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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

VICTOR S. BROWN,

Defendant and Appellant.

B270630

Los Angeles County
Super. Ct. No. MA065245-
01

APPEAL from a judgment of the Superior Court of Los Angeles County, Lisa M. Strassner, Judge. Affirmed.

John L. Staley, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Margaret E. Maxwell, Supervising Deputy Attorney General, and Peggy Z. Huang, Deputy Attorney General, for Plaintiff and Respondent.

INTRODUCTION

Defendant Victor S. Brown was convicted of assault with a deadly weapon and false imprisonment by violence after he detained a female companion (the victim) in his home while holding a knife near her throat. On appeal, defendant asks us to review the in camera proceeding conducted by the trial court pursuant to his motion for discovery of personnel records under *Pitchess v. Superior Court* (1974) 11 Cal.3d 531 (*Pitchess*). We conclude the court followed the proper procedure. Defendant also contends the jury was improperly instructed that assault is a general intent, rather than a specific intent, crime. We reject this argument because it is contrary to the view of the California Supreme Court as expressed in *People v. Williams* (2001) 26 Cal.4th 779 (*Williams*). Accordingly, we affirm.

PROCEDURAL BACKGROUND

The People charged defendant by amended information with assault with a deadly weapon (Penal Code, § 245, subd. (a)(1), count 2),¹ and false imprisonment by violence (§ 236, count 3), both serious felonies (§ 1192.7, subd. (c)). As to count 3, the information alleged defendant was armed with a deadly weapon during the commission of the offense. (§ 12022, subd. (a)(1).) The information also alleged defendant suffered seven prior convictions. One conviction was alleged as a strike prior (§§ 667, subds. (b)-(j), 1170.12), a serious-felony prior (§ 667, subd. (a)(1)), and a violent felony prison prior (§ 667.5, subd. (c)); all seven convictions were alleged as prison priors under section 667.5, subd. (b). Defendant pled not guilty and denied the allegations.

¹ All undesignated statutory references are to the Penal Code.

At times, defendant was represented by appointed counsel. Prior to trial, however, defendant made two motions requesting the appointment of a new attorney under *People v. Marsden* (1970) 2 Cal.3d 118. After the court denied both motions, defendant requested to represent himself, which request the court granted. Defendant filed a series of pre-trial motions seeking the appointment of experts and investigators to assist him in preparing his defense. However, after defendant appeared at a pre-trial hearing and repeatedly refused to comply with the court's admonitions regarding his in-court behavior, the court found defendant forfeited his pro per status and again appointed counsel to represent him.

After a bifurcated trial at which defendant testified on his own behalf, the jury convicted defendant of both counts and found the deadly weapon allegation true. The jury later found true all of the prior conviction allegations.

The court selected count 2 (§ 245, subd. (a)(1)) as the base term and imposed an aggregate determinate term of 16 years—the upper term of four years doubled for the strike prior, plus five years for the serious-felony prior (§ 667, subd. (a)), and one year each for three prison priors (§ 667.5, subd. (b)), to run consecutively. The court stayed count 3 and the deadly weapon enhancement under section 654, and struck three of the prison priors. Defendant filed a timely notice of appeal.

FACTUAL BACKGROUND

In the early morning hours of January 28, 2015, three deputies from the Los Angeles County Sheriff's Department responded to a 9-1-1 call which led them to defendant's home. After one of the deputies, Mike Reynolds, heard a man yelling and a woman crying inside, the deputies forced open the front

door and entered defendant's home. Reynolds, who had his service weapon drawn as he entered, saw defendant and the victim laying on their backs on the floor near the front door. Defendant had his left arm wrapped around the victim's chest and held a knife with an 8-inch blade to her throat. The victim was screaming. Reynolds pointed his gun at defendant, who eventually threw the knife to the floor and released the victim.

Defendant testified in his own defense at trial. He explained that he had known the victim for many years and she spent the night at his house prior to the incident. Defendant said that he had been up all night using drugs and, in the morning, was paranoid and afraid. He became convinced other people were in his house and grabbed a knife from the kitchen while he walked through the house looking for the intruders. During this time, he and the victim called 9-1-1 for assistance. The victim, who was trying to leave defendant's home to go to work, suggested they sit together on the floor by the front door until help arrived. Defendant recalled he had his arm around the victim and had the knife in his right hand when the deputies burst through the front door. Reynolds immediately told defendant to put his hands up and throw down the knife, which he did. According to defendant, Reynolds instructed him to lay on the floor on his stomach and then Reynolds hit him on the side of the head with his gun and threatened to shoot him in the head. Reynolds later recovered a small bag of methamphetamine from defendant's front shirt pocket. Defendant denied holding the knife to the victim's throat.

