marsden* motion. On March 8, 2007, although defendant had not been examined by doctors, the court found him competent to proceed to trial. It also granted defendant's *Faretta* motion and appointed his former attorney to act as stand-by counsel.

On April 2, 2007, defendant withdrew his plea of not guilty by reason of insanity. On April 24, he asked that counsel be appointed to represent him on the condition that his former attorney be relieved. His request was granted, and on April 26, a new attorney was appointed to represent him. That attorney represented defendant at both trials.

Although defendant consistently requested *Marsden* hearings after his counsel declared a doubt pursuant to section 1368, the trial court declined to act, believing that defendant's mental competence had to be determined first. It was incorrect. "While it is

⁶ *Faretta v. California* (1975) 422 U.S. 806.

true that section 1368 mandates the suspension of ‘all proceedings in the criminal prosecution’ once the court has ordered a hearing into the mental competence of the defendant [citations], it is equally true that the Sixth Amendment right to effective representation virtually compels a hearing and an order granting a motion for substitution of counsel when ‘there is a sufficient showing that the defendant’s right to the assistance of counsel would be substantially impaired if [the defendant’s] request was denied.’ [Citations.]” (*People v. Stankewitz* (1990) 51 Cal.3d 72, 87-88.) Here, defendant unequivocally stated on several occasions that he wanted new counsel because an irreconcilable conflict had arisen. He claimed counsel acted in bad faith when he declared a doubt that defendant was competent to stand trial. The court should have conducted a *Marsden* hearing, notwithstanding the pending issue regarding defendant’s competency. (*People v. Solorzano* (2005) 126 Cal.App.4th 1063, 1069-1070 (*Solorzano*).)

However, the court’s failure to conduct a *Marsden* hearing earlier in the proceedings does not require reversal. Defendant argues to the contrary, relying on *Solorzano*. In that case, while criminal proceedings were suspended, the defendant requested a *Marsden* hearing. The court believed that a hearing was not required at that time due to counsel’s declaration of a doubt as to the defendant’s competency. The defendant, who chided his attorney for not securing medical and school records which might have demonstrated his incompetence to proceed, was found competent against his wishes. The court then denied his motion to relieve counsel. The appellate court reversed, finding that it could not “conclude beyond a reasonable doubt that this denial of the effective assistance of counsel did not contribute to [the finding he was competent to stand trial]. [Citation.]” (*Solorzano, supra*, 126 Cal.App.4th at p. 1071.)

Here, in contrast, the court conducted a *Marsden* hearing on February 8, 2007, before it adjudicated the issue of defendant’s competency. Defendant had a full opportunity to establish his counsel’s inadequacies before the criminal proceedings

resumed.⁷ He does not explain how he was prejudiced by the mere fact that his *Marsden* hearing was delayed. Defendant suffered no harm from the delay for another reason. Defendant's dissatisfaction stemmed from his belief that counsel had no basis for declaring a doubt as to his competency. He did not concur with counsel's decision to enter a plea of not guilty by reason of insanity. Ultimately, the court declared defendant competent to stand trial, relieved counsel, allowed defendant to represent himself and withdraw his not guilty plea by reason of insanity, and appointed a new attorney upon his request. Put simply, the trial court gave defendant everything he sought. Under these circumstances, we conclude beyond a reasonable doubt that defendant was not prejudiced by the trial court's refusal to conduct an earlier *Marsden* hearing. (See *Marsden*, *supra*, 2 Cal.3d at p. 126 [test for determining prejudice].)

II. The Trial Court Properly Denied Defendant's Motion for a Mistrial

On direct examination, the prosecutor asked Valerie Robles how long she had been married to defendant on the date of the incident. She replied, "For about four years." Not satisfied with the answer, the prosecutor asked, "You were married?" Robles answered, "No Now we're married four years. Sorry. But he had been incarcerated the whole time for two years at the time." Defendant's counsel asked for a mistrial. The court denied the request, choosing instead to admonish the jury.

The court told the jury the following. "In prior questioning, the witness, Ms. Robles, volunteered information that was unresponsive to the question posed about her marital status with respect to a prior incarceration. Those were the words. That portion of her testimony is stricken. And you're admonished to disregard it in its entirety, that portion thereof. It is irrelevant and may not be considered by you for any purpose."

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Defendant does not claim the trial court erred in denying his request to relieve counsel.

Defendant contends the trial court abused its discretion by denying him a mistrial and claims he was denied a fair trial. We disagree.

“In reviewing rulings on motions for mistrial, we apply the deferential abuse of discretion standard. [Citation.] ‘A mistrial should be granted if the court is apprised of prejudice that it judges incurable by admonition or instruction. [Citation.] Whether a particular incident is incurably prejudicial is by its nature a speculative matter, and the trial court is vested with considerable discretion in ruling on mistrial motions.

