

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.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

THE PEOPLE,

Plaintiff and Respondent,

v.

THANH VAN JENSEN,

Defendant and Appellant.

2d Crim. No. B279454
(Super. Ct. No. 2016009714)
(Ventura County)

Thanh Van Jensen appeals from a judgment after a jury convicted him of one count of assault with force likely to produce great bodily injury (Pen. Code,¹ § 245, subd. (a)(4)) and one count of battery with serious bodily injury (§ 243, subd. (d)). Appellant admitted, and the trial court found true, allegations that appellant had suffered two prior serious or violent felony convictions within the meaning of the “Three Strikes” law (§§ 667, subds. (c) & (e), 1170.12, subds. (a) & (c)) and that

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

appellant had served one prior prison term (§ 667.5, subd. (b)). The jury found true an allegation that appellant personally inflicted great bodily injury upon the victim (§§ 12022.7, subd. (b), 1192.7, subd. (c)(8)). He was sentenced to an indeterminate prison term of 33 years to life. Appellant contends that the trial court erred when it denied his motion to dismiss his prior strikes. He also contends the evidence was insufficient to support the jury's finding of great bodily injury. We affirm.

BACKGROUND

Appellant and his half sister, Lucy Jensen, were both living in the home of their mother, Bethi Jensen, in Simi Valley. Appellant and Lucy were not on speaking terms.

The Attacks on Lucy

When Lucy noticed that someone had left the toilet seat up, she told appellant that he should “put the seat down or go piss outside.” He responded with a profanity and they began yelling at each other. Appellant emerged from his room, charged at Lucy, and threw soup on her. He then lunged at her and punched her in the face.

Lucy went to call 911. One of her eyes was “swollen up” and she was crying and screaming. While she was speaking to the dispatcher, appellant came up behind her yelling profanities and struck her repeatedly. At some point, she managed to escape and go outside.

When Lucy returned to the house, appellant approached her from behind and shoved her to the floor. He got on top of her, grabbed her hair, and started “banging [her] head into the floor.” He slammed her head into the floor more than 10 times while saying, “I’m going to kick your ass. I’m going to kill

you, you fucking bitch.” Lucy feared for her life and believed appellant would kill her.

When police officers arrived, Lucy was crying and overwhelmed. Appellant said that “Lucy got what she deserved.”

Lucy’s Injuries

Lucy suffered multiple visible injuries, including bruising and “large swelling” on her eye, a cut on her forehead, and bumps on her head. She had “a big bump under [her] eye.” She had bruises on her knees.

Lucy was taken to the hospital and underwent a CT scan of her head. The doctor diagnosed a subdural hematoma, which is internal bleeding of the brain. Subdural hematomas often result from blunt force trauma to the head, such as by being punched in the head or having one’s head slammed into the floor. They range from small to large and they can be fatal. Lucy suffered a small subdural hematoma, but because there was a risk that it might grow and become fatal, Lucy was hospitalized overnight for monitoring. Symptoms may include altered mental status, headaches, and neurological deficit. Lucy experienced headaches every night after appellant’s attacks.

Appellant’s Prior Convictions

Appellant has a history of prior criminal convictions, including a drug-related misdemeanor in 1993 (§ 653f, subd. (d)) resulting in 24 months of probation, another drug-related misdemeanor in 1996 (*ibid.*) resulting in three months in county jail and 24 months probation, a drug-related felony in 1999 (Health & Saf. Code, § 11350) resulting in 90 months in county jail followed by 36 months of formal probation, and two super-strike convictions for committing lewd acts upon a child and

forcible rape (§§ 288, subd. (a), 261, subd. (a)(2)) resulting in 12 years in prison.

DISCUSSION

The Romero Motion

The Three Strikes law was enacted by both the Legislature and the electorate in 1994. (*People v. Vargas* (2014) 59 Cal.4th 635, 638.) Under that law, if a defendant commits a qualifying felony after having suffered a prior qualifying felony conviction, a doubled sentence is mandatory. (*Ibid.*) If a defendant commits a third qualifying felony after having suffered two prior qualifying felony convictions, a life sentence is mandatory. (*Ibid.*) “Sentence enhancement based on recidivism flows from the premise that the defendant’s current criminal conduct is more serious because he or she previously was found to have committed criminal conduct and did not thereafter reform.’ [Citation.]” (*Ibid.*)

Appellant contends that the trial court erred by failing to exercise its discretion to dismiss his prior strike convictions. Section 1385, subdivision (a), provides that a judge may order an action dismissed “in furtherance of justice.” Because of the policy reasons underlying enactment of the Three Strikes law, our Supreme Court has “established stringent standards that sentencing courts must follow in order to find such an exception” to its mandatory sentencing scheme. (*People v. Carmony* (2004) 33 Cal.4th 367, 377 (*Carmony*).)

