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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THE PEOPLE,

Plaintiff and Respondent,

v.

SHAUN DOMINIC MOORE,

Defendant and Appellant.

B282184

(Los Angeles County
Super. Ct. No. BA436825)

APPEAL from a judgment of the Superior Court of
Los Angeles County, Robert M. Martinez, Judge. Affirmed.

Ava R. Stralla, under appointment by the Court of Appeal,
for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief
Assistant Attorney General, Lance E. Winters, Senior Assistant
Attorney General, Scott A. Taryle and David W. Williams,
Deputy Attorneys General, for Plaintiff and Respondent.

INTRODUCTION

Shaun Moore appeals from the judgment entered after a jury convicted him of attempted murder and assault with a deadly weapon. Moore argues that substantial evidence does not support the jury's finding he intended to kill his victim and that the trial court abused its discretion in denying his motion to dismiss one of his prior serious or violent felony convictions in furtherance of justice. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

A. *Moore Attacks with a Knife*

One afternoon in May 2015 Eugene Choi was walking on the sidewalk in the Koreatown area of Los Angeles, on his way from his job at a nonprofit organization to a nearby printing shop. He noticed several people, including Moore, sitting at a bus stop bench. As Choi walked past the bus stop, Moore stood up, approached him, and asked Choi if he was Korean. Choi said he was Korean, and continued walking.

After Choi had taken five or six steps, Moore removed a knife from his pocket, made a "swinging motion" toward Choi's neck, and stabbed him. Choi heard Moore murmur something, felt a stab on the left side of his neck, and fell to the ground. Moore stabbed Choi once or twice in the neck while Choi was standing and several more times, including in the armpit and back, after Choi fell. Choi began "bleeding profusely" from his neck and felt numb below his chest. He tried to stop the bleeding from his neck with a napkin, but he began to feel cold and was

unable to continue putting pressure on his neck. Choi asked someone to call 911.

Moore ran away across the street, into an alley, and threw the knife into the middle of the street. As Choi lay on the ground, he pointed toward Moore. A witness called 911 and reported a stabbing.¹

Moore was arrested in his room at a nearby drug and alcohol residential treatment facility where he lived. He had blood on his hands. Police recovered the knife from the middle of the street. One witness identified Moore at a field show-up and another witness recognized him as a resident in the treatment facility. Blood on the knife matched Choi's DNA.

Choi suffered deep stab wounds, one of which cut half way through his spinal cord. The stab wound that caused the spinal cord injury penetrated "multiple layers" of flesh, including "the skin, muscles, all the subcutaneous tissues," the many "layers surrounding the spinal cord," and finally the spinal cord. An MRI showed the "trajectory" of a "wound that entered from the skin,

¹ At trial Moore described the incident differently. He testified Choi was a "strange dude" who walked up to him and asked him where he was from, which Moore interpreted as a gang challenge. According to Moore, Choi said he was from an Asian gang, spit on Moore, hit him, pulled out a pocket knife, and swung it at Moore. Moore stated he grabbed Choi's wrist and made Choi stab himself, and tripped Choi, which caused Choi to fall on the knife. Moore said he grabbed the knife and threw it in the street to get the knife away from Choi, who Moore thought was chasing him. A police officer who interviewed Moore after his arrest testified Moore denied he was present during the incident.

went through the muscles, went through the ligamentum flavum, which is a covering over the spinal cord and into the spine.” Another stab wound caused Choi’s lung to collapse and fill with blood, which was a life-threatening injury. This wound was “a deep penetrating injury where the knife actually went more than superficially” to traverse muscles and the membrane surrounding the lung. Emergency room physicians treated Choi for the collapsed lung by placing a tube in his chest and giving him blood transfusions. They treated his spinal cord injury by monitoring and maintaining his blood pressure.

Choi was in the intensive care unit of a local hospital for 10 or 11 days and then spent 20 to 25 days at a rehabilitation center. He was unable to walk or use his body below his chest; he had movement but no sensation on the left side of his body and sensation but no movement on the right side. He used a wheelchair for four or five months, and then a walker. By the time of trial, he was using crutches and could walk short distances with the assistance of an ankle-foot sustainer that supported his foot to keep it at a right angle. Doctors diagnosed him with Brown-Sequard Syndrome, a condition caused by certain spinal cord injuries, a “unique constellation of symptoms where a patient will have weakness on one side but loss of pain and temperature on an opposite side.” His prognosis was uncertain.

