

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.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 SEVEN

THE PEOPLE,

Plaintiff and Respondent,

v.

DERRICK HILL,

Defendant and Appellant.

B291672

(Los Angeles County
Super. Ct. No. BA465502)

APPEAL from a judgment of the Superior Court of
Los Angeles County, Lisa B. Lench, Judge. Affirmed.

Katharine Eileen Greenebaum, 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, Shawn McGahey Webb, Supervising Deputy
Attorney General, Nima Razfar, Deputy Attorney General for
Plaintiff and Respondent.

INTRODUCTION

Derrick Hill appeals from the judgment entered after a jury convicted him of assault and battery, arguing the trial court erred in discharging a juror during trial. Hill contends that the record does not show the excused juror was unable to decide the case without regard for her personal beliefs against incarceration and that the court's ruling excusing the juror violated Hill's rights to an impartial, unanimous jury and due process. The People contend that, although the juror ultimately said she would be able to follow the court's instructions and decide the case without considering punishment, her inconsistent answers justified the court's decision to excuse her. We affirm.

FACTUAL AND PROCEDURAL HISTORY

A. *Hill Punches a Fellow Inmate and Is Convicted of Assault and Battery*

Hill was an inmate in county jail and was housed in a cell on the same row as Carlos Pichinte. One morning Hill punched Pichinte in the mouth because of an "ongoing dispute over the television." Hill knocked two of Pichinte's teeth loose and injured his eye. A security camera recorded the incident. At the time of trial, Pichinte had ongoing pain, difficulty eating, and impaired vision in his left eye.

The People charged Hill with battery with serious bodily injury in violation of Penal Code section 243, subdivision (d),¹ and assault by means of force likely to produce great bodily injury in violation of section 245, subdivision (a)(4). The jury convicted

¹ Statutory references are to the Penal Code.

Hill of the lesser-included offenses of misdemeanor assault and battery. The trial court sentenced Hill to 200 days in county jail on each conviction but stayed execution of the sentence on the assault conviction under section 654. Hill timely appealed.

B. *The Trial Court Excuses Juror No. 6*

On the third day of trial, the court advised the parties Juror No. 6 had spoken with the judicial assistant that morning and raised concerns about incarceration. To avoid delaying the trial, the court did not conduct an inquiry on the matter until the next day of trial, which was the following Monday. At that time, after the close of evidence and before the court instructed the jury, the court informed the parties Juror No. 6 had told the courtroom assistant that she “visits people at Folsom” and that she would not convict defendants “if it meant they were going to go back into or go to prison.” Acknowledging jurors were not supposed to consider punishment, counsel asked the court to question Juror No. 6, which the court did.

The court asked Juror No. 6 to describe what she had said to the judicial assistant:

“The Court: I’m not here to make you nervous, or anxious, or anything like that. My assistant said that last week you said something to her. And I just want to inquire as to what your thoughts are on it, about—that you go to Folsom.

“Juror No. 6: No. I volunteer—well, I was working as a personal assistant to a celebrity, and they were championing these bills to like reduce prison sentences or enhancements. And so as a result, like, we did this prison concert and we toured the men’s facilities at Folsom and Lancaster.

“The Court: And was it part of what you said, that you would not be able to convict somebody if it meant they were going to go to prison or—

“Juror No. 6: Yeah. I believe in rehabilitation. And I don’t think that we would ever be doing that if we put someone in those conditions.”

The trial court then asked whether the juror’s personal beliefs would preclude her from following the court’s instructions not to consider punishment:

“The Court: Well, it’s going to be your obligation, if you ultimately deliberate on this case, to consider the evidence and not to consider the consequences of your verdict. And I don’t know whether you are in a position to do that. The instructions tell you that you may not consider penalty or punishment. It’s not part of what you are tasked to do. By the same token, if you are not able to separate out deliberating and reaching a verdict as to the charges without consideration of what the consequences are, that creates a problem in terms of your ability to consider the charges. So I don’t know what your thoughts are on it as to whether you could follow the instruction to not consider it or not.

“Juror No. 6: I feel like I can’t because—it’s not a religious conviction, but it is that important to me.

“The Court: Okay.

“Juror No. 6: So when you asked that, then after the fact, I realized I can’t do that.

