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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

HERIBERTO CANDELARIO AND
BRIAN STEVE HERNANDEZ,

Defendants and Appellants.

2d Crim. No. B233424
(Super. Ct. No. BA369519)
(Los Angeles County)

Heriberto Candelario and Brian S. Hernandez appeal from the judgments entered following their conviction of attempted murder (Pen. Code, §§ 664, 187, subd. (a)),¹ assault with a deadly weapon (§ 245, subd. (a)(1)), and aggravated mayhem. (§ 205.) As to attempted murder and assault with a deadly weapon, the jury found true an allegation that appellants had personally inflicted great bodily injury. (§ 12022.7, subd. (b).) As to attempted murder, the jury found true an allegation that appellants had personally used a knife. (§ 12022, subd. (b)(1).) The jury found not true an allegation that the attempted murder had been committed deliberately and with premeditation. For aggravated mayhem, appellants were sentenced to life imprisonment with the possibility of parole. Sentences for attempted murder and assault with a deadly weapon were stayed pursuant to section 654.

¹ All statutory references are to the Penal Code.

Hernandez contends that the trial court erroneously denied his section 1118.1 motion for a judgment of acquittal on the aggravated mayhem charge. Candelario contends that the evidence is insufficient to support his conviction of this offense. We affirm, except that we modify Hernandez's judgment of conviction to award him one additional day of presentence custody credit.

Facts

Arnulfo B., who was in the ninth grade, was walking home from school when appellants approached him. Hernandez stood in front of Arnulfo B., while Candelario stood behind him. Appellants "started beating" Arnulfo B. He "felt a sharp pain" in the back of his neck and fell to the ground. Arnulfo B.'s legs were numb, and he was unable to get up. While he was on the ground, appellants continued to beat him. Arnulfo B. estimated that he was struck about 30 times. Appellants then ran away.

A witness testified that she had seen two boys "hitting" a "little boy" who was on the ground. Both boys were making stabbing motions toward the "little boy's" back. She did not see the attackers' faces.

Arnulfo B. had three stab wounds on the back of his neck at the base of his head. In addition, he had 16 stab wounds starting at the base of the back of his neck and continuing down his spine to his lower back. He showed the scars to the jury.

The stab wounds injured Arnulfo B.'s spinal cord. The injury is permanent but "incomplete so he has some functions." He was in a wheelchair when he testified. A doctor opined that Arnulfo B. will "always have some form of paralysis." The doctor noted that not all of the stab wounds "directly hit the spine," but there was *[sic]* a couple of areas that were seriously injured." The doctor told Arnulfo B. that he was "very lucky" because one of the stab wounds was "right at the cervical area . . . in the neck area. Had it . . . injured that level, he would be a quadriplegic." The major spinal cord injury was at the thoracic (chest) area.

Discussion

Hernandez contends that the trial court erroneously denied his section 1118.1 motion for a judgment of acquittal on the aggravated mayhem charge. Candelario contends that the

evidence is insufficient to support his conviction of this offense. "The standard applied by the trial court under section 1118.1 in ruling on a motion for judgment of acquittal is the same as the standard applied by an appellate court in reviewing the sufficiency of the evidence to support a conviction. [Citation.] 'In reviewing a challenge to the sufficiency of the evidence, we do not determine the facts ourselves. Rather, we "examine the whole record in the light most favorable to the judgment to determine whether it discloses substantial evidence—evidence that is reasonable, credible and of solid value—such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt." [Citations.] We presume in support of the judgment the existence of every fact the trier reasonably could deduce from the evidence. [Citation.] . . . We do not reweigh evidence or reevaluate a witness's credibility. [Citation.]' [Citation.]" (*People v. Whisenhunt* (2008) 44 Cal.4th 174, 200.)

Appellants argue that the evidence of aggravated mayhem is insufficient because it fails to establish a specific intent to permanently disable the victim. "[A] conviction of aggravated mayhem require[s] proof that appellant[s] intentionally . . . caused another person to sustain permanent disability or disfigurement." (*People v. Ferrell* (1990) 218 Cal.App.3d 828, 833.) "There is insufficient evidence of specific intent to maim if a defendant merely indiscriminately attacks his victim. [Citations.]" (*People v. Campbell* (1987) 193 Cal.App.3d 1653, 1668.) "Furthermore, specific intent to maim may not be inferred solely from evidence that the injury inflicted actually constitutes mayhem; instead, there must be other facts and circumstances which support an inference of intent to maim rather than to attack indiscriminately. [Citation.]" (*People v. Ferrell, supra*, 218 Cal.App.3d at p. 835.)

Candelario argues that "the evidence shows no more than a sudden, indiscriminate, and unfocused battering of [Arnulfo B.'s] body." Hernandez similarly argues that "the attack here was an indiscriminate attack against [Arnulfo B.]." We disagree. "The evidence did not show an indiscriminate random attack on the victim's body . . . ; instead, the attack was directed, controlled, and of focused or limited scope. [Citation.] (*People v. Lee* (1990) 220 Cal.App.3d 320, 326.) Appellants inflicted 19 stab wounds starting at the back of

Arnulfo B.'s neck and continuing down his spine to his lower back. Based on the number and location of the stab wounds, "the jury could reasonably have inferred that appellant[s] intended both to kill [Arnulfo B.], and, if [he] did not die, to disable [him] permanently." (*People v. Ferrell, supra*, 218 Cal.App.3d at p. 836.) "It takes no special expertise to know that [stab wounds] in the [back of the] neck [and down the spine] . . . , if not fatal, [are] highly likely to disable permanently." (*Id.*, at p. 835.) Substantial evidence, therefore, supports the jury's verdict.

Credit for Time Served

The trial court gave Hernandez credit for 493 days of presentence custody (429 days of actual custody plus 64 days of conduct credit). Hernandez contends, and the People concede, that he is entitled to credit for 494 days of presentence custody (430 days of actual custody plus 64 days of conduct credit). We accept the People's concession.

Disposition

Candelario's judgment of conviction is affirmed. Hernandez's judgment of conviction is modified to award him credit for 494 days of presentence custody (430 days of actual custody plus 64 days of conduct credit). In all other respects, the judgment is affirmed. The trial court is directed to prepare an amended abstract of judgment for Hernandez and to send a certified copy to the Department of Corrections and Rehabilitation.

NOT TO BE PUBLISHED.

YEGAN, J.

We concur:

GILBERT, P.J.

PERREN, J.

Frederick N. Wapner, Judge
Superior Court County of Los Angeles

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