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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

JAMES PRESSLEY,

Defendant and Appellant.

2d Crim. No. B236064
(Super. Ct. No. PA068724)
(Los Angeles County)

James Pressley appeals from the judgment entered following his conviction by a jury of five counts of second degree robbery (Pen. Code, §§ 211, 212.5),¹ six counts of possession of a firearm by a felon (§ 12021, subd. (a)(1)), and one count of second degree burglary. (§§ 459, 460.) As to each robbery count, the jury found true an allegation that appellant had personally used a firearm. (§ 12022.53, subd. (b).) Appellant admitted one prior serious felony conviction (§ 667, subd. (a)(1)) and one prior serious or violent felony conviction within the meaning of California's "Three Strikes" law. (§§ 1170.12, subds.(a)-(d); 667, subds. (b)-(i).) He was sentenced to prison for 45 years.

¹ All statutory references are to the Penal Code unless otherwise stated.

Appellant contends that (1) the evidence is insufficient to support his conviction on one of the counts of possession of a firearm by a felon, (2) the trial court abused its discretion in refusing to allow the impeachment of a prosecution witness with prior felony convictions; and (3) the prosecutor committed misconduct during closing argument. We affirm.

Facts

The robberies occurred at cigarette stores and a convenience store. Victim Amir Rahemipour identified appellant as the perpetrator of one of the robberies. Rahemipour testified that appellant had used a black handgun with a wood handle. A handgun marked as People's No. 1 was approximately the same size as appellant's handgun and had a similar handle.

Joe Macias witnessed a second robbery. Macias identified appellant as the robber and People's No. 1 as the handgun that appellant had used during the robbery.

Najim Marghih was the victim of a third robbery. The robber used a small "old style gun with [a] wood handle." People's No. 1 looked "very much the same" as the robber's gun. Marghih remembered that the robber's gun was black with a wood handle. Marghih was unable to identify the robber because he was wearing a hat, sunglasses, and a fake beard.

Ranjodh Singh was the victim of a fourth robbery. The robber was wearing a fake beard and a cap. Singh was "certain" that People's No. 1 was the gun used by the robber. The robber left his cell phone on the premises, and Singh gave it to the police. The cell phone contained photographs of appellant.

The victim of a fifth robbery was Saadi Salmoon. The robber was wearing a hat and a fake beard or mustache. The robber used a small, black handgun with a wood handle. People's No. 1 resembled the handgun used by the robber.

After the commission of the five robberies, Officer Mike Mitchell made a traffic stop of a vehicle that appellant was driving. Danielle Eason was the only

passenger. She was the owner of the vehicle. Mitchell found People's No. 1 inside the trunk. The police were unable to lift fingerprints from the handgun.

Sufficiency of the Evidence

Based on Officer Mitchell's discovery of People's No. 1 inside the trunk of the vehicle, appellant was charged in count 12 with being a felon in possession of a firearm. (§ 12021, subd. (a)(1).) Appellant contends that the evidence is insufficient to show that he possessed People's No. 1 because the vehicle belonged to Danielle Eason and was occupied by her at the time of the traffic stop.

"In assessing the sufficiency of the evidence, we review the entire record in the light most favorable to the judgment to determine whether it discloses evidence that is reasonable, credible, and of solid value such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. [Citations.] Reversal on this ground 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.)

Appellant overlooks substantial evidence linking him to People's No. 1. Witnesses testified that appellant had used People's No. 1 in prior robberies. Accordingly, a reasonable trier of fact could find appellant guilty beyond a reasonable doubt.

Impeachment

The trial court refused to allow appellant to impeach Joe Macias with the following prior felony convictions: a 1980 conviction of second degree commercial burglary and 1993 convictions "for transporting a controlled substance . . . and felony evading." The trial court excluded the convictions because they were remote in time. Appellant contends that the trial court abused its discretion because Macias "had not led a blameless life" since the 1993 convictions. Macias's only other conviction was for misdemeanor disorderly conduct in 2010.

