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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

IVAN ALEJANDRO ZAMORA BLANCO,

Defendant and Appellant.

F064101

(Super. Ct. No. 1418747)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Stanislaus County. Dawna Reeves, Judge.

Marcia R. Clark, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Michael P. Farrell, Assistant Attorney General, Eric L. Christoffersen and Jennevee H. DeGuzman, Deputy Attorneys General, for Plaintiff and Respondent.

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* Before Wiseman, Acting P.J., Poochigian, J. and Franson, J.

STATEMENT OF THE CASE

On September 13, 2011, a Stanislaus County jury found appellant Ivan Alejandro Zamora Blanco guilty in count 1 of attempted premeditated murder (Pen. Code,¹ §§ 187, 664), in count 2 of assault with a firearm (§ 245, subd. (a)(2)), in count 5 of the lesser included offense of discharge of a firearm from a motor vehicle (§ 12034, subd. (d)), and in count 6 of assault with a semiautomatic firearm (§ 245, subd. (b)). The jury found that appellant personally used a firearm during the commission of counts 1, 2 and 6 (§ 12022.5, subd. (a)) and personally and intentionally discharged a firearm during the commission of count 1 (§ 12022.53, subd. (c)).

On November 4, 2011, the trial court sentenced appellant to state prison for a term of life with the possibility of parole on count 1, plus 20 years for the related section 12022.53, subdivision (c) enhancement. As to count 6, the court sentenced appellant to five years in state prison plus four years for the related section 12022.5 enhancement. The court stayed the sentence imposed on count 2 and sentenced appellant to two years in state prison in count 5, the term to be served concurrently with the term imposed on count 6.

On January 3, 2012, appellant filed a notice of appeal.

STATEMENT OF FACTS

Facts Underlying Counts 1 and 2

On the evening of January 26, 2010, Christina Casillas drove her red Dodge Stratus on West Main Street in Turlock and headed for the Freeway 99 onramp to Modesto. Appellant pulled out in front of her and proceeded slowly in his white Lincoln Aviator. Casillas passed the Aviator and then stopped at a red light. When Casillas

¹ All further statutory references are to the Penal Code unless otherwise stated.

reached the freeway onramp, appellant sped up and passed her on the left as the two vehicles entered the freeway.

Appellant and Casillas moved to the middle lane and Casillas's vehicle followed the Aviator. The Aviator eventually moved into the right lane and pulled up next to Casillas's vehicle. Casillas turned her head and saw that appellant was looking at her. Casillas then heard a smash and realized that the back passenger window of her vehicle was shattered. She heard another smash and the driver's side front window shattered. Casillas moved her vehicle into the slow lane and observed appellant get off the freeway at the Fulkerth Road exit. She proceeded to the Monte Vista Avenue exit, got off the freeway, and called 911 and her cousin Carmen Guzman.

Turlock Police Officer Amy Beebe responded to the scene and recovered bullet fragments from the Stratus. In Officer Beebe's opinion, the bullet entered through the rear passenger door, passed through the interior of the vehicle, pierced the front headrest on the driver's side, and exited through the front driver's side window. Casillas described the suspect and his vehicle to Beebe. Casillas later saw a Lincoln Aviator in the Turlock area and telephoned the police with the license plate number. Casillas eventually met with a police detective and identified appellant's picture from a photographic lineup.

Facts Underlying Counts 3 Through 6

On the afternoon of March 29, 2010, appellant drove past the James Hicks home in Turlock and exchanged words with one of Hicks's sons. From his Lincoln Aviator, appellant accused the son of stealing some tools the day before. Appellant drove past the Hicks home, turned around in a cul-de-sac, and drove back to the Hicks residence. Appellant pulled to the curb in front of the Hicks residence so that the driver's window was close to the house. Appellant and Hicks argued with one another. Appellant extended his arm through the driver's window and pointed a gun at Hicks and several of his sons. Hicks ran toward appellant to block the weapon and prevent appellant from

shooting at the children. When Hicks got within two feet of the vehicle, appellant fired the weapon, leaving gunpowder residue on Hicks's face. After appellant departed, Hicks found a shell casing on the street and called police. Hicks's wife and three of his sons identified appellant's picture in a photographic lineup.

DISCUSSION

THE TWO-YEAR SENTENCE IMPOSED ON COUNT FIVE MUST BE STAYED PURSUANT TO SECTION 654

Appellant contends and respondent concedes the trial court erroneously imposed a concurrent two-year term on count 5.

Respondent explains:

“Here, it is undisputed that appellant engaged in a single act of firing the gun from his car. The trial court reasoned that section 654 was inapplicable because count five required that the shooting be from a vehicle while count six involved an assault with a firearm. Although the requirement of a vehicle is not present for a violation of count six, section 654 addresses punishment for ‘criminal acts and omissions.’ (*In re Hayes* (1969) 70 Cal.2d 604, 611.) Because appellant engaged in a single criminal act, the sentencing court should have stayed the sentence imposed in count five.”

DISPOSITION

The judgment is affirmed. The superior court is directed to stay the concurrent term imposed on count 5, to amend the abstract of judgment accordingly, and to transmit certified copies of the amended abstract to all appropriate parties and entities.