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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE, Plaintiff and Respondent, v. ENOS HAYES III, Defendant and Appellant.	B267522 (Los Angeles County Super. Ct. No. MA065225)

APPEAL from a judgment of the Superior Court of Los Angeles County. Charles A. Chung, Judge. Affirmed in part and reversed in part with directions.

Pamela J. Voich, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Michael R. Johnsen, Supervising Deputy Attorney General, and Lindsay Boyd, Deputy Attorney General, for Plaintiff and Respondent.

Enos Hayes appeals from the judgment on his convictions following a jury trial for possession of a short-barreled rifle or shotgun (Pen. Code,[1] § 33215, count 5) and possession of a firearm and ammunition by a felon (§ 29800, subd. (a)(1), count 6; § 30305, subd. (a)(1), count 7). The trial court sentenced appellant to a total of nine years in state prison and awarded 365 days of presentence custody credit.

Appellant contends substantial evidence did not support his convictions for possession of a firearm and ammunition. We disagree and affirm the judgment of conviction. Appellant also asserts the trial court erred in its calculation and award of presentence custody credits, and he is entitled to 437 days' credit. Respondent agrees that the court miscalculated appellant's custody credits, but asserts he was entitled to 385 days of presentence credit. Finally, appellant contends, and the Attorney General concedes, that the trial court lacked authority to impose a postconviction protective order. The matter is remanded to the trial court to strike the protective order. The trial court is further ordered to modify the judgment to reflect 369 days' presentence custody credit and forward a corrected abstract of judgment to the California Department of Corrections and Rehabilitation.

FACTUAL BACKGROUND

On January 14, 2015, late in the afternoon at the house of Anita Jones, appellant had a disagreement with Jones, his fiancée. Following the disagreement, appellant left Jones's house for approximately an hour and a half. During this time, appellant found a sawed-off shotgun. Appellant brought the gun

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[1] Undesignated statutory references are to the Penal Code.

into Jones's house and showed it to Jones and Jones's friend, Sherlyn Cox. Appellant cocked and racked the shotgun.

Cox called 911 and reported that appellant pointed a shotgun and a knife at Cox and Jones. Appellant's brother, Johnie Stigall, who was residing at Jones's house at the time, took the gun from appellant and put it in a bin outside the house. Appellant hid underneath a car in Jones's attached garage.

Deputies arrived on the scene while Cox was still on the 911 call. The deputies interviewed Cox, Jones, and Stigall. Stigall led a deputy to the bin outside the house where he had placed the gun. The deputies confiscated the gun, which had two rounds of live ammunition—one in the barrel and one in the chamber.

Appellant was arrested about two weeks later. During an interview with police following his arrest, appellant claimed he had found the gun in a park. He denied pointing the gun at Jones or Cox, and claimed that he merely showed the gun to them. Appellant recognized that the firearm was a sawed-off shotgun, and expressed surprise that it was loaded with only two rounds of ammunition.

Appellant testified in his own behalf at trial. He admitted that his three prior felony convictions meant he could not lawfully possess a firearm. Appellant claimed he had previously seen the gun in Stigall's possession and called his own story about finding the shotgun in the park a lie. Instead, appellant testified he had found the gun in the attached garage of Jones's house and wanted to show it to Jones as proof that Stigall was keeping an illicit firearm at her house. Appellant was adamant that he did not point the gun at anyone. However, appellant admitted that he cocked and racked the gun because he was prepared to shoot Stigall "if necessary."

DISCUSSION

In assessing appellant's substantial evidence challenge, " '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 a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt.' " (*People v. Avila* (2009) 46 Cal.4th 680, 701; *People v. Watkins* (2012) 55 Cal.4th 999, 1019–1020.)

