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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.

GARY LENORY HUDSON,

Defendant and Appellant.

B278709

(Los Angeles County
Super. Ct. No. TA139329)

APPEAL from a judgment of the Superior Court of
Los Angeles County. John J. Lonergan, Jr., Judge. Affirmed.

Frank Duncan for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief
Assistant Attorney General, Lance E. Winters, Senior Assistant
Attorney General, Michael C. Keller and Eric J. Kohm, Deputy
Attorneys General, for Plaintiff and Respondent.

Defendant and appellant Gary L. Hudson appeals from a judgment following a jury trial that resulted in his conviction on three felony counts. A five-count information filed on April 6, 2016, charged him with: (1) assault on a peace officer with a semiautomatic firearm in violation of Penal Code section 245, subdivision (d)(2) (counts 1 through 3);¹ (2) possession of a firearm by a felon in violation of section 29800, subdivision (a)(1) (count 4); and (3) possession of ammunition by a person prohibited from possessing a firearm due to a prior conviction in violation of section 30305, subdivision (a)(1) (count 5). The jury found Hudson guilty on counts 4 and 5. On count 1, the jury found Hudson not guilty of the charged offense of assault on a peace officer but guilty of the lesser included offense of assault with a firearm in violation of section 245, subdivision (a)(2). The jury also found true the special allegation that Hudson used a firearm in committing the offense. The jury failed to reach a verdict on counts 2 and 3. The trial court sentenced Hudson to 9 years 4 months in state prison.

Hudson raises three issues on appeal. First, he argues that the evidence was insufficient for conviction on count 1. Second, he argues that the trial court erred in admitting evidence that the firearm Hudson used in committing the assault had an obliterated serial number. Third, he claims that the trial court denied his Sixth Amendment confrontation right by limiting his cross-examination of a testifying officer. We find no error with respect to any of these issues and therefore affirm.

¹ Subsequent undesignated statutory references are to the Penal Code.

FACTUAL BACKGROUND

1. *The Prosecution's Case-in-Chief*

On February 10, 2016, about 10 deputy sheriffs and other law enforcement officers were outside Hudson's residence for the purpose of serving an arrest warrant. About 11:20 a.m. Detective Adam Navarrette saw Hudson leave the house, look around, and walk back to the house. About 11:50 a.m. Hudson again left the house, walked across the street and got into his car, a gray Cadillac. He closed the door to the car.

The officers converged with several vehicles to box Hudson in and to make sure that he would not drive away. Navarrette could see inside Hudson's car. Navarrette approached the car and observed Hudson holding the driver's side of the steering wheel with his left hand. He had a gun in his right hand, which Navarrette recognized as a black semiautomatic weapon. Hudson had the gun pointed directly at Navarrette's partner, Detective Rodriguez.

Navarrette screamed, "Sheriff, Sheriff, Sheriff." Hudson continued looking at Rodriguez with Hudson's gun "facing" Rodriguez's head.

Navarrette thought that Hudson was about to shoot Rodriguez, so he fired three rounds at Hudson. While doing so, Navarrette tried to find cover behind the engine compartment of a police car. After getting cover, Navarrette saw Hudson turn with his gun still in his right hand. Hudson pointed the gun toward Navarrette and another detective, White, who was in the front driver's side of the police car. Navarrette again yelled, "Sheriff, Sheriff, Sheriff," and fired at Hudson four more times.

After Navarrette fired the second round of shots, he saw Hudson slouch to his right over the passenger seat. At that point

Hudson stopped pointing the gun at the officers. The officers told Hudson to show his hands, which he did. The officers instructed him to roll down the window, open the door from the outside, and step outside. Hudson complied.

Navarrette and several other officers took Hudson into custody. Navarrette's sergeant ran over and asked what had happened. Navarrette testified that Hudson said, "[H]ey, I had a gun. My nephew got shot' or something to that effect."

Detective Landreth searched Hudson and in his front pocket found a black magazine with bullets. The gun that Navarrette had seen Hudson pointing was in the floorboard of the driver's seat in Hudson's car. A sheriff department criminalist later retrieved the gun from the car and found a cartridge in the chamber.

