

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.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

THE PEOPLE,

Plaintiff and Respondent,

v.

CAGNEY STYLES McPHAN,

Defendant and Appellant.

B266753

(Los Angeles County
Super. Ct. No. VA138966)

ORDER MODIFYING
OPINION; NO CHANGE
IN JUDGMENT

THE COURT:

It is ordered that the opinion filed on October 5, 2016, be modified as follows:

On page 5, second line from the bottom, the words “does not” are to be inserted between the words “incident” and “demonstrate” so that the sentence reads:

The absence of visible facial and neck injuries in the photographs taken of Prince on the day of the incident does not demonstrate that the witnesses’ accounts of McPhan’s attack on Prince were false.

There is no change in the judgment.

PERLUSS, P. J.

SEGAL, J.

GARNETT, J.*

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

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(Los Angeles County
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APPEAL from a judgment of the Superior Court of Los Angeles County, Patrick T. Meyers, Judge. Affirmed.

Melissa Hill, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, and Margaret E. Maxwell, Deputy Attorney General, for Plaintiff and Respondent.

Cagney Styles McPhan appeals a judgment convicting him of inflicting corporal injury on a spouse, cohabitant, or fellow parent (Pen. Code, § 273.5, subd. (a)).¹ His conviction arises from an incident in which witnesses observed him hitting Raquel Prince in the face and pulling her hair. McPhan contends the evidence is not sufficient to prove that he inflicted corporal injury resulting in a traumatic condition, as required to support his conviction. We conclude that substantial evidence supports his conviction and affirm.

FACTUAL AND PROCEDURAL BACKGROUND

A. The Prosecution's Case

In the early afternoon of April 17, 2015, Irene Gutierrez was driving on Slauson Avenue with her husband, Victor Loredó, who was sitting in the front passenger seat. As Gutierrez was driving, she saw McPhan and Prince walking toward a bus stop. McPhan was hitting Prince, punching her with a closed fist numerous times in her face, mouth, and nose, and pulling Prince's hair. Gutierrez called 9-1-1, watched as McPhan and Prince boarded a bus, and waited for the police to arrive.² During her 9-1-1 call, Gutierrez continued to describe to the operator her contemporaneous observations that McPhan was hitting Prince, dragging her, and pulling her hair.

Loredó was riding in the car with his wife, Gutierrez. He saw McPhan repeatedly punching and hitting Prince as McPhan and Prince walked toward the bus stop.

Deputy Sheriff Richard Ochoa was on patrol on April 17, responded to the scene and spoke with Prince. Ochoa testified that Prince told him that McPhan was flailing his arms and had hit her. Prince stated that McPhan sometimes had mental outbreaks in

¹ All statutory references are to the Penal Code.

² An audio recording of Gutierrez's 9-1-1 telephone call was admitted in evidence and played for the jury.

which he was angry and violent. Ochoa observed scratches on Prince's neck and thought it looked like some of her hair had been pulled out.

Ochoa took photographs of Prince at the scene, which were admitted in evidence. Ochoa testified that the photographs did not clearly depict the scratches he had observed on Prince's neck on the day of the incident.

Prince testified she had been in a relationship with McPhan for almost six years, that McPhan is her fiancé, and that he is the father of her two-year-old daughter. She stated that while she and McPhan were on their way to the bus stop, en route to pick up their daughter from day care, they had what she initially described as "a little argument." According to Prince, McPhan was upset about other men looking at her. Later, Prince stated, "I wouldn't even say it was an argument. It was just a few words back and forth." Prince denied the argument became physical. She testified that McPhan did not hit her or make any violent gestures toward her. She also denied ever telling Ochoa that McPhan had hit her or that McPhan had been flailing his arms. Prince testified that she did not suffer any injury that day. When she was asked about the appearance of her hair in one of the photographs, Prince stated that she wore hair extensions and that she had not done her hair that day.

B. *The Defense Case*

McPhan did not testify or present any evidence.

C. *The Jury Verdict and Sentencing*

The trial court instructed the jury on the crimes of inflicting corporal injury on a spouse, cohabitant, or fellow parent (§ 273.5); battery against a spouse, cohabitant, or fellow parent (§ 243, subd. (e)(1)); and battery (§ 242). The jury found McPhan guilty of one count of inflicting corporal injury on a spouse, cohabitant, or fellow parent.

