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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. NARCISO RAMIREZ, Defendant and Appellant.	B271540 (Los Angeles County Super. Ct. No. TA137658)

APPEAL from a judgment of the Superior Court of Los Angeles County, Allen Joseph Webster, Jr., Judge. Affirmed.

Carlos Ramirez, 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, Michael C. Keller, Deputy Attorney General, for Plaintiff and Respondent.

Defendant and appellant Narciso Ramirez raises an evidentiary issue following his conviction of attempted voluntary manslaughter with firearm use and great bodily injury findings. For the reasons discussed below, the judgment is affirmed.

BACKGROUND

Viewed in accordance with the usual rules of appellate review (*People v. Ochoa* (1993) 6 Cal.4th 1199, 1206), the evidence established the following.

1. *Prosecution evidence*.

a. *Sugey Archuleta*

Sugey Archuleta and defendant have two children together. Archuleta had been living with defendant and his family, including defendant's father, Narciso Ramirez Sr. (Ramirez Sr.), for about five years.

Archuleta testified that defendant used drugs and, beginning in May or June of 2015, became increasingly distrustful of Archuleta. He came to believe she was cheating on him with both his father and some of their neighbors. Defendant even believed Archuleta had conceived his youngest son with Ramirez Sr.

On July 5, 2015, defendant took Archuleta and the children to a hotel to celebrate the Fourth of July holiday. Defendant, who was using crystal methamphetamine, became paranoid, searched through Archuleta's cell phone, and accused her of cheating on him. Defendant also believed he was being followed or that Archuleta was going to do something to him.

While having dinner at a restaurant the next night, July 6, defendant asked Archuleta if she had been involved with his father. After Archuleta denied that anything had happened between them, defendant got up, made a telephone call, and then

told Archuleta they were leaving. Defendant smoked some crystal methamphetamine and said he was going to confront his father about having an affair with Archuleta.

Defendant drove the family away from the restaurant, then parked and told Archuleta to get out of the car. Defendant and Archuleta walked to a nearby intersection where they saw Ramirez Sr. walking toward them, talking on a cell phone. Ramirez Sr. turned the phone off and defendant greeted him. Defendant said, " 'I just want to ask you something.' " Defendant asked Ramirez Sr. if he was having an affair with Archuleta. Defendant then took a gun from his waistband and shot his father several times in the chest from a few feet away. Archuleta testified she had seen defendant's gun before, but not that day. After being shot, Ramirez Sr. said, " 'hijo (son), hijo.' "

Archuleta testified that right after shooting Ramirez Sr., defendant drove off with her and the children. Defendant said "he didn't have a soul anymore because of what he [had] done." The family did not return to the hotel where they had been staying, but drove north on Highway 5. Defendant said he was "just bad" for Archuleta. After driving for three hours, defendant stopped at a new motel. Archuleta believed defendant took more drugs in the motel bathroom. The following morning, defendant told Archuleta to take the car and drive back to Los Angeles. Archuleta and the children got into the car, but Archuleta "had a feeling," so she returned to the motel room and begged defendant not to kill himself. Defendant said, "okay," got back in the car, and continued driving. At some point, the family stopped in Tehachapi, where defendant was arrested.

b. *Narciso Ramirez Sr.*

Ramirez Sr. testified that in the month before the shooting, defendant had on several occasions accused him of having an affair with Archuleta. Ramirez Sr. testified the accusation was untrue. On July 6, 2015, Ramirez Sr. was having dinner with a friend when he received a call from defendant, who said he needed to see him. Ramirez Sr. left the restaurant and walked to the meeting place. He described what happened as he approached defendant and Archuleta at the designated intersection:

"A. [Defendant] started to make allegations as to whether or not I had been with his wife.

"Q. Did you answer him back?

"A. Yes. It made me angry because there had already been several occasions where he was making those allegations.

"Q. What did you say?

"A. I told him I was already tired of him making the allegation."