B. *The Jury Convicts Moore, and the Trial Court
Sentences Him*

The People charged Moore with attempted murder (Pen. Code, §§ 187, subd. (a), 664, subd. (a))² and assault with a deadly weapon (§ 245, subd. (a)(1)). The People alleged Moore personally used a deadly and dangerous weapon within the meaning of Penal Code section 12022, subdivision (b)(1), personally inflicted great bodily injury within the meaning of section 12022.7, subdivision (a), and personally inflicted great bodily injury causing the victim to suffer paralysis of a permanent nature within the meaning of section 12022.7, subdivision (b). The People also alleged Moore committed the crimes as hate crimes within the meaning of section 422.75, subdivision (a). Finally, the People alleged Moore had suffered two prior convictions for felonies, one in 2005 and one in 2011, that were serious felonies within the meaning of section 667, subdivision (a)(1), and serious or violent or serious felonies within the meaning of the three strikes law (§§ 667, subds. (b)-(i), 1170.12), and had served three separate prison terms for felonies within the meaning of section 667.5, subdivision (b).

The jury convicted Moore of both crimes. The jury also found true the allegations Moore personally used a deadly and dangerous weapon and personally inflicted great bodily injury. The jury found not true, however, the allegations Moore committed the crimes as hate crimes and caused Choi to suffer paralysis.

At sentencing, Moore admitted the 2005 and 2011 prior serious or violent felony convictions under the three strikes law

² Statutory references are to the Penal Code.

and section 667, subdivision (a)(1). Moore also admitted he had served three separate prison terms for felonies within the meaning of section 667.5, subdivision (b). The court denied Moore's motion under *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497 to dismiss at least one of the prior serious or violent felony convictions.

On the attempted murder conviction, the trial court sentenced Moore to a prison term of 25 years to life, plus 10 years for the two prior serious felony convictions, three years for the great bodily injury enhancement, and one year for the use of a deadly or dangerous weapon, for a total term of 39 years to life. On the assault with a deadly weapon conviction, the court imposed and stayed under section 654 a similar term. The court struck the one-year prior prison term enhancements. Moore appealed.

DISCUSSION

A. *Substantial Evidence Supports Moore's Conviction for Attempted Murder*

"On appeal, the test for sufficiency of the evidence is whether evidence was presented from which a reasonable trier of fact could conclude, beyond a reasonable doubt, that the prosecution sustained its burden of proof. [Citation.] Although we assess whether the evidence is inherently credible and of solid value, we must also view the evidence in the light most favorable to the jury verdict and presume the existence of every fact that the jury could reasonably have deduced from that evidence." (*People v. Reed* (2018) 4 Cal.5th 989, 1006.) "We ""must review the whole record in the light most favorable to the judgment

below to determine whether it discloses substantial evidence—that is, evidence which is reasonable, credible, and of solid value—such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt.””” (*People v. Brooks* (2017) 3 Cal.5th 1, 57; see *People v. Zaragoza* (2016) 1 Cal.5th 21, 44 [“the relevant inquiry on appeal is whether, in light of all the evidence, ‘any reasonable trier of fact could have found the defendant guilty beyond a reasonable doubt’”].) “““Conflicts and even testimony [that] is subject to justifiable suspicion do not justify the reversal of a judgment, for it is the exclusive province of the trial judge or jury to determine the credibility of a witness and the truth or falsity of the facts upon which a determination depends. [Citation.] We resolve neither credibility issues nor evidentiary conflicts; we look for substantial evidence.””” (*People v. Jackson* (2014) 58 Cal.4th 724, 749.) “A reversal for insufficient evidence “is unwarranted unless it appears ‘that upon no hypothesis whatever is there sufficient substantial evidence to support’ the jury’s verdict.” (*People v. Manibusan* (2013) 58 Cal.4th 40, 87.)