McPhan admitted that he had suffered a prior strike. The trial court sentenced McPhan to four years in prison, consisting of the low term of two years, doubled pursuant to the Three Strikes law (§§ 667, subd. (b)-(i), 1170.12).

DISCUSSION

Section 273.5, subdivision (a), states, “[a]ny person who willfully inflicts corporal injury resulting in a traumatic condition upon a victim described in subdivision (b) is guilty of a felony” Subdivision (b) states that subdivision (a) applies if the victim is or was the offender’s spouse or former spouse, cohabitant or former cohabitant, fiancé or fiancée, or the mother or father of the offender’s child. Subdivision (d) defines “traumatic condition” to mean “a condition of the body, such as a wound, or external or internal injury, including, but not limited to, injury as a result of strangulation or suffocation, whether of a minor or serious nature, caused by physical force. . . .” (§ 273.5, subd. (d); see also *People v. Wilkins* (1993) 14 Cal.App.4th 761, 771 [“Section 273.5 is violated when the defendant inflicts even ‘minor’ injury.”].) One of the legislative purposes of section 273.5 was to “clothe[] persons . . . in intimate relationships with greater protection by requiring less harm to be inflicted before the offense is committed.” (*People v. Gutierrez* (1985) 171 Cal.App.3d 944, 952.)

McPhan contends the evidence is insufficient to prove that he inflicted corporal injury resulting in a traumatic condition. He argues Gutierrez and Loredo did not describe any physical injury to Prince, and the scratches that Ochoa observed on Prince’s neck ordinarily would not result from the kind of punching and hair pulling that Gutierrez and Loredo had witnessed.³ McPhan also argues the photographs do not depict any physical injury to Prince’s face, so they call into question the veracity of the witnesses’ testimony. In addition, McPhan argues there is no evidence that he pulled Prince’s hair out, and in any event hair loss is not a corporal injury under the statute.

“““The proper test for determining a claim of insufficiency of evidence in a criminal case is whether, on the entire record, a rational trier of fact could find the

³ McPhan does not argue the scratches to Prince’s neck do not constitute a traumatic condition under the statute, but argues instead there is no evidence that he inflicted the scratches.

defendant guilty beyond a reasonable doubt. [Citations.] On appeal, we must view the evidence in the light most favorable to the People and must presume in support of the judgment the existence of every fact the trier could reasonably deduce from the evidence. [Citation.]” [Citations.] [¶] “Although we must ensure the evidence is reasonable, credible, and of solid value, nonetheless it is the exclusive province of the trial judge or jury to determine the credibility of a witness and the truth or falsity of the facts on which that determination depends. [Citation.] Thus, if the verdict is supported by substantial evidence, we must accord due deference to the trier of fact and not substitute our evaluation of a witness’s credibility for that of the fact finder. [Citations.]” [Citation.]’ [Citation.]” (*People v. Smith* (2005) 37 Cal.4th 733, 738-739.) “A reversal for insufficient evidence ‘is unwarranted unless it appears “that upon no hypothesis whatever is there sufficient substantial evidence to support”’ the jury’s verdict. [Citation.]” (*People v. Zamudio* (2008) 43 Cal.4th 327, 357.)

In the present case, substantial evidence supports the jury’s verdict. Gutierrez testified that McPhan punched Prince in the face, mouth, and nose and pulled her hair. Loreda testified that McPhan repeatedly punched and hit Prince and also pushed her. Ochoa testified that when he spoke with Prince shortly after the altercation she told him that McPhan had hit her, that he was flailing his arms, and that he sometimes had outbreaks of angry and violent behavior. Ochoa also observed injuries in the form of scratches on Prince’s neck and believed that some of her hair had been pulled out. Prince’s injuries to her neck were consistent with Prince’s statement to Ochoa that McPhan had hit her.

