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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE,

Plaintiff and Respondent,

v.

EUTIMIO REYES,

Defendant and Appellant.

B234367

(Los Angeles County  
Super. Ct. No. BA369536)

APPEAL from a judgment of the Superior Court of Los Angeles County.  
Frederick N. Wapner, Judge. Affirmed.

Janice Wellborn, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, James William Bilderback II and Kathy S. Pomerantz, Deputy Attorneys General, for Plaintiff and Respondent.

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Defendant Eutimio Reyes appeals his convictions of three felonies arising out of an assault on his former girlfriend Allyson F., and one count of felony stalking, also of Allyson F. His sole contention on appeal is that none of the convictions is supported by substantial evidence. We disagree and affirm.

## **FACTUAL AND PROCEDURAL BACKGROUND**

The violent episode that gave rise to the most serious convictions took place in 2009. Defendant and Allyson, however, first started dating in late 2002, when Allyson was a sophomore in college. The early part of the relationship has some bearing on the incident in question, so we start our factual discussion there.

Shortly after they began dating, defendant moved into Allyson's condominium near downtown Los Angeles. The relationship soon turned sour, and defendant became verbally abusive, calling Allyson a "bitch," a "slut," and other epithets. The two argued regularly. In early 2003, the abuse became physical, and Allyson often had bruises on her body. Defendant's sister, Dalila, a Navy veteran who had served in Iraq, testified that around that time she saw bruises on Allyson's side and arms. Allyson often wore long-sleeved sweaters on warm days in an apparent effort to hide her injuries. Dalila connected the appearance of these bruises to the time when defendant's goal of becoming an Olympic boxer failed to materialize. Allyson testified that during 2003-2006, while they were living together, defendant choked, shoved, hit, slapped, kicked, and pushed her.

The first incident about which Allyson provided some detail occurred in February 2004, when, shortly before she went to Hawaii, defendant became "very physical, and I was just all bruised." She described defendant "grabbing me, pushing me, pulling me around, hitting at me." The next altercation was in November 2004 when Allyson and defendant started arguing on the way home from dinner. The disagreement escalated into a "physical fight," with defendant pushing Allyson. She testified she "was really scared" and called defendant's sister. Eventually the police were summoned but Allyson did not pursue charges. Following the November 2004 fight, Allyson began recording

incidents of domestic violence in her journal, often with the words, “bad night” or “domestic,” or in some instances by using a “sad face” emoticon.

The next incident that Allyson recounted occurred the night of October 27, 2006, as she drove defendant back to their home. An argument eventually prompted defendant to strike Allyson in the face while she was driving. The blow split her lip and caused blood to “gush.” When they got home, Allyson locked herself in the bathroom and took photographs of herself with her cell phone, but did not call the police. The photographs were admitted into evidence.

Shortly thereafter, defendant moved out of Allyson’s condominium although the stated reason for his departure was that defendant had two pit bulls and the homeowners association would not allow the dogs to stay.

After defendant moved out, the two continued to date, eventually breaking up in September 2007. Between 2007 and 2009, defendant made several threatening calls and left threatening text messages, even after some of the events we describe next. In several of the phone calls, defendant told Allyson he had either been watching her on a date with another man, or knew what she was wearing, or had watched her in her apartment.

The assault which formed the basis of the principal charges against defendant occurred in the late evening of September 9 and the early morning hours of September 10, 2009. Several days before, defendant had called Allyson at 2:00 a.m., sounding out of sorts and saying he was stuck and needed someone to pick him up. Allyson knew defendant’s family was out of town at a reunion, so “reluctantly” she agreed to get him. When Allyson arrived at where defendant had been stranded, he got in the car, and she started to drive around but defendant would not say where he wanted to go. Eventually she allowed him to spend the night at her condominium. He became verbal, but not physical, and the two were not romantic with each other. Defendant left in the morning.

He next called on September 8, apologizing for his conduct a few days earlier, and offering to take her to dinner in appreciation for having picked him up late at night. At

dinner that evening, defendant became verbally abusive, and the two left the restaurant early. Allyson dropped defendant off some place that she could not remember.

Defendant called the next day, the 9th, apologizing for the night before and asking for another chance at dinner. At least in part because she could not believe that “he was treating me that way,” she agreed to the second dinner. Allyson testified that the two of them were “having such a nice time” at dinner. “[A]nd that’s the first time I remember going out at that time and him not being rude or calling me a bitch or being mean. He was pleasant.” They decided to rent a movie and go back to her condo. Defendant started drinking – Allyson did not – and eventually became drunk and belligerent when there was no more orange juice for the vodka. Allyson asked defendant to leave and he did so without incident.