DISCUSSION

Defendant requests that we evaluate the court's in camera review of Deputy Reynolds's personnel files to determine whether

any discoverable information was withheld. Defendant also contends the court misinstructed the jury concerning the mens rea required to commit assault.

1. No *Pitchess* error occurred.

As pertinent here, defendant filed a motion for pre-trial discovery under *Pitchess*, seeking to discover all “complaints from any and all sources relating to acts of aggressive behavior, violence, excessive force, or attempted violence or excessive, [sic] racial bias, gender bias, ethnic bias, sexual orientation bias, coercive conduct, violation of constitutional rights, fabrication of charges, fabrication of evidence, fabrication of reasonable suspicion and/or probable cause, illegal search/seizure; false arrest, perjury, dishonesty, writing of false police reports, writing of false police reports to cover up the use of excessive force, planting of evidence, false or misleading internal reports including but not limited to false overtime or medical reports, and any other evidence of misconduct amounting to moral turpitude . . .” contained in the personnel records of Deputy Reynolds. The court granted the motion, reviewed the records in camera, and ordered certain information disclosed to defendant within one week’s time subject to a protective order.

Defendant has requested our independent review of the in camera portion of the court’s *Pitchess* proceedings to determine whether any discoverable information was withheld. (See generally *People v. Mooc* (2001) 26 Cal.4th 1216.) We have reviewed the sealed reporter’s transcript of the in camera portion of the *Pitchess* proceeding and conclude the court fulfilled its obligations.

2. The court correctly instructed the jury concerning the elements of assault.

Defendant argues the court's instructions to the jury regarding assault misstated the elements of the offense by permitting the jury to convict him based on negligent conduct, rather than requiring a specific intent to injure the intended victim. We disagree.

The court delivered the following instruction (CALJIC No. 9.00) to the jury regarding the elements of assault (§ 240):

“In order to prove an assault, each of the following elements must be proved:

1. A person willfully and unlawfully committed an act which by its nature would probably and directly result in the application of physical force on another person;
2. The person committing the act was aware of facts that would lead a reasonable person to realize that as a direct, natural and probable result of this act that physical force would be applied to another person; and
3. At the time the act was committed, the person committing the act had the present ability to apply physical force to the person of another.

The word ‘willfully’ means that the person committing the act did so intentionally. However, an assault does not require an intent to cause injury to another person, or an actual awareness of the risk that injury might occur to another person.

To constitute assault, it is not necessary that any actual injury be inflicted. However, if an injury is inflicted it may be

considered in connection with other evidence in determining whether an assault was committed.”²

This instruction correctly states the mens rea requirement as discussed in *Williams, supra*. There, the court “[held] that assault does not require a specific intent to cause injury or a subjective awareness of the risk that an injury might occur. Rather, assault only requires an intentional act and actual knowledge of those facts sufficient to establish that the act by its nature will probably and directly result in the application of physical force against another.” (*Williams, supra*, 26 Cal.4th at p. 790.) Moreover, the court specifically rejected the position advanced by defendant here, namely that “assault requires either a desire to cause an application of physical force or substantial certainty that such an application would result.” (*Id.* at p. 784 [summarizing and rejecting position taken by the Court of Appeal].)

As defendant acknowledges³, we must follow the California Supreme Court’s decision in *People v. Williams* (2001) 26 Cal.4th 779. (See *Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 455-456.) We therefore conclude the jury was properly instructed concerning the mental state required for the offense of assault with a deadly weapon.

² The court also instructed the jury regarding assault with a deadly weapon (§ 245, subd. (a)(1), (2) & (4)) using CALJIC No. 9.02, which states the first element of the offense requires proof that “[a] person was assaulted.”

³ Defendant advises that he “is raising this issue to preserve his right to petition the Supreme Court to reconsider *People v. Williams*.”

DISPOSITION

The judgment is affirmed.

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LAVIN, J.

WE CONCUR:

EDMON, P. J.

JOHNSON (MICHAEL), J.*

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.