In deciding whether to grant a motion to dismiss a prior qualifying strike conviction, “the court in question must consider whether, in light of the nature and circumstances of his present felonies and prior serious and/or violent felony convictions, and the particulars of his background, character, and

prospects, the defendant may be deemed outside the scheme's spirit, in whole or in part, and [therefore] should be treated as though he had not previously been convicted of one or more serious and/or violent felonies.' [Citation.]" (*Carmony, supra*, 33 Cal.4th at p. 377.) In determining whether a trial court properly denied a section 1385 motion to dismiss a prior strike, we apply a "deferential abuse of discretion standard." (*Id.* at p. 374.)

Appellant contends that his criminal history is limited, remote in time, and that his prior felony strikes "consisted of two crimes arising out of a transaction with a single victim." He argues that because he served only one prison sentence for his two prior strike convictions, he has had only one "prior opportunity to reform his conduct." We reject his contentions.

Appellant has now suffered seven criminal convictions, five of which were felonies, and two of which were "super strikes." He has been placed on three separate grants of probation and has served 12 years in prison, providing ample opportunities to "reform his conduct." And although his two super-strike convictions were 15 years old at the time of sentencing in this case, appellant spent 12 of those years in prison.

Appellant argues that the trial court should have granted his motion to dismiss at least one strike because his "sexual crimes . . . occurred against a single victim in a brief time period." We disagree. Appellant's victim was 11 or 12 years old when he progressed beyond fondling her breasts and genitals to vaginal penetration with his penis. He engaged in sexual intercourse with his victim on numerous occasions over several months, digitally penetrated her vagina, and forced her to

masturbate his penis until he ejaculated. He forced her to commit oral sex on him. He impregnated her when she was 13 years old. We reject his attempt to minimize his criminal behavior.

The trial court properly considered appellant's criminal history, his current offenses, and his background, character and prospects. It did not abuse its discretion when it denied appellant's motion to dismiss one or more of the prior strike convictions.

Great Bodily Injury

Appellant next contends that the evidence was insufficient to support the jury's finding of great bodily harm. In reviewing such a claim, our role is limited. We must uphold the conviction unless ““upon no hypothesis whatever is there sufficient substantial evidence to support [it].” [Citation.]” (*People v. Cravens* (2012) 53 Cal.4th 500, 508.) Our task is to “review the entire record in the light most favorable to the judgment below to determine whether it discloses sufficient evidence—that is, evidence that is reasonable, credible, and of solid value—supporting the decision, and not whether the evidence proves guilt beyond a reasonable doubt.” (*People v. Jennings* (2010) 50 Cal.4th 616, 638 (*Jennings*).)

In reviewing the evidence, we do not reweigh it or evaluate the credibility of witnesses. (*Jennings, supra*, 50 Cal.4th at p. 638.) We must “presume in support of the judgment the existence of every fact the jury reasonably could deduce from the evidence. [Citation.] If the circumstances reasonably justify the findings made by the trier of fact, reversal of the judgment is not warranted simply because the circumstances might also reasonably be reconciled with a contrary finding. [Citation.]” (*Id.*

at pp. 638-639.) Unless it is physically impossible or inherently improbable, the testimony of a single witness is sufficient to support a conviction. (*People v. Young* (2005) 34 Cal.4th 1149, 1181.)

Section 12022.7, subdivision (a) provides that “[a]ny person who personally inflicts great bodily injury on any person other than an accomplice in the commission of a felony or attempted felony shall be punished by an additional and consecutive term of imprisonment in the state prison for three years.” Great bodily injury is defined in subdivision (f) of that statute as “a significant or substantial physical injury.”

The injury need not cause disfigurement, impairment, loss of bodily function, or permanent injury. (*People v. Escobar* (1992) 3 Cal.4th 740, 749-750 (*Escobar*).) Physical pain or damage, including lacerations and abrasions, constitute great bodily injury. (*Id.* at p. 750 [bruises and abrasions, stiff neck, soreness impairing ability to walk]; *People v. Hale* (1999) 75 Cal.App.4th 94, 108 [broken teeth, split lip and cut underneath eye]; *People v. Bustos* (1994) 23 Cal.App.4th 1747, 1755 [abrasions, lacerations and contusions].) Whether a victim suffered great bodily injury is a factual question for the jury. (*Escobar*, at p. 750.)

The record here includes substantial evidence supporting the jury’s finding. The evidence established that Lucy suffered multiple physical injuries as a result of being repeatedly punched in the face and body, and having her head repeatedly slammed into the floor. She was treated and diagnosed with internal bleeding of the brain after the attacks. She had to be hospitalized overnight because even small subdural hematomas can grow and prove fatal. She suffered serious swelling under

her eye, multiple bumps on her head, bruising of her knees, and a laceration to her forehead. In addition, Lucy testified that she suffers from persistent and recurring headaches on a nightly basis ever since the attacks. The jury reviewed photographs and heard testimony describing the injuries, and determined the injuries were significant or substantial. The evidence amply supports the jury's determination that she suffered great bodily injury.

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED.

TANGEMAN, J.

We concur:

YEGAN, Acting P. J.

PERREN, J.

Charles W. Campbell, Jr., Judge
Superior Court County of Ventura

Richard C. Gilman, 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, Toni R. Johns Estaville and Abtin
Amir, Deputy Attorneys General, for Plaintiff and Respondent.