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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

JOSE GONZALES CASAS,

Defendant and Appellant.

D060766

(Super. Ct. No. JCF23116)

APPEAL from a judgment of the Superior Court of Imperial County, Poli Flores, Jr., Judge. Affirmed.

INTRODUCTION

A jury found Jose Gonzales Casas guilty of attempted first degree murder (Pen. Code,¹ §§ 187, subd. (a), 664), assault with a deadly weapon (§ 245, subd. (a)(1)), and first degree burglary (§ 459). The jury also found true an allegation Casas committed the attempted murder willfully, deliberately and with premeditation (§§ 664, subd. (a),

¹ Further statutory references are also to the Penal Code unless otherwise stated.

1192.7, subd. (c)). The trial court sentenced him to life with the possibility of parole for the attempted first degree murder conviction and stayed the sentences for the other two convictions under section 654.

Casas appeals, contending we must reverse his convictions because there is insufficient evidence to support them. We conclude there is no merit to this contention and affirm the judgment.

BACKGROUND

Prosecution Evidence

In the evening on February 8, 2009, Margaret Stearman was at her home on the corner of Pater Street and Sequoia Avenue in Brawley, California. Around 8:30 p.m., she was working on her computer in her bedroom with her back to the bedroom door when she heard the front door open and close. Before she could see who came in, she felt a hard strike on and a sharp pain in the right side of her neck. She turned around and saw a young, Hispanic male stranger walk out of her room. He wore dark pants and was about six feet tall, with short hair and a medium build. Stearman's children heard Stearman scream, but did not see the man or the attack. Stearman suffered a severe stab wound to her neck, near her carotid artery and jugular vein.

The same evening, Nellie Cornejo was outside her mother's house on Sequoia Avenue when she heard a woman scream loudly. She saw a man sprinting down the street. The man had short black hair and was wearing "dark clothing," either a blue or black sweatshirt and black pants. He looked at her and then threw something that hit a nearby wooden fence. He continued sprinting down Sequoia Avenue and turned left onto

Jones Street. Police officers later found a black-handled kitchen knife by the fence. The knife had Stearman's DNA on it.

Around the same time Cornejo saw the man running, Cornejo's younger sister, Linda Nunez, was walking on Sequoia Avenue with Casas's sister, Elizabeth Casas (Elizabeth). Nunez and Elizabeth had just been at Elizabeth's house on Jones Street and were walking to Nunez's house. Nunez saw a man running toward them. According to Nunez, Elizabeth asked, "Is that my brother?" Nunez replied, "I don't know." Nunez testified the area lighting was dim and she did not look at the man's face. She only saw his clothes. He wore dark-colored clothing, including a pullover sweatshirt.

The prosecutor asked Nunez whether it was possible she told a police officer she had seen the man's face and that he was a Hispanic male. She testified, "Maybe then I did. Now, two and a half years later, I don't remember exactly what I said to the officer." She also testified she did not remember whether she told the officer the man had a goatee and wore a black T-shirt and white shoes.

After Nunez refreshed her recollection with a police report, she testified she had seen the man's face "[a] little bit." She identified Casas as the man both at an in-field lineup on the evening of the stabbing and at trial.

Earlier the afternoon of the stabbing, between 3:00 p.m. and 5:00 p.m., Nunez walked over to Elizabeth's house. While there, Nunez saw Casas walk down the stairs and enter the kitchen. She described him as being between five feet, five inches and six feet tall. His hair was "real short" and he wore "dark colors," including a dark sweatshirt with a hood and brown pants. There was a door in the kitchen leading to the backyard.

Nunez could not see into the kitchen and could not remember whether Casas came back out of the kitchen.

After seeing Casas enter the kitchen, Nunez stayed at Elizabeth's house "a little while longer" until her parents called her to return home. Elizabeth walked Nunez home. They walked out of Elizabeth's garage onto Jones Street, then down Eucalyptus and turned onto Sequoia Avenue. Nunez could not remember the time she left, but testified it was "pretty late" and she had seen Casas minutes earlier.

Elizabeth testified she and Nunez left the house at 8:30 p.m. She saw Casas sitting outside on the front porch swing when they left. He was still wearing his church clothes and black dress shoes. She did not see anyone running until about a minute after turning onto Sequoia Avenue, which was about four to five minutes after leaving her house. The man who ran by her had a medium build and did not say anything to her. According to her, Casas was overweight, could not run very well and quickly became out of breath.

Casas's mother, Angelica Chacon, testified Casas called her around 8:15 p.m. on the night of the stabbing from the Victory Outreach recovery home, where he had been living for about a month. She left two or three minutes later to pick him up from the home, which was about eight minutes away. When she picked him up, he was wearing "church clothes," including black slacks, a navy blue sweater vest, a light colored shirt, a tie, and black shoes. He had all of his other clothes with him.

The Victory Outreach director said Casas was wearing a black sweatshirt and gray sweatpants when he left. The director also said Casas had short hair and a little mustache.

Chacon returned home with Casas around 8:20 p.m. While Casas took his belongings to his room, Chacon got some water from the kitchen, then went upstairs to her room and did some laundry. Sometime while she was doing laundry, Chacon heard the front door slam. About a minute later, she heard it slam again. She assumed the first slam was Elizabeth and Nunez leaving the house.