“The Court: So is there a reason that you didn’t raise that earlier or you—

“Juror No. 6: Honestly, I was trying to—I’m bad at kind of focusing. I was giving it my all. But after, I realized kind of what the magnitude is, what being a juror actually entailed.

“The Court: And it’s your belief that you cannot follow that instruction; is that right?

“Juror No. 6: I’m being completely honest.

“The Court: I want you to be.

“Juror No. 6: I don’t think I can separate my own guilt from that, being part of potentially putting someone in jail or prison.”

The court asked Juror No. 6 directly if she could deliberate without considering punishment:

“The Court: So can you make a decision based upon the evidence as to whether or not these crimes were committed and whether or not the People have proved beyond a reasonable doubt that Mr. Hill is responsible for them or not by following the instructions that I give you with respect to consideration of penalty or punishment?

“Juror No. 6: Now I feel like I’m going to get in trouble.

“The Court: You’re not going to get in trouble. The whole point of this is to have jurors that can do the job they’re tasked to do. There’s no right or wrong answer to that, just the truth. That’s the only thing. So don’t—that’s why—I’m not picking on you.

“Juror No. 6: I know.

“The Court: If the truth is that you can’t do it, then that’s it. And it’s not a big deal. It’s not saying anything about you.

. . . .

We have alternates, so it’s not like—you know, it’s not a big deal to anybody except the people who are involved in this case who are entitled to the impartial consideration of 12 jurors. That’s all. It’s not—it’s nothing about you. And I don’t want to get you—it’s not to get you upset. It’s just to sort of to find out.

And if that's the way you feel, that's the way you feel. That's just how it is. And it's perfectly fine. I just need to have a sense.

"Juror No. 6: I'll be fine. So my decision is just without consideration of what happens down the line?

"The Court: You can do that?

"Juror No. 6: Yeah.

"The Court: Okay. All right. I'm not trying to force an answer out of you.

"Juror No. 6: No. It's okay.

"The Court: Okay. All right.

"Juror No. 6: Thank you."

The court conferred with counsel outside the presence of the jury and discharged Juror No. 6 over Hill's objection. The court stated it was "sensitive to the fact that if [Juror No. 6] had mentioned any of it during jury selection, she would not be a juror here" because she would have been subject to challenge for cause. The court added, "[I]t's hard for me to understand how she didn't think that was something that we would want to know about her when asked [during voir dire] both by me in terms of whether there was anything . . . she thought . . . would impact [her] ability to be fair, and also when asked by the People specifically about any beliefs that would impact their ability to carry out their job." The court acknowledged Juror No. 6 ultimately said "yeah" when asked if she could set aside her personal beliefs, but the court was unconvinced. The court stated that, although discharging a juror "should be done carefully, I think that about three-quarters of the way through the conversation, I was committed to removing her."

When the court excused Juror No. 6, she was so upset she cried and said, "I should have said something. I just didn't

realize.” The court randomly selected an alternate juror to replace Juror No. 6. The jury returned guilty verdicts that afternoon.

DISCUSSION

A. *Applicable Law and Standard of Review*

Section 1089 provides that, “[i]f at any time, whether before or after the final submission of the case to the jury, a juror dies or becomes ill, or upon other good cause shown to the court is found to be unable to perform his or her duty, or if a juror requests a discharge and good cause appears . . . the court may order the juror to be discharged and draw the name of an alternate.” The court may discharge a juror for good cause at any time before or during deliberations. (*People v. Powell* (2018) 6 Cal.5th 136, 153-156; *People v. Cleveland* (2001) 25 Cal.4th 466, 486; *People v. Salinas-Jacobo* (2019) 33 Cal.App.5th 760, 780.) “When a court is informed of allegations which, if proven true, would constitute good cause for a juror’s removal, a hearing is *required*.” (*People v. Debose* (2014) 59 Cal.4th 177, 200; see *People v. Barnwell* (2007) 41 Cal.4th 1038, 1051.)

Misconduct such as refusing to deliberate, sleeping during trial, or being unable to “follow the court’s instructions because of a personal bias” is good cause to discharge a juror under section 1089. (*People v. Fuiava* (2012) 53 Cal.4th 622, 713; see *People v. Barnwell*, *supra*, 41 Cal.4th at p. 1051; *People v. Cleveland*, *supra*, 25 Cal.4th at p. 485.) Discharge of a juror is improper when the juror merely harbors doubts about the sufficiency of the evidence, disagrees with other jurors, relies on faulty logic, or is

an inarticulate deliberator. (*Fuiava*, at p. 713; *Cleveland*, at p. 485.)

