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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
(Sacramento)

THE PEOPLE,

Plaintiff and Respondent,

v.

PETER HOWARD PEARSON,

Defendant and Appellant.

C069523

(Super. Ct. No. 10F08420,
10F04689)

Defendant Peter Howard Pearson was found guilty of manufacturing a sharp instrument and possessing a sharp instrument while in a penal institution.

On appeal, defendant contends the trial court erred in instructing the jury that the objects found on him were sharpened weapons. We find no error in the court's instructions to the jury. Accordingly, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

While serving a jail sentence as a condition of probation for burglary and possession of stolen property, defendant and his cell were searched by custodial officers. They found two items in defendant's waistband: an unfolded paper clip sharpened at one end and a golf pencil approximately four inches long with a metal washer attachment.

The metal washer attachment was sharpened on both sides. Each object could be used as a slashing instrument or cutting tool.

After the jury found defendant guilty of manufacturing a sharp instrument and possession of a sharp instrument in a penal institution, the court found a prior conviction allegation to be true. The court sentenced defendant to six years for possession of a sharp instrument while in a penal institution (the three-year middle term doubled for the prior strike), four years for manufacturing a sharp instrument in a penal institution (the two-year middle term doubled) to run concurrently, and a consecutive one-year, four-month sentence in the burglary case for a total of seven years four months in prison.

DISCUSSION

Defendant contends the trial court erred by “defin[ing] the evidence, a golf pencil with a sharpened washer, and a sharpened paper clip, as weapons.” According to defendant, “[b]y directing the jury in this manner, the court deprived [defendant] of his right to due process and a fair trial under the [F]ifth and [F]ourteenth [Amendments to the] United States Constitution, as well as article I, section 15, of the California Constitution.” We disagree.

In reviewing jury instructions, we determine “whether the trial court ‘fully and fairly instructed on the applicable law.’ ” (*People v. Ramos* (2008) 163 Cal.App.4th 1082, 1088.) In determining whether error was committed by giving or not giving an instruction, it is important to consider the instructions as a whole and to assume the jurors are intelligent persons capable of understanding and correlating all instructions given. (*People v. Romo* (1975) 47 Cal.App.3d 976, 990.) Furthermore, there is a presumption that “ ‘ ‘ ‘the correctness of jury instructions is to be determined from the entire charge of the court, not from a consideration of parts of an instruction or from a particular instruction.’ ” ’ ’ ’ (*People v. Estep* (1996) 42 Cal.App.4th 733, 738-739.) “ ‘ “[W]e inquire ‘whether there is a reasonable likelihood that the jury has applied the challenged

instruction in a way' that violates the Constitution." ' ' (People v. Welch (1999) 20 Cal.4th 701, 766.)

Here, the trial court instructed the jury with CALCRIM No. 2745, as follows:

“[THE COURT:] The defendant is charged in Count One with manufacturing and in Count Two with possessing a weapon, specifically, a sharp instrument, while in a penal institution, in violation of Penal Code section 4502.

“To prove that the defendant is guilty of these crimes, the People must prove:

“1. That the defendant was present at or confined in a penal institution;

“2. The defendant manufactured or attempted to manufacture (Count One) or possessed (Count Two) a sharp instrument;

“3. The defendant knew that he manufactured or attempted to manufacture (Count One) or possessed (Count Two) a sharp instrument; and

“4. The defendant knew that the object could be used as a stabbing or cutting weapon.

“A penal institution is a county jail.

“The People do not have to prove that the defendant used or intended to use that objects as a weapon.

“You may consider evidence that the object could be used in a harmless way in deciding if the object is a weapon.

“The People allege that the defendant manufactured or attempted to manufacture the following weapon: The golf pencil with attached sharpened washer.

“The People allege that the defendant possessed the following weapon: Sharpened paper-clip.”

Construing the foregoing instruction as a whole, a reasonable juror would not interpret the instruction to mean that the items found in the defendant's waistband were, in fact, weapons or sharpened objects, as defendant contends. Instead, a reasonable juror would understand that what defendant knew or did had to satisfy all four elements of the

charge in order for his actions to constitute a crime and would understand that the court was not directing that the items were weapons. Further, the jury examined both of the objects confiscated from defendant during the search. Thus, they were given the opportunity to determine whether the objects qualified as “sharpened” so that each could be used as a “weapon” pursuant to the instruction. The jury also heard ample evidence from witnesses pertaining to the visibly sharp attributes of the items. Under these circumstances, it is not reasonably likely that the jury applied the instruction in a way that violates the Constitution or defendant’s due process rights.¹

DISPOSITION

The judgment is affirmed.

ROBIE, J.

We concur:

NICHOLSON, Acting P. J.

HOCH, J.

¹ Our conclusion that the instruction was not erroneous necessarily disposes of defendant’s belated argument in his reply brief that the CALCRIM No. 2745 instruction on which this instruction was based is unconstitutional.