We draw all reasonable inferences in favor of the verdict and presume " 'the existence of every fact the [jury] could reasonably deduce from the evidence' " that supports its findings. (*People v. Maciel* (2013) 57 Cal.4th 482, 515; *People v. Kraft* (2000) 23 Cal.4th 978, 1053.) We do not, however, " ' "limit [our] review to the evidence favorable to respondent." ' " (*People v. Dominguez* (2006) 39 Cal.4th 1141, 1153; *People v. Johnson* (1980) 26 Cal.3d 557, 577.)

"[T]he testimony of a single witness is sufficient for the proof of any fact" (*People v. Richardson* (2008) 43 Cal.4th 959, 1030–1031) and to "uphold a judgment 'even if it is contradicted by other evidence, inconsistent or false as to other portions.' " (*People v. White* (2014) 230 Cal.App.4th 305, 319, fn. 14.)

I. Substantial Evidence Supports Appellant's Convictions for Possession of a Short-barreled Shotgun and Ammunition

A. *Possession of a Short-barreled Shotgun*

To be guilty of a violation of section 33215, a defendant must have (1) possessed a short-barreled rifle or shotgun, (2) known that he possessed a short-barreled rifle or shotgun, and (3) known the object was a short-barreled rifle or shotgun. (CALCRIM No. 2500.) A shotgun with a barrel length of less

than 18 inches is a short-barreled shotgun. (§ 17180, subd. (a).) The trial testimony of appellant himself, as well as that of Jones and Stigall, supplied overwhelming evidence to support the jury's finding that appellant met all three of these elements beyond a reasonable doubt.

There is no question that appellant possessed the shotgun. On direct examination and on cross-examination, appellant admitted possession of the shotgun. Jones also testified on direct examination that appellant possessed the shotgun. And Stigall testified that appellant possessed the shotgun.

The shotgun in this case has a barrel length of 14-7/8 inches, well under the legal limit of 18 inches. Appellant testified that he knew the shotgun was "sawed-off" in the butt, stock, and barrel. Based on this direct evidence from appellant's own testimony, a jury could reasonably conclude that appellant knowingly possessed a short-barreled shotgun and knew the shotgun was short-barreled.

B. *Possession of a Firearm by a Felon*

To be guilty of a violation of section 29800, subdivision (a)(1), a defendant must have (1) previously been convicted of a felony, (2) had in his possession or under his control a shotgun, and (3) known of the presence of the shotgun. (CALJIC No. 12.43.) Again, appellant's own trial testimony provides sufficient direct evidence to support the jury's finding on the elements of the crime.

Appellant admitted that he previously has been convicted of a felony and thus is prohibited from possessing a firearm. Appellant, Jones, and Stigall all testified that appellant possessed a shotgun. Appellant testified that he knew what he possessed was a shotgun. Based on this direct evidence from appellant's

own testimony, a jury could reasonably conclude that appellant was a felon knowingly in possession of a shotgun.

C. *Possession of Ammunition by a Felon*

To be guilty of a violation of section 30305, subdivision (a)(1), a defendant must have (1) knowingly possessed or had under his control ammunition and (2) been prohibited from possessing a firearm. (CALJIC No. 12.49.) Once again, appellant's own trial testimony provides sufficient direct evidence to support the jury's finding on the elements of the crime.

Appellant admitted that he previously has been convicted of a felony and thus is prohibited from possessing a firearm. Appellant cocked and racked the shotgun, sending the ammunition from the barrel to the chamber. Appellant admits he did this because he was prepared to shoot his brother, if necessary. This direct evidence is fully consistent with knowingly having control over the ammunition inside the gun. When told during his interview with police that the shotgun contained two rounds, appellant responded, "That's all?" Based on this direct evidence, a jury could reasonably conclude that appellant was a felon knowingly in possession of ammunition in violation of section 30305, subdivision (a)(1).

II. Protective Order

The trial court imposed a posttrial protective order forbidding appellant from attempting to contact or communicate with Jones or Cox. The court cited no authority for its order, nor was there any statutory or factual basis for a postconviction protective order. Appellant argues, and respondent concedes, that the order was improper.