2. *The Defense Case*

Hudson testified in his defense. He testified that, before he got into his car that morning, he saw a car with "real dark tint" parked in front of a fire hydrant. Hudson was concerned because the car looked suspicious and his cousin had been shot a couple of months previously while sitting in his car. Hudson started his car and "right after that someone started shooting at me." He had a gun in the car, which he picked up, but he did not point it. When someone started shooting at him, he "dropped and went for cover and tried to climb out the other side of the door." He did not hear anyone yell "Sheriff" until the shooting stopped.

The defense also called Detective Mezzano, who was part of the team that arrested Hudson. Mezzano was positioned at the rear of Hudson's residence, monitoring radio communications. He testified that he heard a radio transmission from Rodriguez stating that Hudson had left the house, and immediately after

that heard Navarrette over the radio saying, “He’s got a gun. He’s got a gun.” He then heard several faint gunshots.

3. *The Prosecution’s Rebuttal Case*

The prosecution introduced evidence of statements that Hudson made the day he was arrested. Detective Gonzalez testified that she interviewed Hudson after he was in custody. Hudson admitted that he had a gun in his hand, and physically demonstrated to Gonzalez that the gun was at “eye level.” Hudson told Gonzalez that “at no time did he point the gun at the police,” but he admitted that Navarrette “could see the gun that he was holding.”

DISCUSSION

1. *The Evidence Supports the Jury’s Verdict on Count One*

We review Hudson’s challenge to the sufficiency of the evidence on count one under the substantial evidence standard. Under that standard, an appellate court must “‘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.’” (*People v. Avila* (2009) 46 Cal.4th 680, 701, quoting *People v. Lindberg* (2008) 45 Cal.4th 1, 27.) In conducting such a review, the court “‘presumes in support of the judgment the existence of every fact the trier could reasonably deduce from the evidence.’” (*Avila*, at p. 701, quoting *People v. Kraft* (2000) 23 Cal.4th 978, 1053.) Reversal is not warranted “simply because the circumstances might also be reconciled with a contrary finding.” (*Lindberg*, at p. 27.) An appellate court “neither reweighs evidence nor reevaluates a witness’s credibility.” (*Ibid.*)

To prove the offense of assault with a deadly weapon under section 245, subdivision (a)(2), the prosecution was required to prove that Hudson: (1) did an act with a deadly weapon that by its nature would directly and probably result in the application of force to a person; (2) he did the act willfully; (3) when he acted, he was aware of facts that would lead a reasonable person to realize that his act by its nature would result in the application of force to someone; and (4) when he acted, he had the present ability to apply force with a deadly weapon. (*People v. Golde* (2008) 163 Cal.App.4th 101, 120–121.)

Evidence that a defendant pointed a loaded weapon at another person is sufficient to support a conviction for assault with a firearm. (*People v. Rodriguez* (1999) 20 Cal.4th 1, 12-14 (*Rodriguez*); *People v. Miceli* (2002) 104 Cal.App.4th 256, 269.) There was abundant evidence at trial showing that was what Hudson did.

There was testimony that Hudson pointed a weapon at Detective Rodriguez (who was the person identified as the victim in count 1). Navarrette testified that he saw Hudson sitting in his car holding a black semiautomatic gun that Hudson was pointing “directly” at Rodriguez. Navarrette observed the gun and screamed, “Sheriff, Sheriff, Sheriff,” when he was about five feet away from Hudson’s car window.

There was also evidence that the gun was loaded. After Hudson was taken into custody and searched, the officers found a magazine in Hudson’s pocket with bullets in it. A police criminalist examined the gun that was in Hudson’s car and found a round in the chamber, ready to be fired.

While this evidence alone is sufficient to sustain the conviction, Hudson’s own statements provide additional

corroboration. After he was arrested at the scene, Hudson admitted that he had a gun. During an interview later that same day, Hudson admitted that he had a gun in his hand and “signified with his hands” during the interview that he had held the gun at eye level. While he denied pointing his gun at the officers, Hudson told the interviewing officer that Navarrette could see the gun that Hudson was holding.