Moments later, defendant called from the condominium garage on a house phone that could be answered in Allyson’s residence. He said he had left his cell phone upstairs, and started yelling at her. After searching for the phone without success, Allyson agreed to let defendant back into the apartment to look for himself. Allyson looked in the bathroom, but the phone was not there. As she turned around to leave the bathroom, defendant was right behind her, pointing a knife “within inches” of her face. The blade was towards her neck. The knife had come from the kitchen and was the largest one Allyson owned. Allyson was petrified and screamed. Defendant started to laugh hysterically, followed by: “Oh, no, no, no. This isn’t – I’m not going to hurt you. This is for you to use on me.” He then handed her the knife. She pretended to be calm and returned the knife to its holder in the kitchen.

Allyson next used her landline phone to call defendant’s mother for help – Allyson had a close relationship with defendant’s parents and sisters – but got only an answering machine. Defendant took the phone from her and threw it against the wall, breaking the phone. He then destroyed her cell phone and ripped the wires from the house phone (the one that had been used to talk to defendant in the garage and which could be used to call night security).

Defendant laid down on a futon in the front room and pretended to sleep, but Allyson did not leave, out of fear for what defendant might do to her apartment and her pets. Eventually defendant got up and Allyson started to lead him towards the front door. At that point defendant stopped, turned and dragged Allyson up and over the living room couch. Defendant pulled her by the legs to a place near a turtle tank. He got on top of her – “sitting on top of me” – and started to choke her by pressing his forearm across her neck. Allyson was screaming and asking him to stop. At that point defendant said to Allyson that she is “gonna die, this is it.” She testified he told her, “If I won’t shut the fuck up, he will snap my neck in 21 places, or he will put my head in the turtle tank and electrocute me.” He rambled on about killing her and then he started to cry and said he was going to kill himself.

Defendant let up, and Allyson freed herself. She ran to the front door but it was locked and latched. (Defendant apparently had put on the dead bolt and the chain.) Allyson ran toward the patio door, intending to jump off the fourth floor balcony. “I was going to jump out. There was no other way for me to get out. And I knew he was gonna kill me, so I thought I may as well jump. I have better a *[sic]* chance.” Defendant grabbed at her, and as he pulled her away from the sliding door, the door handle broke and they both tumbled backwards. The momentum of the fall resulted in a cut opening on defendant’s head, the result of either being struck by the handle or hitting his head on the floor. Allyson was momentarily released from defendant’s grip, and she ran towards the front door again. He prevented her from leaving and dragged her to the master bathroom. He shut the door to the bathroom and was laughing saying “somebody was gonna die.” Defendant next started to take the belt off from around his waist, and said “Someone’s gonna die tonight. Who is it gonna be, you or me?” He put the belt around his own neck, and laid down on his stomach. Then he gave Allyson the belt, but she dropped it and finally was able to open the front door and ran out. She called the doorman on the elevator phone and eventually ran to where the doorman was stationed.

The doorman, Sam Payne, testified that Allyson seemed panicked when she was on the phone and when he saw her in person she looked scared. He saw blood over her

face and hair, but Allyson told him that was defendant's blood from a cut opened when he hit his head on the floor.

Prosecution witness Alicia S. testified she was assaulted by defendant in October 2000. She had dated defendant for four years while they were in high school, but by 2000 they would only see each other occasionally and were not dating. On Halloween night she came home from work late and felt she was being watched. She arrived in her apartment where a male work colleague was staying for a few days. There was no romantic involvement. As she was getting ready for bed, she heard a loud noise and then saw defendant standing in the apartment. He threatened and pushed the male friend who left. Defendant forced Alicia into her bedroom and threatened her life. Defendant pushed her to the ground, straddled her, and put a pillow over her head. He then took off his belt and wrapped it around her neck. At that point the police arrived, and defendant was taken away. Afterwards defendant continued to telephone Alicia, but she refused to take his calls.

Prosecution witness Sandra Baca, an expert on Intimate Partner Battering (sometimes called Battered Women's Syndrome), had not interviewed any of the parties, nor had she read police reports. She said battered partners often minimize threats and battering. They often blame themselves for the violence, rationalizing that if a person who I love has done this, it must be because I deserve it. Victims often stay in a relationship, buoyed by the good times, convinced that things have turned around. Victims also stay because they are afraid of being killed if they try to leave.

Police officers were called by both sides. They generally corroborated the events as described by Allyson. There were some inconsistencies between what Allyson testified to and what she either told police or they had observed. Telephone records revealed several calls from defendant's phone to Allyson as late as 2010.

Defense witness Ann P. testified to an incident in 2006 where Allyson stormed into defendant's residence during the time period in which Ann and defendant had a romantic relationship. She said that Allyson yelled at both of them and eventually

destroyed Ann's cell phone. Allyson admitted the incident generally but denied vandalizing the cell phone.

Defendant was charged with seven counts. All but one arose out of the September 9-10, 2009, incident. These six charges were false imprisonment with violence (Pen. Code, § 236); making of criminal threats (Pen. Code, § 422); corporal injury to a cohabitant (Pen. Code, § 273.5); destruction of a cell phone (Pen. Code, § 591.5); cutting a utility line (Pen. Code, § 591); and assault with a deadly weapon (Pen. Code, § 245, subd. (a)(1)). The seventh charge, stalking (Pen. Code, § 646.9 subd.(a)) was alleged to have occurred between February 1, 2007, and March 30, 2010.

