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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE,

Plaintiff and Respondent,

v.

CHARLES RAY WILLIAMS,

Defendant and Appellant.

B271623

(Los Angeles County
Super. Ct. No. MA067303)

APPEAL from a judgment of the Superior Court of Los Angeles County, Kathleen Blanchard, Judge. Affirmed.

Heather J. Manolakas, under appointment by the Court of Appeal, for Defendant and Appellant.

Kathleen Kenealy, Acting Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Steven D. Matthews and Rama R. Maline, Deputy Attorneys General, for Plaintiff and Respondent.

A jury convicted Charles Ray Williams of five counts of assault with a firearm on separate victims and one count of possession of a firearm by a felon. It also found true certain firearm enhancements. (Pen. Code, §§ 245, subd. (a)(2); 29800, subd. (a)(1); 12022.5, subd. (a).)¹ Williams contends the trial court prejudicially erred in admitting evidence of a bullet hole found in a neighboring garage. We find no error and affirm.

FACTS

Background

In October 2015, Williams and his wife Deitra Jones lived in Lancaster, California. Several of his wife's relatives were also living with them, including her sister Gwendolyn Jones, her niece Dominique McPhearson, her niece's husband Gregory McPhearson, and their four children, and her nephew Cordell L., and his parents. Gabriel Valencia, a friend of Gregory and Dominique McPhearson, was at the house visiting Gregory and Dominique on the morning of the incident.

The October 29, 2015 Incident

On October 29, 2015, around 8:00 a.m., Williams was awakened by loud music and talking inside the house. At approximately 8:30 a.m., Williams came out of his bedroom and walked through the house to retrieve his coffee mug from the car when he saw Dominique, Gregory, and "about ten" other people that he didn't recognize in the kitchen. Complaining about the noise, Williams said to Dominique and Gregory, "This [is] wrong, and you [are] disrespecting my house."

After he retrieved his coffee mug from the car, Williams was walking back to the house when Dominique came outside and they exchanged words. Dominique told Williams "[s]he was

¹ All further section references are to the Penal Code.

tired of [his] shit” and they began “arguing back and forth” in the driveway. At this point, events quickly escalated and the argument became physical. Williams and Dominique were “pushing and shoving” each other back and forth. In an attempt to separate Williams and Dominique, Gregory intervened and physically wrestled Williams to the ground, placing Williams in a headlock and holding him down from behind. While Williams was restrained on the ground, Dominique asked if he was “going to go get his gun” and Williams responded, “It’s over.” Gregory released Williams from his restraint and Williams ran inside the house.

Gwendolyn Jones testified she heard someone hollering, “He go [*sic*] get a gun.” At this point, everyone scattered and ran to their cars to leave. Dominique and her daughter Shadiamon jumped into the back seat of Gabriel Valencia’s car. Gregory told his 15-year-old nephew Cordell, “Get in the car and duck your head.” Moments later, Williams returned with a gun and fired several shots in the direction of Gregory’s and Valencia’s cars as they were driving away. Gwendolyn further testified Williams was upset, swearing and calling Dominique and Gregory “mother fuckers.” While both cars were pulling away, Gwendolyn heard Williams say, “Come back.” Gwendolyn did not see Williams shooting at anyone but she did hear shots being fired.

Los Angeles County Sheriff’s Department (LASD) Deputy Christopher Hindman was the first deputy to respond to the call at the house. When he arrived, he saw Williams sitting on the porch area and approached him. Williams had a laceration below his left eye, and bruising on his right shoulder. When asked if he needed any medical attention, Williams declined it. Williams told Deputy Hindman he had an altercation with his niece and

her husband, and that he had a gun inside the house. Deputy Hindman went inside the home and recovered a .22-caliber firearm from the front right pocket of a pair of brown pants located on a chair in Williams's bedroom. The firearm "had six empty shell casings that were fired in the cylinder, and one empty cylinder."

