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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

GUILLERMO RANGEL,

Defendant and Appellant.

B229403

(Los Angeles County
Super. Ct. No. BA352322)

APPEAL from a judgment of the Superior Court of Los Angeles County,
Charlaine F. Olmedo, Judge. Affirmed.

Mark Yanis, 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, Susan Sullivan Pithey,
Supervising Deputy Attorney General, and Taylor Nguyen, Deputy Attorney General, for
Plaintiff and Respondent.

A jury convicted Guillermo Rangel of lending an assault weapon in violation of Penal Code section 12280, subdivision (a)(1).¹ He appeals, arguing that there was insufficient evidence to support his conviction at the time he filed a motion under section 1118.1, and that the trial court erred when it did not give the jury a separate instruction that it must find the prosecution proved each element of the offense beyond a reasonable doubt. We affirm.

BACKGROUND

An amended information charged Rangel and Ruben Martinez with five counts of attempted murder in violation of sections 664 and 187, subdivision (a) and one count of shooting at an occupied vehicle in violation of section 246. Each of those counts also alleged that Martinez personally used a firearm within the meaning of section 12022.5, subdivision (a). Count 8 charged Rangel and Martinez with manufacture, distribution, transportation, importation, sale, possession, or lending an assault weapon (an AK-47) in violation of section 12280, subdivision (a)(1).² Rangel pleaded not guilty to all counts.

Rangel and Martinez were tried together. At trial, Raul Stewart testified that around 1:00 a.m. on January 31, 2009, he was returning home from the races in his Volvo with two of his cousins, Reynaldo and Esther Mendez, with Reynaldo driving.³ As they drove north on Hoover towards 59th Street, Stewart saw a pickup truck in the middle of the road blocking his lane. The Volvo drove on the wrong side of the street around the pickup truck, and the occupants of the truck put their hands out the window. Thinking he might know them, Stewart told Reynaldo to turn around and try to meet up with the truck.

¹ Unless otherwise indicated, all subsequent statutory references are to the Penal Code.

² The information also charged Martinez with possession of heroin in violation of Health and Safety Code section 11350, subdivision (a). Martinez was tried jointly with Rangel, and is not a party to this appeal.

³ For ease of reference, we use the first names of Reynaldo and Esther Mendez. No disrespect is intended.

On 62d Street near Hoover, the pickup truck stopped behind the Volvo, and Stewart got out of the car. Stewart approached the passenger side of the pickup truck and saw Rangel and Martinez inside, with Rangel driving; he did not recognize them. They said, "I thought you were somebody else," and Stewart said, "All right" and shook hands with Martinez. When Stewart reached across Martinez to shake hands with Rangel, Rangel said something angry and reached down for something. Believing "I am going to get stabbed or shot or something," Stewart punched Rangel in the head. Stewart then pulled his head out of the pickup truck, and Rangel and Martinez drove away.

Stewart, Reynaldo, and Esther drove to Stewart's home, where Stewart's pregnant girlfriend Jessica Pacheco put his year-old son into his car seat in the back seat of the Volvo. They all left in the Volvo to take Reynaldo and Esther home, with Pacheco driving. As the Volvo turned onto 62d Street and drove toward Hoover, Stewart saw Martinez standing on the sidewalk "like a soldier," holding what looked like a big rifle. He then heard around ten shots in rapid succession, like an assault rifle, and heard the bullets hit glass and metal and a bullet whizzing past his head; there was glass in the front seat. The bullets hit the car, broke windows and mirrors, and punctured two tires. Pacheco drove the Volvo home and everyone got out of the car.

Stewart got back in the car and tried to drive back to the location of the shooting, but the Volvo died. He got out of the car and called Pacheco, and then as he walked down 62d Street the police stopped him. Thirty minutes later, as Stewart was in the police car and Pacheco was standing outside talking to the officers, Rangel and Martinez walked by, and Stewart told the police that was them.

Jessica Pacheco testified that as she was driving the Volvo on the day of the shooting, Stewart and his cousins mentioned that there had been a problem on 62d Street, and then screamed "drive fast." At the same time, Pacheco heard more than six gunshots and the back window of her car shattered. She drove straight home, finding it hard to turn the car, because both right side tires were flat. Stewart then drove away in the Volvo. After he called Pacheco from 62d and Figueroa, she walked over.

