Filed 6/18/18 P. v. Sanchez 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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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. TERRANCE SCOTT SANCHEZ, Defendant and Appellant.	B282334 (Los Angeles County Super. Ct. No. GA087986)

APPEAL from a judgment of the Superior Court of Los Angeles County, Teri Schwartz, Judge. Affirmed.

Stephen M. Hinkle, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Zee Rodriguez, Deputy Attorney General, for Plaintiff and Respondent.

A jury convicted defendant Terrance Scott Sanchez of possessing an assault weapon. There was no real dispute that defendant possessed the firearm at issue; the question for the jury was whether defendant knew or should have known that the weapon had a detachable magazine and therefore was an assault weapon. Defendant contends the evidence was insufficient to support the jury's conclusion that he did. We disagree and affirm the judgment of conviction.

PROCEDURAL HISTORY

An information charged defendant with one count of possessing an assault weapon in April 2011, in violation of former Penal Code section 12280, subdivision (b) ("former section 12280(b)").[1] The information also charged defendant with 18 counts of unlawfully transferring a firearm. (Former Pen. Code, § 12072, subd. (d).)[2] The trial court granted defendant's Penal Code section 995[3] motion to dismiss 11 of the unlawful transfer counts, and the prosecution later dismissed the remaining seven unlawful transfer counts pursuant to section 1385.

Defendant proceeded to trial on the sole remaining possession count. A jury found him guilty of violating former section 12280(b). The trial court suspended imposition of sentence and placed defendant on three years of formal felony probation. Defendant timely appealed.

---

[1] Effective January 1, 2012, former section 12280 (b) was recodified without substantive change at Penal Code section 30605. (See Stats. 2010, ch. 711, §§ 4, 6.)

[2] Effective January 1, 2012, former Penal Code section 12072, subdivision (b) was recodified without substantive change at Penal Code section 27545. (See Stats. 2010, ch. 711, §§ 4, 6.)

[3] All further statutory references are to the Penal Code unless otherwise indicated.

FACTUAL BACKGROUND

I. Prosecution Evidence

Los Angeles Police Department detectives Jerry Kowalsky and Matt Vandersall made contact with defendant in 2011, during their investigation of Aegis Trading Company, a gun store in Burbank. Kowalsky and Vandersall visited Aegis undercover four times during the course of the investigation; Kowalsky testified he saw defendant there twice.

During one of the visits, Kowalsky wore a hidden camera to capture a prearranged transaction in which he and Vandersall would buy high-capacity magazines from defendant. Video from the camera was admitted into evidence, as was a transcript of the recording. Defendant arrived at the store with disassembled magazines after a store employee telephoned him to let him know the detectives were there.

Kowalsky testified that defendant "gave us some details on how to assemble the magazines and how they work and some history about the magazines and how they are designed." For example, defendant showed the detectives how to distinguish metric magazines from standard ones—he told them to look for "half-moon tabs"—and assured them that the magazines he was selling were "good quality," not the "cheaper stuff" that would give the gun a "weird tilt." Kowalsky testified that defendant had "an impressive knowledge of firearms."

Defendant told the detectives he had done "a lot of research" on how to possess the magazines legally. He assured them that "nobody in California has ever been tried . . . for high-capacity mags." He nevertheless cautioned them not to "drill out the rivets" that restricted the magazine capacity to 10 rounds.

As the conversation progressed, defendant told the detectives that he owned a MSAR rifle (the gun at issue here), which he described as an "awesome gun" that was "the same thing as Steyr AUG." Defendant said he originally "got a couple" but sold two at Aegis a few months earlier. He told them that he kept "the two nicest," "most expensive ones" and "added like every accessory on there." Defendant also remarked that he had both AR-15 magazines and "clear mags" for the MSAR.

Vandersall subsequently authored a search warrant for defendant's residence. LAPD detective Benjamin Meda, a specially trained member of the "gun unit," was one of the officers who executed the search warrant. Meda testified that he recovered approximately 25 to 30 guns from safes in defendant's garage.[4] One of the guns was a MSAR XM17 rifle, which Meda testified "had a magazine inserted in the well." Meda testified that he was able to remove the magazine from the gun by using his finger to press the magazine release button. He used "[v]ery minimal force" and did not need to use tools to release the magazine.

Based on his training and experience in identifying assault weapons and studying relevant law, Meda concluded the MSAR XM17 met the statutory definition of an assault weapon. Meda testified that a firearm is an assault weapon if it is one of several enumerated models or if it is a semi-automatic centerfire gun with a detachable magazine and at least one additional "offending feature." The MSAR XM17 was not an enumerated model but was a semi-automatic centerfire gun with a detachable

[4] Meda also testified that he recovered approximately 40 high-capacity magazines and defendant's driver's license from the safes.

magazine and three offending features: a pistol grip, a forward pistol grip, and a flash suppressor.

