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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE, Plaintiff and Respondent, v. CORNELIUS MARCUS DRAPER, Defendant and Appellant.	B239032 (Los Angeles County Super. Ct. No. BA372018)

APPEAL from a judgment of the Superior court of Los Angeles County. Craig E. Veals, Judge. Affirmed.

Cornelius Marcus Draper, in pro. per.; and Michele A. Douglass, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

FACTUAL AND PROCEDURAL BACKGROUND

On May 27, 2010, appellant Cornelius Draper, armed with a gun, confronted Miguel Deisita and demanded that he give him his cell phone and car. Deisita refused to hand over the phone but moved away from his car. Appellant got in the car and drove away. He was later chased by police, but escaped. He was eventually arrested.

Appellant was charged with one count of carjacking with the use of a firearm (Pen. Code, §§ 215, subd. (a), 12022.53, subd. (b)),[1] one count of attempted robbery (§ 211), and two counts of possession of a firearm by a felon (former § 12021, subd. (a)(1)), and it was alleged that he had suffered one prior serious felony conviction and a prior strike conviction and had served a prior prison term (§§ 667, subds. (a)(1) & (b), 667.5, subd. (b); 1170.12, subds. (a)-(d)).

When the jury was unable to reach a verdict, a mistrial was declared and appellant was retried. At the second trial, appellant represented himself and was provided stand-by counsel. He filed motions for appointment of an eyewitness identification expert (granted), production of trial transcripts (denied), transcription analysis (granted), appointment of a handwriting expert (granted); appointment of a fingerprint expert (denied), suppression of identification evidence (denied), production of discovery (granted), dismissal in the interest of justice (denied), recusal of the district attorney's office (denied), substitution of standby counsel (denied), and reconsideration of the suppression motion (denied).

Appellant also filed two motions for *Pitchess*[2] discovery, seeking the personnel files of Los Angeles Sheriff's Deputy Marco Magana and Los Angeles Police Detective Larsen Trevor, specifically pertaining to the officers' history of use of excessive force, violation of suspects' rights, and acts of dishonesty or moral turpitude. The motions were denied.

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[1] Undesignated statutory references are to the Penal Code.

[2] *Pitchess v. Superior Court* (1974) 11 Cal.3d 531.

At trial, appellant's motion to exclude testimony about a bullet found near his car was denied.

Appellant's defense was alibi: He was with friends and relatives when the carjacking occurred.

During trial, juror No. 1 submitted a note to the court regarding possible misconduct by juror No. 7. After a hearing, the court found no misconduct had occurred.

The jury convicted appellant of carjacking and two counts of firearm possession, but acquitted him on the attempted robbery count. It found the firearm allegations true. The court later found the prior conviction allegations to be true.

In a hearing on January 24, 2012, appellant contended the verdict form on count one, which contained a finding that he had used a gun during the carjacking, was not the same form the jurors returned, which contained no firearm allegation finding. The trial court disagreed. Appellant also sought leave to file a motion for new trial and requested a continuance to permit him to do so. The trial court denied the request.

At sentencing, appellant again contended the verdict form for count one was not the same as was returned by jurors and asked to see the original form. The trial court denied his request to see the original verdict form but showed him a one-sided copy of it—with the jury foreperson's name redacted. The court also reviewed the reporter's transcript and determined that the verdict form in hand was the same as was originally returned by the jury. Appellant was not satisfied with the copy because it showed only the front of the form, not the back, where he and the prosecutor had placed their initials. The trial court denied his request for further investigation into the matter.

Appellant was sentenced to 25 years in prison, comprising the middle term of five years on count one, doubled, plus ten years for the firearm use allegation, plus five years for the serious felony prior enhancement. The court imposed the middle term of three years on counts 3 and 4, concurrent. A $200 restitution fine was imposed and a matching parole fine, which was stayed. Appellant was given 665 days custody credit.

Appellant filed a timely appeal. We appointed counsel to represent him on appeal, and after examining the record counsel filed an opening brief raising no issues and asking

this court to review the record independently. On October 5, 2012, we advised appellant he had 30 days within which to personally submit any contentions or issues he wished us to consider.

Appellant filed a supplemental letter brief in which he contends (1) the verdict form containing a firearm finding on count one was not the same form as was returned by the jury, and (2) insufficient evidence supported the carjacking conviction. Appellant has requested that the verdict form be filed in this court. We granted the request, and the form was filed under seal with instructions to permit appellant's counsel to see it but not make a copy. Appellant contends his counsel has now seen the form, but failed to inform him of the contents.

DISCUSSION

A. The Jury Found the Firearm Allegation to be True

Appellant contends the trial court imposed a firearm enhancement even though the jury made no finding on the firearm allegation. He argues the true verdict form returned by the jury, which he and the prosecutor had initialed on the back, contained no firearm finding.

