

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

MICHAEL ANDREW AGE,

Defendant and Appellant.

B283843

(Los Angeles County
Super. Ct. No. BA450535)

APPEAL from a judgment of the Superior Court of
Los Angeles County. Craig Elliott Veals, Judge. Affirmed.

Pamela J. Voich, 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, Assistant
Attorney General, and Michael C. Keller, Deputy Attorney
General, for Plaintiff and Respondent.

In an information filed by the Los Angeles County District Attorney's Office, defendant and appellant Michael Andrew Age was charged with assault with a deadly weapon (Pen. Code, § 245, subd. (a)(1)).¹

Defendant pleaded not guilty, and on February 21, 2017, the matter proceeded to trial. On February 27, 2017, a mistrial was declared.

Defendant's second trial began on April 27, 2017. On May 2, 2017, the jury returned a guilty verdict. Defendant was sentenced to a total of two years in state prison, the low term on the assault count. Various fines and assessment were imposed. Defendant received 466 days of presentence credits.

This timely appeal ensued. Defendant contends that the evidence presented at trial was insufficient to support his conviction for assault with a deadly weapon.

We affirm.

FACTUAL BACKGROUND

A. Prosecution Evidence

On September 25, 2016, Alejandro Cervantes (Cervantes) and his wife, Michelle Orellana (Orellana), were walking toward the Golden Apple comic book store in Los Angeles. They pushed their six-month-old daughter in a stroller. They noticed a "crazy" person—defendant—behaving erratically in the parking lot by the comic book store. Defendant was wearing black clothing, had dreadlocks, and had a shopping cart. He was screaming, at no one in particular, and he was getting in the way of cars that were trying to exit the parking lot. The couple tried to ignore defendant, but he began walking in their direction. Cervantes

¹ All further statutory references are to the Penal Code unless otherwise indicated.

told his wife to switch sides with him so that he would be on the same side as defendant.

Ryan Leibowitz (Leibowitz), the owner of the comic book store, had been keeping an eye on defendant that evening after he noticed him in the parking lot talking loudly to himself. Defendant seemed angry and agitated. Leibowitz saw defendant making lunging motions towards the couple and their baby, saying things like, “You want to go? I’ll . . . kill you.” Defendant pushed, or at least made a grabbing motion towards, the stroller. When the couple reached the front of the store, Cervantes told Orellana to take their daughter inside. Leibowitz helped her and her daughter inside the store and locked the door. He then yelled to his mother, who was also inside the store, to call 911.

Cervantes tried to calm defendant, telling him to relax and asking him if everything was okay. Defendant pushed Cervantes and told him that he was not his friend. Defendant held onto Cervantes and pushed him away from the store. Defendant continued to talk in an aggressive tone; then he pulled out a knife and held it to Cervantes’s stomach. He asked Cervantes, “Will you die for your family?” Cervantes only saw half of the knife, and described it as being “black and pointy” with a “gray circle.” Cervantes continued to try to calm defendant, who quietly held the knife against Cervantes’s abdomen. After 35 to 40 seconds, defendant walked away and Cervantes went inside the store and called 911.

After Cervantes’s call, Leibowitz opened the back door. He and Cervantes observed defendant in an alley throwing things from his cart and screaming. The police arrived shortly thereafter and spoke with Cervantes and Leibowitz. Cervantes and Leibowitz saw defendant at a bus stop and told police that

that was the man who had confronted the couple. The police got in their car and drove down to the bus stop, where they detained defendant. Defendant told police that the cardboard he had in his cart were his paintings. The police searched defendant and discovered a knife blade in his front left pocket.

At trial, Cervantes was shown a photograph of the knife recovered from defendant. Cervantes identified it as the weapon used. When Cervantes was later shown the knife itself, he testified that he did not recall the object and that it looked different from the photograph.

B. Defense Evidence

Defendant presented no evidence at trial.

DISCUSSION

Defendant contends that the evidence was insufficient to support his conviction for assault with a deadly weapon.

It is well-established that an appellant “bears a massive burden in claiming insufficient evidence” because the reviewing court’s “role on appeal is a limited one.” (*People v. Akins* (1997) 56 Cal.App.4th 331, 336.) We review the record in the light most favorable to the judgment and determine whether it discloses substantial evidence such that a rational trier of fact could find the defendant guilty beyond a reasonable doubt. (*People v. Earp* (1999) 20 Cal.4th 826, 887.) We presume in support of the judgment the existence of every fact the trier of fact could reasonably deduce from the evidence. (*People v. Osband* (1996) 13 Cal.4th 622, 690.) We do not reweigh evidence, reappraise the credibility of witnesses, or resolve conflicts in the evidence, as these functions are reserved for the trier of fact. (*People v. Ochoa* (1993) 6 Cal.4th 1199, 1206.) The same standard applies to the

review of circumstantial evidence. (*People v. Stanley* (1995) 10 Cal.4th 764, 792.)

Assault is defined as “an unlawful attempt, coupled with a present ability, to commit a violent injury on the person of another.” (§ 240.) Assault with a deadly weapon is merely an assault in which either a deadly weapon or any means of force likely to produce great bodily injury are used. (§ 245.) Assault and assault with a deadly weapon are general intent crimes. They do not require either a specific intent to injure or a subjective awareness of the risk that an injury might occur. (*People v. Bailey* (2012) 54 Cal.4th 740, 750.) Assault requires only an intentional act and actual knowledge of facts that would lead a reasonable person to realize that a battery—the application of physical force against another—would directly, naturally, and probably result from his conduct. (*People v. Williams* (2001) 26 Cal.4th 779, 788.)

Here, defendant held a knife to Cervantes’s abdomen. Cervantes testified that the knife was “pointy,” and he knew that because of how it felt against his body. A reasonable person would have realized that a battery would directly, naturally, and probably result by holding a knife to another’s stomach because knives are sharp and can inflict physical injury.

Moreover, though not required, there is substantial evidence that defendant had an intent to injure and that he knew that drawing a knife on Cervantes would result in a battery. Prior to drawing the knife, defendant made lunging motions at Cervantes, Orellana, and their baby; he even pushed the stroller. He also made verbal threats, such as “I’ll . . . kill you,” and asked Cervantes, “Will you die for your family?” Defendant’s threatening words and actions evince an intent to injure

Cervantes and knowledge of the probable consequences of his actions.

Defendant argues that his “state of mind did not and could not sustain the assault conviction” because he was acting “in a crazy and incoherent manner.” To the extent defendant is suggesting that he may have been mentally ill, it is well-established that mental illness cannot be used to prove the absence of general intent. (*People v. Jefferson* (2004) 119 Cal.App.4th 508, 519.)

Defendant further argues that there is insufficient evidence that he possessed and used a knife in the commission of the assault. In support, defendant notes that Cervantes was the only witness to see the weapon and he gave conflicting statements regarding the knife. Recognizing that a knife was found in defendant’s possession shortly after the assault, defendant speculates that he could have picked up the blade after the assault occurred. We cannot agree.

Ample evidence supports the jury’s finding that defendant used a knife against Cervantes. Cervantes so testified. His testimony is sufficient to uphold the finding of fact. (*People v. Barnwell* (2007) 41 Cal.4th 1038, 1052.)

The fact that Cervantes did not “recall” the object when presented with it at trial does not compel a different result. Cervantes’s inability to conclusively identify the knife does not mean that defendant did not use one. Rather, Cervantes’s testimony and the fact that police found defendant shortly after the assault with a knife in his possession support the jury’s conclusion.

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

_____, J.
ASHMANN-GERST

We concur:

_____, P. J.
LUI

_____, J.
CHAVEZ