Meda took custody of the MSAR XM17. At some point, he turned the gun over to Vandersall. Vandersall, another specially trained member of the gun unit, testified that the gun was in "[v]ery nice" condition and had no external damage when he received it. Like Meda, Vandersall concluded that the MSAR XM17 was a semi-automatic, centerfire rifle with a flash suppressor and forward hand grip. He further concluded that the magazine release operated with a press of his finger. Vandersall demonstrated the magazine release for the jury, removing the magazine from the rifle using only his finger. Like Meda, Vandersall opined that these characteristics qualified the MSAR as an assault weapon.

Vandersall testified that the magazine release had a "bullet button" on it. He explained that a bullet button "looks like a pencil tip" and prevents the magazine release from operating "until a tool was inserted into that metal tip depressing it." When a bullet button is operational, the magazine release cannot be operated without the use of a tool. The magazine therefore is not considered detachable.

Vandersall testified that the bullet button was not working when he inspected the MSAR XM17 in 2011. He was able to determine that the bullet button did not work "simply by looking at how it behaved when you pressed it"; he did not need to insert a magazine into the gun to reach this conclusion. Vandersall nevertheless explained that he also could tell the bullet button did not work when he inserted a magazine into the gun. He demonstrated for the jury and pointed out the "audible tone" indicative of the malfunctioning button.

Kowalsky, a third specially trained member of the gun unit, reached the same conclusion about the MSAR XM17 and performed a similar demonstration for the jury. He and Vandersall both testified that they were present on several occasions when defense experts inspected and tested the gun. Both Kowalsky and Vandersall testified that the bullet button did not work during any of these tests; the magazine always could be removed from the gun with a finger press and did not require tools. Neither Kowalsky nor Vandersall noticed any damage on the gun or magazine consistent with forcible removal of the magazine.

II. Defense Evidence

Forensic scientist Lance Martini testified as defendant's firearms expert. Martini examined the MSAR XM17 rifle in Kowalsky's presence. Martini testified that he was "prevented" from taking the gun apart and performing an "internal investigation." He concluded from his visual examination and "some external functional testing" that the gun was "in excellent condition," aside from the non-functioning bullet button. Martini testified that the bullet button "externally . . . appeared to be properly installed." Yet "the magazine release magazine catch [*sic*] operated normally without the necessity to deactivate the bullet button."

Martini testified that it was possible that "overuse" of the bullet button could cause it to malfunction. He identified two other possible causes, poor cut-down and fitting of the bullet button to the particular weapon and malfunctioning of the springs in the bullet button assembly. Martini agreed that "the gun would not be in compliance with California law" if the bullet button was "non-functional for whatever reason."

Martini was not able to determine when the bullet button became nonfunctional. He testified that an individual who loaded or fired the gun would "likely be aware" of the issue, but agreed that it was "a real possibility" that a gun owner who did not fire the gun "would not be aware of any issues related to the gun." Based on the gun's condition, Martini concluded it "had been fired minimally." This was consistent with the gun being a "safe queen," or valued collector's item; Martini opined that the value of such a gun may diminish if it is used. He also noted that the gun had a "sales tag of some type" on it when he examined it.

On cross-examination, Martini conceded that one would not need to fire the MSAR XM17 to determine whether the bullet button was functional. He also agreed that someone buying a gun "like this" would "[p]robably," but "not necessarily" handle the gun even if he or she did not fire it. Martini could not tell whether the gun had been fired after it was factory-tested. He also could not tell whether the price tag, which was tied on a string, had ever been removed. He did not see any damage consistent with forcibly removing a magazine from the magazine well. In his capacity as a gun safety instructor, Martini taught his students that it was important to know and comply with the laws governing firearms. He further taught them that it was their responsibility to ensure that their weapons operated correctly. Martini testified that the owner of any gun, including an assault weapon, bore the ultimate responsibility for keeping the gun in compliance with the law. However, it was possible that a gun that did not comply with the law would have some cachet with collectors and command a higher value.

Defendant testified that guns were "a big hobby and passion" of his. He began shooting with his father when he was

about four or five years old, got his first gun when he was 12 or 13, and purchased his first gun when he turned 18. He was not employed in the firearms industry, but participated in competitions, "gave courses" on firearms, and "helped out at F.F.L. gun shops."[5] He assisted with "building gassers and AR-15s for different military and law enforcement agencies," and "trade[d his] labor for parts like barrels, et cetera, and stuff." He also traded firearms with individuals he met online and sold firearms on consignment at various stores, including Aegis.