Defendant was convicted of false imprisonment with violence, criminal threats, assault with a deadly weapon, and stalking. He was found not guilty of destruction of a cell phone and mistrials were declared as to the two remaining counts, which were then dismissed. Defendant received a five-year sentence, composed of the midterm three years on the assault with a deadly weapon charge and eight months consecutive on the other three convictions.

## **DISCUSSION**

Defendant makes a single contention on appeal: that the evidence was insufficient as to all counts. He asserts both state and federal constitutional error. As such, we apply the familiar rules of appellate review. To determine the sufficiency of the evidence to support a conviction, an appellate court reviews the entire record in the light most favorable to the prosecution to determine whether it contains evidence that is reasonable, credible, and of solid value, from which a rational trier of fact could find the defendant guilty beyond a reasonable doubt. The pertinent inquiry is “whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” (*People v. Rodriguez* (1999) 20 Cal.4th 1, 11.) “If the verdict is supported by substantial evidence, we are bound to give due deference to the trier of fact and not retry the case ourselves. . . . It is the exclusive function of the trier of fact to assess the credibility of

witnesses and draw reasonable inferences from the evidence.” (*People v. Sanchez* (2003) 113 Cal.App.4th 325, 330, citing *Jackson v. Virginia* (1979) 443 U.S. 307, 318-319, other citations omitted.)

Defendant’s argument is made more difficult because he does not contend that any particular element of any particular count was legally insufficient. (See *Tecklenburg v. Appellate Division* (2009) 169 Cal.App.4th 1402, 1413 [sufficiency of the evidence as to one element]; *People v. Dupre* (1968) 262 Cal.App.2d 56, 58 [evidence insufficient because prosecution failed to prove the element of knowledge].) Instead, he argues that Allyson’s trial testimony was not “reasonable in nature, credible and of solid value.” As such, his argument must overcome perhaps the most stringent rule of appellate review: Even though a “witness may be discredited by a showing of bias or interest, or self-contradiction, or other grounds of impeachment, or by the manner of testifying, or by inherent probabilities in the testimony,” that is not enough, for credibility is for the trier of fact to determine, not for the appellate court. (See 6 Witkin & Epstein, *Cal. Criminal Law* (3d ed. 2000) Criminal Appeal, § 151, at p. 398.) While an appellate court can theoretically reverse a judgment when it concludes the evidence is inherently improbable, “such a finding is so rare as to be almost nonexistent.” (*People v. Ennis* (2010) 190 Cal.App.4th 721, 728.) “ ‘ “To warrant the rejection of the statements given by a witness who has been believed by a trial court, there must exist either a physical impossibility that they are true, or their falsity must be apparent without resorting to inferences or deductions.” ’ ” (*Ibid.*, citing *People v. Huston* (1943) 21 Cal.2d 690, 693, overruled on another point in *People v. Burton* (1961) 55 Cal.2d 328, 352.) Neither is present here.

Defendant’s argument is predicated on claimed inconsistencies in Allyson’s version of events:

1. She testified at trial that she called the doorman, Sam Payne, from the elevator’s emergency phone, but Payne testified that at the time the emergency phone had to be unlocked with a key; and



2. Payne said that Allyson told him she got blood on her hair from defendant's head injury when he slipped and fell on the floor. At trial, she said the injury might have been caused by the handle that had broken off in her hand as defendant was grabbing her. She was certain of that version when she sought a temporary restraining order against defendant. Her trial testimony on the point was generally confirmed by the reports and testimony of police offices.

These inconsistencies – if they were inconsistencies – were for the jury to resolve. As to defendant's first point, the jury may have believed Allyson and thought that Payne was wrong about the time when locks were added to the elevator phones. Or the jury might have disbelieved Allyson about whether defendant had smashed her cell phone – they could not reach a verdict on the utility charges – and concluded that she used the cell phone to make the call to Payne. Either way, Payne said Allyson sounded panicked on the phone, reasonable testimony considering the events that had just transpired. Whether or not Allyson used the elevator phone had little bearing on the weight of the other testimony.

As to how defendant got injured, the testimony from Allyson, the police, and Payne had a single common denominator: there was a struggle at the patio door, Allyson took hold of the handle to try to get to the balcony, defendant grabbed her, the handle came off and as the two of them fell backwards on to the floor, defendant cut his head either by the handle striking it or by the force of the fall onto the floor. The precise etiology was simply not important. Allyson never claimed the blood was hers.

Any inconsistency notwithstanding, as expert witness Baca explained, the evidence in this case traced a fairly typical pattern of domestic violence. Alicia S.'s testimony provided eerily similar details to what Allyson testified: attack against a former girlfriend, in her apartment, straddling the victim and using a belt. There was more than enough evidence to convict defendant beyond a reasonable doubt.

**DISPOSITION**

The judgment is affirmed.

RUBIN, ACTING P. J.

WE CONCUR:

FLIER, J.

GRIMES, J.