" 'Sections 788 and 352 of the Evidence Code control the admission of felony convictions for impeachment. Together, they provide discretion to the trial judge to exclude evidence of prior felony convictions when their probative value on credibility is outweighed by the risk of undue prejudice. [Citation.]' [Citation.]" (*People v. Mendoza* (2000) 78 Cal.App.4th 918, 925.) One of the factors that the trial court should consider is "the nearness or remoteness in time of a prior conviction." (*Ibid.*) An old conviction may have little probative value. However, "convictions remote in time are not automatically inadmissible for impeachment purposes. Even a fairly remote prior conviction is admissible if the defendant has not led a legally blameless life since the time of the remote prior. [Citations.]" (*Id.*, at pp. 925-926.)

The trial court did not abuse its discretion in excluding the 1980 and 1993 convictions on the ground that they were remote in time. Macias had apparently led a legally blameless life for 17 years after the 1993 convictions. In 2010 he was convicted of a minor misdemeanor offense - disorderly conduct - that does not reflect adversely on his honesty or veracity. The trial court could have reasonably concluded that, in view of the age of the prior felony convictions, any probative value they had was outweighed by the danger that their admission would cause undue prejudice. Because the trial court did not abuse its discretion, we reject appellant's claim that the exclusion of the prior felony convictions "violated his federal constitutional 14th amendment right to due process."

Prosecutorial Misconduct

During closing argument, the prosecutor attempted to explain why eyewitnesses had not seen a tattoo on appellant's right hand: "[T]he witness is focusing on the gun. It is called weapons [focus], when somebody points a gun at you. That's where your eyes are going because that's the immediate threat." At this point defense counsel objected, but did not state the grounds for his objection. The trial court overruled the objection.

Appellant contends that the prosecutor committed misconduct because his remarks were "unsupported by any expert testimony about the factors that influence eyewitness identification." Appellant has forfeited the contention because his counsel failed to object on this basis at trial. " '[A] defendant may not complain on appeal of prosecutorial misconduct unless in a timely fashion—and on the same ground—the defendant made an assignment of misconduct and requested that the jury be admonished to disregard the impropriety. [Citation.]' [Citation.]" (*People v. Riggs* (2008) 44 Cal.4th 248, 298.)

Appellant claims that his counsel was ineffective for failing to properly object to the alleged misconduct. The standard for evaluating a claim of ineffective counsel is enunciated in *Strickland v. Washington* (1984) 466 U.S. 668 [104 S.Ct. 2052, 80 L.Ed.2d 674]. "First, [appellant] must show that counsel's performance was deficient. . . . Second, [appellant] must show that the deficient performance prejudiced the defense." (*Id.*, 466 U.S. at p. 687.)

Appellant has failed to show that trial counsel was deficient. To establish deficient performance, "the defendant must show that counsel's representation fell below an objective standard of reasonableness." (*Strickland v. Washington, supra*, 466 U.S. at p. 688.) Competent counsel could have reasonably concluded that the prosecutor's remarks were permissible because it is common knowledge that a person threatened with a deadly weapon will focus on the weapon. "[A] prosecutor ' "may state matters not in evidence that are common knowledge, or are illustrations drawn from common experience" [Citation.]' [Citation.]" (*People v. Cunningham* (2001) 25 Cal.4th 926, 1026.)

Even if counsel were deficient, appellant has failed to show "that there is a reasonable probability that, but for counsel's [alleged] unprofessional errors, the result of the proceeding would have been different." (*Strickland v. Washington, supra*, 466 U.S. at p. 694.) The prosecutor's explanation of "weapon focus" arguably benefited appellant by undermining the accuracy of eyewitness identifications of

appellant. (See *People v. Arias* (2010) 182 Cal.App.4th 1009, 1015 [defense expert testified that ability to make an accurate identification may be compromised by "'weapon focus' " because "when a weapon is present, the victim will tend to attend more closely to the weapon than to the criminal's face"]..)

Disposition

The judgment is affirmed.

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YEGAN, J.

We concur:

GILBERT, P.J.

PERREN, J.

David B. Gelfound, Judge
Superior Court County of Los Angeles

Julie Schumer, under appointment by the Court of Appeal, for
Defendant and Appellant.

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