Defendant grabbed the cell phone out of Ramirez Sr.'s hand. Defendant said his mother told him that Archuleta and Ramirez Sr. had been together at a hotel a day earlier. Defendant then pulled a gun from his waistband and shot Ramirez Sr. in the upper right chest and under his arm. A third bullet apparently missed Ramirez Sr. entirely. Ramirez Sr. fell to the ground. When Ramirez Sr.'s friend arrived, Ramirez Sr. "told him it was my son."

c. *Detective Jason Bates*

On July 8, 2015, Los Angeles County Sheriff's Department Detectives Jason Bates and Antonio Garcia interviewed defendant. Bates testified that he asked whether defendant had

shot his father, and defendant admitted that he did. Defendant said he did it because he believed Ramirez Sr. was involved in a sexual relationship with Archuleta. Defendant said he asked his father to meet him on the corner of Barlow and Martin Luther King Boulevard. He asked to see his father's phone, and then asked whether Ramirez Sr. had a relationship with Archuleta. According to defendant, Ramirez Sr. "raised up his arms and said, 'You're crazy. You're crazy.' His father took one step off the sidewalk, [defendant] removed a black handgun from his waistband, pointed it at his father and shot him one time. His father fell to the ground. [Defendant] shot two additional shots into the air."

Ramirez Sr. collapsed, and defendant said to Archuleta, " 'Let's go. Let's go. Run. Run.' " They ran back to their car and drove north. Defendant said he had purchased the gun he used to shoot his father "off the street" about a month earlier. Defendant told Detective Bates that he "felt bad for what he did" and "wanted to come clean."

Defendant told the officers that he and his father sold drugs, and that his father was known to carry guns. Defendant said he had not meant to kill his father, but only to hurt him.

2. *Defense evidence.*

The defendant did not testify or present any evidence on his behalf.

3. *Trial outcome.*

The jury convicted defendant, who had been charged with attempted murder, of the lesser included offense of attempted voluntary manslaughter. The jury also found true firearm use and great bodily injury enhancement allegations. The trial court sentenced defendant to prison for 18 years 6 months.

DISCUSSION

Defendant contends the trial court prejudicially erred by refusing to allow him to impeach Ramirez Sr. with a prior conviction for possession of a concealed weapon in a vehicle. For the reasons that follow, we disagree and affirm.

1. *Proceedings below.*

Just after Ramirez Sr. took the stand and began testifying, the trial court heard argument on a defense motion to impeach him with a 1999 misdemeanor conviction for possessing a concealed weapon in a vehicle.[1] The trial court remarked on the remoteness of the prior conviction, saying, "That's 17 years ago," and expressed doubt that it even qualified as a crime of moral turpitude. The prosecutor pointed out that the prior conviction was a misdemeanor, not a felony.

After further discussion, the court denied the motion, explaining its ruling as follows:

"Well, it just seems to the court, first of all, the conviction occurred in 1999, at which time [defendant] was 10 [years old]. So then, it doesn't seem to me that we really have a real issue with respect to violence, threats and intimidation by [a parent] against [his child]. And it [is] a misdemeanor. And there [does not] seem to be an issue with respect to any sort of self-defense, nothing here that suggests that Mr. Ramirez Sr. was in possession of any sort of weapon. He walked outside, talked to

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[1] Ramirez Sr.'s 1999 conviction was for a violation of Penal Code former section 12025, subdivision (a). "Effective January 1, 2012, former section 12025, subdivision (a)(1) was recodified, without substantive change, as section 25400, subdivision (a)(1). [Citations.]" (*People v. Aguilar* (2016) 245 Cal.App.4th 1010, 1012, fn. 1.)

his son, and then according to at least the evidence so far, he was shot not once but three times. And he said hijo [son], hijo . . . and that was about it.

"So there's nothing that would suggest that there was any threats, danger or harm or self-defense or that Mr. Ramirez, Sr., had [a] proclivity to carry a weapon and would use it against his son. So there is nothing.

"First of all, the law doesn't support this particular prior as a[n] impeachable prior. And two, the evidence doesn't support that there was anything out of the ordinary with respect to Mr. Ramirez's behavior or body language that suggests any sort of aggressive behavior towards [defendant]."

2. *Any error in excluding the prior conviction evidence was harmless.*

We assume solely for the sake of argument that Ramirez Sr.'s prior misdemeanor conviction evidenced moral turpitude and therefore bore on his credibility as a prosecution witness. We further assume that the trial court therefore erred in excluding evidence of the conviction. Nevertheless, as we now discuss, any error was harmless.