LASD Deputy Benjamin Tanner arrived at the scene in response to a call for backup. He interviewed Gwendolyn. Deputy Tanner testified Gwendolyn told him that Williams said, "I got something for you guys," which she indicated was directed towards Dominique and Gregory. Further, that Williams "came running out of the house" and "he fired the gun like six to ten times at the -- at her daughter and her daughter's husband as they were leaving in the cars." Gwendolyn said she asked, "What's wrong with you?" as Williams was shooting the gun. Williams responded, "I'm going to get them mother fuckers."

Gabriel Valencia testified Williams pointed the gun in the direction of Valencia's car as he was driving away. He said, "it looked like [Williams] was pointing a gun at us. I don't know what I saw. I just saw his hand pointing straight. I just thought it was a gun." Valencia further testified he heard three or four "tinkling noise[s]" as he was driving away and "felt like we're getting shot at. It sounds like bee-bees." "Tinkling, like something was hitting something. Like a bullet hitting something. I don't know. It sounded like that. Like a ting." Valencia thought his car had been hit by some bullets but when he later inspected his car, "[t]here [were] no bullets in the car or nothing." Gregory's car had a mark on the front windshield on the driver's side, which was consistent with a bullet impact.

LASD Deputy Javier interviewed Cordell. Deputy Munoz testified as to what Cordell told him during the interview: “He said he looked over and that he saw Mr. Williams appear to be holding a gun as they were driving away. . . . He said as they rounded the corner, that he heard a pop sound.”

Deputy Munoz further testified he inspected the vehicle that Gregory and Cordell were in and he believed “there was an impact near the front windshield area, near the driver-side area.” When asked what he meant by “impact,” Deputy Munoz replied, “It appeared that a bullet had struck or had impacted the vehicle.” Deputy Munoz had been a deputy sheriff with the LASD for nine years, was trained in firearms, and had been involved in four or five shooting investigations where he observed bullet impact marks.

Williams testified on his own behalf. He admitted at some point after the fight ended, he took the gun out of his pocket and “fired a couple of shots in the air.” Williams explained, “When I got up, they standing there, I was scared. I reached in my pocket and fired it in the air.” “Everybody started running and going different ways.” He admitted he fired the gun but that he fired the shots in the air in an attempt “to scare them away. Scare them off my property.” Williams denied pointing the gun at any of the people who were outside or at any vehicles that were there. He admitted the gun in his pocket was loaded. “I knew it had a couple shells in it.”

The Criminal Proceedings

The People filed an information charging Williams with five counts of assault with a firearm (§ 245, subd. (a)(2); counts 1-5), one count of possession of a firearm by a felon (§ 29800, subd.

(a)(1); count 6), and five counts of attempted murder (§§ 664, 187, subd. (a); counts 7-11).

The charges were tried to a jury and the prosecution presented testimony and evidence establishing the facts summarized above. The prosecution also presented expert testimony from LASD Detective Timothy Schank, who testified that an impact mark found on the neighboring garage was consistent with a bullet hitting the stucco, most likely a .22-caliber round.

The jury returned verdicts finding Williams guilty of assault with a firearm in violation of section 245, subdivision (a)(2), as charged in counts 1 through 5, and possession of a firearm by a felon in violation of section 29800, subdivision (a)(1), as charged in count 6. In addition, the firearm enhancements were found true. The jury found Williams not guilty of attempted murder (§§ 664,187, subd. (a)), as charged in counts 7 through 11.

The trial court sentenced Williams to the upper term of four years, plus 10 years for the firearm enhancement, for a total state prison sentence of 14 years as to count 1. The court imposed the same sentence on counts 2 through 5, and ordered them to run concurrent. The court imposed the usual fines, assessments and fees. The court awarded Williams 169 days of custody credits as follows: 147 actual days served, plus 22 local conduct credits.

Williams filed a timely notice of appeal.

DISCUSSION

I. The Trial Court Did Not Err in Admitting Evidence of the Bullet Hole Found in a Neighboring Garage

Williams contends the trial court prejudicially erred in admitting evidence of the bullet impact mark found on a neighboring garage. We disagree.