Also sometime while Chacon was doing laundry, Casas went into Chacon's room and asked for some aspirin. He then went downstairs. When Chacon checked on him later, he was out of breath. She told a police officer she asked Casas why he was out of breath and Casas told her it was because he went up the stairs.

Brawley police officers received a call regarding the stabbing at 8:38 p.m. Around 9:00 p.m., based on Stearman's description of her attacker, Officer Perry Monita went to Casas's house to determine whether he was involved in the stabbing. Casas was wearing a white T-shirt, gray sweatpants, and running shoes. Monita described him as a Hispanic male, in his early 20's, between five feet, 10 or 11 inches tall, weighing approximately 180 pounds, with a shaved head, thin mustache, and a goatee.

When Monita told Casas he was investigating an attack on a woman, Casas slowly looked down at his right hand and turned it palm side up, which Monita thought was strange. Monita did not observe any blood, scratches, or other injuries on Casas's hands.

Monita left Casas's home to help the other investigating officers. He later went back to Casas's home and Casas agreed to participate in an in-field lineup. At that point, Casas wore a black or navy blue sweatshirt and gray sweatpants.

Chacon told Monita she thought Casas stayed home that evening and had not left. However, she also said she had been upstairs in her bedroom and could not be certain. She told another officer she did not know whether he had left or not.

A police officer found three knives in Chacon's kitchen similar to the knife the assailant threw by the fence. Chacon said she believed the knife found by the fence was hers.

Defense Evidence

Nunez testified she told officers she identified Casas based on a text message she received from Elizabeth informing her of the matching knives and stating Casas was the man they saw running. However, she also testified the text message did not influence her identification of Casas. She was sure Casas was the man she saw running before she received the message and was simply "more sure" after receiving the message. She testified she never identified Casas by name even though she knew him because he was Elizabeth's brother and she and Elizabeth were close friends.

DISCUSSION

"When the sufficiency of the evidence to support a conviction is challenged on appeal, we review the entire record in the light most favorable to the judgment to determine whether it contains evidence that is reasonable, credible, and of solid value from which a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. [Citation.] 'Conflicts and even testimony which is subject to justifiable suspicion do not justify the reversal of a judgment, for 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 upon

which a determination depends.' [Citation.] Unless it describes facts or events that are physically impossible or inherently improbable, the testimony of a single witness is sufficient to support a conviction." (*People v. Elliott* (2012) 53 Cal.4th 535, 585.)

Casas contends we must reverse his convictions for insufficient evidence because they rest on Nunez's testimony identifying him as the man who ran by her, which he contends is inherently improbable. He supports his argument by pointing out discrepancies between Nunez's identification of him as the suspect and other statements she made, including that she did not know the suspect and did not see enough of him to identify him. In addition, according to Elizabeth, Nunez told Elizabeth the man running was not Casas. Nunez also told police she only identified Casas as the suspect after receiving a text message from Elizabeth informing her he was the suspect.

While we agree there were discrepancies between Nunez's identification of Casas and some of her other statements, these discrepancies do not permit us to reject her testimony. "The 'inherently improbable' standard for rejecting testimony on appeal is not merely an enhanced version of implausibility 'Highly implausible' is still an argument reserved for the trier of fact. Inherently improbable, by contrast, means that the challenged evidence is 'unbelievable per se' (italics omitted), such that 'the things testified to would not seem possible.'" (*People v. Ennis* (2010) 190 Cal.App.4th 721, 725, 728-729.)

When Nunez was confronted with the discrepancies at trial, she explained she was reluctant to initially identify Casas because of her long-standing, close relationship with Elizabeth. She also explained Elizabeth's text message did not prompt her identification

of Casas, but rather validated it. The jury apparently credited these explanations and neither is impossible or unbelievable per se.

Casas also contends Nunez 's testimony is inherently improbable because she testified Casas was at Chacon's home minutes before Nunez left with Elizabeth and there was not enough time for him to run to Stearman's house, commit the crimes, and run back up Sequoia Avenue to encounter Nunez and Elizabeth. He bolsters this contention by pointing to evidence in his favor, including his mother's testimony that he had not left his home, his sister's testimony that he was overweight and had trouble running, his mother's testimony that he was out of breath from walking up the stairs, and his mother's and Cornejo's testimony indicating the brand of knife the assailant used was not uncommon and was sold at mass market retailers.

We are not persuaded by these arguments because there was no testimony about how long it would take someone to get from Chacon's home to Stearman's home by the various available routes. Moreover, the only non-police witness who provided a precise time for any of the events was Elizabeth and the jury implicitly found her testimony incredible on this point and many other points, including her version of her interactions with Nunez and her assessment of Casas's physical capacity. Further, we cannot consider the evidence favorable to Casas in our analysis because "[t]he determination of inherent improbability must be made without resort to inference or deduction, and thus cannot be established by comparing the challenged testimony to other evidence in the case."

(*People v. Ennis, supra*, 190 Cal.App.4th at pp. 725, 728-729.) Accordingly, we conclude Casas has not established Nunez's identification testimony was inherently

improbable or, correspondingly, that there was insufficient evidence to support his conviction.

DISPOSITION

The judgment is affirmed.

McCONNELL, P. J.

WE CONCUR:

HALLER, J.

IRION, J.