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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

JUAN CARLOS ESTRADA,

Defendant and Appellant.

G048984

(Super. Ct. No. 11CF2003)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, M. Marc Kelly, Judge. Affirmed.

Laurel M. Nelson, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Barry Carlton and Adrienne S. Denault, Deputy Attorneys General, for Plaintiff and Respondent.

\* \* \*

A jury found defendant Juan Carlos Estrada guilty of assault with a deadly weapon. Estrada contends the trial court erred in denying his motion for a mistrial after a prosecution witness suggested Estrada had served time in prison, and also challenges the sufficiency of the evidence to support the verdict. For the reasons expressed below, we affirm the judgment.

## I

### FACTUAL AND PROCEDURAL BACKGROUND

Leonel Garcia testified someone hit him on the back of the head with a baseball bat around 7:00 to 8:00 p.m. on July 7, 2011. The assailant struck Garcia as he walked into his Santa Ana home.

Three days earlier Garcia and Estrada, the brother of Garcia's wife Nancy, fought each other during a party at Garcia's home. During the party Estrada demonstrated a hold on Garcia's 20-year-old nephew, Jerry Cardona (Jerry), but when Estrada ignored Jerry's request to stop and the two men began to struggle, Garcia attempted to separate the combatants. During the argument Estrada and Garcia exchanged blows. Nancy called the police, and as Estrada departed he warned Garcia and Jerry, "you better watch your back." Estrada called Garcia the next day and challenged him to another fight, but Garcia declined.

At trial, Garcia claimed he did not see who hit him, but he told a police officer at the scene and a detective a week later it was Estrada. Garcia called the police about two weeks after the incident and asked an officer to drop the charges. He explained that after talking with Estrada's wife, Mayra, he realized how the incident had adversely affected the family and therefore wanted to drop the charges. Mayra told Garcia that Estrada was remorseful, and she feared for her children's well-being if Estrada went to jail because he was the family breadwinner. Garcia believed Estrada was trying to hit him on the back and inadvertently struck his head.

On the night of the assault, Nancy called 911 and told the dispatcher she needed a police officer sent to the house because “my brother came to my house and hit [my husband] on the head with a bat.” She and her son, Jonathan, identified Estrada as the assailant to investigators. Jonathan told an investigator he was talking to his Aunt Suzana on the porch and saw Estrada run up behind Garcia with a metal baseball bat and strike Garcia on the back of the head. Estrada said, “tell Jerry he’s next” and ran off. At trial, Nancy claimed she did not see the assailant and only implicated her brother because of the July 4 incident.

### *Defense*

Mayra testified that on July 7 Estrada returned to their Corona home from work around 7:00 p.m. and did not leave the house. Mayra received a phone call from Estrada’s mother, Aurora, who asked if Estrada was home. Aurora explained Nancy called and told her Estrada had hit Garcia with a bat. Mayra told Aurora “he’s right here.” Aurora came over after the call. Aurora testified Nancy called her “late in the afternoon” and told her Estrada hit Garcia, but Nancy admitted she did not actually see Estrada hit Garcia.

Following a trial in August 2013, the jury convicted Estrada as noted above. In September 2013, the trial court imposed a two-year low-term prison sentence.

## II

### DISCUSSION

#### *A. Substantial Evidence Supports Estrada’s Conviction for Assault with a Deadly Weapon*

Estrada contends “[w]ith no physical evidence tying appellant to the attack and the sworn testimony of the victim and his wife that they did not see who attacked Garcia and other sworn testimony establishing appellant was not even in Santa Ana on

the night of the attack on Garcia, the jury's guilty verdict lacked *substantial* supporting evidence." We disagree.

"When considering a challenge to the sufficiency of the evidence to support a conviction, we review the entire record in the light most favorable to the judgment to determine whether it contains substantial evidence – that is, 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." (*People v. Lindberg* (2008) 45 Cal.4th 1, 27.) The question is whether after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. (*Jackson v. Virginia* (1979) 443 U.S. 307, 318-319; *People v. Johnson* (1992) 5 Cal.App.4th 552, 558.) Reversal of the judgment is not warranted even though the evidence might support a contrary finding. (*People v. Bolin* (1998) 18 Cal.4th 297, 331.) We may not reverse "unless it appears "that upon no hypothesis whatever is there sufficient evidence to support" the jury's verdict.'" (*People v. Zamudio* (2008) 43 Cal.4th 327, 357.)

Here, the jury reasonably could find Estrada attacked Garcia based on strong evidence of motive – ill feelings engendered by the fight and beer bottle incident three days earlier – and the witnesses' statements to investigators. (Evid. Code, § 1235; Cal. Law Revision Com. com., 29B Pt. 4 West's Ann. Evid. Code, § 1235 (1995) p. 225 ["In many cases, the inconsistent statement is more likely to be true than the testimony of the witness at the trial because it was made nearer in time to the matter to which it relates and is less likely to be influenced by the controversy that gave rise to the litigation"]; *People v. Brown* (1995) 35 Cal.App.4th 1585, 1596-1597.) As recounted above, the prosecution impeached Garcia's and Nancy's testimony they did not see the assailant with inconsistent statements provided to investigators. Jonathan also identified Estrada as the bat-wielding assailant. The jury therefore reasonably could conclude the witnesses

recanted at trial because of Mayra's call and the stress the incident had placed on the families. Ample evidence supported the jury's verdict.