Defendant recalled meeting Kowalsky and Vandersall at Aegis and selling them magazines. He purposely did not assemble the magazines for them because he believed that would be against the law. Defendant explained that he tried his "best to understand [California gun] laws and try to inform people to the best of my knowledge about them" to ensure no one got into trouble.

Defendant collected guns and had a few "safe queens," which he explained were weapons "that you have pride in because of [their] rarity, antiquity" and "don't want to shoot." He considered the MSAR XM17 a "safe queen" and kept it locked in a safe in his garage. Defendant did not store the gun with a magazine in the well; he explained that it would not fit in the safe that way. The trial court admitted into evidence photographs that the parties stipulated were taken at the time of the search. Defendant pointed out the MSAR XM17 in the photographs and described its empty magazine well for the jury.

Defendant testified that he purchased the MSAR XM17 brand new from a gun shop in November 2010. He had

---

[5] Defendant explained that an "F.F.L." is a federal firearms license.

researched the gun beforehand and decided to purchase it because he liked various features it had. In particular, defendant thought it was "cool" that "it accepted AR-15 magazines." He knew that the MSAR XM17 was similar to a firearm on the enumerated list of assault weapons and had several "offending features," but believed it was "California compliant" because of the bullet button. He knew that the gun would be illegal if the bullet button did not function.

At the time defendant purchased the gun, the salespeople "went over the safety features" with him and showed him "how the bullet button worked." During that five-minute demonstration, the bullet button worked; the salesperson used a special tool to release the magazine. Defendant did not inspect the gun further before taking it home and immediately securing it in his safe.

Even though he "like[d] having experience with every type of firearm and shooting it and understanding the knowledge of its functionality and how it shoots," defendant never removed the MSAR XM17 from his safe. It was the only one of his guns that he did not remove. He never inserted a magazine into the gun. He did not want it to diminish in value.

Defendant testified that several of the guns the LAPD seized from his safes "had nicks and scratches on them" when they were returned. His attorney argued during closing that LAPD also damaged the bullet button during the search.

DISCUSSION

Former section 12280(b) made it a crime to possess "any assault weapon" within the state of California. "Assault weapon" was defined in two separate sections of the Penal Code. Former

section 12276[6] included a list of specific weapons, such as the Beretta AR-70 and the Steyr AUG. (Former § 12276, subds. (a)(3), (a)(15).) The list did not include the MSAR XM17. (See generally former § 12276.) Former section 12276.1[7] was more expansive, however, and defined assault weapons by their characteristics. (See former § 12276.1.) As is relevant here, it defined "assault weapon" to be "[a] semiautomatic, centerfire rifle that has the capacity to accept a detachable magazine and any one of the following" features, including "[a] pistol grip that protrudes conspicuously beneath the action of the weapon," "[a] flash suppressor," and "[a] forward pistol grip." (Former § 12276.1, subd. (a)(1).) A functioning bullet button rendered the magazine non-detachable.

To prove that a defendant committed the crime of possessing an assault weapon, "the People bear the burden of proving the defendant *knew or reasonably should have known* the firearm possessed the characteristics bringing it within the [statutory definition]." (*In re Jorge M.* (2000) 23 Cal.4th 866, 887 (*Jorge M.*)) Defendant's sole contention on appeal is that the prosecution failed to carry this burden in his case.

"The question of the defendant's knowledge or negligence is, of course, for the trier of fact to determine, and depends heavily on the individual facts establishing possession in each case." (*Id.* at pp. 887-888.) A defendant's familiarity with the weapon in question or firearms in general is a relevant consideration. (*Id.* at

---

[6] Effective January 1, 2012, former section 12276 was recodified without substantive change at section 30510. (See Stats. 2010, ch. 711, §§ 4, 6.)

[7] Effective January 1, 2012, former section 12276.1 was recodified without substantive change at section 30515. (See Stats. 2010, ch. 711, §§ 4, 6.)

p. 885.) "Generally speaking, a person who has had substantial and unhindered possession of a semiautomatic firearm reasonably would be expected to know whether or not it is of a make or model listed in [former] section 12276 or has the clearly discernable features described in [former] section 12276.1. At the same time, any duty of reasonable inquiry must be measured by the circumstances of possession; one who was in possession for only a short time, or whose possession was merely constructive, and only secondary to that of other possessors, may have a viable argument for reasonable doubt as to whether he or she either knew or should have known the firearm's characteristics." (*Id.* at p. 888.) "[I]n many circumstances a trier of fact properly could find that a person who knowingly possesses a semiautomatic firearm reasonably should have investigated and determined the gun's characteristics. The exceptional cases in which the salient characteristics of the firearm are extraordinarily obscure, or the defendant's possession of the gun was so fleeting or attenuated as not to afford an opportunity for examination, would appear to be instances of largely innocent possession that . . . the Legislature presumably did not intend to be subject to felony punishment." (*Id.* at p. 885.)