“Attempted murder requires the specific intent to kill and the commission of a direct but ineffectual act toward accomplishing the intended killing.’ [Citations.] ‘Intent to unlawfully kill and express malice are, in essence, “one and the same.”’ [Citation.] Express malice requires a showing that the assailant either desires the victim’s death or knows to a substantial certainty that the victim’s death will occur.” (*People v. Covarrubias* (2016) 1 Cal.5th 838, 890.) “[I]t is well settled that intent to kill or express malice, the mental state required to convict a defendant of attempted murder, may . . . be inferred from the defendant’s acts and the circumstances of the

crime.” (*People v. Avila* (2009) 46 Cal.4th 680, 701; see *People v. Smith* (2005) 37 Cal.4th 733, 741; *People v. Millbrook* (2014) 222 Cal.App.4th 1122, 1149.)

Moore argues “the evidence was legally insufficient to prove the element of intent to kill in attempted murder beyond a reasonable doubt.” Moore acknowledges the trial court “instructed the jury with the lesser included offense of attempted voluntary manslaughter on a theory of imperfect self-defense,” and he “recognizes that by finding [him] guilty of attempted murder, the jury rejected his testimony under this theory. However, [Moore] maintains, inasmuch as the prosecution has not established an intent to kill, the evidence was insufficient to prove this requisite element.”

But it was. Moore attacked Choi multiple times with a knife, even after Choi was on the ground and helpless. (See *People v. Avila, supra*, 46 Cal.4th at pp. 701-702 [evidence defendant “repeatedly attempted to stab [the victim], an unarmed and trapped victim, and succeeded in stabbing him in the arm and leg” was “alone . . . substantial evidence of defendant’s intent to kill”]; *People v. Prince* (2007) 40 Cal.4th 1179, 1253 [“clustered stab wounds support an inference of a deliberate killing”]; *People v. San Nicolas* (2004) 34 Cal.4th 614, 658 [“[t]he jury . . . fairly could have concluded that defendant was intent upon killing [the victim] due to the sheer number of wounds on [her] body”]; *People v. Osband* (1996) 13 Cal.4th 622, 682 [evidence established “to a near certainty” the defendant “harbored lethal intent at the moment he used the knife” where “there was little doubt that the knife wound was administered while the victim was in [a] defenseless position”]; *People v. Nazeri* (2010) 187 Cal.App.4th 1101, 1118 [“numerous blows to the neck

and vital organs of [the] victims . . . supports the reasonable inference . . . that the blows were intended to kill rather than merely wound”]; *People v. Gonzalez* (2005) 126 Cal.App.4th 1539, 1552 [defendant’s intent to kill “was established by the evidence of his unprovoked attack that rendered the unarmed victim prone and defenseless as [the defendant] repeatedly stabbed him”].)

Moore inflicted deep, life-threatening injuries to Choi’s neck, lungs, and spinal cord. (See *People v. Bolden* (2002) 29 Cal.4th 515, 561 “[i]n plunging the knife so deeply into such a vital area of the body of an apparently unsuspecting and defenseless victim, defendant could have had no other intent than to kill”]; *People v. Osband, supra*, 13 Cal.4th at p. 682 “[t]he deep stab wound in the neck of [the victim] who was probably already disabled through defendant’s beating of her, combined with evidence that he stabbed her twice or, if not twice, stabbed her once and twisted or let the knife twist in her neck, is inconsistent with unintentional homicide”]; *People v. Gonzalez, supra*, 126 Cal.App.4th at p. 1552 [“the totality of the circumstances, including the manner of the attack and the number and location of the penetrating knife wounds, was sufficient to support a finding of intent to kill”]; *People v. Moore* (2002) 96 Cal.App.4th 1105, 1114 [substantial evidence supported the jury’s finding the defendant intended to kill where the defendant “stabbed the victim not in the arm or leg, but in the abdomen, an extremely vulnerable area of the body” with “all his might and effort”].)

There was reasonable, credible, and solid evidence Moore intended to kill Choi. Substantial evidence supported Moore’s conviction for attempted murder.