*B. The Trial Court Did Not Abuse Its Discretion By Denying Estrada's Motion for Mistrial*

On direct examination, the prosecutor asked Jerry how the July 4 physical altercation between Estrada and Garcia "happened." Jerry replied, "Well, he [Estrada] was trying to teach me something, um, I guess he learned in prison or I don't know through his friends where he tried twisting my wrist to . . . control your opponent."

After Jerry completed his testimony, the trial court and the parties engaged in an unreported sidebar discussion, after which the court admonished the jury: "Okay. Ladies and gentleman, the last witness made a statement regarding wrestling where he said it's a wrestling move that [Estrada] taught me while he was in – learned while he was in prison. There's no evidence at all of that before you. You are to disregard that portion of that statement in its entirety. Okay? That's not evidence to be considered. The statement that he said that he taught me about what he learned in prison, the portion 'he learned in prison' is to be disregarded in its entirety. That is not evidence before you, and that is to be stricken. [¶] Do you all understand that, ladies and gentlemen?" The jurors answered, "Yes."

The court later memorialized the sidebar discussion and noted defense counsel had expressed satisfaction with what the court told the jury. Defense counsel stated, "Well, it's just hard to unring the bell, but I hope that your admonishment gets to them." The court stated it did not "see it as a situation that rises to the level of . . . a mistrial" and noted defense counsel had not asked for one. The court told counsel if he "had something else that [he] wished [the court] to add to that [admonishment], I will consider that." Counsel stated he would think about it.

The following morning, defense counsel moved for a mistrial, explaining it was a “close case” and upon reflection Jerry’s comment was “too prejudicial,” noting that after Jerry’s reference to prison the “jurors turned around and looked at” Estrada. Counsel further explained he did not cross-examine Jerry on whether Estrada was “teaching” Jerry something or fighting with him because he did not want to remind the jury about the reference to prison. The court noted jurors had assured the court they would not consider the reference for any purpose, and given the defense was “alibi, really the question comes down to are [jurors] going to believe . . . your witnesses that [Estrada] was not there.” After reviewing the transcript, the court denied the motion, observing Jerry’s statement was not “a definite factual statement” and there was no evidence Estrada previously had committed any crimes or had been in prison. The court concluded its admonition cured the harm and the error did not rise “to a level of prejudice warranting a mistrial.” During instructions, the trial court again reminded jurors to disregard testimony the court had stricken from the record, and jurors stated they understood.

We review a trial court’s ruling on whether to grant a mistrial under the deferential abuse of discretion standard. (*People v. Cox* (2003) 30 Cal.4th 916, 953.) “[E]xposing a jury to a defendant’s prior criminality presents the possibility of prejudicing a defendant’s case and rendering suspect the outcome of the trial. [Citations.]” (*People v. Harris* (1994) 22 Cal.App.4th 1575, 1580-1581; see *People v. Thompson* (1980) 27 Cal.3d 303, 314 [cautioning “evidence that involves crimes other than those for which a defendant is being tried has a ‘highly inflammatory and prejudicial effect’ on the trier of fact”].) But “[j]uries often hear unsolicited and inadmissible comments and in order for trials to proceed without constant mistrial, it is axiomatic the prejudicial effect of these comments may be corrected by judicial admonishment; absent evidence to the contrary the error is deemed cured.” (*People v. Martin* (1983) 150 Cal.App.3d 148, 163.) The trial court should grant a mistrial “only when a party’s chances of receiving a fair trial have been irreparably damaged . . . .” (*People v.*

*Bolden* (2002) 29 Cal.4th 515, 555.) “Whether a particular incident is incurably prejudicial is by its nature a speculative matter, and the trial court is vested with considerable discretion in ruling on mistrial motions.’ [Citation.]” (*People v. Wharton* (1991) 53 Cal.3d 522, 565; see *People v. Chatman* (2006) 38 Cal.4th 344, 369-370 [“Whether a particular incident is incurably prejudicial requires a nuanced, fact-based analysis”].)

Here, the trial court responded to Jerry’s fleeting and uncertain prison reference with a strong admonition to the jury that no evidence supported the “learned in prison” comment and struck the testimony. Jurors stated they understood the reference did not constitute evidence and they must disregard it. (See *People v. Valdez* (2004) 32 Cal.4th 73, 128 [officer’s statement he interviewed defendant at “Chino Institute” hinted at additional criminality but did not require mistrial].) Additionally, Estrada acknowledges an important factor in assessing the denial of a motion for mistrial and determination of prejudice is the quantum and quality of evidence of the defendant’s guilt (*People v. Harris* (1994) 22 Cal.App.4th 1575, 1581), and an improper reference to a prior conviction is nonprejudicial if the record points convincingly to guilt. (*People v. Rolon* (1967) 66 Cal.2d 690, 693.) As recounted above, motive evidence and the witnesses’ statements made near in time to the July 2011 assault convincingly pointed to Estrada as the perpetrator. We disagree with Estrada’s assessment the prosecution’s evidence was “weak and contradictory.” The trial court did not abuse its discretion in denying Estrada’s motion for mistrial.

III

DISPOSITION

The judgment is affirmed.

ARONSON, J.

WE CONCUR:

O'LEARY, P. J.

THOMPSON, J.