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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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. RAYMONDO SHUJAA COX, Defendant and Appellant.	2d Crim. No. B229864 (Super. Ct. No. LA061743) (Los Angeles County)

Raymondo Shujaa Cox appeals the judgment entered following a court trial in which he was convicted of second degree robbery (Pen. Code,[1] § 211), assault with a semiautomatic firearm (§ 245, subd. (b)), and being a felon in possession of a firearm (former § 12021, subd. (a)(1)).[2] The court found true allegations as to the robbery and assault counts that appellant personally used a firearm (§§ 12022.5, subd. (a), 12022.53, subds. (b)-(c)). Appellant admitted being a felon in possession of a firearm, and also admitted he had a prior serious felony conviction (a 1994 juvenile adjudication for robbery) that qualifies as a strike (§§ 667, subds. (a)(1), (b)-(i), 1170.12, subds. (a)-(d)). The court sentenced him to a total term of 16 years in state prison, consisting of a three-

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

[2] Former section 12021 was repealed and reenacted as sections 29800 through 29875, effective January 1, 2011, operative January 1, 2012.

year midterm for the robbery, doubled for the strike prior, plus 10 years for the personal firearm use allegation. Concurrent sentences were imposed on the remaining counts. Appellant contends the evidence is insufficient to support his assault conviction. We affirm.[3]

STATEMENT OF FACTS

On January 3, 2009, Lilit Mkrtchyan was working at a medical marijuana dispensary in Sherman Oaks when she saw appellant entering the facility while pushing and fighting with another individual. After appellant entered, he approached Mkrtchyan with a gun in his hand and ordered her to open the cash register. Mkrtchyan opened the register, and appellant emptied the money out of it. Appellant also took marijuana from another room and from a safe he had ordered Mkrtchyan to open. Appellant then told Mkrtchyan to press the button that would allow him to open the exit door. As Mkrtchyan pushed the button, she heard a sound she later learned was gunfire. Appellant told Mkrtchyan to push the button again, and she complied. Appellant opened the exit door and left.

The dispensary's surveillance cameras recorded the entire incident, including the fight that took place between appellant and another individual just inside the front door. Mkrtchyan identified the video footage, which was played in court and admitted into evidence.

Appellant was subsequently arrested. When appellant was initially interviewed on April 9, 2009, he admitted committing the robbery and claimed he had done so because he needed money for child support. At that time, appellant did not claim

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3 We deferred submission of this matter after granting appellant leave to file an in propria persona supplemental brief in which he claims that the use of his prior juvenile adjudication as a strike is prohibited under Welfare and Institutions Code section 203. Because appellant is represented by counsel, we need not consider briefs filed in propria persona. (*People v. Clark* (1992) 3 Cal.4th 41, 173.) In any event, appellant's claim lacks merit. Although section 203 of the Welfare and Institutions Code states that "[a]n order adjudging a minor to be a ward of the juvenile court shall not be deemed a conviction of a crime for any purpose," the subsequently enacted Three Strikes Law makes clear that a juvenile adjudication qualifies as a strike "[n]otwithstanding any other provision of law." (§ 1170.12, subd. (b)(3); see also § 667, subd. (d)(3) [providing that juvenile adjudications qualify as strikes "[n]otwithstanding any other law"].)

that other individuals were involved in the crime. When he was interviewed again on September 21, 2009, he said that Jeffrey Vaynberg and "Milo" had conspired with him to rob the facility. Vaynberg apparently had inside information about the facility because his mother had installed the credit card machine. According to appellant, Vaynberg had devised a plan for Milo to meet him outside the facility. The "clerk" at the facility was also going to be involved. Appellant went to the facility after he received a text message from Vaynberg stating something like "it's time to go." As appellant was entering the facility, he engaged in a "struggle or a fight" with Milo.

Appellant testified in his defense. He admitted that he brought a loaded 9-millimeter semiautomatic handgun to the medical marijuana facility. He also reiterated his claim that the robbery was part of a plan devised by Vaynberg. When appellant arrived at the facility that day he was met by Milo, whom he identified as Miles Woodward. Milo shoved appellant and told him that he did not want to be caught on video and had changed his mind about participating in the robbery. Appellant claimed that he took the gun out of his shorts after he began fighting with Milo because he did not want it to fall out. After appellant successfully entered the facility, he approached Mkrtchyan and demanded money. Mkrtchyan opened the register and appellant took out approximately $1,000 in cash. He also took marijuana and other items out of a safe he had ordered Mkrtchyan to open. As he was leaving the facility, the gun started to fall out of his pocket and discharged. He subsequently met with Vaynberg to divide the money and marijuana.

