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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.

ALFRED SHORTY GONZALEZ,

Defendant and Appellant.

G049670

(Super. Ct. No. 13CF1147)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, W.
Michael Hayes, Judge. Affirmed.

Theresa Osterman Stevenson, under appointment by the Court of Appeal,
for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant
Attorney General, Julie L. Garland, Assistant Attorney General, Charles C. Ragland and
Teresa Torreblanca, Deputy Attorneys General, for Plaintiff and Respondent.

* * *

A jury convicted defendant Alfred Shorty Gonzalez of one count of assault with force likely to produce great bodily injury on his cellmate Fernando Gutierrez (Pen. Code, § 245, subd. (a)(4); all further statutory references are to this code) and found true he personally inflicted great bodily injury on him (§ 12022.7, subd. (a)). Defendant admitted he had served two prior prison terms and had committed a prior serious felony. The trial court sentenced defendant to 11 years in state prison.

Defendant contends insufficient evidence showed he committed an assault or personally inflicted injuries on Gutierrez. We disagree.

FACTS

Gutierrez pushed the emergency call button from his cell, which he shared with defendant, saying he had slipped and fallen and had cut his face. Upon responding, Sheriff's Deputy Eder Palma opened the cell door and instructed Gutierrez to go to the recreation area and wait for medical treatment. Gutierrez was holding a t-shirt "saturated in blood" against the left side of his face. Defendant threw out Gutierrez's legal paperwork, "just tossed it out," before closing the cell door.

As Palma looked into the cell, he saw blood on the right side of the wall near the entrance and "all across the floor, next to the little table that they have inside." Defendant said he had been drawing when Gutierrez slipped or fell off his bunk. Palma noticed defendant was "trembling, nervous," and "breathing heavily." As a result, Palma had defendant stick out his hands through the emergency hatch and observed defendant had a cut on his right ring finger, which was still bleeding. The knuckles on both of defendant's hands were also swollen, with those on his right hand "a lot more swollen." Defendant told Palma the cut occurred when he tried to pick Gutierrez up after his fall. Inmates in neighboring cells were not cooperative when Palma asked if they had heard a fight or other commotion. The cell conceals sounds but is not soundproof.

Palma escorted Gutierrez to the medical room. Gutierrez had swollen cheeks, an almost swollen shut left eye, a cut on his brow, and scrapes around his neck. A prison doctor determined Gutierrez's injuries required him to be taken to an emergency room where he was diagnosed with a concussion, a broken rib, and a nose bone fracture. Gutierrez also had several abrasions and cuts near his left eye, some of which required stitches.

While Gutierrez was at the hospital, Palma and Sheriff's Deputy Zachariah Scott read defendant his *Miranda* rights and formally interviewed him about the incident. Defendant said, "my cellie slipped and fell and that's all I'm going to tell you." When asked about the cut on his ring finger, defendant changed his original story and stated he had cut it during recreation time. After the interview, while escorting defendant back to his cell, Scott jokingly stated, "Since Gutierrez only slipped and fell, he'll probably return to the same cell." Defendant replied, "If Gutierrez fell that hard once, he'll probably fall that hard again."

Photographs were taken of defendant and Gutierrez later that day. Defendant's right hand remained more swollen than the left, but the blood from the cut on his right ring finger had coagulated. The cut under Gutierrez's left eye had been stitched closed, and he had "cuts and red marks all over his face." By the time a photograph was taken of the cell a couple hours after the incident, the blood Palma had seen on the floor and wall had been "cleared up." Defendant had been allowed to return to the cell before the photographs were taken.

After an oral motion to dismiss under section 1118.1 by the defense was denied, Gutierrez testified for defendant. Gutierrez, then 48 years old and a long time user of heroin, was "detoxing" off drugs at the time of the incident. According to Gutierrez, during the two to three weeks that he shared the cell with defendant, they had not had any arguments or problems. He explained that although he was taller than his top bunk, which was only five feet high, he could not jump off, but rather had to step onto a

metal table next to the bunk because there was no ladder. Describing the incident at issue, Gutierrez testified that as he placed his foot on the table to climb down from the bed, he slipped and fell, hitting his face and nose on the table before falling onto the concrete floor. Gutierrez said defendant tried to help him but Gutierrez hit the emergency button for medical attention because he was bleeding.

Gutierrez believed defendant cut his knuckle when he punched a wall a few days before the incident. Having “been in and out of jail and prison a lot,” Gutierrez stated, “You have to know when to be quiet.” An inmate had to “respect everybody else.” If he saw other inmates fighting, he “would just leave it alone” and not get involved.

