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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. ARTHUR LEE EDWARDS, Defendant and Appellant.	2d Crim. No. B237014 (Super. Ct. No. BA370138) (Los Angeles County)

A jury convicted Arthur Lee Edwards as follows:

(1) count 1: assault with a firearm (Pen. Code, § 245, subd. (a)(2))[1] with a personal use of a firearm enhancement (§ 12022.5, subd. (a));

(2) count 2: attempted willful deliberate and premeditated murder (§§ 664; 187, subd. (a)) with the following enhancements: personal and intentional discharge of a firearm (§ 12022.53, subd. (c)) and personal use of a firearm (*id.* at subd. (b));

(3) count 4: shooting at an inhabited dwelling, with the following enhancements: personally and intentionally discharging a firearm (§ 12022.53, subd. (c)) and personal use of a firearm (*id.* at subd. (b))

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

(4) count 6: criminal threats (§ 422) with a personal use of a firearm enhancement (§ 12022.5, subd. (a));

(5) count 9: possession of a firearm by a felon (former § 12021, subd. (a)(1));

(6) count 10: possession of ammunition (former § 12316, subd. (b)(1)); and

(7) count 13: assault with a firearm (§ 245, subd. (a)(2)) with a personal use of a firearm enhancement (§ 12022.5, subd. (a)).

The trial court sentenced Edwards to life plus 32 years. We remand for resentencing. In all other respects, we affirm.

FACTS

On April 10, 2011, Edwards went to Darnesha H.'s apartment on 84th Street in Los Angeles. Edwards was looking for Laviolette G., but she was not there. Edwards drove Darnesha to a pharmacy to pick up a prescription. Edwards bought a bottle of liquor and a gallon of wine. They returned to Darnesha's apartment.

Edwards and Darnesha were sitting on a couch drinking when Laviolette arrived. Laviolette sat next to Edwards but she was not drinking. At some point Edwards became upset. Edwards had asked Laviolette to go to a motel with him to have sex, but she refused.

Darnesha went into the bedroom. About 20 minutes later, Laviolette came into the bedroom and told Darnesha that Edwards had pulled a knife on her. Laviolette left the bedroom and asked Edwards to leave. Edwards said he would leave when he finished his drink. Edwards left within 20 minutes.

Later, Darnesha and Laviolette were sitting on the couch talking. The apartment door was open but the screen door was closed. Edwards knocked on the screen door and said, "Boobie, I would like to talk to you." Boobie was Edward's name for Laviolette. Laviolette told Edwards to come back when he was sober. Edwards replied, "Boobie, I have a bullet for your head." Darnesha heard

something drop. About five seconds later, she heard the sound of three shots coming from the area of her front door. Darnesha started screaming. Edward said, "I don't give a fuck, call who you are going to call, do what you are going to do." Edwards walked away. Laviolette had been shot in the mouth.

Darnesha called 911. When the police arrived, they found two .25 caliber casings by the front door of Darnesha's apartment and a bullet fragment in the ceiling.

Darnesha told the police where Edwards lived. Los Angeles Police Officers Timothy McLaughlin and John Calzada went to his house on Loness Avenue in Compton to arrest him. Outside the house, the police searched a pickup truck registered to Edwards. They found a round of live ammunition in the truck.

Edwards and his mother consented to a search of the house. The police found a piece of mail with Edwards's name and the Loness Avenue address next to his bed.

The police searched a closet that was either in or just outside of Edwards's bedroom.[2] McLaughlin testified he found an empty .38 caliber rifle in the closet under some clothes. Edwards's mother said the rifle was hers. She did not indicate whether it also belonged to Edwards.

People's exhibit No. 16 is a photograph of the closet. It shows a Winchester ammunition box in the closet. McLaughlin testified he did not see the box in the closet. When he saw the box, his partner was holding it. His partner told him it had been in the closet. The box was not introduced into evidence and McLaughlin's partner did not testify. The trial court did not admit exhibit 16 into evidence, finding there was no sufficient foundation. The police never found a .25 caliber firearm or a .25 caliber ammunition.

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[2] On direct examination, McLaughlin testified the closet was in the bedroom. On cross-examination, McLaughlin testified the closet was "just outside of the bedroom."

DISCUSSION

I.

Edwards contends his conviction for possession of a rifle by a felon is not supported by substantial evidence.

In reviewing the sufficiency of the evidence we view the evidence in a light most favorable to the judgment. (*People v. Johnson* (1980) 26 Cal.3d 557, 578.) We discard evidence that does not support the judgment as having been rejected by the trier of fact for lack of sufficient verity. (*People v. Ryan* (1999) 76 Cal.App.4th 1304, 1316.) We have no power on appeal to reweigh the evidence or judge the credibility of witnesses. (*People v. Stewart* (2000) 77 Cal.App.4th 785, 790.) We must affirm if we determine that any rational trier of fact could find the elements of the crime or enhancement beyond a reasonable doubt. (*People v. Johnson*, *supra*, at p. 578.)

Former section 12021, subdivision (a)(1) as it existed in 2010, provides in part: "Any person who has been convicted of a felony . . . and . . . has in his or her possession or under his custody or control any firearm is guilty of a felony."

The evidence is the rifle the police found under some clothes in a closet either in or immediately next to Edward's bedroom. The parties stipulated that Edwards has a prior felony conviction.

Edwards points out that knowledge is an element of the offense. A person cannot exercise dominion or control over an object unless he is aware of its presence. (Citing *People v. Gory* (1946) 28 Cal.2d 450, 454-455.)

