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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(San Joaquin)

THE PEOPLE,

Plaintiff and Respondent,

v.

JACK PERRY,

Defendant and Appellant.

C079783

(Super. Ct. No. SF128725A)

Defendant Jack Perry was convicted of elder abuse and assault with a stun gun (Taser). On appeal, defendant contends the trial court abused its discretion in allowing the prosecution's expert to give an opinion on whether the victim was hit with a Taser. We shall affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Seventy-six-year-old Elias Carranco worked as a parking attendant at a Stockton city parking lot near an apartment complex. Defendant visited this apartment complex daily and residents had seen him with a Taser.

On June 24, 2014, Carranco tried to leave the parking lot in his truck but defendant was standing with his bicycle blocking the exit. Carranco repeatedly asked defendant to move but defendant refused. According to defendant, Carranco then used his truck to push defendant's bicycle forward by two feet. Defendant's leg was pushed underneath the front bumper of Carranco's truck and defendant's bicycle fell over. Defendant picked up his bicycle, acted like he was going to throw the bicycle at Carranco's truck, and yelled at Carranco. Carranco then drove forward and struck the bicycle, causing defendant to spin around. Defendant dropped the bicycle and threw a punch at Carranco, although defendant was unsure whether he struck Carranco. Police arrived and found Carranco bleeding from the left side of his face. Carranco was nervous but was able to explain to police what happened. Although the police wrote a report, no one was arrested.

The next day, witnesses saw defendant holding a Taser and walking near the apartment complex toward the Stockton city parking lot. A few minutes later, defendant returned to the apartment complex. A few minutes after that, Carranco was found on the ground with his eyes closed, his ear bleeding, and a pool of blood behind his head. Carranco eventually opened his eyes but was incoherent, unable to explain what happened, and needed help to get on his feet. Paramedics took Carranco to the hospital, where he was treated for a ruptured ear drum, a skull fracture, and brain bleed. In addition, the top of Carranco's head had a red mark the size of a quarter. At the time of sentencing, Carranco continued to experience difficulties due to his brain injuries.

At trial, Ed Obayashi testified as an expert on video analysis on use of force with a Taser. A Taser is a weapon that emits an electrical discharge against the body, causing incapacitation and significant pain. Tasers can paralyze an individual from seconds up to a minute and cause more pain in older individuals.

Obayashi played a video for the jury of a man being "Tased," pointing out how the man's body went stiff and was "incapable of doing anything but just fall." According to

Obayashi, this was “the typical physiological reaction of a Taser discharge against an individual. There is no other device, weapon or physical option that I am familiar with that would cause an individual to react in this manner and fall backwards helplessly without even attempting to break his or her fall. It is a very distinct physiological reaction unique to a Taser discharge against the body.”

Obayashi then reviewed with the jury a surveillance video of the June 25, 2014, incident, which he had spent four or five hours reviewing prior to trial. Obayashi testified the victim displayed physiological characteristics of an individual who has been “Tased,” including going into an “at-attention position” with his arms to the side and then being “suddenly propelled backwards” and then falling uncontrollably “with no attempt to break his fall.” Obayashi testified the victim’s fall was similar to the “Tasing” example video he had shown earlier. In Obayashi’s opinion, “the victim was most probably attacked with a Taser device. [¶] . . . I cannot think of an alternative force option that could have caused the victim to be propelled and fall out of the booth in that manner.” It was “highly unlikely” that the victim was pushed because the victim did not stumble, twist his body, or otherwise attempt to break his fall. Obayashi did not know the identity of the suspect or the victim and had no background information about the incident, other than the location and a copy of the ambulance report, which he reviewed for physical evidence of Taser use.

A jury found defendant guilty of elder abuse and assault with a Taser. The jury also found true defendant personally inflicted great bodily injury on a person who was 70 years of age or older. Defendant subsequently admitted he had a prior serious felony conviction and the trial court found true defendant had a prior strike and prior prison term. The trial court sentenced defendant to an aggregate term of 18 years in prison.

DISCUSSION

Defendant contends the trial court erred in allowing Obayashi to testify that Carranco had been “Tased.” According to defendant, this was a main issue of contention

during trial and Obayashi's opinion usurped the jury's function to decide the case. The People disagree, contending Obayashi's opinion was not a legal conclusion as to defendant's guilt.

Expert opinion testimony must be "[r]elated to a subject that is sufficiently beyond common experience that the opinion of an expert would assist the trier of fact." (Evid. Code, § 801, subd. (a).) Such testimony is "not objectionable because it embraces the ultimate issue to be decided by the trier of fact." (Evid. Code, § 805; *People v. Torres* (1995) 33 Cal.App.4th 37, 47 ["[o]pinion testimony often goes to the ultimate issue in the case".]) For example, an expert may testify as to: (a) the speed of a car leaving skid marks measured at an auto accident scene; (b) what circumstances might cause hemorrhaging found in the eyes during an autopsy of a suspected homicide victim; (c) the presence of a particular tattoo shows the person belongs to a gang; or (d) how an injury might be caused or its potential long-term effects, and whether the party was still suffering from the effects of the injury. (*People v. Sanchez* (2016) 63 Cal.4th 665, 675-677.) Still, an expert's opinion may not invade the province of the jury to decide a case, such as expressing an opinion as to defendant's guilt or innocence or whether a crime has been committed. (*Torres*, at pp. 46-47.) Such opinions are " " "inadmissible because they are of no assistance to the trier of fact. To put it another way, the trier of fact is as competent as the witness to weigh the evidence and draw a conclusion on the issue of guilt." ' ' ' (*People v. Vang* (2011) 52 Cal.4th 1038, 1048.)

Despite defendant's contentions, Obayashi's opinion regarding the likely cause of the victim's fall in the video did not usurp the jury's role. The physiological effects of a Taser on a victim and whether an individual is behaving as though they have been "Tased," are sufficiently beyond common experience that testimony from an expert such as Obayashi would assist the jury in determining the cause of the victim's fall in the video. (See, e.g., *People v. Sanchez, supra*, 63 Cal.4th at pp. 675-677.)