Appellant was shown a photograph of himself along with Vaynberg and another individual that was taken on the New Year's Eve prior to the robbery. Vaynberg is seen holding money in other photographs taken in appellant's kitchen and bathroom. Appellant was also shown photographs of text messages he sent to Vaynberg after his arrest in which he referred to Milo.

DISCUSSION

Appellant contends the evidence is insufficient to support his conviction for committing assault with a semiautomatic firearm against "Milo." We disagree.

When assessing a challenge to the sufficiency of the evidence, "we review the entire record in the light most favorable to the judgment to determine whether it contains substantial evidence—that is, evidence that is reasonable, credible, and of solid value—from which a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. [Citation.]" (*People v. Lindberg* (2008) 45 Cal.4th 1, 27.) We presume all facts in support of the judgment that the jury reasonably could deduce from the evidence, and do not reweigh the evidence, or evaluate the credibility of witnesses. (*People v. Ochoa* (1993) 6 Cal.4th 1199, 1206.) A judgment will be reversed only if there is no substantial evidence to support the verdict under any hypothesis. (*People v. Bolin* (1998) 18 Cal.4th 297, 331.)

"The elements of assault with a firearm, under section 245, subdivision (a)(2) include (1) an assault, which requires the intent to commit a battery, and (2) the foreseeable consequence of which is the infliction of great bodily injury upon the subject of the assault. [Citation.]" (*People v. Cook* (2001) 91 Cal.App.4th 910, 920.) Assault with a firearm is a general intent crime and does not require either a specific intent to injure or a subjective awareness of the risk that an injury might occur. (*People v. Colantuono* (1994) 7 Cal.4th 206, 215-216.) "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." (*People v. Williams* (2001) 26 Cal.4th 779, 788-790.) "[T]he crime of assault has always focused on the nature of the act and not on the perpetrator's specific intent." (*Id.* at p. 786.) "[A]ssault criminalizes conduct based on what *might* have happened – and not what *actually* happened . . . ." (*Id.* at p. 787.)

Substantial evidence supports appellant's conviction for assault with a semiautomatic firearm. "'Holding up a fist in a menacing manner, drawing a sword, or bayonet, presenting a gun at a person who is within its range, have been held to constitute an assault. So, any other similar act, accompanied by such circumstances as denote an intention existing at the time, coupled with a present ability of using actual violence against the person of another, will be considered an assault.' [Citations.]" (*People v.*

Colantuono, supra, 7 Cal.4th at p. 219, italics omitted.) The video of the incident, which was played in court and entered into evidence, shows appellant holding a firearm in his right hand while fighting with Milo. Moreover, appellant admitted that the gun was loaded and that he drew it after the fight began. Because appellant visibly and admittedly committed an act with a firearm accompanied by circumstances demonstrating both a present ability to commit violent injury and knowledge that said injury was a foreseeable consequence thereof, his claim of insufficient evidence fails.

Appellant argues that his conviction for assault with a firearm cannot stand because "the court's comments regarding the state of the evidence shows [*sic*] that the court was possibly entertaining a reasonable doubt as to whether" appellant was guilty of the crime. We are not persuaded. In the referenced comments, the court merely noted its observation that the video does not show appellant pointing the gun at the victim. As we have explained, such evidence is not essential to the conviction. Moreover, the court's comments were made in the context of a hypothetical based on appellant's proffered version of the events, i.e., "[h]e pulls [the gun] out because he's on the way to go rob the individual, as planned, and the other guy tries to pull him away, and he's struggling with the other guy, and he happens to have a gun in his hand." The court did not expressly find this version of the events to be true. Indeed, appellant's own testimony demonstrates that he drew the gun *after* he began fighting with Milo. The court ultimately found: "[A]though I think Mr. Woodward may have well been involved in it, I think the struggle, technically, is an assault. I'll take my view of the facts into consideration when I get to sentencing. But I do think it's an assault." Viewing the evidence in the light most favorable to the judgment, as we must (*People v. Lindberg*, *supra*, 45 Cal.4th at p. 27), there is no basis for us to disturb the court's finding that appellant was guilty of committing assault with a semiautomatic firearm.

The judgment is affirmed.

NOT TO BE PUBLISHED.

PERREN, J.

We concur:

GILBERT, P.J.

COFFEE, J.*

* Retired Associate Justice of the Court of Appeal, Second Appellate District, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Joseph A. Brandolino, Judge

Superior Court County of Los Angeles

A. William Bartz, Jr., under appointment by the Court of Appeal; Raymundo Cox, in pro. per., for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Susan Sullivan Pithey, Supervising Deputy Attorney General, Tasha G. Timbadia, Deputy Attorney General, for Plaintiff and Respondent.