Stewart's cousin Esther testified that as Pacheco drove the Volvo from Stewart's house and turned onto 62d Street, Esther saw two men walking on the sidewalk. She saw flashing lights, heard Pacheco screaming, and saw the same two men, one shooting a long weapon, and the other standing an arm's length away. She recognized them as the men who had been in the truck. Esther identified Rangel in a photographic lineup, and in court, as the man standing next to the shooter.

Los Angeles Police Department (LAPD) Officer Jonathan Kincaid testified that he responded to a radio call regarding a shooting at 62d and Hoover in the early morning hours of January 31, 2009. Stewart flagged him down, and said two Hispanic men had shot at him and his family with an AK-47 rifle. Officer Kincaid found 10 spent bullet casings on the sidewalk, of a type commonly used with an AK-47 assault rifle. While he was at the scene, Officer Kincaid saw two Hispanic men fitting the description given by Stewart walking towards them on the sidewalk. Stewart said, "that's them," and Officer Kincaid detained Martinez and Rangel, who were later placed under arrest.

Officer Kincaid then went to Rangel's residence, where he saw a pickup truck in the driveway with the windows rolled down. Officer Kincaid shone his flashlight in the window and saw a handgun on the floorboard, between the passenger seat and the door of the car. Rangel's mother answered the door. They went to the rear of the house, with Officer Kincaid's supervisor and three other officers. One of the other officers told Officer Kincaid he saw a gun case protruding from the crawl space of the residence. Officer Kincaid saw the crawl space, which was about 18 inches high by two feet long, below the house and up next to the patio, and saw a hard gun case protruding in plain view. The gun case was pulled out and opened, and inside was an AK-47 rifle with a magazine and live ammunition, as well as a soft gun case containing a hunting rifle and rounds of ammunition. The gun case and the AK-47 were in evidence, and Officer Kincaid identified them as the items found in the crawl space. The AK-47 was unregistered.

LAPD Criminalist Allison Manfreda testified that the AK-47 was classified as an assault weapon in California. The 10 bullet casings found at the scene had been fired by the AK-47.

LAPD Detective Sheryl Reynolds testified that she was the investigating officer. Esther had told her that she recognized Rangel as the driver of the pickup truck.

At the close of the prosecution's case, Rangel's counsel made a motion under section 1118.1 to dismiss count 8 for insufficient evidence.⁴ The court denied the motion, concluding that there was sufficient evidence that Rangel transported the AK-47 by walking around with it, or lent it to Martinez.

The first defense witness was Rangel. He testified that at 1:00 a.m. on January 31, 2009, he was driving home in his truck from Martinez's house to his home on 62d Street, with Martinez in the passenger seat. Rangel saw a white Volvo stopped in the middle of 62d Street with its emergency flashers on. Stewart was crouched down next to the tire, and stood up and beckoned with his hand; Rangel thought he had a flat tire or needed a jump start. Rangel pulled up a house or two away, and Stewart came up to the truck window, shook Martinez's hand, and said, "you're just messed up" or "we're just messed up." Rangel did not have a gun in the car. Stewart then tried to open the door, and Rangel put the truck in gear to drive away; Stewart struck him in the head with a hard object, likely metal, and said, "Fuck you, levas" (Spanish slang for sissy). Rangel, dizzy, stunned, and in pain, hit the gas without steering. Martinez grabbed the steering wheel and managed to turn corners to get the truck around the block to Rangel's house, where the truck hit the post of Rangel's front gate. Rangel hit his head on the steering wheel. He was not sure what damage was done to his truck.

⁴ Defense counsel made a section 1118.1 motion as to all counts and both defendants at the close of the prosecution's case, and the court first denied the motion as to Rangel and Martinez on all counts except count 8, which the court took under submission. The court later granted the motion to dismiss count 8 as to Martinez and denied the motion as to Rangel.

