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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.

JESUS GUARDADO,

Defendant and Appellant.

B268094

(Los Angeles County
Super. Ct. No. NA098524)

APPEAL from a judgment of the Superior Court of Los Angeles, Gary J. Ferrari, Judge. Affirmed.

Mona D. Miller, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Kathleen Kenealy, Acting Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Marc A. Kohm and Lindsay Boyd, Deputy Attorneys General, for Plaintiff and Respondent.

SUMMARY

Jesus Guardado appeals from his jury conviction on one count of assault with a deadly weapon with a great bodily injury enhancement. The trial court sentenced Guardado to an aggregate term of 16 years in state prison.

On appeal, Guardado contends his conviction must be reversed because the trial court erroneously excluded testimony from his expert that the victim's injury could not have been caused by the weapon the victim described at the preliminary hearing. In addition, Guardado contends the trial court made two other erroneous rulings.

We affirm.

BACKGROUND

I. Evidence at Trial

On the morning of March 1, 2014, Jesse Basset was riding his skateboard on a street in San Pedro when he passed Guardado outside an apartment building. Guardado gestured him over to talk. Initially they spoke in front of Guardado's building, but then moved into an alley. Guardado accused Basset of contacting Guardado's girlfriend while Guardado was in jail. After Basset stated he did not know the two were dating, he shook Guardado's hand and turned to leave. Guardado ran up to Basset and hit him over the head with some type of weapon.

After being hit, Basset saw Guardado unstrap a weapon from his hand and place it in his pocket. His description of the weapon to police and hospital workers varied, and included a "skullcrusher" and a pipe. Basset did not get a good look at the weapon, but at the preliminary hearing and at trial he described it as a handmade, triangular-shaped weapon with a point and metal rings.

Basset could feel a dent in his head and found that he had lost the ability to speak. He called 911 and also approached various people for help but was unable to communicate intelligibly. Eventually, he decided to lie down in the middle of the street to get assistance. After police responded, he had a seizure and was taken to the hospital for emergency surgery.

Dr. Rudi Scharnweber, the neurosurgery resident who performed the operation, testified that based on Basset's injury and its location in an area of the skull with harder bone, it was very likely a weapon was used and unlikely the injury was caused by a fist. Because the skin was not cut, the portion of the weapon that hit Basset's head would not have been sharp. Likewise, because there was no bleeding or other injury, Dr. Scharnweber thought the injury was unlikely to have been caused by a skateboarding accident.

The two defense witnesses, Guardado's girlfriend and her mother, saw Basset and Guardado talking in front of their apartment building while they were across the street. They saw or heard Basset ride away on his skateboard at the end of the conversation.

II. Pretrial Hearing on Expert Testimony

At a pretrial hearing, the trial court tentatively excluded testimony from the prosecution's expert on handheld weapons and testimony from the defense expert on whether Basset's injury was compatible with the triangular weapon he described or with an injury from the wheel of a skateboard. The trial court stated the rulings were tentative and depended upon the testimony at trial, but noted that defense counsel's theory that Basset may have been injured by a skateboarding accident was conjecture.

III. Ruling During Trial

After Basset testified at trial, the court again excluded expert testimony from both sides, citing Evidence Code section 352 and stating “we don’t know what the instrumentality was” because Basset’s description was not particularly specific and therefore any expert testimony would be speculative. The court noted expert testimony was unnecessary to determine if the weapon used could cause great bodily injury.

IV. Conviction and Sentencing

The jury convicted Guardado of one count of assault with a deadly weapon (Pen. Code, § 245, subd. (a)(1))¹ and found true the allegation that he had inflicted great bodily injury upon the victim (§ 12022.7, subd. (a)).

The court sentenced him to an aggregate term of 16 years in state prison based on the upper term of 4 years, doubled for a prior strike (§ 667), plus a 3-year great bodily injury enhancement and a 5-year prior serious felony enhancement (§ 667, subd. (a)(1)).

DISCUSSION

Guardado contends the trial court erred in excluding testimony from his expert and in making two other rulings.

I. Exclusion of Expert Testimony

“Whether rooted directly in the Due Process Clause of the Fourteenth Amendment or in the Compulsory Process or Confrontation Clauses of the Sixth Amendment, the Constitution guarantees criminal defendants “a meaningful opportunity to present a complete defense.”” (*Holmes v. South Carolina* (2006) 547 U.S. 319, 324.) The ordinary rules of evidence generally do

¹ Unless stated otherwise, all further statutory references are to the Penal Code.

not impermissibly infringe on the accused's right to present a defense. (*Id.* at pp. 324, 326-327; see *People v. Lucas* (2014) 60 Cal.4th 153, 270.)

Evidence Code section 801 limits expert testimony to that “[r]elated to a subject that is sufficiently beyond common experience that the opinion of an expert would assist the trier of fact.” (Evid. Code, § 801, subd. (a).) A “trial court has wide discretion to admit or exclude expert testimony. . . . An appellate court may not interfere with the exercise of that discretion unless it is clearly abused.” (*People v. Manriquez* (1999) 72 Cal.App.4th 1486, 1492.)

Evidence Code section 352 grants a trial court the discretion to “exclude evidence if its probative value is substantially outweighed by the probability that its admission will (a) necessitate undue consumption of time or (b) create substantial danger of undue prejudice, of confusing the issues, or of misleading the jury.” The court’s ruling on the admission or exclusion of evidence under Evidence Code section 352 “must not be disturbed on appeal *except* on a showing that the court exercised its discretion in an arbitrary, capricious or patently absurd manner that resulted in a manifest miscarriage of justice. [Citations.]” (*People v. Jordan* (1986) 42 Cal.3d 308, 316.)” (*People v. Rodrigues* (1994) 8 Cal.4th 1060, 1124-1125.)

Guardado has not demonstrated an abuse of discretion. Common experience would have informed the jury that Basset’s injury could not have been caused by a sharp, pointed weapon, as he had suffered a “dent” in the back of his head, with no bleeding or perforation of the skin. Although Guardado argues that Basset gave a very detailed drawing of the weapon, which his expert could have ruled out as the cause of his injury, Basset’s

drawing was quite rudimentary, and he stated more than once that he did not get a good look at the weapon. Moreover, testimony from his expert to the effect that the shape of Basset's injury was compatible with the shape of a skateboard wheel would have been speculative, as there was no testimony or other evidence that Basset had had a skateboarding accident.

II. Other Alleged Errors

Guardado contends the trial court erred in striking Basset's mother's testimony that she had kicked him out of her house for using pain pills and marijuana, arguing the evidence showed Basset lied about living with his mother at the time of the incident and showed that Basset was using pain pills and marijuana near the time of the incident. The stricken testimony did not show that Basset lied, it only showed that Basset's mother had kicked him out on a prior occasion, not that he was not living with her at the time of the incident. In fact, his mother's testimony was that he had stayed with her the night before the incident. Moreover, because there was no time frame for the stricken testimony, it was not relevant to whether Basset was using those drugs near the time of the incident.²

Guardado also argues that the trial court improperly sustained an objection to his counsel's argument that marijuana and methamphetamine tend to distort perceptions, "sometimes to the extreme of causing delusions." We find no error, as there was no evidence that Basset was impaired to the point of being delusional. Moreover, any error was harmless, as defense counsel was still able to argue to the jury that it should use its

² We note, however, that stipulated evidence showed that Basset tested positive for marijuana and methamphetamine when he was hospitalized.

common sense about Basset's drug use and impairment and the effect on his credibility.

DISPOSITION

The judgment is affirmed.

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CHANEY, Acting P. J.

We concur:

JOHNSON, J.

LUI, J.