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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.

JOSE CARLOS FLORES,

Defendant and Appellant.

2d Crim. No. B287454  
(Super. Ct. No. 2015027226)  
(Ventura County)

Jose Carlos Flores fatally stabbed Pedro Gaspar outside an Oxnard cantina. The jury convicted him of involuntary manslaughter. (Pen. Code, § 192, subd. (b).)<sup>1</sup> It acquitted him of second degree murder and voluntary manslaughter. The jury found true an allegation that Flores personally used a knife. (§ 12022, subd. (b)(1).) The trial court sentenced Flores to four years in state prison, deemed the sentence served, and released him.

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<sup>1</sup> All statutory references are to the Penal Code.

Flores contends that the trial court should have granted his motion for acquittal of murder (§ 187, subd. (a)) at the close of the prosecution's evidence. He also contends that there is insufficient evidence to support the conviction because he acted in self-defense. We affirm.

### BACKGROUND

One evening in 2013, Flores and his friend encountered Gaspar and his two companions outside the Tex-Mex Cantina in Oxnard. A surveillance camera recorded parts of the encounter.

The video shows Flores's friend walk up to Gaspar and kick him in the groin. There is a scuffle. Flores shoves one of Gaspar's companions into a wall, and Gaspar steps in to push Flores away. Flores makes a stabbing motion at Gaspar. Gaspar pushes Flores toward the wall and looks down at his chest. The surveillance video was played at trial.

After the stabbing, the cantina's security guard came out and heard someone say, "You already stabbed him." He saw three men moving toward Flores, who was backing up and waiving a knife. The guard tried to stop them as they kicked, hit and stomped on Flores.

The fight ended when Gaspar fell to the ground. Flores offered the guard the knife but he did not take it. The guard told Flores to wait for police. Flores ran away, leaving his keys behind. Gaspar died soon afterward at the hospital.

About two years later, police detectives interviewed Flores. Flores said Gaspar hit him six or eight times in the head before he stabbed him. After Flores watched the video, he instead said Gaspar gave "[a] kick and a blow." Flores acknowledged that Gaspar did not hit him hard enough to knock his (Flores's) cigarette from his mouth and that he did not see any weapons. He said he took the knife out to scare Gaspar and only used it

because Gaspar came at him with “eagerness.” The jury heard recordings of these interviews at trial.

Flores testified that he was afraid for his life. He said Gaspar and his friends yelled at him and threatened to beat him. They had their fists clenched and he was afraid they would attack him. He did not know if they had weapons. One had a beer bottle. He did not intend to stab Gaspar. He did not remember opening the knife blade. He was using the knife to scare Gaspar away, and may have “poked” him. He did not want Gaspar to die.

Flores also presented two character witnesses. They testified that Flores is not a violent person. The trial court denied Flores’s motion for acquittal after the prosecution’s case-in-chief.

### DISCUSSION

The trial court properly denied the motion for acquittal because the prosecution presented substantial evidence to support a murder conviction under the theory of implied malice. The same evidence supports the conviction for involuntary manslaughter.

A motion for acquittal must be granted “if the evidence then before the court is insufficient to sustain a conviction.” (§ 1118.1.) We review the denial of a section 1118.1 motion under the same standard as that for sufficiency of the evidence to support a conviction. (*People v. Houston* (2012) 54 Cal.4th 1186, 1215.) We examine the record in the light most favorable to the judgment, and we presume the existence of every fact the jury could reasonably deduce from the evidence to support it. (*Ibid.*) We do not reweigh evidence or reevaluate credibility. (*Ibid.*) “Review of the denial of a section 1118.1 motion made at the close

of a prosecutor's case-in-chief focuses on the state of the evidence as it stood at that point.” (*Ibid.*)

The jury had before it sufficient evidence to sustain a conviction for murder when Flores moved for acquittal at the close of the prosecution’s case. Murder requires proof of an unlawful killing of a human being with malice aforethought (§ 187, subd. (a)), either express or implied. (*People v. Chun* (2009) 45 Cal.4th 1172, 1181.) The parties stipulated that Gaspar died of a stab wound, and Flores admitted he stabbed him. A jury could reasonably conclude that Flores did so with implied malice because he brought a knife into a non-lethal fistfight.

Implied malice has both a physical and a mental component. (*People v. Chun, supra*, 45 Cal.4th 1172, 1181.) It requires (1) a physical act, the natural consequences of which are dangerous to life, and (2) that the defendant knows the conduct endangers the life of another and acts with conscious disregard for life. (*Ibid.*) A jury could reasonably conclude Flores acted with implied malice because he took a knife out of his pocket, opened the blade, and stabbed Gaspar in the chest during a fistfight.

Likewise, the prosecution presented sufficient evidence to negate self-defense because Flores used deadly force in response to a non-lethal attack. The prosecution had the burden to prove beyond a reasonable doubt that Flores did not act in self-defense. (*People v. Lee* (2005) 131 Cal.App.4th 1413, 1429.) Any right to self-defense is limited to use of force that is reasonable under the circumstances. (*People v. Minifie* (1996) 13 Cal.4th 1055, 1065.) And deadly force may be used only to repel a deadly attack. (*People v. Hardin* (2000) 85 Cal.App.4th 625, 629-630.) An assault with fists does not justify the use of a deadly weapon in

self-defense. (*People v. Enriquez* (1977) 19 Cal.3d 221, 228, overruled on other grounds in *People v. Cromer* (2001) 24 Cal.4th 889, 901.)

Flores told an investigator that he opened the knife in reaction to “shoving.” Gaspar and his companions were unarmed. Flores acknowledged that he did not see any weapons. A reasonable jury could have found beyond a reasonable doubt that “the nature of the attack did not justify the resort to deadly force or that the force used exceeded that which was reasonably necessary to repel the attack.” (*People v. Clark* (1982) 130 Cal.App.3d 371, 380 [shooting was an excessive response to the victim’s threat to beat the defendant with his fists].)

Flores contends that he “proved” self-defense because he said he was afraid for his life, he said the other men threatened to beat him, the victim pushed and hit him, and he thought the other men were going to attack and possibly kill him. We will not reweigh the jury’s implicit finding that Flores was not credible. (*People v. Houston, supra*, 54 Cal.4th 1186, 1215.)

Flores points to evidence that the security guard saw the victim and his two companions repeatedly strike and kick him and saw them stomp on his head. But this happened after Flores stabbed Gaspar. The guard said he saw the men attack Flores after Flores “already stabbed [Gaspar].” The guard did not see what happened before the stabbing.

#### DISPOSITION

The judgment is affirmed.

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GILBERT, P. J.

We concur:

YEGAN, J.

PERREN, J.

Jeffrey G. Bennett, Judge

Superior Court County of Ventura

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Jolene Larimore, under appointment by the Court of Appeal, for Defendant and Appellant.