Rangel got out of the truck and staggered around, with Martinez trying to get him inside the gate. Rangel saw car lights and the white Volvo approaching, with Stewart hanging out the car window pointing a gun in Rangel's direction and screaming, "Fuck you chavalas" (also Spanish slang for sissy). Martinez said, "Get down, they're trying to kill . . . us." Rangel lay down on his stomach to hide, and the Volvo drove by again more slowly, with Stewart still aiming the gun and yelling obscenities. Rangel heard four or five gunshots down the street. He stayed frozen on the ground, had no idea that Martinez was the shooter, and did not see Martinez pick up the AK-47, walk down the street, fire the gun, or put it away. Martinez continued to yell at Rangel to get inside. The truck was still leaned up against the pole with the doors open and the interior light on. Rangel could see a gun in the middle of the street four or five houses away, under a streetlight. Rangel ran down the street and grabbed the gun in case the people in the Volvo might come back for it, and threw the gun into the truck. Rangel then backed his truck up and put it in the driveway, turned off the lights, and tried to close the gate.

When Rangel was in his yard, he saw flashing lights and heard police helicopters. He and Martinez decided to walk over to the police, thinking they had pulled over a random motorist to give him a ticket. He saw the Volvo and Stewart pointing at him and Martinez, and they were arrested. Martinez then told Rangel he had fired the AK-47, and said he was sorry. Rangel and Martinez both believed their lives were in danger, and Rangel believed Martinez had saved his life. Rangel sought medical treatment for his head injury while in jail.

Rangel lived with his girlfriend and his daughter. His mother and his grandfather lived in the front of the house, and his younger brother lived in the back of the house. Earlier that day, Rangel's uncle called and asked if Rangel could keep something for him, and Rangel told him to drop it off without asking what it was. His uncle's wife would not let him keep the gun in the house. When his uncle came by, Rangel wasn't there but Martinez was present. When Rangel got home around noon, there was a hard case in the living room; Rangel opened it and saw a soft case (which he did not open), a ziplock bag full of cartridges, and the AK-47 with a clip inserted. He and Martinez both saw the

weapon, and “[w]e knew it was the real thing.” Rangel’s mother got upset and told him he could not keep it there, so Rangel put the hard case in the crawl space in the back of the house, next to where his daughter had her toys. Martinez was outside and saw Rangel put the gun in the crawl space. Rangel never told Martinez to take the AK-47, and never gave him permission or encouraged him to use the gun. Rangel had not owned any guns except BB guns, and no one in the household owned guns. He had seen ammunition belonging to his grandfather around the house.

Julia Denoso testified that in November 2007, she was double-parked in front of her house waiting for a parking space to open. Stewart banged on her car door yelling obscenities, made a punching gesture, reached in and opened the door, dragged her out, and kicked her as she lay on the pavement. Stewart then got into her car and drove away. A psychologist who had examined Stewart in connection with another case testified that Stewart described experiencing blackouts when he was stressed, “mind buzzing,” and auditory and visual hallucinations. Character witnesses testified that Rangel was honest, soft-spoken, and peaceful.

In rebuttal, the prosecution called Rangel, who admitted he pulled his girlfriend’s hair and pushed her during two incidents in March and April 2008. Andrea Galdamez testified that she was the mother of Rangel’s child. In March 2008, when they were dating and living together, they had an argument about disciplining their daughter, during which she started to push, slap, and shove Rangel, and he struck her with a closed fist on the right side of her face. In April 2008, Galdamez again began to push, slap, and shove, and Rangel pulled her hair to get her out of the house.

In surrebuttal, the prosecution called Rangel’s uncle, who had been subpoenaed to testify and felt intimidated by calls from Rangel’s family. Rangel’s uncle testified that he had not been in touch with Rangel for several years since divorcing Rangel’s aunt, and he never called Rangel and asked him to keep any item at Rangel’s house, including the AK-47.

The jury convicted Rangel of unlawful transporting, giving, or lending an assault weapon in violation of section 12280, subdivision (a)(1) (count 8), and acquitted him on the remaining charges of attempted murder and shooting at an occupied vehicle.

DISCUSSION

I. The prosecution’s case contained sufficient evidence to support the trial court’s denial of Rangel’s motion to dismiss count 8 for insufficient evidence.

Rangel argues that at the close of the prosecution’s case, there was insufficient evidence to support the jury’s finding of guilt on count 8, transporting, giving, or lending an assault weapon, so that the trial court erred in denying his motion to dismiss that count. We disagree.

