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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.

KENNETH ROY WILSON,

Defendant and Appellant.

Case No. B292081

(Los Angeles County
Super. Ct. No. SA025425)

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

Arielle Bases, under appointment by the Court of Appeal,
for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief
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Boyd, Deputy Attorneys General for Plaintiff and Respondent.

INTRODUCTION

In 1996 a jury convicted Kenneth Wilson of inflicting corporal injury on the mother of his child, making a criminal threat, and assault with a deadly weapon. In 2014 Wilson filed a petition under Penal Code section 1170.126,¹ part of the Three Strikes Reform Act (Proposition 36), for recall of his sentence and resentencing as a second strike offender. The trial court denied his petition, and we reversed and remanded the matter for the trial court to consider Wilson’s eligibility for resentencing on his conviction for inflicting corporal injury. (See *People v. Wilson* (Oct. 31, 2015, B260281) [nonpub. opn.].)

On remand the trial court found Wilson was ineligible for resentencing on that conviction because he intended to cause great bodily injury during the commission of the offense. In this, his second appeal challenging denial of relief under Proposition 36, Wilson argues substantial evidence did not support the trial court’s finding he intended to cause great bodily injury. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

A. *Wilson Attacks the Mother of His Child*

Wilson lived in an apartment with his girlfriend Belinda P., their child, and four of Belinda’s children. One day Wilson came home drunk. Wilson and Belinda argued, and the dispute escalated into mutual shoving, “tussling,” and “wrestling” in the bedroom. Wilson, a large man, became “infuriated,” grabbed

¹ Statutory references are to the Penal Code.

Belinda's face with one hand, and tore her skin with his fingernails. Wilson pushed Belinda into a glass table, causing it to shatter and injure her.

Wilson left the room and, at some point, threatened to kill Belinda and one of her children. Wilson went to the kitchen and returned with a knife. He moved toward the children's room, but Belinda blocked him. Wilson stabbed her with the knife several times. Belinda fled the apartment.

Belinda sustained lacerations on the side of her head and across her arms. She also suffered "screwdriver-type" puncture wounds on her hands.

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

In November 1996 a jury convicted Wilson of inflicting corporal injury on the mother of his child, in violation of section 273.5, subdivision (a) (count 1); making a criminal threat, in violation of section 422 (count 2); and assault with a deadly weapon or by means of force likely to produce great bodily injury, in violation of former section 245, subdivision (a)(1) (count 3).² Count 1 involved the mutual shoving and Wilson's pushing Belinda into the glass table, while counts 2 and 3 involved the death threat and the stabbing. The jury also found true allegations Wilson personally used a dangerous weapon within the meaning of section 12022, subdivision (b), had a prior serious

² "Penal Code section 245, subdivision (a), has since been amended to separate the prohibitions against assault 'with a deadly weapon' and assault 'by any means of force likely to produce great bodily injury' into different subdivisions." (*People v. Gallardo* (2017) 4 Cal.5th 120, 125, fn. 1.)

felony conviction within the meaning of section 667, subdivision (a)(1), had four serious or violent felony convictions within the meaning of the three strikes law (former §§ 667, subds. (b)-(i), 1170.12), and had served prior prison terms within the meaning of section 667.5, subdivision (b).

The trial court ultimately (after several appeals) imposed an aggregate prison term of 56 years to life. The court imposed consecutive sentences of 25 years to life on counts 1 and 3 and stayed execution of the sentence on count 2 under section 654. The court also stayed execution of the enhancement for using a dangerous or deadly weapon. Finally, the court imposed a five-year enhancement under section 667, subdivision (a)(1), for Wilson's prior serious felony conviction and a one-year enhancement under section 667.5, subdivision (b), for one of Wilson's prior prison terms.

C. *Wilson Petitions for Resentencing*

In 2014 Wilson petitioned for recall of his sentence and resentencing under section 1170.126. The trial court denied the petition, ruling Wilson's personal use of the knife during the commission of his offenses made him ineligible for resentencing on all three convictions. Wilson appealed, and on October 13, 2015, after the Supreme Court's decision in *People v. Johnson* (2015) 61 Cal.4th 675, we remanded the matter for the trial court to determine his eligibility for resentencing on count 1, inflicting corporal injury on the mother of his child. (See *People v. Wilson, supra*, B260281.) On July 19, 2018 the trial court found beyond a reasonable doubt Wilson was armed with a knife and intended to cause great bodily injury during the commission of count 1, and

the court ruled Wilson was ineligible for resentencing. Wilson timely appealed.

DISCUSSION

A. *Applicable Law*

In 2012 the voters enacted section 1170.126, which allows an eligible defendant serving an indeterminate life sentence as a third strike offender for a felony that is not serious or violent to petition for recall of the third strike sentence. (§ 1170.126, subds. (e)(1), (f); see §§ 667, subd. (e)(1), 1170.12, subd. (c)(1).) For incarcerated defendants sentenced under the pre-Proposition 36 law, section 1170.126 “establishes procedures for convicted individuals to seek resentencing in accordance with the new sentencing rules. [Citation.] The procedures call for two determinations. First, an inmate must be eligible for resentencing. (§ 1170.126, subd. (e)(2).) An inmate is eligible for resentencing if his or her current sentence was not imposed for a violent or serious felony *and* was not imposed for any of the offenses described in clauses (i) to (iv) of section 1170.12, subdivision (c)(2)(C). (§ 1170.126, subd. (e)(2).) Those clauses describe certain kinds of criminal conduct, including the use of a firearm during the commission of the offense. Second, an inmate must be suitable for resentencing. Even if eligible, a defendant is unsuitable for resentencing if ‘the court, in its discretion, determines that resentencing the petitioner would pose an unreasonable risk of danger to public safety.’ (§ 1170.126, subd. (f).) If an inmate is found both eligible and suitable, the inmate’s third strike sentence is recalled, and the inmate is resentenced to a second strike sentence.” (*People v. Estrada* (2017) 3 Cal.5th

661, 667.) The court must determine eligibility on a count-by-count basis. (*People v. Johnson, supra*, 61 Cal.4th at p. 695 [“resentencing is allowed with respect to a count that is neither serious nor violent, despite the presence of another count that is serious or violent”].)