[Citation.]’ [Citation.]” (*People v. Wallace* (2008) 44 Cal.4th 1032, 1068.) “A motion for mistrial should be granted only when a party’s chances of receiving a fair trial have been irreparably damaged.” (*People v. Lewis and Oliver* (2006) 39 Cal.4th 970, 1029.)

Despite defendant’s argument to the contrary, he was not deprived of a fair trial. After Robles made the remark at issue, a brief recess was taken. Immediately after the recess, the court strongly admonished the jury, instructing it to ignore Robles’s statement about defendant’s incarceration because it was irrelevant. Jurors are presumed to follow a court’s admonitions concerning the scope of evidence it is to consider. (*People v. Houston* (2005) 130 Cal.App.4th 279, 312.) We have no reason to disregard that presumption in light of the clear and direct instruction by the court.

In any event, any harm caused by Robles’s brief comment was harmless by any standard. The evidence of defendant’s guilt was overwhelming. On the night in question, only defendant and the victim were in the room where the attack occurred. This was confirmed by the victim and defendant’s mother. After the victim screamed for help, defendant’s mother came out of her bedroom and saw defendant standing next to the victim, who was crying and bleeding. After the victim went outside of the apartment, defendant fled the location by stealing his mother’s car. Shortly after the incident, the victim told a deputy sheriff that defendant had stabbed her. Defendant asserts the remark regarding his prior incarceration affected the jury’s decision to return guilty verdicts on the attempted murder and aggravated mayhem counts. We are not persuaded. Defendant correctly points out that the intent to kill and to disfigure, necessary elements of the crimes in question, are generally proven with circumstantial evidence. Indeed, the

prosecutor told the jury to consider the 12 stab wounds defendant inflicted,⁸ the nature of the attack, and the seriousness of the victim's wounds when deciding whether defendant had the requisite intent. In other words, the jury was appropriately advised to base its decision on the circumstances of the crime, not defendant's character, as he contends. As we set forth below (section IV, *post*), the evidence supporting the jury's verdict is substantial.

The cases upon which defendant relies are readily distinguishable. The victim did not refer to defendant as an "ex-con" or advise the jury that he was a "parolee." Significantly, the courts in those cases found prejudicial error due to the fact that the evidence of the defendants' guilt was not compelling. As we have discussed, that is not the case here.

We conclude the trial court reasonably found that any harm caused by the victim's comment, which did not specify why defendant had been incarcerated or if he had been convicted of a crime, could be cured by admonishing the jury. Its denial of defendant's mistrial motion was not an abuse of discretion.

III. The Court Did Not Err in Instructing the Jury

During the discussion of the proposed jury instructions, the court asked whether it was required to include the bracketed portion of CALCRIM No. 226 which tells the jury to consider whether a "witness engaged in [other] conduct that reflects on his or her believability?" Defense counsel suggested that the victim's admission that she was under the influence of methamphetamine at the time the crime was committed warranted inclusion of the bracketed portion. The trial court concluded that the particular instruction applied to situations where a witness committed a misdemeanor or other act constituting moral turpitude and refused to give it. It was correct.

⁸ As neither trial nor appellate counsel disputes the accuracy of this statement, we assume the medical records submitted into evidence established the number of wounds Robles suffered.

Defendant asserts that the court's refusal to include the bracketed language denied him a right to present a defense. His argument misses the mark. In each case on which he relies, the jury did not receive testimony or an instruction relating to a vital concept—a witness's ability to perceive the facts about which he or she testified. Here, the jury received both. It heard evidence that Robles abused methamphetamine in the days prior to the attack. It was instructed to consider these factors: (1) "How well could the witness see, hear, or otherwise perceive the things about which the witness testified?" and (2) "How well was the witness able to remember and describe what happened?" Defendant failed to demonstrate how the jury lacked guidance on the issue of a witness's intoxication.

Defendant does not cite a single case holding that a witness's use of drugs alone constitutes conduct reflecting on his or her credibility. It is not surprising, as we have no difficulty determining that the bracketed portion in CALCRIM No. 226 at issue states in a different way what CALJIC No. 220, the comparable instruction on judging witness credibility, described as "Past criminal conduct of a witness amounting to a misdemeanor." One need only track the two instructions to reach the same conclusion. The last three bracketed portions of each instruction refer to the same subjects. CALJIC lists the factors of felony conduct, misdemeanor conduct, and immunity. CALCRIM lists felony conduct, other conduct, and immunity. Defendant's suggestion that the "[other] conduct" language in CALCRIM No. 226 applies to acts not constituting moral turpitude is unavailing.

