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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE,

Plaintiff and
Respondent,

v.

MICHAEL MILLER,

Defendant and
Appellant.

B281819

(Los Angeles County
Super. Ct. No. GA043414)

APPEAL from judgment of the Superior Court of Los Angeles County, William C. Ryan, Judge. Affirmed.

Marta I. Stanton, under appointments 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, Noah P. Hill and Lindsay Boyd,
Deputy Attorneys General, for Plaintiff and Respondent.

In 2000, defendant and appellant Michael Miller was sentenced to an indeterminate life term under the three strikes law (Pen. Code, §§ 667, subds. (b)–(i), 1170.12, subds. (a)–(d))¹ after a jury convicted him of inflicting corporal injury to a spouse (§ 273.5, subd. (a)), assault by means likely to cause great bodily injury (§ 245), and false imprisonment by violence (§ 236). After the voters approved Proposition 36 in 2012, Miller petitioned to have his sentence recalled under section 1170.126. Following a hearing, the trial court denied the petition, finding that Miller’s conduct demonstrated an intent to cause great bodily injury.

Miller argues reversal is required because the trial court found the disqualifying factor by a preponderance of the evidence, rather than the correct standard of beyond a reasonable doubt. He further contends there is insufficient evidence in the record to support the trial court’s finding that he intended to cause great bodily injury.

We affirm the trial court’s judgment.

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

FACTS²

On July 15, 2000, Miller was talking with his wife, B.P., in her parked car. B.P. was sitting in the driver's seat. Miller took B.P.'s cell phone, and called her ex-husband, with whom he believed she was having an affair. He told B.P. to tell her ex-husband not to call her. B.P. refused. Miller became angry, and threatened to kill them both. Miller ordered B.P. to leave, but as she attempted to drive away, he stopped her, turned off the engine, and took her keys. B.P. got out of the car. Miller followed her into the backyard, picked her up, and carried her into the house. He instructed B.P. to go to bed, but she refused. She barricaded herself in the bedroom by blocking the door with a bed and a couch. Miller began yelling and pushed the door open. He pulled B.P. off the bed and hit her on the back and sides of her head. Miller drug B.P. through the house by her clothing and her arm, dropping her to the floor at various places in the residence. He then drug B.P. into the driveway where she passed out momentarily. She awoke near the car.

B.P.'s clothing was torn. As she was attempting to run away, Miller said, "No, I won't let you go like this because you can use this as evidence." He took her back into the house and tore off all of her clothing to prevent B.P. from using it as evidence. Miller pushed her back into the

² The facts are taken from our prior opinion affirming Miller's sentences. (*People v. Miller* (July 17, 2002, B152031) [nonpub. opn.])

bedroom, where he continued to threaten B.P. and her ex-husband. Miller told her it did not really matter whether he was in jail because he could “make [B.P. and her ex-husband] come out missing.” He pushed B.P. out of the house in her underwear.

B.P. hid in the neighbor’s backyard. She saw Miller drive his car up and down the street approximately four or five times. She grabbed two towels from her neighbors’ outdoor laundry to cover herself, and walked to a nearby liquor store, where she telephoned the Sheriff’s Department.

Los Angeles County Deputy Sheriff Ronnie Manier responded to the liquor store. He found B.P. standing near a pay phone wearing two towels. She was very distraught and emotional. Paramedics transported her to the hospital. B.P. was treated for bruises and a sprained shoulder. Deputy Manier observed redness and bruising on B.P.’s right arm.

Los Angeles County Deputy Sheriff Ruby Munshi photographed B.P.’s injuries on July 19, 2000. B.P. had dark purple and red bruising on her arms and legs. The bruises on her calves were green.

Miller testified on his own behalf. He believed that he had been the subject of a conspiracy for over 15 years, and that the offenses for which he was being tried were in furtherance of that conspiracy. Miller testified that he was “kidnapped by way of judicial and administrative fraud” and “stalked by the police.” He informed the jury that he was on parole after serving an 11-year sentence for attempted voluntary manslaughter. Miller explained that he

accidentally shot his ex-wife while “pistol whipping” a man who had molested his daughter. Although he had been acquitted, the government used “w[h]ite out” to alter the abstract of judgment in that case. Miller also indicated that he had filed to reopen the investigation of the assassination of President Kennedy. Miller testified his wife was violent: “She’s a little [thing], but she’s very violent. [¶] And she may not [appear] to be a person that would not [sic] do things like that, but she’s very dangerous.” He continued: “Now, you watched this woman sit on this very stand and make tears come out of her eyes like she was really wounded. And when I seen that, that scared me. Because it’s a person who is so--that devious and make a teardrop fall from her eye, and try [to] convince you that she’s been wounded and injured, that is a very dangerous woman.” Miller testified: “I don’t know how [she] got these bruises. . . . They haven’t proved how she got them. She even admits that she was resisting, trying to leave out, and I put her out [sic] the house.” He testified that “[h]er scratches and bruises are self-inflicted” and “. . . she took it upon herself to make it convenient to put me in jail. To block a restraining order. By me being in jail, that gives her access to the property and control of the property.”