Hudson makes various arguments about why Navarrette was not credible and his testimony implausible, and cites his own testimony that contradicted Navarrette’s version of events. Such arguments concern the weight of the evidence rather than its sufficiency, and do not provide any basis to reverse the jury’s verdict. In reviewing the sufficiency of the evidence in favor of the verdict, we may not act as “an appellate fact finder.” (*Rodriguez, supra*, 20 Cal.4th at p. 12.) “In deciding the sufficiency of the evidence, a reviewing court resolves neither credibility issues nor evidentiary conflicts.” (*People v. Young* (2005) 34 Cal.4th 1149, 1181 (*Young*)). Rather, our task is complete when we identify evidence from which a reasonable jury could have reached the verdict that the jury here returned. (*Rodriguez*, at pp. 11–12.)

Navarrette’s testimony provides such evidence. Along with the testimony of the police criminalist concerning the loaded weapon recovered at the scene, Navarrette’s testimony that he saw Hudson point the weapon directly at Rodriguez constitutes direct evidence that Hudson was guilty of the charge on which he was convicted. Navarrette’s testimony was neither “physically impossible [n]or inherently improbable,” and it is therefore

sufficient to support the conviction. (*Young, supra*, 34 Cal.4th at p. 1181.)²

2. *The trial court did not err in admitting evidence concerning the obliterated serial number on Hudson's firearm*

Before the criminalist testified, Hudson objected to testimony concerning the destruction of serial numbers on the

² Hudson argues that there was a contradiction between the testimony of Navarrette and Mezzano that undermined Navarrette's credibility. As discussed above, such credibility contests are not for us to resolve. In resolving any contradiction, the jury was not *required* to reject all of Navarrette's testimony, as Hudson argues. In accord with CALCRIM No. 226, the jury was properly instructed here that "if you think the witness lied about some things, but told the truth about others, you may simply accept the part that you think is true and ignore the rest." In any event, the alleged inconsistent testimony concerned a collateral issue and was not necessarily contradictory. On direct examination by Hudson's counsel, Mezzano testified that he heard Navarrette over the radio saying, "He's got a gun, He's got a gun," and then heard several gunshots. He did not mention hearing Navarrette say, "Sheriff, Sheriff, Sheriff." Navarrette denied using the radio, and said that he yelled, "Sheriff, Sheriff, Sheriff," before he shot. Testimony about whether Navarrette yelled "Sheriff" was relevant to whether Hudson knew Rodriguez was a police officer for purposes of the primary charged offense of assault with a firearm on a police officer (on which Hudson was acquitted). However, it had nothing to do with whether Navarrette saw Hudson pointing his gun at Rodriguez. And, on cross-examination, Mezzano agreed that Navarrette would not have been able to both fire his rifle and push the button necessary to activate his radio. He admitted that he might have simply heard Navarrette speaking over someone else's radio.

weapon recovered from Hudson's car on the ground that "the prejudicial value is greater than any probative value." The trial court concluded that the weapon was "evidence the way it was found," and that the criminalist "can testify as to what they observed was on the weapon and based on their training and experience they can form whatever opinions they want." However, the court precluded testimony that Hudson was responsible for destroying the serial number, "unless they personally saw Mr. Hudson obliterate that serial number."

The criminalist, April Wong, testified that the Glock pistol she recovered from Hudson's car had "an obliterated serial number on the frame of the pistol." However, the "serial number is also available on two other parts of this particular firearm so there was a serial number on the slide and the barrel."

Hudson argues that this testimony was evidence of a "prior bad act" that should have been excluded under Evidence Code section 1101. Hudson forfeited this argument, as he did not object to the testimony at trial as inadmissible character evidence. Rather, he claimed only that its "prejudicial value is greater than any probative value." (See Evid. Code, § 353, subd. (a); *People v. Valdez* (2012) 55 Cal.4th 82, 130 [objections to gang-related evidence on other grounds were "insufficient to preserve for appeal the claim that the evidence was inadmissible under Evidence Code section 1101, subdivision (a)"].)