B. *The Trial Court Did Not Abuse Its Discretion in Denying Moore's Motion To Strike One of Moore's Prior Convictions*

1. *Relevant Proceedings*

After his conviction, Moore filed a motion to dismiss one of his two prior serious or violent felony convictions for purposes of sentencing him under the three strikes law. Moore argued the trial court should dismiss either the 2005 conviction or the 2011 conviction in the interest of justice because Moore had a history of mental illness and “was not of sound mind when the incident was committed.” Moore argued he had been diagnosed and treated “as schizophrenic, bi-polar, paranoid and delusional,” was “picked on by gang members growing up,” and heard voices despite taking medication. Moore submitted letters and reports documenting his mental illness, including from friends, family members, and psychiatrists. A psychiatrist opined that Moore’s psychotic symptoms “likely impacted . . . Moore’s actions in the time period prior to his arrest.” Another psychiatrist stated Moore met the diagnostic criteria for a mood disorder and “most likely” had bipolar spectrum illness. This doctor noted that Moore had a “mental health history which dated back to age 17 including paranoid ideation, intermittent auditory hallucinations, and psychiatric treatment” and opined that “at the time of the instant offense it is possible that he was hypomanic or manic.”

In opposing the motion, the People, noting neither conviction was “unusually old,” argued that dismissing one of Moore’s prior serious or violent felony convictions would not serve the interests of justice. The People argued that, between the 2005 conviction and the 2011 conviction, Moore “did not remain

crime free” and “repeatedly violated the terms of his probation” and that he committed the crimes in this case within eight months of his release on parole. The People also argued that, although Moore “received mental health treatment,” there were “serious questions” about the “true extent of [Moore’s] mental issues” and that Moore posed “a substantial danger to society” and would “continue to offend.” The People submitted a report by another psychiatrist, who stated Moore was deceitful and “admitted he feigned symptoms” of mental disorders “for secondary gain, including” lying to prison authorities about his medical condition to obtain medication to sell and “faking” mental illness to “obtain benefits.” This psychiatrist opined that Moore’s “behavior at the time of the instant offense” was not “linked to any manic/psychotic symptoms, regardless of his diagnosis at the time of the instant offense,” and that Moore’s conduct in committing the crimes in this case “represents a pattern of criminal behavior for this individual.” The psychiatrist concluded Moore’s wrongful conduct “was not influenced by psychiatric symptoms.”

The trial court denied Moore’s motion to dismiss. The court ruled: “The court recognizes that it has discretion to strike priors But the last one is the most serious, the most dangerous and the one that could have resulted in the taking of someone’s life. In [any] event, the court does not find any circumstances that would promote in the interest of justice by the striking of [the] prior strikes, and the motion to dismiss is denied.”

2. *Standard of Review*

Section 1385, subdivision (a), vests the court with discretion to dismiss a qualifying strike conviction “in furtherance of justice.” (*Romero, supra*, 13 Cal.4th at p. 530; see *People v. Williams* (1998) 17 Cal.4th 148, 158.) “[I]n ruling whether to strike or vacate a prior serious and/or violent felony conviction allegation or finding under the Three Strikes law . . . or in reviewing such a ruling, the court . . . must consider whether, in light of the nature and circumstances of his present felonies and prior serious and/or violent felony convictions, and the particulars of his background, character, and prospects, the defendant may be deemed outside the [three strikes] scheme’s spirit, in whole or in part, and hence should be treated as though he had not previously been convicted of one or more serious and/or violent felonies.” (*People v. Williams*, at p. 161; accord, *People v. Solis* (2015) 232 Cal.App.4th 1108, 1124; see *People v. Vargas* (2014) 59 Cal.4th 635, 646 [“when ruling on a defendant’s *Romero* motion [citation], trial courts should consider, among other things, the nature and circumstances of the prior convictions and whether the defendant falls outside the spirit of the Three Strikes law”].) “[A] court may not dismiss a strike solely for judicial convenience, in exchange for a guilty plea, or based on antipathy to the Three Strikes law. Instead, in determining whether to strike a prior conviction, the trial court must look to ‘factors intrinsic to the [Three Strikes] scheme.’” (*People v. Johnson* (2015) 61 Cal.4th 674, 688.)