"When considering a challenge to the sufficiency of the evidence to support a conviction, 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 the trier of fact] could find the defendant guilty beyond a reasonable doubt." (*People v. Lindberg*, (2008) 45 Cal.4th 1, 27.) "We presume in support of the judgment the existence of every fact the trier of fact reasonably could infer from the evidence. [Citation.] If the

circumstances reasonably justify the trier of fact's findings, reversal of the judgment is not warranted simply because the circumstances might also reasonably be reconciled with a contrary finding." (*Ibid.*) We do not reweigh the evidence or reassess witness credibility. (*Ibid.*)

There was sufficient evidence from which the jury could conclude defendant knew or should have known the magazine on the MSAR XM17 was detachable because the bullet button did not work. Defendant acknowledges that the evidence showed he was a gun enthusiast with an impressive knowledge of firearms: he built them, traded them, and "gave courses" on them. The evidence further demonstrated that he was quite knowledgeable about the MSAR XM17 specifically. He researched the model and knew that it was analogous to the banned Steyr AUG; he bought and sold several MSAR XM17s, keeping the most valuable for himself; he procured and added accessories; and he was familiar with and owned various types of magazines the gun could accommodate. In addition, the evidence showed that defendant was knowledgeable about the laws governing firearms. He told the detectives he spent a lot of time researching how to possess high capacity magazines legally and shared some of his insights with them.

Defendant had the MSAR XM17 in his exclusive possession for several months, a lengthy amount of time during which the jury reasonably could conclude he handled the gun and should have discovered the defective bullet button. Multiple witnesses with substantial firearms experience—including defendant's expert—testified that the problem with the bullet button was evident from simple manipulation of the gun's magazine release. Defendant told the detectives that he added accessories to the

gun, from which the jury could infer he handled the weapon. He also told them that one of his favorite features of the gun was its capacity to accommodate different types of magazines; it would be reasonable to infer that he would have tried that feature before securing the gun in his safe. In addition, Meda testified that the gun had a magazine inserted when he recovered it from the safe, and other witnesses demonstrated for the jury the "audible tone" produced by the nonfunctional bullet button when a magazine was inserted into the gun. All of this evidence provided an ample basis from which to conclude defendant knew or should have known that the magazine was detachable, even if he had not fired the weapon. Indeed, defendant's expert testified that the owner of a gun bore the ultimate responsibility for ensuring it complied with the law.

Defendant nevertheless contends "the prosecution's position is nothing more than speculation" because there was no evidence disputing his testimony that the bullet button worked when he got the gun or that he treated the gun as an unhandled "safe queen." He further asserts that the photograph from the search "prove[d] definitively" that the MSAR XM17 was found with no magazine inserted. He also calls into question the veracity of Meda's testimony, based on the photograph and the improbability that defendant would keep his driver's license locked in a safe in his garage.

These assertions present questions of credibility that were within the jury's purview. "Resolution of conflicts and inconsistencies in the testimony is the exclusive province of the trier of fact. [Citation.] Moreover, unless the testimony is physically impossible or inherently improbable, testimony of a single witness is sufficient to support a conviction." (*People v.*

Young (2005) 34 Cal.4th 1149, 1181.) Furthermore, "the fact that a witness's testimony is false in part does not preclude a trier of fact from accepting as true the rest of it." (*People v. Maxwell* (1979) 94 Cal.App.3d 562, 577.) Thus, even if the jury disbelieved Meda's testimony about the location of defendant's driver's license, which was not physically impossible, it could have credited his other testimony. Other possibilities defendant ignores are that the jury disbelieved his testimony that the bullet button worked when he purchased the gun or that he never handled the weapon. The jury also could have interpreted the photograph differently than defendant did. Which evidence to believe and how much weight to afford the evidence were questions for the jury, and "'we must accord due deference to the trier of fact and not substitute our evaluation of a witness's credibility for that of the fact finder. [Citations.]' [Citation.]" (*People v. Ochoa* (1993) 6 Cal.4th 1199, 1206.)

DISPOSITION

The judgment of the trial court is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

COLLINS, J.

We concur:

EPSTEIN, P. J. WILLHITE, J.