Filed 1/29/13 P. v. Sizemore CA2/6

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE, Plaintiff and Respondent, v. THOMAS EBER SIZEMORE, Defendant and Appellant.	2d Crim. No. B236539 (Super. Ct. No. 2011010788) (Ventura County)

Thomas Eber Sizemore appeals the judgment entered after a jury convicted him of assault with a deadly weapon on a police officer (Pen. Code,[1] § 245, subd. (c)), felony evading (Veh. Code, § 2800.2, subd. (a)), and misdemeanor being under the influence of a controlled substance (Health & Saf. Code, § 11550, subd. (a)). In a bifurcated proceeding, the trial court found true allegations that appellant had served three prior prison terms (§ 667.5, subd. (b)). Appellant was sentenced to eight years eight months in state prison. He contends the evidence is insufficient to support his assault conviction. We affirm.

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1 All further undesignated statutory references are to the Penal Code.

STATEMENT OF FACTS

At approximately 3:00 a.m. on March 27, 2011, Sergeant Craig Adford of the Ventura County Sheriff's Department saw appellant make an illegal left turn on Highway 1 near Mugu Rock. Sergeant Adford began following appellant as appellant continued driving approximately 55 to 60 miles per hour in a 50 miles-per-hour zone.

Appellant's front seat passenger, Antonio Barragan, saw Sergeant Adford's patrol car and told appellant to pull over. Appellant told Barragan he was going to try to "escape" and that "no matter what he wasn't going to go to prison." After appellant drove through a stop sign and red light, Sergeant Adford activated his lights and siren. Appellant repeatedly crossed into the opposing traffic lane and continued driving at an excessive speed. Several officers eventually joined the pursuit with their lights and sirens activated.

The pursuit continued as appellant drove to Newbury Park and turned onto a dead-end street that ended in a cul-de-sac. Sergeant Adford, Deputy Ryan Lindsey, and Sergeant Galante followed appellant into the cul-de-sac and strategically positioned their vehicles to block appellant's exit. Deputy Lindsey parked his patrol car approximately a car length away from appellant's vehicle, and Sergeant Adford's Tahoe cruiser was about eight to ten feet from Deputy Lindsey's vehicle. Sergeant Galante also parked behind Deputy Lindsey, while Deputies Jacob Holt (the victim) and Julie Novak stopped their vehicles further down the street.

All of the officers got out of their vehicles and drew their firearms on appellant. Appellant backed up toward a driveway, then sped through a narrow gap between the parked police vehicles. Appellant's vehicle came within eight to twelve feet of Sergeant Adford, who had to jump out of the way to avoid being hit.

Appellant sped directly toward Deputy Holt as the two of them made eye contact. The deputy saw the driver's side headlight of appellant's vehicle "coming straight for [his] body." Deputy Holt repeatedly yelled at appellant to stop. Instead of stopping or slowing down, appellant accelerated. Deputy Holt "was convinced" that he and Deputy Novak were going to be hit and killed. Deputy Holt ran to his right to avoid

being hit as he fired several rounds at the driver's side door of appellant's vehicle. Deputy Novak heard the shots and saw appellant's vehicle coming in her direction. The deputy ran to her vehicle and quickly drove in reverse to avoid being hit. Appellant straightened out his vehicle and narrowly avoided a collision with Deputy Novak's vehicle.

Deputies Holt and Novak attempted to follow appellant's vehicle but lost sight of him. Appellant abandoned his vehicle a few blocks away, leaving Barragan behind. Appellant was subsequently arrested by Deputy Holt after the deputy saw him walking on the sidewalk. Appellant displayed signs of being under the influence of a stimulant, and tested positive for cocaine and marijuana.

Barragan was also arrested. Barragan had suffered a superficial gunshot to the abdomen and was drunk and belligerent. He told the arresting officer, "That mother fucker is crazy, he wanted to kill the cop." Barragan testified he did not recall making this statement. Barragan also failed to recall telling the police later that day that he could see Deputy Holt standing in front of them and jumping out of the way to avoid being hit. He admitted, however, that he could see the officers outside of their cars with their guns drawn before appellant drove toward them.