We have reviewed the verdict form. On the front it states, in pertinent part: "We further find the allegation that in the commission of the above offense, the defendant personally used a firearm, to wit: a handgun, within the meaning of PENAL CODE SECTION 12022.53(b) and 1203.06(a)(1) to be TRUE." The back of the form bears the initials "CD" and "SAM" (the prosecutor's initials). The verdict form indicates the jury found the firearm allegation to be true.

Moreover, during sentencing the trial court read from the August 18, 2011 minute order, which quotes the verdict form verbatim, to the same effect. The trial court also read from the reporter transcript of the August 18, 2011 proceedings, which reflected that the verdict form, including the firearm finding, was read in open court. Finally, the trial judge consulted his own notes, which comported with the transcript, and personally remembered that the firearm allegation had been found true. The trial court concluded, as

do we, that the record "beyond question points out that the jury found that that special allegation was true."

B. Sufficiency of Evidence

Appellant contends insufficient evidence supported the carjacking conviction because the evidence showed only that he took Deisita's vehicle, not that he took it from his person or immediate presence or by means of force or fear. We disagree.

"'Carjacking' is the felonious taking of a motor vehicle in the possession of another, from his or her person or immediate presence, . . . against his or her will and with the intent to either permanently or temporarily deprive the person in possession of the motor vehicle of his or her possession, accomplished by means of force or fear." (§ 215, subd. (a).)

Appellant argues the original police report indicated Deisita told police appellant had demanded only his cell phone, and was later altered to indicate he also demanded Deisita's car. This indicates he did not demand the car when he confronted Deisita, which implies he did not take it from his person or by means of force or fear. Appellant argues Deisita's testimony provides confirmation. When Deisita was asked by the prosecutor whether appellant had said anything to him during the robbery, appellant argues, Deisita said only that appellant had demanded his phone, and could not remember whether appellant demanded the car too. We conclude sufficient evidence supports the conviction.

Deisita was questioned by the prosecutor as follows:

"Q Did the defendant say anything to you?

"A Yes.

"Q What did he say to you?

"A He was going to shoot me.

"Q What else did he say that—what else did he say to you? Did he just say, 'I'm going to shoot you'?

"A He told me to give up my phone.

"Q Did you give him your phone?

"A No.

"Q Did he say anything else to you?

"A I can't remember.

"Q Did the defendant say anything about the car?

"A I can't remember.

"Q Do you remember if he said, "Give me the car or I will shoot you?'

"DEFENDANT DRAPER: Objection, Your Honor; leading.

"THE COURT: Sustained.

"Q (BY MR. MARCUS:) Do you remember telling the police that night—well, did you talk to the police that night?

"A Yes.

"Q Did you tell the police everything that you could remember as best you could remember it?

"A Yes.

"Q Did you try to give the police as accurate a description of what had happened to you that night?

"A Yes.

"Q Is it fair to say that your recollection of what happened that night was better since it was that night than it was sitting here today a year later?

"A Yes.

"Q Do you remember telling the police that night that the defendant said to you, 'Give me the car or I will shoot you right now?'

"A Yes.

DEFENDANT DRAPER: Objection, Your Honor; leading.

THE COURT: I'll overrule.

"Q (BY MR. MARCUS:) When the defendant said that, what did you do?

"A The keys were in the ignition so, I mean, I just got out and he just told me to get away, to get out of here.

"Q I'm sorry?

"A He told me to, 'Leave or I'll shoot you.'

"Q The defendant said, 'Leave or I'll shoot you?'

"A Yeah, to get away.

"Q When he said, 'Leave or I'll shoot you,' were you afraid that he would shoot you?

"A Yes.

"Q So what did you do?

"A So I left.

"Q When the defendant said, 'Leave or I'll shoot you,' did he still have the gun?

"A Yes.

"Q Was he still pointing the gun at you?

"A Yes.

"Q Where at you was he pointing the gun?

"A Well, from my face it went down to my body, towards my chest.

"Q The defendant lowered the gun from your face to your chest?

"A Yes.

"Q And that was when he said, 'Leave or I'll shoot you?'

"A Yes.

"Q How was it that you got out of the way? How was it that you left?

"A I just stepped away toward the back of my car.

"Q Towards the rear of the car?

"A Yes.

"Q Back towards the trunk?

"A Yes."

The record reflects appellant demanded that Deisita give him the car. Even if appellant had said nothing about the car, as he argues (but the record contradicts), it is undisputed that he pointed a gun at Deisita while they were near the front of the vehicle, which caused Deisita to fear for his life and cede control of the vehicle, which appellant

then took. A reasonable jury could conclude from this evidence that appellant took the vehicle from Deisita's immediate presence, against his will, by means of force or fear. Appellant was thus properly convicted of carjacking.

CONCLUSION

We have examined the entire record and are satisfied that appellant's counsel has fully complied with the responsibilities set forth in *People v. Kelly* (2006) 40 Cal.4th 106, 109-110 and *People v. Wende* (1979) 25 Cal.3d 436, 441. No arguable issues exist.

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED.

CHANEY, J.

We concur:

ROTHSCHILD, Acting P. J.

JOHNSON, J.