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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE,

B281561

Plaintiff and Respondent,

(Los Angeles County
Super. Ct. No. BA442921)

v.

KENDON RAY PARKS,

Defendant and Appellant.

APPEAL from the judgment of the Superior Court of Los Angeles County. Lisa B. Lench, Judge. Affirmed.

Jennifer Hansen, 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, Senior Assistant Attorney General, Paul M. Roadarmel, Jr., and John R. Prosser, Deputy Attorneys General, for Plaintiff and Respondent.

* * * * *

Defendant and appellant Kendon Ray Parks was convicted by jury of three gun-related charges, including one count of carrying a loaded firearm in a vehicle. The sole issue on appeal is whether there was substantial evidence defendant was “carrying” a loaded firearm in a vehicle within the meaning of Penal Code section 25850.

The record reflects that defendant was in the front passenger seat of a vehicle being pursued by law enforcement officers. After a high-speed pursuit, the car eventually stopped, and defendant was apprehended shortly after fleeing the car. A loaded AR-15 assault weapon was found in the front passenger compartment of the car. We conclude there is substantial evidence defendant was carrying a loaded firearm in a vehicle, and therefore affirm.

FACTUAL AND PROCEDURAL BACKGROUND

On January 11, 2016, around 11:20 p.m., Officer Brett Ehring of the Los Angeles Police Department was on patrol with his partner, Rodrigo Lopez, near the intersection of Normandie Avenue and Vernon Avenue. They received a radio call to be on the lookout for a white four-door sedan. Shortly thereafter, they saw a car matching that description driving erratically and at an excessive speed. Officers Ehring and Lopez began to follow the car. They were close enough that Officer Ehring could see the person in the front passenger seat repeatedly looking back at them, ducking down toward the floor of the front seat, and talking to the driver. After running the license plate number through their onboard computer system, they activated their lights and siren. In response, the white car accelerated, sped through several stop stops and almost hit several cars.

Officers Ehring and Lopez pursued the white car for several more blocks and called for backup. Near 41st Street and Normandie Avenue, the car came to a stop and the front passenger door was opened. Officer Ehring saw the passenger (later identified as defendant) jump out of the car and run down 41st Street. Officer Ehring and his partner detained the driver. Officer Phillip Ahn arrived on the scene just as defendant fled the car. Officer Ahn chased after defendant on foot and apprehended him.

After detaining the driver, Officer Ehring looked inside the white car and saw an “AR-15 assault rifle leaning up against the center console of the passenger side compartment.” Officer Shane Bua arrived to assist in securing the scene. Officer Bua photographed the rifle where it was located in the front passenger compartment of the car. He then inspected it and confirmed it was loaded.

In an amended information, defendant was charged with one count of being in possession of a firearm with a prior violent conviction (Pen. Code, § 29900, subd. (a); count 2), one count of being in possession of an assault weapon (§ 30605, subd. (a); count 3), and one count of carrying a loaded firearm in a vehicle (§ 25850, subd. (a); count 4).¹ It was further alleged that defendant had suffered a prior strike within the meaning of the Three Strikes law (§ 667, subds. (b)-(i), § 1170.12), and had served a prior prison term (§ 667.5, subd. (b)).

The jury found defendant guilty on all three counts. Defendant admitted his strike prior and his prior prison term. The court sentenced defendant to state prison for four years on

¹ The codefendant (the driver) is not a party to this appeal.

count 2 (two-year midterm, doubled due to the strike). The court imposed a one-year term on the prison prior and four-year terms on each of counts 3 and 4, and stayed those sentences pursuant to Penal Code section 654. Subsequently, defendant was resentenced as part of a global disposition and plea agreement arising from two other pending cases against defendant. Defendant's sentence in this case was reduced to a 16-month term, to be served consecutively to the state prison terms imposed in the other two cases.

This appeal followed.

DISCUSSION

Defendant contends that in order to be found guilty of carrying a loaded firearm in a vehicle there must be evidence of "some physical touching or support of the weapon as it is being moved in the car." Alternatively, defendant argues that if this court finds that such touching is not required by the statutory language, then the word carry is, at best, ambiguous and the rule of lenity requires reliance on his interpretation. We disagree.

