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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. LEONARD SUAREZ, Defendant and Appellant.	G028772 (Super. Ct. No. 00NF0776) O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Gregg L. Prickett, Judge. Affirmed.

G. David Haigh for Defendant and Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney General, Gary W. Schons, Assistant Attorney General, Janelle M. Boustany and Carlson M. Legrand, Deputy Attorneys General, for Plaintiff and Respondent.

* * *

Defendant Leonard Suarez was convicted of mayhem (Pen. Code, § 203), assault with a deadly weapon (§ 245, subd. (a)(1)), willful infliction of corporal injury (§ 273.5, subd. (a)), and two misdemeanor counts of making annoying telephone calls. He argues insufficient evidence connects him with the felonies and the court abused its discretion by denying his motion for new trial based on new evidence. For the reasons set forth below, we affirm.

I

Maria Rosas and her sister, victim Sara Andrade, drank and danced at a nightclub until the early morning hours of November 28, 1999. Andrade said she would take a taxi home, and Rosas departed.

A short time after Rosas went to bed, defendant, the father of Andrade's two children, telephoned several times demanding to know where Andrade was and whether she had a boyfriend. He sounded drunk. All Rosas would tell him was that Andrade was out partying. Defendant threatened to come over and beat them up. Arriving as promised, he demanded information on Andrade's whereabouts. Defendant decamped a few minutes later, only to telephone again. Rosas finally told him Andrade was at another sister's home. Defendant announced he would go there and wait.

Later that night, Rosas's father awakened her and told her to take Andrade to the hospital. Rosas found her sister in the kitchen, bleeding and screaming in pain. She had a deep knife-wound on her right calf, bruises above her eye, and a slight injury to her knee. Andrade was hospitalized and needed crutches for a month.

A day or two later, defendant telephoned and asked to speak to Andrade. When Rosas refused, defendant angrily snapped that he "should have finished the job." Rosas threatened to call the police. Defendant replied he would be waiting for them, would spit in their faces and would not be taken alive. Rosas and defendant did not like each other, and frequently traded insults and threats.

Around 4:00 a.m. on November 28, Rosas's neighbor Julia Jurado heard voices, and saw a woman talking to the driver in a dark car. Five minutes later, she heard a woman scream. The dark car was gone. Under a streetlight, she saw a man yell, then hit and kick a woman, who was then lying on the ground. She recognized the woman's voice as Andrade's. Jurado went outside, approached the couple, and yelled several times for the man to stop. The attacker complied. Andrade said something to the effect that Jurado was that "woman that I hate." Andrade got up and walked towards her house, as did her assailant. She did not limp, nor did Jurado see blood on her legs. Jurado retrieved Andrade's purse and handed it to her. The man continued to yell profanities, claiming he did not care if Andrade's family was outside. Jurado identified defendant as Andrade's attacker in a pretrial photo-lineup, but did not identify him at trial.[1]

Rudy Castillo was acquainted with both defendant and the Andrades. In a conversation with a plainclothes sheriff's deputy (secretly tape-recorded in July 2000), Castillo stated that Andrade and defendant had been at a wedding earlier that day.[2] Defendant did not like Andrade dancing with other men. Castillo, who continued to party through the night and early morning, saw Andrade and defendant fighting in Andrade's driveway, but did not interfere because it was only a case of "spousal abuse."

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[1] Jurado testified she selected defendant's photograph because his facial features resembled those of Andrade's children.

[2] Evidence of the interview was admitted as a prior inconsistent statement. Castillo claimed no memory of the conversation. He testified he attended the wedding, but did not see defendant or Andrade. He left the reception around 8:00 p.m. and passed out drunk on the floor of his mother's home. His pit bull awakened him in time for his 6:30 a.m. methadone appointment. His mother also testified and confirmed the substance of his testimony.

Castillo, who claimed to be a blackout-suffering alcoholic, had multiple prior convictions (theft, using false names, threatening a prosecutor, drug and weapons possession), with two stints in prison. He was well-acquainted with the prison "code of silence," a concept shared by those in his neighborhood, and believed a "rat" who "squeal[ed]" would be killed.

Andrade evidently patched up her differences with defendant, successfully dodged a subpoena, and did not testify at trial. She exercised her Fifth Amendment privilege and refused to testify at defendant's preliminary hearing.[3]

II

Defendant contends there was insufficient evidence of the corpus delicti to support his conviction. Specifically, he argues the prosecution did not demonstrate the victim's injuries were caused by criminal acts, noting the victim did not testify and the prosecution offered no medical testimony describing the nature of the injuries. We disagree.