In addition, the scratches that Ochoa observed on Prince’s neck were consistent with the witnesses’ description of McPhan’s violent attack involving the repeated punching and hitting of Prince’s face, pulling of her hair, and flailing of McPhan’s arms. The jury could reasonably conclude that McPhan had scratched Prince’s neck in a flurry of violent activity. The absence of visible facial and neck injuries in the photographs taken of Prince on the day of the incident demonstrate that the witnesses’ accounts of McPhan’s attack on Prince were false. The jury could reasonably believe Ochoa’s

testimony that he observed scratches that were not depicted in the photographs, Ochoa's testimony concerning Prince's statements to him accusing McPhan of hitting her in a violent outburst, and Gutierrez's and Loredó's testimony describing the attack, while disbelieving Prince's contrary testimony at trial that she had suffered no injury, that McPhan did not hit her, and that she and McPhan had not been arguing.⁴

McPhan cites *People v. Beasley* (2003) 105 Cal.App.4th 1078 (*Beasley*) and *People v. Abrego* (1993) 21 Cal.App.4th 133 (*Abrego*), to argue the evidence is insufficient to justify the jury's finding that he had inflicted corporal injury on Prince. However, these cases do not support McPhan's position. In *Beasley*, the jury convicted the defendant of 11 counts of inflicting corporal injury on a cohabitant, including three counts involving beating the victim with a rod on three separate occasions. (*Beasley, supra*, at p. 1084.) The victim testified regarding the first incident that she had sustained bruises as a result of being beaten with a rod. She testified regarding the second incident that she "had some bruises that [were] still healing," (*id.* at p. 1085) but she did not know whether she had suffered additional injury in the second incident. She did not testify about any injury in the third incident. (*Id.* at p. 1086.)

Beasley held as to the first incident that the bruising constituted a traumatic condition and that there was sufficient evidence to support the defendant's conviction for that incident. However, the court held that because the victim did not know whether the second beating resulted in additional injury, no other witnesses had observed injuries from the second incident, and the victim did not testify to any injury resulting from the third incident, there was insufficient evidence that the victim had suffered a traumatic condition in the second and third incidents. (*Beasley, supra*, 105 Cal.App.4th at pp. 1085-1086.)

⁴ Prince initially testified, "We had a little argument" She later described it as "regular conversation," and stated, "I wouldn't even say it was argument. It was just a few words back and forth."

In *Abrego*, the defendant slapped or punched the victim five times in the head. The victim testified during trial that she felt no pain when the defendant struck her and that she was not injured or bruised. However, she told an investigating officer on the day of the incident that she felt pain and tenderness where the defendant had struck her, but the officer did not observe any injury. (*Abrego, supra*, 21 Cal.App.4th at p. 135.) *Abrego* held that the victim's pain did not constitute an injury and that there was insufficient evidence of a traumatic condition. (*Id.* at p. 138.)

Here, unlike the second and third incidents found insufficient to support convictions in *Beasley*, there was substantial evidence to support McPhan's conviction for inflicting corporal injury on Prince. Prince reported to Ochoa that she had been hit by McPhan, and Ochoa observed scratches on Prince's neck consistent with her statements. Gutierrez and Loredo also witnessed McPhan's violent attack on Prince. There was no evidence that anyone else had attacked Prince. Nor was there any evidence that she sustained the scratches at any time other than during McPhan's attack on her. There was thus substantial evidence to support the finding that Prince suffered the scratches to her neck as a result of the violent attack described by Gutierrez and Loredo.

Further, unlike *Abrego*, the scratches on Prince's neck were visible to Ochoa and were consistent with her statement to Ochoa that she had been hit by McPhan. Although the scratches were minor, similar to the bruises on the victim found sufficient to constitute a traumatic condition for the first incident in *Beasley*, they were well within the definition of a traumatic condition under section 273.5, subdivision (d).

We conclude that the evidence supports a reasonable inference that McPhan scratched Prince's neck while attacking her on the street. Thus, substantial evidence supports the jury's finding that McPhan inflicted corporal injury resulting in a traumatic condition.⁵

⁵ In light of our conclusion that substantial evidence supports the conviction based on the neck scratches, we need not decide whether the evidence also supports the conviction based on the pulling out of hair.

DISPOSITION

The judgment is affirmed.

GARNETT, J.*

We concur:

PERLUSS, P. J.

SEGAL, J.

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