Ramirez Sr. testified in relevant part that defendant initiated the meeting with Ramirez Sr. and shot him three times after asking if he was involved sexually with Archuleta. We believe it unlikely that Ramirez Sr.'s 17-year-old misdemeanor conviction for possession of a gun would have caused the jury to doubt the truth of Ramirez Sr.'s testimony. But even if the jury *had* completely disregarded Ramirez Sr.'s testimony, it is not reasonably probable defendant would have obtained a more favorable result because Ramirez Sr.'s testimony was corroborated by other evidence, and there was no evidence to the

contrary. As relevant here, Archuleta testified that defendant set up the meeting with Ramirez Sr., asked Ramirez Sr. if he was having an affair with Archuleta, shot Ramirez Sr., fled immediately after the shooting, and expressed remorse for what he had done. Detective Bates's testimony was of similar effect: He testified that defendant admitted shooting Ramirez Sr., admitted fleeing the scene of the shooting, and said he "felt bad for what he did" and "wanted to come clean." Defendant did not testify or present any evidence on his own behalf. Under these circumstances, even if the jury had given *no* weight to Ramirez Sr.'s testimony, it is not reasonably probable that defendant would have achieved a better result. (Cf. *People v. Collins* (1986) 42 Cal.3d 378, 391, fn. omitted [prejudicial error determined by whether "it is reasonably probable that a result more favorable to the defendant would . . . have been reached in the absence of the . . . admission of the prior convictions"]; accord *People v. Marquez* (1986) 188 Cal.App.3d 363, 369 [error in admitting or excluding evidence of witness's prior conviction is tested by the *Watson*[2] test, i.e., appellant must show it is "reasonably probable that a result more favorable to appellant would have resulted in the absence of" the error].)

We also reject defendant's contention that the trial court's erroneous exclusion of Ramirez Sr.'s prior conviction "deprived [defendant] of the opportunity to explore his father's propensity to carry concealed weapons and eviscerated [defendant's] theory of self-defense." As the Attorney General properly notes, there was no evidence that defendant knew about Ramirez Sr.'s prior conviction, and thus the conviction could have had no bearing on

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[2] *People v. Watson* (1956) 46 Cal.2d 818.

the jury's findings regarding defendant's state of mind when he shot Ramirez Sr. (E.g., *People v. Cash* (2002) 28 Cal.4th 703, 726 [victim's violent debt collection practices "were not relevant to show defendant's state of mind at the time he killed [the victim] unless defendant knew of those practices"].) Moreover, there was no evidence to support a finding that defendant believed, reasonably or unreasonably, that Ramirez Sr. presented a physical threat to him at the time of the shooting. To the contrary, all of the evidence showed that defendant shot Ramirez Sr. because he believed Ramirez Sr. had a sexual relationship with Archuleta.

On this record, therefore, it is not reasonably probable that defendant would have achieved a better result had the jury learned that Ramirez Sr. had been convicted for possession of a concealed weapon in a vehicle 17 years earlier.

3. *Defendant is not entitled to remand pursuant to Senate Bill 620*

On October 11, 2017, the Governor signed Senate Bill 620. As relevant here, Senate Bill 620 provides that effective January 1, 2018, section 12022.5, subdivision (c) is amended to permit the trial court to strike a firearm enhancement, as follows: "The court may, in the interest of justice pursuant to Section 1385 and at the time of sentencing, strike or dismiss an enhancement otherwise required to be imposed by this section. The authority provided by this subdivision applies to any resentencing that may occur pursuant to any other law."

In supplemental briefing, defendant urges that because his case is not yet final, it must be remanded to the trial court for resentencing under the amended section 12022.5, subdivision (c). We do not agree. Even if the amended section applies

retroactively to this case—an issue we do not reach—remand would not be appropriate because the sentencing court clearly indicated that it "would not, in any event, have exercised its discretion to strike the allegations." (*People v. Gutierrez* (1996) 48 Cal.App.4th 1894, 1896 [remand not required where trial court's comments at sentencing and sentence itself show that "no purpose" would be served by a remand].) In the present case, after finding that the circumstances in aggravation outweighed those in mitigation, the trial court selected (1) the upper term of five years and six months for defendant's attempted voluntary manslaughter conviction, and (2) the upper term of 10 years based on defendant's use of a firearm. We agree with the Attorney General that given the court's decision to impose the upper term on both the substantive charge and the firearm enhancement, there is no reasonable probability that it would strike the firearm enhancement if given the opportunity on remand. Thus, "[u]nder the circumstances, no purpose would be served in remanding for reconsideration." (*Ibid.*)

DISPOSITION

The judgment is affirmed.

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EDMON, P. J.

We concur:

LAVIN, J.

STONE, J.*

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