Prior to trial, defense counsel brought a motion to exclude evidence related to the bullet hole found on a neighboring garage. The defense argued there was “no foundational testimony or evidence that that specific damage to the wall did not predate the date of the incident in this case” and that “without a foundational testimony this evidence should not be introduced.” The court indicated it would admit the evidence, stating: “It does sound like that is circumstantial evidence of the firearm actually being fired. To the extent that all of the things that the defense has brought up I think you can explore that on cross-examination, so I’ll allow the people to inquire into that.”

On appeal, Williams argues there was no connection between the bullet hole and the crime. He further asserts the deputies’ contrary testimony was pure speculation and an insufficient evidentiary foundation to render the evidence admissible.

The Trial Evidence

Deputy Hindman testified he had been employed by the LASD for three and a half years and had seen approximately 50 to 100 bullet impact marks. He canvassed the area on the day of the incident to look for any bullet fragments or bullet marks on the surrounding homes and vehicles. He testified he observed a bullet impact mark on the garage of a neighboring home, located across the street from Williams’s home, approximately four

houses down. The impact mark was found on the northeast corner of the garage, approximately five to eight feet off the ground, and directly in line from Williams's front yard.

When asked on direct examination, "What was it that caught your attention about this mark," Deputy Hindman responded, "It was just out of place. The rest of the house, all the stucco was intact. Not a bit had marks on it, and that was the only mark that was there." Deputy Hindman noticed "there was a darker gray spot where the stucco had been indented." Deputy Hindman testified the garage door very well "could have been struck by a bullet coming from 1608 Torbay Court."

Detective Schank testified he worked at the LASD for 12 years and was assigned as a detective in the assault division for over three years. He had extensive experience and training with firearms. He had conducted approximately one hundred investigations, all involving firearm shootings consisting of different caliber bullets striking different surfaces, such as impact marks on walls, concrete, and stucco. Detective Schank opined the impact mark found on the neighboring garage appeared to be fresh and consistent with a bullet hitting the stucco. He further opined, the impact on the stucco was consistent with a small-caliber round, most likely a .22-caliber, which struck from a distance away.

The Governing Law

"When the relevance of proffered evidence depends on the existence of a preliminary fact, the proponent of the evidence has the burden of producing evidence as to the existence of that preliminary fact. (Evid. Code, § 403, subd. (a)(1).) The proffered evidence is inadmissible unless the trial court finds sufficient evidence to sustain a finding of the existence of the preliminary

fact. (*Ibid.*; see also *People v. Marshall* (1996) 13 Cal.4th 799, 832 [‘the trial court must determine whether the evidence is sufficient to permit the jury to find the preliminary fact true by a preponderance of the evidence’].) ‘The decision whether the foundational evidence is sufficiently substantial is a matter within the court’s discretion.’ [Citations.]” (*People v. Bacon* (2010) 50 Cal.4th 1082, 1102-1103.)

Here, the bullet hole evidence was properly admitted based upon the eyewitness statements to investigators, in addition to testimony from deputies and three witnesses. Both Gwendolyn Jones and Gabriel Valencia testified they saw Williams holding the gun and heard shots being fired. More importantly, Williams admitted he fired the gun. Two officers who were experts on the identification of bullet impact marks opined the hole on the garage stucco was likely the result of a bullet. Detective Schank testified the mark was likely to have been recently made from a small caliber weapon. This was indisputably sufficient foundation for admission of the evidence and we find no abuse of discretion in admitting it.

Even if the court erred, it is not reasonably probably a result more favorable to Williams would have occurred without its admission. (*People v. Watson* (1956) 46 Cal.2d 818, 836.) This was not a close case. The prosecution presented three eyewitnesses as to the events that occurred that morning. Further, Williams expressly admitted to personally using and discharging a firearm by firing a couple of shots in the air to scare the people off of his property. Admission of the bullet hole evidence did not affect the outcome of the trial given the balance of the evidence presented to the jury.

DISPOSITION

The judgment is affirmed.

BIGELOW, P.J.

We concur:

RUBIN, J.

FLIER, J.