Penal Code section 25850, subdivision (a) provides, in relevant part, that "[a] person is guilty of carrying a loaded firearm when the person carries a loaded firearm on the person or in a vehicle while in any public place or on any public street."

Penal Code section 25850 is the successor statute to former section 12031 which was enacted in 1967. (*People v. Wade* (2016) 63 Cal.4th 137, 140 (*Wade*).) "Former section 12031 was part of an act that the Legislature declared to be urgency legislation to become effective immediately. The Legislature declared the following facts to constitute the necessity for such immediate effect: 'The State of California has witnessed, in recent years, the increasing incidence of organized groups and individuals publicly

arming themselves for purposes inimical to the peace and safety of the people of California. [¶] Existing laws are not adequate to protect the people of this state from either the use of such weapons or from violent incidents arising from the mere presence of such armed individuals in public places. Therefore, in order to prevent the potentially tragic consequences of such activities, it is imperative that this statute take effect immediately.’ [Citations].’ ” (*Id.* at p. 143.)

Penal Code former section 12031 was repealed in 2010 as part of the Deadly Weapons Recodification Act of 2010. (*Wade, supra*, 63 Cal.4th at p. 140.) The amendments were intended to be a reorganization and recodification of the statutes pertaining to deadly weapons and “ ‘entirely nonsubstantive’ ” in effect. (*Ibid.*)

As our Supreme Court explained in *Wade*, nothing in the Legislature’s “broad statement of concern” in enacting former Penal Code section 12031 suggests an “intent that the statute be narrowly applied. Instead, we believe *the statute should be fairly applied consistently with the Legislature’s concern with the threat to public safety from those with control over and ready access to loaded guns in public.*” (*Wade, supra*, 63 Cal.4th at pp. 143-144, italics added.)

The evidence here was undisputed that defendant was observed by Officer Ehring in the front passenger seat of the vehicle that led officers on a high-speed chase. During the pursuit, defendant repeatedly looked back at the officers and made movements down toward the floor of the front passenger compartment. When the car came to a stop, Officer Ehring saw defendant jump from the front passenger seat and flee the scene. As another officer chased and then apprehended defendant a

short distance away, Officer Ehring found an AR-15 assault rifle in the front passenger compartment of the car. The rifle was later determined to be loaded. Such evidence, and reasonable inferences therefrom, provide ample evidence that defendant was in possession of that weapon while it was being transported in a vehicle in violation of the statute. The presence of the driver in the car does not diminish the strength and significance of defendant's immediate access to and possession of the weapon while in the vehicle. (See, e.g., *People v. Miranda* (2011) 192 Cal.App.4th 398, 410-411 [in evaluating sufficiency of the evidence to support a conviction for being a felon in possession of a firearm, possession may be physical or constructive, and more than one person may possess the same contraband].)

Defendant's argument that we should construe the statutory language as requiring physical touching or "support" of the weapon while in the vehicle is without merit and directly contrary to the Supreme Court's statement in *Wade* that the statutory language is to be broadly construed to effectuate its purpose. Defendant's proposed interpretation also renders the phrase "in a vehicle" surplusage, as evidence showing a defendant was physically touching or holding a weapon while in a vehicle would be, in most instances, covered by the qualifying language prohibiting carrying a weapon "on the person." We will not read the statute in a manner that renders language meaningless.

We also reject defendant's contention the rule of lenity applies. The rule of lenity "applies only when two reasonable interpretations of a penal statute stand in relative equipoise. "[A]lthough true ambiguities are resolved in a defendant's favor, an appellate court should not strain to interpret a penal statute

in defendant's favor if it can fairly discern a contrary legislative intent." ' ' (Wade, *supra*, 63 Cal.4th at p. 147 [concluding language of section 25850 is not ambiguous and a gun carried in a backpack is carried on the person within the meaning of the statute].) We do not find the statutory language ambiguous and can fairly discern the legislative intent to prohibit the conduct at issue here.

DISPOSITION

The judgment of conviction is affirmed.

GRIMES, J.

WE CONCUR:

BIGELOW, P. J.

RUBIN, J.