A defendant is ineligible for resentencing if, among other reasons, the court finds that, “[d]uring the commission of the [third strike] offense, the defendant used a firearm, was armed with a firearm or deadly weapon, or intended to cause great bodily injury to another person.” (§§ 1170.12, subd. (c)(2)(C)(iii), 667, subd. (e)(2)(C)(iii).) “[G]reat bodily injury” is “significant or substantial physical injury” beyond that inherent in the underlying offense. (§ 12022.7, subd. (f); see *People v. Escobar* (1992) 3 Cal.4th 740, 746.) “[S]ome physical pain or damage, such as lacerations, bruises, or abrasions is sufficient for a finding of ‘great bodily injury.’” (*People v. Washington* (2012) 210 Cal.App.4th 1042, 1047.) The People may prove the defendant intended to cause great bodily injury with circumstantial evidence. (See *People v. Thomas* (Sep. 12, 2019, B290614) ___ Cal.App.5th ___, ___ [2019 WL 4316478, p. 3] [“The intent to inflict great bodily injury thus ‘may be shown by, and inferred from, the circumstances surrounding the doing of the act itself.’”]; *People v. Phillips* (1989) 208 Cal.App.3d 1120, 1124 [intent to inflict great bodily injury “may be inferred from the circumstances attending the act, including the manner in which the act was done and the means used”].)

Finally, under section 1170.126, the “petitioning defendant has the *initial* burden of establishing a prima facie case for eligibility for recall of the third strike sentence. [Citations.] Once that requirement is satisfied, however, the burden shifts to

the prosecution to prove beyond a reasonable doubt that one of the disqualifying factors applies. [Citations.] . . . [I]n determining a petitioner’s eligibility, the trial court may rely on facts not found by a jury, and ‘[a] reviewing court, in turn, must defer to the trial court’s determination if it is supported by substantial evidence.’” (*People v. Thomas, supra*, ___ Cal.App.5th at p. ___ [p. 2].) “We review the whole record in a light most favorable to the order to determine whether it contains substantial evidence, i.e., evidence that is credible and of solid value, from which a rational trier of fact could find ineligibility by a preponderance of the evidence.” (*People v. Valdez* (2017) 10 Cal.App.5th 1338, 1346.)

B. *Substantial Evidence Supported the Trial Court’s Finding Wilson Intended To Cause Great Bodily Injury During the Commission of Count 1*

Substantial evidence supported the trial court’s finding that Wilson intended to cause great bodily injury when he fought with Belinda. When Wilson grabbed Belinda’s face during the fight, he dug his fingernails into her face with enough force to cause lacerations. Such injuries can amount to great bodily injury. (See *People v. Odom* (2016) 244 Cal.App.4th 237, 247 [““Abrasions, lacerations and bruising can constitute great bodily injury.””]; *People v. Davis* (1996) 42 Cal.App.4th 806, 818 [“hands or fists may be used with sufficient force to create great bodily injury”]; *People v. Sanchez* (1982) 131 Cal.App.3d 718, 727 [multiple abrasions, lacerations, and bruises on the victim’s eye and cheek constituted great bodily injury], disapproved on another ground in *People v. Escobar, supra*, 3 Cal.4th at p. 752.) Wilson also pushed Belinda into a glass table that had a “brass

frame [and] no foundation.” When the table broke, glass shards from the table further injured Belinda, including cuts on the right side of her face. The trial court reasonably inferred from this evidence that Wilson “intended the natural consequences of his actions” and to cause Belinda great bodily injury. (See *People v. Conley* (1952) 110 Cal.App.2d 731, 737 [pushing the victim into the street with enough force that the victim hit his head on a parking meter was sufficient evidence to show the force used was likely to produce great bodily injury]; *Ward v. McDowell* (S.D.Cal. May 23, 2017, No. 16cv3055-DMS-MDD) 2017 WL 2258054, p. 7 [throwing a victim “through a glass door, the glass of which was already broken,” was evidence of assault with force likely to cause great bodily injury].)

Wilson asserts Belinda “fell” on the glass table during the fight. This court’s prior opinion, however, stated that Wilson pushed Belinda into the table. Because the record in this appeal is missing key portions of the testimony at trial, including Belinda’s testimony on cross-examination, we adopt the statement of facts from our prior opinion, which was based on a complete record. (*People v. Wilson* (Jan. 15, 2002, B142587) [nonpub. opn.]; see *People v. Guilford* (2014) 228 Cal.App.4th 651, 659-661 [trial court properly relied on facts in an appellate opinion to affirm an order finding the defendant ineligible for resentencing].)

Wilson dug his fingernails into Belinda’s face and threw her through a glass table. As the trial court found, “one can easily imagine much more severe injury that could result from pushing a person into a glass table.” Substantial evidence supported the trial court’s finding Wilson intended to inflict great bodily injury.

DISPOSITION

The trial court's order denying Wilson's petition under section 1170.126 is affirmed.

SEGAL, J.

We concur:

PERLUSS, P. J.

ZELON, J.