Hudson's argument that the testimony should have been excluded under Evidence Code section 352 is also unpersuasive. "We review a trial court order denying a defendant's motion to exclude evidence pursuant to Evidence Code section 352 for abuse of discretion." (*People v. Williams* (1997) 16 Cal.4th 153, 213.) In ruling on a motion to exclude under section 352, "a trial

court need not expressly weigh prejudice against probative value, or even expressly state it has done so. All that is required is that the record demonstrate the trial court understood and fulfilled its responsibilities under Evidence Code section 352.” (*Ibid.*)

The record shows that the trial court met its obligations here. As the trial court noted, the missing serial number was simply part of the description of the weapon that was found in Hudson’s car. And, as respondent points out, that description was relevant to identifying the gun that was in Hudson’s possession, which the prosecution was required to prove under section 29800, subdivision (a)(1).

The testimony was not unfairly prejudicial. Wong did not testify or suggest that Hudson was responsible for obliterating the serial number. Nor was the testimony likely to “‘evoke an emotional bias against the defendant as an individual.’” (*People v. Karis* (1988) 46 Cal.3d 612, 638.)

Hudson argues that the possession of a gun with an obliterated serial number suggested that Hudson was “a bad person, a criminal.” However, during his testimony, Hudson admitted that he had previously been convicted as a felon in possession of a firearm. He was charged in this case with the same offense. Thus, the jury was aware that Hudson’s *possession* of a weapon alone was unlawful. Any implication that the gun was illicitly obtained was unlikely to add any prejudice beyond what was established by the fact of possession itself, which was highly probative of the charged offense.

3. *The Trial Court Did Not Err in Limiting Hudson’s Cross-examination of Navarrette*

The trial court sustained a prosecution objection to Hudson’s cross-examination of Navarrette concerning the

direction in which his weapon discharged cartridge cases. Hudson argued that testimony about the direction of discharge and how far the cartridges “generally travel” was relevant to impeach Navarrette on the issue of where he was standing when he observed Hudson with a weapon. The trial court told Hudson that he could present evidence about where the casings were, and could make arguments at the appropriate time based upon the physical evidence. However, the court concluded that Navarrette’s belief about where his casings might have landed was speculation.

Hudson argues that this limitation on cross-examination amounted to a denial of his Sixth Amendment confrontation right. We disagree.

“The federal Constitution’s confrontation right is not absolute; it leaves room for trial courts to impose reasonable limits on a defense counsel’s cross-examination of a witness.” (*People v. Pearson* (2013) 56 Cal.4th 393, 454, quoting *People v. Sapp* (2003) 31 Cal.4th 240, 290.) These limits include curtailing examination into topics that are relevant, if at all, only to tangential impeachment material. “[R]eliance on Evidence Code section 352 to exclude evidence of marginal impeachment value that would entail the undue consumption of time generally does not contravene a defendant’s constitutional rights to confrontation and cross-examination.” (*Pearson*, at p. 455, quoting *People v. Brown* (2003) 31 Cal.4th 518, 545.)

That is what the trial court did here. Although Hudson argues that, if the cross-examination had been permitted, “[a]n expert witness could have been called to show the deputy had not told the truth as to how the shooting happened,” he does not explain why the cross-examination of Navarrette was necessary

for that purpose. The trial court did not preclude Hudson from presenting evidence and argument about where the casings were found.³ If expert testimony could have cast doubt on Navarrette's testimony about where he was standing when he saw Hudson point his gun at Rodriguez, such testimony could have been prepared based upon the physical evidence without exploring Navarrette's belief about how his gun ejected casings.

³ The trial court did not limit Hudson's cross-examination of the prosecution criminalist concerning the physical evidence at the crime scene. During Hudson's cross-examination of Wong, the trial court overruled the prosecutor's relevance objections to questions concerning the number and trajectory of bullets that Navarrette fired. The trial court explained that the court denied the objections because Navarrette "explained where he was, what he saw when he shot, and defense has a right to use the physical evidence and the ballistics to attack that testimony."

DISPOSITION

The judgment is affirmed.
NOT TO BE PUBLISHED.

LUI, J.

We concur:

CHANEY, Acting P. J.

JOHNSON, J.