The jury was properly instructed.

IV. The Attempted Murder and Aggravated Mayhem Verdicts Are Supported by Substantial Evidence

Defendant claims that the jury verdicts on count one, attempted murder, and count three, aggravated mayhem, are not supported by the evidence. We disagree.

"The proper test for determining a claim of insufficiency of evidence in a criminal case is whether, on the entire record, a rational trier of fact could find the

defendant guilty beyond a reasonable doubt. [Citations.] On appeal, we must view the evidence in the light most favorable to the People and must presume in support of the judgment the existence of every fact the trier could reasonably deduce from the evidence. [Citation.]” (*People v. Ochoa* (1993) 6 Cal.4th 1199, 1206.) Reversal on the ground of insufficiency of the evidence “is unwarranted unless it appears ‘that upon no hypothesis whatever is there sufficient substantial evidence to support [the conviction].’ [Citation.]” (*People v. Bolin* (1998) 18 Cal.4th 297, 331.)

Defendant argues the evidence demonstrated that his act was the product of haste and rash impulse. He contends the prosecution failed to prove that he committed premeditated attempted murder or had the intent to cause a permanent disability or disfigurement to the victim.

Defendant was not convicted of committing premeditated attempted murder. The jury found him guilty of attempted murder and made no further finding relating to deliberation and premeditation. In order to find defendant guilty of attempted murder, the prosecution had to prove that he intended to kill his victim and took a direct but ineffectual step toward killing her. (CALCRIM No. 600.) Suffice it to say that the evidence establishing defendant stabbed Robles 12 times is more than adequate to support an attempted murder conviction.

In order to be convicted of aggravated mayhem, a defendant must have the specific intent to maim his or her victim. (*People v. Park* (2003) 112 Cal.App.4th 61, 64.) “[S]pecific intent may be inferred from the circumstances attending an act, the manner in which it is done, and the means used, among other factors.” (*People v. Lee* (1990) 220 Cal.App.3d 320, 325.) “Thus, evidence of a ‘controlled and directed’ attack or an attack of ‘focused or limited scope’ may provide substantial evidence of such specific intent. [Citation.]” (*People v. Quintero* (2006) 135 Cal.App.4th 1152, 1162.)

Defendant characterizes his attack as sudden, indiscriminate, and unfocused. As such, he claims that the evidence did not establish he had the intent to cause a permanent disability or disfigurement. The jury believed otherwise and its conclusion is supported by ample evidence. The scope of defendant’s attack was focused. He inflicted serious

wounds to vulnerable areas of Robles's body—her face, breast, and upper torso. This suggests that he did not stab her indiscriminately. His intent to maim was demonstrated by the fact that when he returned to the bedroom, he began his attack by stabbing Robles under the eye. He did so with such force that the bone under her eye became displaced and she was left with a scar. Moreover, defendant's choice of weapon, a sharp cutting instrument, is one quite capable of causing intense pain and leaving a victim scarred, as was the case here. The jury's view of the circumstantial evidence is entitled to great deference and we will not disturb its determination that defendant intended to cause his victim a permanent disability or disfigurement. (See *People v. Snow* (2003) 30 Cal.4th 43, 66.)⁹

V. The Abstract of Judgment Must Be Modified

As we noted above, the court sentenced defendant to a life term in prison and, due to his prior serious felony conviction, ordered that he serve a minimum of 14 years before becoming eligible for parole. The court also imposed a consecutive determinate term of nine years, consisting of four years for the unlawful driving of a vehicle and five years for the prior serious felony conviction pursuant to section 667, subdivision (a). However, the abstract of judgment states the life term is seven years and the determinate term is four years, as it fails to include the five-year sentence for the prior serious felony conviction.

We have the inherent power to correct clerical errors at any time, such as when an abstract of judgment does not accurately reflect the oral pronouncement of judgment. We may correct the error absent a request from the parties. (*People v. Mitchell* (2001) 26 Cal.4th 181, 185.) Accordingly, we order that the abstract of judgment be corrected to accurately reflect the sentence ordered by the court.

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As we have found the trial court committed no individual prejudicial error, defendant's claim of cumulative error necessarily fails.

DISPOSITION

The clerk of the superior court is directed to modify the judgment to provide: (1) as to defendant's life sentence, that he serve 14 years before becoming eligible for parole; and (2) that five years be added to his determinate term to reflect the sentence imposed for a prior conviction pursuant to section 667, subdivision (a). The clerk is directed to send a copy of the corrected abstract to the Department of Corrections and Rehabilitation. As modified, the judgment is affirmed.

CERTIFIED FOR PARTIAL PUBLICATION

SUZUKAWA, J.

We concur:

EPSTEIN, P.J.

MANELLA, J.