Filed 6/19/12 P. v. Man CA2/4

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE, Plaintiff and Respondent, v. DETH MAN, Defendant and Appellant.	B230400 (Los Angeles County Super. Ct. No. NA086770)

APPEAL from a judgment of the Superior Court of Los Angeles County, Richard R. Romero, Judge. Affirmed.

Ellise R. Nicholson, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Steven D. Matthews and Analee J. Brodie, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant Deth Man appeals from the judgment entered following his conviction by jury of being a felon in possession of a firearm. (Pen. Code, § 12021, subd. (a).) He contends there is insufficient evidence to support the conviction and the trial court erred in admitting evidence that the gun in question was stolen. We affirm.

STATEMENT OF FACTS

I. The Prosecution Case

On September 4, 2010, Long Beach Police Officer Jorge Marquez was in the area of 17th Street and Stanton Place in the City of Long Beach when he encountered defendant. Marquez asked defendant for identification. The identification defendant produced listed his address as 1643 Stanton Place, which was approximately 15 yards away. Marquez asked defendant to take him to the residence so the officer could conduct a search. Defendant agreed.[1]

When the men arrived at defendant's apartment, there were two males and a female present. The apartment had a living room, kitchen, bathroom, and one bedroom. There were two beds in the living room. Once inside, defendant became nervous. He addressed the female as "Mom," and told her to close and lock the door to her room because the police were not allowed to search inside. When she failed to do so, defendant loudly repeated the statement. Marquez told the woman not to close the door and called for additional officers to come to the location.

Marquez looked inside the room defendant did not want him to enter. It was a bedroom. Inside, Marquez saw only men's clothing, a television set, a video game console, and a dresser. Inside the dresser drawers, Marquez found a Valentine's Day card addressed to defendant, a birthday card sent to him by a person defendant later identified as his girlfriend, and a wallet with an identification card inside that had

---

[1] Testimony at the preliminary hearing disclosed that defendant was on parole at the time.

defendant's name and the last four digits of a Social Security number on it.[2] Marquez also saw a box that had the words "Yogie's Jackets" written on it. Defendant told Marquez his nickname was Yogie. Attached to a mirror, Marquez saw a sonogram. Defendant admitted it was a sonogram of his son. Another officer recovered a nine-millimeter Beretta from inside a box that was on the top shelf of the bedroom closet. The gun was wrapped in a towel. No other contraband was found in the bedroom.

The two males at the apartment were defendant's brothers, who also lived there. The officers did not locate any items in the bedroom containing identifying information of either man.

A paralegal from the district attorney's office testified that he obtained a document from the California Law Enforcement Telecommunications System (CLETS) maintained by the California Department of Justice. He received the document in response to an inquiry regarding the serial number of a firearm.[3]

II. The Defense Case

Doeun Man is defendant's younger brother.[4] On the date of defendant's arrest, Doeun lived at the apartment with his mother, sister, defendant, and another brother. Defendant also spent time living at his girlfriend's residence. During the period prior to the discovery of the gun, only Doeun, his mother, and his sister slept in the bedroom. Doeun testified that the gun found in the bedroom belonged to him. The gun was located in his closet, which also contained his clothing. The television and the video game console in the bedroom were also his.

---

[2] Later, Marquez discovered that the numbers on the card matched the Social Security number defendant provided on his booking sheet.

[3] The prosecutor presented a photograph that contained a close up of the serial number on the handgun that was recovered.

[4] Because defendant and his brother share the same surname, we shall refer to Doeun Man by his first name with no disrespect intended.

When shown the items officers recovered in the bedroom that were linked to defendant, Doeun explained that his brothers and sister left personal property in that room. Doeun identified items that were on the bedroom dresser as his. At the scene, the officers asked Doeun if the gun belonged to him and he admitted that it did. He denied ever showing defendant the gun.

At trial, Doeun said he purchased the gun for his protection on the streets in February 2010. Doeun had no prior felony convictions and was aware it would have been lawful for him to buy the gun from a licensed dealer. He denied telling police that he had just gotten the gun the Saturday prior to the day it was discovered in the closet.

III. The Prosecution Rebuttal

On September 4, 2010, Officer Bernardo Barajas spoke to Doeun at the apartment and asked him about the gun the police had found. Doeun told Barajas that the gun was his and he had owned the weapon for about a year. He purchased the gun for $350 after deciding that he needed one for protection.

Officer Marquez had a conversation with Doeun at the station after Doeun had spoken to Barajas. After Doeun told Marquez the gun was his, Marquez suggested the gun might be "hot," meaning it was involved in a shooting.[5] At that point, Doeun replied, "It can't be. I just got it on Saturday for $350."

DISCUSSION

I. Sufficient Evidence Supports the Conviction

Defendant contends there is insufficient evidence to sustain his conviction. He argues there was nothing connecting him to the gun and no proof he had knowledge of its existence. He points out that his brother admitted the gun was his. In addition, five

---

[5] A criminalist testified that she test fired the weapon and put images of the shell casings into a database to determine whether they matched casings recovered in any shootings. There was no match.

people lived in the small apartment and several others left personal belongings in the bedroom where the gun was found.

