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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

CHRISTOPHER REGIN

PORTERBAILEY,

Defendant and Appellant.

A141908

(San Francisco City & County  
Super. Ct. Nos. 13026454, 221282)

Defendant Christopher Regin Porterbailey was convicted of second degree robbery, felony assault, and battery. With respect to the first two counts, the jury also found true the allegation defendant personally inflicted great bodily injury on his victim during the commission of the crimes. Defendant appeals, arguing there was insufficient evidence to support the great-bodily-injury enhancement. We disagree and affirm.

**I. BACKGROUND**

On December 2, 2013, defendant was charged by information with (1) second degree robbery (Pen. Code,<sup>1</sup> § 211), (2) felony assault with force likely to produce great bodily injury (§ 245, subd. (a)(4)), (3) battery resulting in serious bodily injury (§ 243, subd. (d)), and (4) misdemeanor assault with force likely to produce great bodily injury (§ 245, subd. (a)(4)). As to the first two counts, the information alleged that, during the commission of the crime, defendant personally inflicted great bodily injury on his victim, which under section 12022.7, subdivision (a) is punishable by an additional and

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

consecutive three-year prison term. The information also alleged defendant had a prior violent or serious felony conviction that left him ineligible for probation pursuant to section 1203, subdivision (k).

The charges arose out of events at a San Francisco karaoke lounge in June 2013. At closing time, Emily Scannell and Mark Miller noticed a commotion outside of the bar. A circle had formed around what appeared to be a fight. Miller approached the circle and noticed defendant, who was agitated, “jumping from side to side and going back and forth and yelling.” When Miller told defendant to calm down, he punched Miller in the eye. Meanwhile, a woman approached Scannell and grabbed her purse. A struggle for the purse ensued, and Scannell eventually fell to the ground. The woman hit Scannell in the face and ran away with her purse. Miller noticed Scannell on the ground, and then observed defendant kick her in the head. Scannell then blacked out.

The San Francisco Fire Department patient care report indicates Scannell lost consciousness for 30 to 40 seconds and had a five-centimeter open hematoma on the back of her head. Hospital records also show Scannell had a “Scalp laceration,” a “Head injury with concussion—unknown loss of consciousness,” and a “scalp hematoma.” A single staple was used to repair the laceration. The staple was removed after about five days.

The police obtained a surveillance video showing the attack on Scannell and released it to the media. Durrell Sanders saw the video, identified defendant as the man who kicked Scannell, and contacted the police. The police arrested defendant in July 2013, and held him in the San Francisco County Jail. Defendant’s phone calls from the jail were recorded. During one of those calls, defendant said: “I didn’t rob nobody. . . . I beat the nigger up and kicked the bitch and that was it.”

The jury found defendant guilty of second degree robbery, felony assault, and battery, and it also found true the allegation he personally inflicted great bodily injury in the commission of the first two counts. The jury could not reach a verdict on the misdemeanor assault charge, and the court dismissed that count on the district attorney’s motion. After a bench trial, the court found the prior conviction allegation true.

Defendant subsequently moved for a new trial, challenging the sufficiency of the evidence on the jury's finding on the great-bodily-injury allegation. The court denied the motion and sentenced defendant to six years in prison—three years for the second degree robbery count and another three years for the great-bodily-injury enhancement.

## II. DISCUSSION

Defendant argues there was insufficient evidence to support the enhancement for great bodily injury. We must affirm the jury's verdict on the enhancement if it is supported by substantial evidence. On substantial evidence review, we “ ‘view the whole record in a light most favorable to the judgment, resolving all evidentiary conflicts and drawing all reasonable inferences in favor of the decision of the trial court.’ ” (*DiMartino v. City of Orinda* (2000) 80 Cal.App.4th 329, 336.) “We may not substitute our view of the correct findings for those of the [jury]; rather, we must accept any reasonable interpretation of the evidence which supports the [jury]'s decision.” (*Ibid.*) “Substantial evidence, of course, is not synonymous with ‘any’ evidence.” (*Toyota Motor Sales U.S.A., Inc. v. Superior Court* (1990) 220 Cal.App.3d 864, 871.) Rather, it is “evidence of ponderable legal significance, evidence that is reasonable, credible and of solid value.” (*Roddenberry v. Roddenberry* (1996) 44 Cal.App.4th 634, 651.) The focus is on the quality, not the quantity, of the evidence. (*Ibid.*)