DISCUSSION

Appellant claims the evidence is insufficient to sustain his conviction for assault with a deadly weapon on a police officer, i.e., Deputy Holt. He is wrong.

In deciding the sufficiency of the evidence, we draw all reasonable inferences from the record to support the judgment. (*People v. Ochoa* (1993) 6 Cal.4th 1199, 1206.) We do not weigh the evidence or decide the credibility of the witnesses. (*Ibid.*)

"[A]ssault requires only a general criminal intent and not a specific intent to cause injury. [Citation.]" (*People v. Williams* (2001) 26 Cal.4th 779, 782 (*Williams*).) An assault conviction merely requires proof the defendant (1) willfully committed an act which by its nature would probably and directly result in the application of physical force against another; and (2) was aware of facts that would lead a reasonable person to realize this direct and probable consequence of his or her act. (*Ibid.*) The crime does not require

any intent to cause an application of physical force, or a substantial certainty that an application of force will result. (*People v. Colantuono* (1994) 7 Cal.4th 206, 214-220.) "[A]ny operation of a vehicle by a person knowing facts that would lead a reasonable person to realize a battery will probably and directly result may be charged as an assault with a deadly weapon." (*People v. Wright* (2002) 100 Cal.App.4th 703, 706.)

The evidence is sufficient to support appellant's assault conviction. After leading the police on a high-speed chase during which he ran several red lights and stop signs, appellant found himself trapped at the end of a cul-de-sac. Appellant's front seat passenger testified he was able to see the officers standing outside their vehicles as appellant sped through a narrow gap between the vehicles, requiring one of the officers to jump out of the way to avoid being hit. The passenger also told the police he could see Deputy Holt standing in front of them as appellant drove directly at him. Deputy Holt testified that he made eye contact with appellant and repeatedly yelled at him to stop. Appellant made no effort to slow down or avoid hitting the deputy, but rather accelerated. From the passenger's perspective, it appeared as if appellant "wanted to kill" the deputy. In light of this evidence, the jury could reasonably infer that appellant deliberately drove his vehicle through the roadblock with knowledge of facts that would lead an objectively reasonable person to realize that injury to Deputy Holt would directly and probably result. Indeed, the evidence is sufficient to support appellant's assault conviction on the theory that he actually intended to hit Deputy Holt with his vehicle. (See *People v. Claborn* (1964) 224 Cal.App.2d 38, 41 [evidence was sufficient to support conviction for assault with a deadly weapon where defendant aimed his vehicle at police officer's vehicle and collided with it].)

In arguing to the contrary, appellant largely ignores the applicable standard of review, which compels us to view the evidence in the light most favorable to the verdict. (*People v. Ochoa, supra,* 6 Cal.4th at p. 1206.) Although appellant correctly notes that mere recklessness is not enough to establish an assault (*Williams, supra,* 26 Cal.4th at p. 788), recklessness is transcended where the defendant has "actual knowledge of the facts sufficient to establish that the defendant's act by its nature will probably and

directly result in injury to another." (*Id.* at p. 782.) It is of no moment whether appellant had, as he claims, "successfully driven through a roadblock before." The issue is whether an objectively reasonable person driving through *this* roadblock would have known that his act would directly and probably result in the application of force to another. The evidence presented at trial is sufficient to support such a finding.[2]

The judgment is affirmed.

NOT TO BE PUBLISHED.

PERREN, J.

We concur:

GILBERT, P. J.

YEGAN, J.

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[2] In arguing that his conduct amounts to mere recklessness, appellant also misplaces his reliance on two older cases involving high speed chases in which the court found the evidence insufficient to support a conviction for assault with a deadly weapon. (*People v. Cotton* (1980) 113 Cal.App.3d 294; *People v. Jones* (1981) 123 Cal.App.3d 83.) Both cases are based on the since-invalidated principle that attempted battery is an element of assault with a deadly weapon. (*Williams, supra*, 26 Cal.4th at p. 788; *People v. Aznavoleh* (2012) 210 Cal.App.4th 1181, 1188.)

Brian J. Back, Judge

Superior Court County of Ventura

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