Those facts were presented to the jury and it rejected the defense theory. "We resolve neither credibility issues nor evidentiary conflicts; we look for substantial evidence. [Citation.]" (*People v. Maury* (2003) 30 Cal.4th 342, 403.) "In applying this test, we review the evidence in the light most favorable to the prosecution and presume in support of the judgment the existence of every fact the jury could reasonably have deduced from the evidence." (*People v. Zamudio* (2008) 43 Cal.4th 327, 357.) A reversal for insufficient evidence "is unwarranted unless it appears 'that upon no hypothesis whatever is there sufficient substantial evidence to support [the conviction].' [Citation.]" (*People v. Bolin* (1998) 18 Cal.4th 297, 331.) A reversal is unwarranted here.

The evidence established that defendant had access to the bedroom in which the gun was found. Indeed, the jury could have reasonably concluded that defendant was the primary occupant. Despite Doeun's testimony that other family members left property in the bedroom, the only objectively identifiable items, the two greeting cards, the identification, and the labeled box of jackets, were linked to defendant. In addition, as the prosecutor suggested in his closing argument, the most compelling evidence against defendant was his attempt to prevent the police from entering the bedroom. He tried to convince the officers that the bedroom was his mother's room. He told her to close and lock the door to her room because the police had no right to search her belongings. When she did not comply, he loudly repeated the request. The officers soon discovered that the bedroom was utilized by a male, as evidenced by the clothing and other personal items that were present. It was eminently reasonable for the jury to reach the common sense conclusion that defendant had something in the bedroom he did not want the police to find. No other occupant of the apartment exhibited any anxiety at the prospect of a search. Defendant's deceitful attempt to prevent contraband from being discovered is "pertinent proof[] of a guilty mind." (*People v. MacCagnan* (1954) 129 Cal.App.2d 100, 105.) The combination of the circumstantial evidence and defendant's conduct during

the search provides ample evidence to support the conviction. (See *People v. Hutchinson* (1969) 71 Cal.2d 342, 345-346 [evidence that the defendant shared access to a bedroom where drugs were found coupled with his flight when confronted with those drugs sufficient to support finding of unlawful possession].)

II. Any Error in Admitting Evidence That the Gun Was Stolen Was Harmless

Defendant asserts the court erred in admitting evidence that the gun was stolen. He argues the evidence should have been excluded pursuant to Evidence Code section 352 because it was more prejudicial than probative. Even if we were to assume error, defendant did not suffer prejudice.

"[S]tate law error in admitting evidence is subject to the traditional *Watson*[6] test: The reviewing court must ask whether it is reasonably probable the verdict would have been more favorable to the defendant absent the error." (*People v. Partida* (2005) 37 Cal.4th 428, 439.) The answer here is "No." Defendant urges he was prejudiced because the fact the gun was stolen "improperly evoked an emotional reaction in the jury that increased the likelihood that it would find [him] guilty." We disagree.

The prosecutor presented no evidence that the gun was used in any other crime. In fact, he elicited testimony that the gun could not be connected with the commission of any nefarious act. Significantly, the prosecutor did not mention the stolen status of the firearm in his closing argument. Given these facts, the assertion that the jury's verdict was a product of passion is unavailing. As the trial court aptly pointed out, the status of the gun did not answer the question whether defendant possessed it on the night in question. In our view, the evidence the gun was stolen cut both ways. It provided support to Doeun's testimony that he purchased the weapon on the street. In any event, although the fact the gun was stolen had little relevance to the issue before the jury, we have no difficulty concluding that defendant was not prejudiced by the admission of that evidence.

---

[6] *People v. Watson* (1956) 46 Cal.2d 818.

III. The Admission of the CLETS Document Was Not Constitutional Error

Defendant argues the introduction of the CLETS document constituted federal constitutional error under *Crawford v. Washington* (2004) 541 U.S. 36 (*Crawford*). We are not persuaded. In *Crawford*, the Supreme Court held: "Where nontestimonial hearsay is at issue, it is wholly consistent with the Framers' design to afford the States flexibility in their development of hearsay law—as does *Roberts*,[7] and as would an approach that exempted such statements from Confrontation Clause scrutiny altogether. Where testimonial evidence is at issue, however, the Sixth Amendment demands what the common law required: unavailability and a prior opportunity for cross-examination." (*Id.* at p. 68.) The question is whether the CLETS document is testimonial evidence.

The Supreme Court provided the answer in *Melendez-Diaz v. Massachusetts* (2009) 557 U.S. 305, 129 S.Ct. 2527, when it wrote: "Business and public records are generally admissible absent confrontation not because they qualify under an exception to the hearsay rules, but because—having been created for the administration of an entity's affairs and not for the purpose of establishing or proving some fact at trial—they are not testimonial." (129 S.Ct. at p. 2539.)

The evidence established that the CLETS document was an official record from a database maintained by the California Department of Justice. The records catalogue the history of firearms as a means of tracking them, not for the purpose of establishing some fact at trial. The document at issue is not testimonial within the meaning of *Crawford*. (*People v. Morris* (2008) 166 Cal.App.4th 363, 373 [CLETS criminal history record not testimonial]; *People v. Taulton* (2005) 129 Cal.App.4th 1218, 1224 [same].) Defendant's right to confrontation was not violated.

---

[7] *Ohio v. Roberts* (1980) 448 U.S. 56.

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

SUZUKAWA, J.

We concur:

EPSTEIN, P. J.

MANELLA, J.