For the purposes of section 12022.7, “*Great bodily injury* means significant or substantial physical injury. It is an injury that is greater than minor or moderate harm.” (CALCRIM No. 3160.) The intent of the statute is to punish a defendant for inflicting substantial injury beyond that inherent in the underlying felony. (*People v. Escobar* (1992) 3 Cal.4th 740, 746.) Determining whether a victim has suffered harm amounting to great bodily injury is a question of fact to be resolved by the jury. (*Id.* at p. 752.) “A fine line can divide an injury from being significant or substantial from an injury that does not quite meet the description. Clearly, it is the trier of fact that must in most situations make the determination.” (*People v. Jaramillo* (1979) 98 Cal.App.3d 830, 836.) “Proof that a victim's bodily injury is ‘great’ . . . is commonly established by evidence of the severity of the victim's physical injury, the resulting pain, or the medical

care required to treat or repair the injury.” (*People v. Cross* (2008) 45 Cal.4th 58, 66.) There is no requirement the victim suffer “ ‘permanent,’ ‘prolonged’ or ‘protracted’ disfigurement, impairment, or loss of bodily function.” (*People v. Escobar*, at p. 750.) Abrasions, lacerations, and bruising have been found sufficient to establish great bodily injury. (*Id.* at p. 752.)

Great bodily injury is “essentially equivalent” to “serious bodily injury” as that term is used in section 243. (*People v. Burroughs* (1984) 35 Cal.3d 824, 831, overruled on another ground in *People v. Blakeley* (2000) 23 Cal.4th 82, 89; but see *People v. Taylor* (2004) 118 Cal.App.4th 11, 24 [the two terms “have separate and distinct statutory definitions” ].) Serious bodily injury means “a serious impairment of physical condition, including, but not limited to, the following: loss of consciousness; concussion; bone fracture; protracted loss or impairment of function of any bodily member or organ; a wound requiring extensive suturing; and serious disfigurement.” (§ 243, subd. (f)(4).)

We find substantial evidence supports a finding defendant personally inflicted great bodily injury on Scannell. Defendant kicked Scannell in the head after she had fallen to the ground. Scannell lost consciousness, and medical records indicate she suffered a five-centimeter open hematoma on the back of her head, a scalp laceration, and a concussion. Based on these facts, the jury could have reasonably concluded defendant inflicted a significant or substantial physical injury.

Defendant argues the severity of Scannell’s laceration could not be established without medical testimony, and her immediate release, coupled with the brevity of her treatment, establish it was not serious. He also asserts Scannell did not complain of protracted pain, and her loss of consciousness was extremely brief. We find these arguments unavailing. Nothing in the statute or the case law suggests medical testimony, protracted pain, or extended medical treatment are necessary to establish great bodily injury.<sup>2</sup> Nor does the statute specify that a victim must lose consciousness for a

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<sup>2</sup> (Cf. *People v. Wade* (2012) 204 Cal.App.4th 1142, 1150 [prosecution not required to show victim’s injury required medical treatment in order to prove battery causing serious bodily injury]; *People v. Jung* (1999) 71 Cal.App.4th 1036, 1042 [§ 206

minimum amount of time. Moreover, even if one aspect of Scannell’s injury or treatment alone is insufficient to establish the existence of great bodily injury, the totality of circumstances warranted such a finding.

### **III. DISPOSITION**

The judgment is affirmed.

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eliminates pain of the victim as an element of the offense since “all that is required as to the nature of the injury is ‘great bodily injury’ ”].)

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Margulies, J.

We concur:

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Humes, P. J.

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Banke, J.

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*People v. Porterbailey*