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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

CAMERON DEMECO SCOTT,

Defendant and Appellant.

E062468

(Super.Ct.No. FVI1402259)

OPINION

APPEAL from the Superior Court of San Bernardino County. John M. Tomberlin, Judge. Affirmed as modified.

Lindsey M. Ball, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Eric A. Swenson and Heather M. Clark, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant and appellant Cameron Demerol Scott was charged by information with assault with a firearm (Pen. Code,¹ § 245, subd. (a)(1), count 1) and possession of a firearm by a felon (§ 29800, subd. (a)(1), count 2). As to count 1, it was also alleged that defendant personally used a firearm (§ 12022.5, subds. (a) & (d)) and that he personally inflicted great bodily injury (§ 12022.7, subd. (a)). The information further alleged that defendant had one prior strike conviction (§§ 1170.12, subds. (a)-(d) & 667, subds. (b)-(i)) and one prior prison conviction (§ 667.5, subd. (b)). A jury acquitted defendant of the charge and enhancements in count 1, but found him guilty of count 2. A trial court found true the prior strike and prior prison conviction allegations. The court sentenced defendant to a total term of seven years in state prison.

On appeal, defendant argues that the court erred in finding that a motor vehicle was involved in the offense and ordering his driver's license to be revoked pursuant to Vehicle Code section 13350. The People concede, and we agree. Thus, the order revoking defendant's license must be stricken. In all other respects, the judgment is affirmed.

FACTUAL BACKGROUND

Count 1—Assault with a Firearm

The victim, Rashad Hanzy, was with his girlfriend, Shonte Martin, on June 4, 2014. They were driving to Hanzy's mother's house, but briefly stopped at defendant's

¹ All further statutory references will be to the Penal Code, unless otherwise noted.

house on the way there. Hanzy's sister was defendant's girlfriend. After the stop, Hanzy drove away from defendant's house. Soon thereafter, he and Martin switched positions so that Martin was driving. When they got to a stop sign, a male walked up to the car and shot Hanzy. The police recovered a .25-caliber bullet inside the car where Hanzy was shot.

At trial, Martin identified defendant as the shooter. She testified that defendant's car pulled up near her. Then, defendant got out of his car, approached her car, stuck his hand in the driver's side window of her car, and shot Hanzy. However, she also admitted that she told an officer who had previously interviewed her that she never saw the face of the shooter. Defendant was acquitted on this count.

Count 2—Possession of a Firearm by a Felon²

During the police investigation on count 1, a warrant was issued to search the house in which defendant was living with his parents. The police found a shotgun in the laundry room. They also found a box of ammunition in the downstairs closet. The prosecution argued that defendant was in constructive possession of the shotgun, since it was found in his residence.

² We note that the parties stipulated to the fact that defendant had previously been convicted of a felony.

ANALYSIS

The Trial Court's Order Under Vehicle Code Section 13350 Must Be Reversed

Defendant's sole contention is that the trial court erred in ordering his driver's license to be revoked under Vehicle Code section 13550. The People concede, and we agree.

Vehicle Code section 13350 provides that “[t]he department immediately shall revoke the privilege of a person to drive a motor vehicle upon receipt of a duly certified abstract of the record of a court showing that the person *has been convicted* of . . . [a] felony in the commission of which a motor vehicle is used” (Veh. Code, § 13350, subd. (a), italics added.)

Here, the prosecutor argued that the felon in possession of a firearm charge (count 2) could be found from defendant “possessing the .25 caliber pistol at the time he shot Mr. Hanzy, or from the shotgun when the search warrant was executed the next day.” Since the jury found defendant not guilty of the assault with a firearm charge in count 1, we infer that it convicted him of being a felon in possession of a firearm based on the shotgun found in his residence. However, at sentencing, the court stated the following: “I’m going to find there was a motor vehicle involved in and incidental to the commission of this offense. Order your license revoked. That’s how they got there. Whether there was a shooting or not, this case came out of the operation of a motor vehicle.” The court was clearly citing the facts related to the assault with a firearm charge in count 1. There was no evidence that defendant used a motor vehicle in

connection with his conviction in count 2 of being a felon in possession of a firearm. Thus, the court erred in finding that a vehicle was used in the commission of that crime, pursuant to Vehicle Code section 13350, and thereby revoking defendant's license. The finding and order should be stricken.

DISPOSITION

The court's finding and order made pursuant to Vehicle Code section 13550 are stricken. Otherwise, the judgment is affirmed.

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HOLLENHORST
Acting P. J.

We concur:

McKINSTER
J.

CODRINGTON
J.