DISCUSSION

Both defendant’s conviction for assault with force likely to produce great bodily injury and the true finding on the enhancement for personally inflicting injuries required proof that he committed an act that caused injuries to Gutierrez. (*People v. Colantuono* (1994) 7 Cal.4th 206, 214-215 [mens rea for assault with force likely to produce great bodily injury is “established upon proof that the defendant willfully committed an act that by its nature will probably and directly result in injury to another”]; § 12022.7, subd. (a) [imposing additional punishment for anyone “who personally inflicts great bodily injury on any person other than an accomplice in the commission or attempted commission of a felony”].) Defendant argues there was no substantial evidence but only “circumstantial and speculative innuendo” to show he committed an act causing Gutierrez’s injuries, thereby requiring his conviction and the true finding to be reversed. We disagree.

In reviewing an insufficiency of the evidence claim, “[w]e do not reassess the credibility of witnesses [citation], [but] review the record in the light most favorable

to the judgment [citation], drawing all inferences from the evidence which support the jury's verdict. [Citation.] By this process we endeavor to determine whether "any rational trier of fact" could have been persuaded of the defendant's guilt." (*People v. Olguin* (1994) 31 Cal.App.4th 1355, 1382.) The same standard applies to cases based primarily on circumstantial evidence. (*People v. Watkins* (2012) 55 Cal.4th 999, 1020.)

Here, the circumstantial evidence supports the inference that defendant assaulted Gutierrez and personally inflicted injuries on him. This includes evidence that defendant was "trembling, nervous," and "breathing heavily" when deputy Palma arrived and had swollen knuckles, with those on his right hand more so, and a cut on his right ring finger that was still bleeding. Defendant gave inconsistent stories about how he sustained the cut on his finger, which impinged upon his credibility. Also, defendant's act of tossing out Gutierrez's legal paperwork as Gutierrez left the cell could have reasonably been seen as a "good riddance" gesture. And defendant's suggestion that Gutierrez was likely to fall "that hard" again if returned to their shared cell could very reasonably be interpreted as a threat.

Moreover, in addition to the injuries to his face that Gutierrez claimed were caused when he slipped and fell while trying to climb down from the top bunk, he had unexplained scrapes around his neck and a broken rib. Palma also observed blood not only across the floor where the table was but also on the right side of the wall at the entrance of the cell.

Viewing the evidence in the light most favorable to the judgment, a reasonable jury could infer defendant committed the assault on Gutierrez and personally inflicted injuries. Because such inferences were based on the facts presented at trial, they were not speculative. (*People v. Cluff* (2001) 87 Cal.App.4th 991, 1002.)

Defendant contends Gutierrez testified that he fell while trying to get down from the top bunk because he was 48 years old and detoxing from heroin. Defendant also points out Gutierrez's consistent statements to Palma and the emergency room doctor that

his injuries resulted from the slip and fall. But the jury was not required to believe Gutierrez. (*People v. Burney* (2009) 47 Cal.4th 203, 254, superseded by statute on other grounds as stated in *People v. Robertson* (2012) 208 Cal.App.4th 965, 981.) Nor was it required to be persuaded by the lack of evidence of (1) prior problems between defendant and Gutierrez, (2) blood on defendant's hands or body, or (3) photographs depicting blood on defendant, his clothes, or the cell shared by defendant and Gutierrez.

We must accept the jury's resolution of credibility issues and evidentiary conflicts, as well as the logical inferences the jury apparently drew from the circumstantial evidence. (*People v. Maury* (2003) 30 Cal.4th 342, 396, 403.) Contrary to defendant's claim, a jury could reasonably infer "it is 'not uncommon' for 'cellies' to be 'uncooperative'" from Gutierrez's statements an inmate has "to know when to be quiet" and to "respect everybody else" and that he would not get involved if he witnessed a fight between inmates. Additionally, despite defendant's claim there was no evidence of blood, Palma testified he saw the cut on defendant's right ring finger was still bleeding. Palma also testified he saw blood on the floor and the right side of the wall as he entered the cell. That the photographs of defendant and the cell did not depict any blood on defendant or the wall did not make Palma's testimony "physically impossible or inherently improbable" (*People v. Young* (2005) 34 Cal.4th 1149, 1181 ["unless the testimony is physically impossible or inherently improbable, testimony of a single witness is sufficient to support a conviction"]) because the photographs of defendant were not taken until later that day and defendant had been allowed to return to the cell before any photographs of it were taken. Palma's testimony about the blood was thus sufficient without corroborating photographs.

Whether the evidence was arguably more consistent or not with defendant's version of events is irrelevant in evaluating a substantial evidence claim on appeal. "Although it is the duty of the jury to acquit a defendant if it finds that circumstantial evidence is susceptible of two interpretations, one of which suggests guilt and the other

innocence [citations], it is the jury, not the appellate court[,] which must be convinced of the defendant's guilt beyond a reasonable doubt. *“If the circumstances reasonably justify the trier of fact's findings, the opinion of the reviewing court that the circumstances might also reasonably be reconciled with a contrary finding does not warrant a reversal of the judgment.”*””””” (People v. Watkins, supra, 55 Cal.4th at p. 1020.) There is no cause for reversal in this case.

DISPOSITION

The judgment is affirmed.

RYLAARSDAM, ACTING P. J.

WE CONCUR:

MOORE, J.

THOMPSON, J.