We review the trial court’s order denying a motion to dismiss a prior serious or violent felony conviction under section 1385 for abuse of discretion. (*In re Large* (2007) 41 Cal.4th 538, 550; see *People v. Carmony* (2004) 33 Cal.4th

367, 375 [“a trial court’s refusal or failure to dismiss or strike a prior conviction allegation under section 1385 is subject to review for abuse of discretion”]; *People v. Leavel* (2012) 203 Cal.App.4th 823, 837 [“[t]he court’s ruling on a motion to strike is subject to a deferential abuse of discretion standard of review”].) ““[T]he burden is on the party attacking the sentence to clearly show that the sentencing decision was irrational or arbitrary.”” (*People v. Carmony*, at p. 376.) “[T]he three strikes law not only establishes a sentencing norm, it carefully circumscribes the trial court’s power to depart from this norm and requires the court to explicitly justify its decision to do so. In doing so, the law creates a strong presumption that any sentence that conforms to these sentencing norms is both rational and proper. [¶] . . . [¶] . . . ‘[I]t is not enough to show that reasonable people might disagree about whether to strike one or more’ prior conviction allegations. . . . Because the circumstances must be ‘extraordinary . . . by which a career criminal can be deemed to fall outside the spirit of the very scheme within which he squarely falls once he commits a strike as part of a long and continuous criminal record, the continuation of which the law was meant to attack’ [citation], the circumstances where no reasonable people could disagree that the criminal falls outside the spirit of the three strikes scheme must be even more extraordinary.” (*Id.* at p. 378.)

3. *There Was No Abuse of Discretion*

Moore's prior criminal history included a 2005 serious felony conviction for carjacking, for which Moore served 270 days in county jail, and a 2011 serious felony conviction for assault with a deadly weapon, for which Moore served six years in state prison. (See § 1192.7, subd. (c)(27), (31).) In addition, Moore had a 2006 conviction for grand theft, a 2009 conviction for carrying a concealed dirk or dagger, and a 2011 conviction for obstructing or resisting an executive officer in the performance of his or her legal duty, as well as multiple parole violations. Between 2005, when he committed his first serious or violent felony, and 2015, when he committed the crime in this case while on parole, Moore spent much of his time committing crimes, serving prison terms, and violating probation. The trial court did not abuse its discretion in ruling Moore did not fall outside the spirit of the three strikes law. (See *People v. Williams*, *supra*, 17 Cal.4th at p. 163 [defendant was not "outside the spirit of the Three Strikes law" where he "did not refrain from criminal activity during [the] span of time . . . between his prior serious and/or violent felony convictions and his present felony"]; *People v. Gaston* (1999) 74 Cal.App.4th 310, 322 [defendant who committed his current crime while on parole and who "had not led a legally blameless life in the interim" between his prior and current convictions was not outside spirit of the three strikes law].)

Moore does not argue the trial court erred in evaluating his prior criminal record, current conviction, background, character, or prospects. Moore argues only the trial court should have dismissed "at least one of" his prior serious felony convictions because sentencing him as a second strike offender, instead of a third strike offender, would have resulted in sufficient

punishment. Moore argues that, “had the court stricken one of [his] two strikes, he could have received a long [determinate] sentence of 32 years at 85%—more than a 27-year sentence. At the time of trial [Moore] was 35 years old. Had he received a 32-year determinate sentence, he would be released when he is 62 years old, having had mental health treatment for 27 plus years.”

That a second strike sentence may be long enough is not a factor in the trial court’s exercise of discretion in ruling on a motion to dismiss a strike. And mental illness, though a consideration, does not require a trial court to dismiss a prior serious or violent felony conviction under *Romero*. (See *People v. Carrasco* (2008) 163 Cal.App.4th 978, 992-993.) This is particularly true where, as here, there was conflicting evidence regarding the nature and extent of Moore’s mental illness and its effect on Moore’s behavior. The trial court did not abuse its discretion in denying Moore’s motion to dismiss one of Moore’s prior serious or violent felony convictions.

DISPOSITION

The judgment is affirmed.

SEGAL, J.

We concur:

ZELON, Acting P. J.

FEUER, J.*

*Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.