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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

MARIO DUMAS,

Defendant and Appellant.

B279101

(Los Angeles County  
Super. Ct. No. BA445219)

APPEAL from a judgment of the Superior Court of Los Angeles County. Larry P. Fidler, Judge. Affirmed.

Joseph R. Escobosa, 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, Michael C. Keller and Timothy L. O'Hair, Deputy Attorneys General, for Plaintiff and Respondent.

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A jury convicted Mario Dumas (defendant) of mayhem (Pen. Code, § 203)<sup>1</sup> and other crimes after he punched, kicked, and used a tire iron to attack a woman. Defendant's sole claim on appeal is that the injuries he inflicted upon the woman were not sufficiently severe to support a conviction for mayhem. We disagree, and affirm.

## **FACTS AND PROCEDURAL BACKGROUND**

### **I. Facts**

During the mid-afternoon of March 23, 2016, defendant approached Brenda Duran (Duran) and her younger brother in a strip mall parking lot. He was angry, and demanded to know why Duran and her brother had flipped him off. They denied doing so. Defendant then blocked Duran's path, and one of the women in defendant's car called Duran a "dyke ass bitch." When Duran pulled out her cell phone to dial 911, defendant smacked the phone to the ground. When Duran put her hands on defendant's chest to push him away, he punched her "real hard" in the face. Around the same time, defendant saw Duran's brother approaching with a tire iron, grabbed the tire iron from him, and hit Duran across the back with it. While Duran was on the ground, defendant then kicked her in the face.

The entire incident was caught on video.

Duran suffered severe injuries to her left eye, her nose, her teeth, and her skull. Her left orbital bone was broken, causing her left eye to sink into the eye socket and not to align with her right eye. This caused her to have blurry vision, double vision, and reduced peripheral vision that creates a "blind spot." She

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<sup>1</sup> All further statutory references are to the Penal Code unless otherwise indicated.

underwent surgery to insert a plate into the socket and lift the eye closer to its original position; the surgery cured most, though not all of the blurry and double vision, but left her peripheral vision damaged. Without that surgery, Duran's vision would have been "altered forever." Her nose was also broken; surgery repaired the cosmetic damage, but did not cure her permanent loss of smell and taste. Ten of her teeth were chipped, and two had to be removed. She also suffered bleeding in the skull, a condition that still causes her thunderous headaches. Duran's back was also bruised by the strike from the tire iron.

## **II. Procedural Background**

In the operative second amended information, the People charged defendant with (1) one count of mayhem (§ 203); (2) three counts of assault by means of force likely to produce great bodily injury (§ 245, subd. (a)(4)), one for the punch to Duran's face, one for the kick to her face, and one for the scuffle with Duran's brother over the tire iron; and (3) one count of assault with a deadly weapon (§ 245, subd. (a)(1)) for striking Duran with the tire iron. The People further alleged that defendant personally inflicted great bodily injury as to the counts for punching and kicking Duran (§ 12022.7, subd. (a)). The People also alleged that defendant's 2005 manslaughter conviction (§ 192, subd. (a)) constituted a "strike" under our Three Strikes law (§§ 667, subds. (b)-(j) & 1170.12, subds. (a)-(d)), a prior "serious" felony (§ 667, subd. (a)(1)), and a prior prison term (§ 667.5, subd. (b)). The People also alleged four additional prior prison terms.

The matter proceeded to trial. Defendant and his daughter testified that Duran had been armed with a knife, and that she and her brother had been the aggressors. The trial court instructed the jury on the charged offenses, on simple assault as

a lesser included offense to all of the assault charges, on battery as a lesser included offense to mayhem, and on self-defense.

The jury found defendant guilty of mayhem, of assault by means of force likely to produce great bodily injury as to the punch and kick to Duran, and simple assault as to the remaining two assault counts. The jury found true the allegations that defendant personally inflicted great bodily injury. Defendant subsequently admitted his prior convictions.

The trial court sentenced defendant to 24 years in prison. The court imposed 24 years on the mayhem count, comprised of a base sentence of 16 years (eight years, doubled due to the prior strike), plus five years for the prior serious felony, plus three years for three of the five prior prison terms. The court stayed all of the remaining sentences under section 654.

Defendant filed this timely appeal.

### **DISCUSSION**

Defendant argues that his mayhem conviction must be overturned because there is insufficient evidence that he permanently injured Duran. We review this claim by asking whether the record—viewed in the light most favorable to the verdict—contains enough evidence that is reasonable, credible, and of solid value for a reasonable trier of fact to find defendant guilty beyond a reasonable doubt. (*People v. Brooks* (2017) 3 Cal.5th 1, 57.)

A person is guilty of mayhem when he “unlawfully and maliciously” does one of six specified acts: “(1) dismembering or depriving a part of someone’s body; (2) disabling or rendering useless a part of someone’s body; (3) disfiguring someone; (4) cutting or disabling the tongue; (5) putting out an eye; [or] (6) slitting the nose, ear or lip.” (*People v. Santana* (2013)

56 Cal.4th 999, 1003-1004; § 203.) To be actionable, an injury to the eye need not “completely destroy[] the victim’s eyesight”; it is enough if the victim cannot “use her eye for the ‘ordinary and usual purposes of life.’” (*People v. Dennis* (1985) 169 Cal.App.3d 1135, 1138 (*Dennis*); cf. *People v. Nunes* (1920) 47 Cal.App. 346, 349 [under the disfigurement clause, “mere disfigurement of an eye would not amount to mayhem unless such disfigurement resulted in rendering the eye useless”].) However, any actionable injury must also be permanent; for these purposes, an injury is permanent notwithstanding the fact that it can be repaired by surgery. (*Santana*, at p. 1007; *People v. Hill* (1994) 23 Cal.App.4th 1566, 1571, 1574-1575; *People v. Newby* (2008) 167 Cal.App.4th 1341, 1345-1346; *People v. Williams* (1996) 46 Cal.App.4th 1767, 1774.)

Substantial evidence supports the jury’s finding that Duran’s injury is actionable as mayhem. The injury to her eye socket would have “altered forever” her vision, resulting in blurred and double vision had it not be corrected by surgery; and even with surgery, her peripheral vision is still impaired. Courts have found comparable injuries to be actionable. (See *Dennis*, *supra*, 169 Cal.App.3d at p. 1138 [injury that distorts peripheral vision and causes double vision; actionable]; *People v. Green* (1976) 59 Cal.App.3d 1, 3-4 [injury that causes double vision and a “ring-shaped blind spot”; actionable].) Defendant points to testimony that Duran will not need any further surgeries, but this does not undermine the jury’s finding that absent the prior surgeries—which is the pertinent inquiry—Duran’s injury was actionable and permanent.

**DISPOSITION**

The judgment is affirmed.

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\_\_\_\_\_, J.  
HOFFSTADT

We concur:

\_\_\_\_\_, Acting P. J.  
CHAVEZ

\_\_\_\_\_, J.\*  
GOODMAN

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