We review a trial court’s decision to remove a juror to determine whether the grounds for the juror’s disqualification appear in the record as a “demonstrable reality.” (*People v. Barnwell*, *supra*, 41 Cal.4th at p. 1052; accord, *People v. Perez* (2018) 4 Cal.5th 421, 446; see *People v. Montes* (2014) 58 Cal.4th 809, 872 [trial court does not err in dismissing a juror where “the grounds for the removal appear in the record as a demonstrable reality”].) This standard of review is more “comprehensive and less deferential” than the substantial evidence test. (*Barnwell*, at p. 1052.) “It requires a showing that the court as trier of fact *did* rely on evidence that, in light of the entire record, supports its conclusion that bias was established.” (*Id.* at pp. 1052-1053.) While a reviewing court does not reweigh the evidence, it “must be confident that the trial court’s conclusion is manifestly supported by evidence on which the court actually relied.” (*Id.* at p. 1053.)

B. *The Trial Court Did Not Err in Discharging
Juror No. 6*

The record shows a demonstrable reality that Juror No. 6 would not have been able to decide the case without considering the issue of punishment or to follow the court’s instructions. The trial court relied on its observations of Juror No. 6, the juror’s explanation of her opposition to incarceration, and her regret for not having previously disclosed her beliefs to the court. At one point the juror, saying she was being “completely honest,” stated that she could not follow the court’s instruction not to consider the consequences of her verdict and that, while her beliefs were

not as strong a “religious conviction,” they were “important to her.” Although the trial court, through persistent questioning, was ultimately able to get Juror No. 6 to give the right answers, the court was well within its authority to recognize the juror’s hesitant answers did not eliminate her personal bias or ensure she would be able to put aside her bias and decide the case on the evidence and without regard to punishment. (See *People v. Virgil* (2011) 51 Cal.4th 1210, 1241 [“[i]f a juror’s responses are conflicting or equivocal, the trial court’s ruling is binding on us”]; *People v. Salcido* (2008) 44 Cal.4th 93, 135 [trial court “acted well within its discretion in excusing [prospective juror] based upon his initial somewhat equivocal answers”].)

Moreover, the trial court was uniquely qualified to evaluate the tone of Juror No. 6’s voice when she gave her inconsistent responses to the court’s questions, the sincerity and conviction of her answers, and her demeanor in court. (See *People v. Barnwell*, *supra*, 41 Cal.4th at p. 1053 [where the “evidence bearing on the question whether a juror has exhibited a disqualifying bias during deliberations [is] in conflict,” the court “must weigh the credibility of those whose testimony it receives, taking into account the nuances attendant upon live testimony,” and “draw upon the observations it has made of the jurors during voir dire and the trial itself”].) We cannot tell from the transcript whether, when Juror No. 6 finally said “yeah” and “okay” to the court’s questions whether she could decide the case without considering punishment, Juror No. 6 was emphatic (“Yeah!”), hesitant (“Yeah . . .?”), or merely saying what she thought the court wanted to hear (“Uh, okaaay”). We defer to the court’s credibility determinations on these issues. (See *People v. Armstrong* (2016) 1 Cal.5th 432, 451 [in reviewing a trial court’s

decision to discharge a juror, “we afford deference to the trial court’s credibility determinations, ‘based, as they are, on firsthand observations unavailable to us on appeal’”]; *People v. Williams* (2015) 61 Cal.4th 1244, 1262 [same]; *People v. Salcido*, *supra*, 44 Cal.4th at p. 135 “[t]o the extent the prospective juror’s views were conflicting, we must defer to the assessment of the trial court that [the prospective juror] entertained views substantially impairing his ability to perform the duties of a juror”]; *People v. Lomax* (2010) 49 Cal.4th 530, 590 [we “defer to factual determinations based on” the court’s “observations of the jurors throughout the proceedings”].)

DISPOSITION

The judgment is affirmed.

SEGAL, J.

We concur:

PERLUSS, P. J.

STONE, J.*

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