TRIAL COURT'S RULING

The trial court determined that Miller was ineligible for sentencing because he intended to cause great bodily injury in the commission of the offense. (§§ 667, subd. (e)(2)(C)(iii), 1170.12, subd. (c)(2)(C)(iii).) The court noted the split of authority regarding the standard of review, and stated its belief that the correct standard is preponderance of the evidence; nevertheless, in addition to applying that standard, the court made an alternative finding applying the beyond a reasonable doubt standard. The court defined intent as follows: “[a] specific intent is an intent to accomplish some additional consequence by commission of the proscribed act.” [Citation.]” It defined great bodily injury as “any “significant or substantial injury”. . . [or] an injury that results in “greater than minor or moderate harm.” [Citation.]” The court emphasized that “[s]ome physical pain or damage, such as bruises or abrasions, is sufficient to constitute great bodily injury,” citing to multiple cases in support. It held:

“Here, the record of conviction establishes Petitioner picked up [B.P.] and carried her into the house against her will. Petitioner then pushed a bedroom door open, pulled [B.P.] off the bed, hit her in the head, drug her through the room ‘by her clothing and arm’, and dropped her to the floor. Petitioner proceeded to tear [B.P.]’s clothing off and pushed her out of the house. [B.P.] momentarily passed out, suffered a

sprained shoulder, and had bruising and redness on her arms and legs, which was documented by the photographs taken by the investigating detectives. [Citation.]

“On this record, the court has no trouble finding, by a preponderance of the evidence, or even beyond a reasonable doubt, that Petitioner intended to inflict great bodily injury when Petitioner committed the aforementioned offenses. [B.P.]’s injuries were certainly ‘greater than minor or moderate harm.’ (*People v. Wyatt* [(2012)] 55 Cal.4th [694,] 702.) Accordingly, the court finds Petitioner is disqualified from Proposition 36 relief. (§ 1170.126, subd. (e)(2).)”

DISCUSSION

“[U]nder the original [Three Strikes] law, a defendant previously convicted of two qualifying strikes was subject to a life term if he was subsequently convicted of *any* new felony, regardless of whether it was a serious or violent one.” (*People v. Frierson* (2017) 4 Cal.5th 225, 230.) After passage of the Reform Act, a defendant who is convicted of a nonserious, nonviolent felony, as Miller was, is sentenced as a second strike offender, unless an exception applies. (See *People v. Johnson* (2015) 61 Cal.4th 674, 681.) Relevant here, a defendant is ineligible for relief if he intended to cause great bodily injury in commission of the crime. (§§ 1170.12, subd. (c)(2)(C)(iii), 1170.126, subd. (e)(2).)

A trial court may make a determination that an exception exists under section 667, subdivision (e)(2)(C)(iii),

and section 1170.12, subdivision (c)(2)(C)(iii) “only if the prosecutor proves this basis for ineligibility beyond a reasonable doubt.” (*People v. Perez* (2018) 4 Cal.5th 1055, 1059.) “[T]he trial court’s eligibility determination may rely on facts not found by a jury; such reliance does not violate the right to a jury trial under the Sixth Amendment to the United States Constitution. A reviewing court, in turn, must defer to the trial court’s determination if it is supported by substantial evidence.” (*Ibid.*)

We reject Miller’s contention that the trial court employed the wrong standard when it made its ruling. The record shows that the trial court believed the cases employing the preponderance of the evidence were correct, but that it nevertheless found Miller had the intent to cause great bodily injury under both the preponderance of the evidence and beyond a reasonable doubt standards.

We also reject Miller’s contention that the evidence was insufficient to support the trial court’s ruling that he intended to cause great bodily injury. “The intent with which a person acts is rarely susceptible of direct proof and usually must be inferred from facts and circumstances surrounding the offense.” (*People v. Massie* (2006) 142 Cal.App.4th 365, 371.) Under the substantial evidence standard, we examine the evidence, both direct and circumstantial, in light of the entire record and must indulge in favor of the order all presumptions as well as every logical inference that the court could have drawn from the evidence. (*People v. Maury* (2003) 30 Cal.4th 342, 371; *People v. Carter*

(2005) 36 Cal.4th 1114, 1156.) We “uphold any express or implied factual findings of the . . . court that are supported by substantial evidence.” (*People v. Robinson* (2010) 47 Cal.4th 1104, 1126.)

In this case, the record showed that Miller pulled B.P. off the bed, hit her on the back and sides of the head, drug her through the residence “by her clothing and arm,” dropping her to the floor at various places and ultimately outside the residence on the driveway, where she briefly lost consciousness. B.P. sustained a sprained shoulder and bruises on her arms and legs. The bruising was further corroborated by photographs taken by investigators four days after the assault. A reasonable person could infer that Miller intended to cause great bodily injury from the facts and circumstances demonstrated in the record. Substantial evidence supports the trial court’s denial of Miller’s section 1170.126 petition to recall his sentence.

DISPOSITION

We affirm the judgment.

MOOR, J.

We concur:

BAKER, Acting P.J.

KIN, J.*

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