"'"The corpus delicti of a crime consists of two elements, the fact of the injury or loss or harm, and the existence of a criminal agency as its cause."'" (*People v. Zapien* (1993) 4 Cal.4th 929, 985-986.) The corpus delicti must be established independently from the defendant's extrajudicial statements or admissions. (*People v. Jones* (1998) 17 Cal.4th 279, 301.) "The independent proof may be circumstantial and need not be beyond a reasonable doubt, but it is sufficient if it permits an inference of criminal conduct, even if a noncriminal explanation is also plausible. [Citations.] There is no requirement of independent evidence 'of every physical act constituting an element of an offense,' so long as there is some slight or prima facie showing of injury, loss or harm by a criminal agency. [Citation.] In every case, once the necessary quantum of independent evidence is present, the defendant's extrajudicial statements may then be considered for their full value to strengthen the case on all issues. [Citations.]" (*People v. Alvarez* (2002) 27 Cal.4th 1161, 1171.)

Here, ample evidence established the corpus delicti. Castillo told an investigating officer he saw defendant assaulting the victim in her driveway in the early

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[3] At sentencing, Andrade claimed the incident had been misinterpreted, her children were suffering the loss of their father, and defendant "should not be serving any time at all for this."

morning hours of November 28. Jurado confirmed an altercation occurred around the same time. A short time later, the victim was carried into her home, bleeding and screaming in pain. There was no evidence to show the victim's injuries were accidental or self-inflicted, and the jury reasonably could infer the wounds were caused by a criminal act.

Defendant's contention there was insufficient evidence he was the perpetrator is equally unavailing. The evidence showed he had searched for the victim throughout the night, believing she was with her paramour and threatening to assault both of them. In a pretrial statement, Castillo indicated he saw defendant assault the victim, and another witness heard the couple arguing at approximately the same time. Several days after the assault, defendant told Rosas he "should have finished the job." This was ample evidence to support the jury's conclusion that defendant was the assailant.

Defendant relies on *Iiams v. Superior Court* (1965) 236 Cal.App.2d 80 in support of his position, but that case is factually distinguishable. There, the defendant brought an injured infant to the hospital. The child had a large bruise on his left cheek and his left ear was partially severed. As the court noted, no circumstances suggested the injuries were intentionally caused by a human being, or were the product of anything other than an accidental or negligent act. All the evidence in this case suggests defendant intentionally caused the serious injuries suffered by Andrade. There are no grounds for reversal.

III

Defendant also complains of the denial of his new trial motion, but offers little more than a boilerplate recitation of cases discussing the law in this area. What he does not discuss, let alone specify, is the precise nature of the trial court's purported error. Defendant and his appellate counsel apparently expect this court to comb through the record in search of reasons to support this contention. That, of course, is not our role. A "'reviewing court is not required to make an independent, unassisted study of the

record in search of error'" (*Guthrey v. State of California* (1998) 63 Cal.App.4th 1108, 1115) and may treat an issue as waived "when an appellant makes a general assertion, unsupported by specific argument . . . ." (*People v. Stanley* (1995) 10 Cal.4th 764, 793.)

Turning to the merits, the argument fails in any event. "In ruling on a motion for new trial based on newly discovered evidence, the trial court considers the following factors: '"1. That the evidence, and not merely its materiality, be newly discovered; 2. That the evidence be not cumulative merely; 3. That it be such as to render a different result probable on a retrial of the cause; 4. That the party could not with reasonable diligence have discovered and produced it at the trial; and 5. That these facts be shown by the best evidence of which the case admits."'" (*People v. Delgado* (1993) 5 Cal.4th 312, 328.) The trial court's denial of a motion for a new trial "'"rests so completely within [its] discretion that its action will not be disturbed unless a manifest and unmistakable abuse of discretion clearly appears."'" (*Ibid.*)

At the hearing on the new trial motion, defendant submitted the declarations of Castillo, Anna and Jose Corral, Frank Fierro, and Michele Burns. Castillo's declaration was not new evidence, merely repeating his earlier testimony. The Corrals' declarations stated they sat with the victim at the wedding and did not see her dance. Fierro and Burns were also at the wedding. Fierro stated Castillo was intoxicated and left before the victim arrived. Burns declared she drove Castillo home around 9:00 p.m.

The trial court noted Castillo had been thoroughly impeached, and the key witness against defendant was Rosas, not Castillo. Rosas had recounted defendant's admissions, which provided the motive for the attack and a later acknowledgement of responsibility. Coupled with Jurado's pretrial identification, the court concluded there was no reasonable probability the "new" evidence would alter the outcome at any retrial. We are of the same opinion and discern no abuse of discretion on this record.

The judgment is affirmed.

ARONSON, J.

WE CONCUR:

SILLS, P. J.

MOORE, J.