Several statutes permit issuance of postconviction protective orders in certain circumstances, namely in cases of domestic violence,[2] stalking,[3] sex offenses involving minors,[4] and as a condition of parole[5] or probation.[6] Appellant's possession convictions do not fit any of these categories.

Neither is there nonstatutory authority for the trial court's protective order. Because there is an existing body of statutory law regulating protective orders, courts "should normally refrain from exercising their inherent powers to invent alternatives. (*People v. Trippet* (1997) 56 Cal.App.4th 1532, 1550.)" (*People v. Ponce* (2009) 173 Cal.App.4th 378, 384.) Additionally, courts should not issue such orders absent a showing of need. (*Ibid.*) Appellant was found not guilty of assaulting either Jones or Cox.[7] Indeed, at sentencing, Jones asked the judge for leniency for appellant so that appellant could live with her. No valid offer of proof was made to show a need for such a protective order.

The trial court's order thus constitutes an unauthorized sentence. (*People v. Robertson* (2012) 208 Cal.App.4th 965, 996.) Unauthorized sentences may be challenged on appeal even absent

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[2] Sections 136.2 and 1203.097, subdivision (a).

[3] Section 646.9, subdivision (k).

[4] Sections 1201.3, subdivision (a) and 1202.05, subdivision (a).

[5] Section 3053.2.

[6] Sections 1203.097, subdivision (a) and 1203.1, subdivision (i)(2).

[7] Appellant was charged with two counts of assault with a firearm in violation of section 245, subdivision (a)(2).

an objection at sentencing. (*People v. Ponce*, *supra*, 173 Cal.App.4th at pp. 381–382.) Thus, appellant properly raises the challenge on appeal, and the matter is remanded to the trial court to strike the protective order.

III. Presentence Custody Credit

At sentencing, the trial court awarded 365 days of credit, consisting of 183 days of actual custody and 182 days of good time/work time. Appellant contends he should be awarded 437 days of presentence credits. Respondent agrees that the trial court miscalculated the number of credits but argues that appellant should be awarded 385 days of presentence credits.

"As a general rule, a defendant is supposed to have the trial court correct a miscalculation of presentence custody credits. [Citation.] However, if—as here—there are other appellate issues to be decided, the appellate court may simply resolve the custody credits issue in the interests of economy. (*People v. Acosta* (1996) 48 Cal.App.4th 411, 427–428.)" (*People v. Jones* (2000) 82 Cal.App.4th 485, 493.)

Appellant was taken into custody on January 27, 2015, but posted bond and was released on January 28, 2015. He was arrested again on March 4, 2015, and remained in custody for the remainder of the proceedings in this case. Appellant was sentenced on September 2, 2015.

Actual custody credits are calculated as follows: Credit is given for the day of arrest, the day of sentencing, and all days in custody in between. (*People v. Lopez* (1991) 11 Cal.App.4th 1115, 1124.) Partial days are counted as full days. (*In re Jackson* (1986) 182 Cal.App.3d 439, 442–443.)

Conduct credits are calculated as follows: Two days of conduct credit for every two days of actual custody. (*People v. Whitaker* (2015) 238 Cal.App.4th 1354, 1361.) "A defendant who

serves an odd number of days is not entitled to an additional single day of conduct credit for his or her final day of actual custody." (*Id.* at p. 1358.)

The time between appellant's arrest and his release on bond was two days. The time between being remanded to custody and sentencing was 183 days. Thus, appellant is entitled to 185 days of actual custody credit and 184 days of conduct credit, for a total of 369 days of presentence credit.

DISPOSITION

The judgment of conviction is affirmed. The matter is remanded to the trial court with orders to strike the protective order, correct the presentence custody credit to 369 days, prepare a new abstract of judgment, and forward the same to the California Department of Corrections and Rehabilitation. In all other respects, the judgment is affirmed.

NOT TO BE PUBLISHED.

LUI, J.

We concur:

ROTHSCHILD, P. J.

CHANEY, J.