We review the ruling on a motion for judgment of acquittal under section 1118.1 using the same standard as we do to review the sufficiency of the evidence to support a conviction, asking whether from all the evidence and the reasonable inferences to be drawn, there is any substantial evidence of the existence of each element of the offense. (*People v. Mendoza* (2011) 52 Cal.4th 1056, 1079.) We must determine whether the prosecution presented sufficient evidence to present the matter to the jury, testing the sufficiency of the evidence at the point the motion is made. (*Ibid.*) We view the evidence in the light most favorable to the judgment. (*People v. Frye* (1998) 18 Cal.4th 894, 953.)

Section 12280, subdivision (a)(1), provides: “Any person who, within this state, . . . gives or *lends* any assault weapon . . . is guilty of a felony . . .” (italics added).⁵ Rangel’s counsel made the section 1118.1 motion to dismiss for insufficient evidence at the close of the prosecution’s case. At that point, the evidence presented included testimony that Rangel and Martinez had come into contact with Stewart when Rangel’s truck blocked the lane of Stewart’s white Volvo. Stewart exited the car and engaged in a confrontation with Rangel and Martinez; Stewart punched Rangel in the

⁵ Respondent concedes that there was no evidence that Rangel transported the AK-47, and we therefore address only whether there was sufficient evidence that Rangel lent the assault weapon.

head, and Rangel and Martinez drove to Rangel's house. Soon thereafter, when Stewart's Volvo was driving in the same general area, Martinez, with Rangel standing next to him, fired a big rifle repeatedly at the Volvo. Police later found an unregistered AK-47 in a crawl space beneath Rangel's residence. Both Rangel and Martinez knew the AK-47 had been in the crawl space since the previous morning, and the bullet casings found at the shooting scene matched the AK-47. Viewing this evidence in the light most favorable to the verdict, we conclude that there was sufficient evidence to present to the jury the question whether Rangel lent the assault rifle to Martinez. The jury was entitled to infer that Rangel, not someone else, lent the rifle to Martinez.

II. The court properly instructed the jury on the prosecution's burden of proof.

Rangel contends the trial court should have given the jury an express instruction providing that the prosecution has the burden of proving "each element" of a criminal charge beyond a reasonable doubt. Rangel argues that although the court gave CALCRIM No. 220, defining the reasonable doubt standard, the instructions were constitutionally inadequate for this purpose because they did not explicitly direct the jury to find each element of the offense beyond a reasonable doubt.

Respondent argues that because Rangel did not request such an express instruction, Rangel did not preserve this claim for appellate review. (*People v. Hart* (1999) 20 Cal.4th 546, 622.) That is incorrect. When, as here, an appellant argues that the instructions as given were not correct in law, the appellant need not have raised that issue at trial to argue it on appeal. (*People v. Ramos* (2008) 163 Cal.App.4th 1082, 1087.)

Numerous courts of appeal have rejected Rangel's argument, holding that jury instructions are adequate when, as in this case, the jury was instructed with CALCRIM No. 220, and also was instructed that the prosecution is required to prove each element of the underlying offense.⁶ (*People v. Riley* (2010) 185 Cal.App.4th 754, 768–769; *People*

⁶ The trial court instructed the jury with CALCRIM No. 220 ("Whenever I tell you the People must prove something, I mean they must prove it beyond a reasonable doubt."), and also instructed regarding section 12280, subdivision (a): "the people must

v. Henning (2009) 178 Cal.App.4th 388, 406; *People v. Wyatt* (2008) 165 Cal.App.4th 1592, 1601; *People v. Ramos, supra*, 163 Cal.App.4th at pp. 1088–1089.) Rangel does not cite any California or United States Supreme Court case disagreeing with these holdings, and we accept these and similar decisions as well-reasoned. “The CALCRIM No. 220 instruction—which informs the jury that when the court says that the People must prove something, the People must prove it beyond a reasonable doubt, combined with the court’s instruction that the People must prove each element of the offense (which is given whenever the court instructs on the elements of an offense) adequately informs the jury that it must find that each element has been proved beyond a reasonable doubt.” (*People v. Riley, supra*, 185 Cal.App.4th at p. 770.)

We conclude that the jury was properly instructed.

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED.

JOHNSON, J.

We concur:

ROTHSCHILD, Acting P. J.

CHANEY, J.

prove that: [¶] 1. The defendant transported, gave or lent an assault weapon, specifically an AK 47; [¶] 2. The defendant knew that he transported, gave or lent it; [¶] AND [¶] 3. The defendant knew or reasonably should have known that it had characteristics that made it an assault weapon.”