Edwards argues proof of opportunity of access to a place where contraband is found, without more, will not support a finding of unlawful possession. (Citing *People v. Redrick* (1961) 55 Cal.2d 282, 285.) But here there is more than proof of an opportunity of access to the place where the rifle was found. The rifle was found in a closet in or immediately next to Edwards's bedroom. Possession may be imputed when contraband is found in a location which is

immediately and exclusively accessible to the defendant and subject to his dominion and control, or is subject to the dominion and control of the accused and another. (*People v. Francis* (1969) 71 Cal.2d 66, 71.)

Here because the rifle was found in a closet in or immediately next to Edward's bedroom, the jury could reasonably conclude Edwards had dominion and control over the closet and its contents. The jury could reasonably conclude that Edwards had knowledge of the contents of a closet in or near his bedroom. That the rifle was hidden under clothes does not mean Edwards was unaware of its existence. The jury could conclude the rifle was hidden under clothes because Edwards knew it was a crime for him to possess it. Edwards acknowledges that the jury was not required to believe his mother's claim that the rifle was hers. The jury's finding is supported by substantial evidence.

II.

Edwards contends his conviction for possession of ammunition by a felon is not supported by substantial evidence.

He points out that neither the ammunition box nor a photograph showing the box was in evidence. Nevertheless, Officer McLaughlin testified he saw the ammunition box in Edwards's house during the search.

Edwards argues there is no evidence to show what, if anything, was in the box. But it requires no leap in logic for a jury to conclude that an ammunition box contains ammunition.

Edwards argues there is no substantial evidence the ammunition box belonged to him, and that he received ineffective assistance of counsel.

He points out that the only evidence linking the ammunition box to the closet where the rifle was found is McLaughlin's hearsay statement that his partner told him the box was obtained from the closet. He argues that he received ineffective assistance when his counsel failed to make a hearsay objection. He claims there was no tactical reason for his counsel's failure to make the objection.

To show ineffective assistance of counsel, Edwards must show that counsel's representation fell below an objective standard of reasonableness, and a reasonable probability that but for counsel's errors, the result would have been more favorable to the defendant. (*People v. Ledesma* (1987) 43 Cal.3d 171, 216, 217-218.)

Even assuming counsel's failure to object constituted deficient performance, Edwards cannot show prejudice. Contrary to Edwards's assertion, the hearsay statement that the ammunition box was found in the closet was not crucial to the prosecution's case.

Obviously, Edwards had an interest in firearms. He fired multiple .25 caliber shots into Darnesha's apartment and a rifle of a different caliber was found in his closet. McLaughlin testified he saw the ammunition box in Edwards's house. The jury found Edwards guilty of both the shooting and possession of the rifle. There is no reasonable probability the jury would have found Edwards not guilty of possessing the ammunition, even if the box were found somewhere in the house other than the closet. It follows the jury's conclusion that the ammunition belonged to Edwards is supported by substantial evidence

III.

Edwards contends the matter must be remanded for resentencing. The People agree.

The trial court sentenced Edwards to life plus 32 years as follows: It appears the court chose the life term for attempted murder (count 2) as the principal term, plus 20 years for the firearm enhancement. For count 1, assault with a firearm, the court chose one year (one-third the midterm), plus four years for the firearm enhancement. For counts 10, 11, and 12, possession of a firearm and two counts of possession of ammunition, the court chose consecutive eight months sentences (one-third the midterm) for a total of two years. For count 13, assault with a firearm, the court chose one year (one-third the midterm), plus four years for

the firearm enhancement. The court stayed sentences on the remaining counts pursuant to section 654.

The court's first error was in choosing an indeterminate life term as the principal term and treating all other terms as subordinate. The indeterminate and determinate sentencing schemes are separate. (*People v. Neely* (2009) 176 Cal.App.4th 787, 797-798.) Only after the sentences are calculated separately under each scheme are the sentences added together to form an aggregate term. (*Ibid.*)

In calculating the determinate term, if the court decides the terms should be consecutive, the principal term must be the greatest term imposed for any of the crimes. (§ 1170.1, subd. (a); *People v. Neely*, *supra*, 176 Cal.App.4th at p. 798.) In this case, the principal term would be the term imposed on either count 1 or 13, assault with a firearm. The other determinate terms would be subordinate.

The court's second error is in concluding it had no discretion in sentencing. The court stated: "This is one of those cases where the court does not have any discretion regarding sentencing and [counsel and the court] just met [at sidebar] for the calculation of the appropriate sentence."

Section 669 requires the trial court to exercise its discretion in directing whether the determinate terms will run concurrently or consecutively and whether the determinate terms will run concurrently or directly with the life term. We must remand for sentencing.

Edwards requests that we instruct the trial court to appoint new counsel to represent him at the resentencing hearing. He claims his counsel failed to provide effective assistance when his counsel stipulated the sentence imposed was "the most appropriate sentence." He claims he had only one prior felony conviction, for receiving stolen property, and should have received a lesser sentence.

We deny Edwards's request to appoint different counsel without prejudice. Such a claim is better addressed to the trial court in the first instance. (See *People v. Marsden* (1970) 2 Cal.3d 118.)

Nothing in this opinion should be read as indicating how the court should rule on resentencing or on any *Marsden* motion. The matter is reversed and remanded for resentencing. In all other respects the judgment is affirmed.

NOT TO BE PUBLISHED.

GILBERT, P.J.

We concur:

YEGAN, J.

PERREN, J.

Drew E. Edwards, Judge

Superior Court County of Los Angeles

Linn Davis, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Linda C. Johnson, Supervising Deputy Attorney General, Kathy S. Pomerantz, Deputy Attorney General, for Plaintiff and Respondent.