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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re PEDRO Z., a Person Coming
Under the Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

PEDRO Z.,

Defendant and Appellant.

G050431

(Super. Ct. No. DL036197)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Lewis W. Clapp, Judge. Affirmed.

Marilee Marshall, 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, Peter Quon, Jr., and Stacy Tyler, Deputy Attorneys General, for Plaintiff and Respondent.

* * *

The juvenile court found Pedro Z. (born March 1997) possessed a firearm while on probation, an offense under Penal Code section 29815. Pedro contends there is insufficient evidence to sustain the finding. We find the contention unpersuasive, and therefore affirm the judgment.

I

FACTUAL AND PROCEDURAL BACKGROUND

In March 2014, the Orange County District Attorney filed a juvenile court petition (Welf. & Inst. Code, § 602) alleging, among other things, Pedro committed the offense of possessing a firearm while on probation (Pen. Code, § 29815). This was Pedro's fifth petition. In March 2010, the juvenile court found he committed assault and battery, and placed him on nonwardship probation. In September 2012, Pedro admitted committing commercial burglary and grand theft, and the court declared him a ward and placed him on probation on various terms and conditions, including a 90-day commitment to juvenile hall. In August 2013, Pedro admitted violating probation by failing to attend school, testing positive for THC, possessing alcohol, and riding a bicycle with a passenger. The court ordered him to serve 60 days on the Accountability Commitment Program (ACP). In March 2014, Pedro admitted violating probation by failing to attend school, associating with a nonapproved person, committing vehicular and business code violations, testing positive for THC, failing to obey curfew, and staying away from home without permission. He was ordered to serve 90 days on ACP.

At the jurisdiction hearing in May 2014, Anaheim Police Officer Mau Huynh testified that around 4:30 p.m. on the afternoon of March 7, 2014, he received a dispatch that someone had brandished a weapon. A 911 caller reported seeing four Hispanic gang members, two males and two females, hiding in the caller's apartment complex laundry room in Anaheim. One of the males appeared to be in his 20's, and was hiding a black gun in the pocket of his jeans. He wore a black t-shirt, a black hat, was about five-feet, eight-inches tall, and average weight. The other male wore a dark gray

shirt and a blue hat. The group left the laundry room and walked westbound down Balsam.

Huynh waited for backup in a patrol car at the intersection of Balsam and East Street. A silver Toyota pulled up to a stop sign to turn left from Balsam onto East. He described the driver and front seat passenger as shaved head “gang types.” Two males, one who wore a dark shirt and a dark baseball cap which Huynh believed matched the 911 caller’s description, sat in the back seat. Huynh followed the Toyota as it turned left, and pulled behind it in the right hand lane at a red light about 100 feet from the entrance to the 91 freeway. The males in the back seat turned and looked at Huynh. At some point, the rear doors swung open and the males ran from the car, north on the sidewalk toward the eastbound 91 onramp.

Huynh activated his overhead emergency lights in an unsuccessful attempt to stop the Toyota, which sped away. Huynh then left his patrol car, yelled “stop,” and pursued the males on foot. One wore a blue-checkered shirt or Pendleton. The other wore a dark blue t-shirt. The person wearing the Pendleton ran directly behind the other person. The males hopped a chainlink fence into a church parking lot. At this point, Huynh was approximately 40 to 50 feet from the suspects.

Huynh followed over the fence. As they ran through the parking lot, the person closest to Huynh, wearing the Pendleton, “discard[ed] a handgun.” Huynh was about 30 to 40 feet away and his view was unobstructed.

Huynh elected to stay with what turned out to be an operable four-inch silver handgun loaded with .22-caliber ammunition. He lost sight of the suspects, who continued running. Other officers located the suspects and Huynh identified Pedro as the person wearing the Pendleton. He identified a photograph of Jose V. as the person wearing a dark blue t-shirt and a blue Dallas Cowboys baseball cap. Huynh described how Pedro’s hand shifted from his waist to the air, and said it was “clear” Pedro, not

Jose, discarded the firearm. Huynh later admitted Jose's t-shirt shirt was dark gray rather than dark blue.

A criminalist found DNA from at least three individuals on the gun. The criminalist could not exclude Jose as the major contributor of DNA, but excluded Pedro as the major contributor.

Officer Dale Miller also received a call to respond to the incident. When he arrived in the area driving his patrol car, he saw Huynh climbing over the chainlink fence chasing two individuals through the church parking lot. One of the subjects wore a blue and white checkered Pendleton-style jacket. He could not describe the other person. The person with the Pendleton was closer to Huynh. Miller estimated Huynh was 60 to 70 yards "if not more" from the person wearing the Pendleton at the point Huynh climbed over the fence. Miller and other officers located Pedro concealing himself on the roof of a house on North Merona Street. They found Jose hiding between trash cans in the side yard of an adjacent home.

Officer Trang Pham spoke with Pedro after his arrest and also testified as a gang expert. Pedro's older brother, Weasel, was a member of the Citron Street criminal street gang, but Pedro, who was called "Lil' Weasel," denied membership. Pedro told Pham he was in the car with three other males and two females. He declined to identify the individuals or say whether they had gang affiliations, and he denied knowing Jose. Pham and a gang officer from Orange opined Jose was a member of Orange County Criminals, a criminal street gang based in City of Orange aligned with Citron. Pedro said they picked up Jose while cruising around. Pedro ran from the car because he was on probation, had cut off his GPS ankle bracelet, and did not want to get caught. He denied knowing anything about a gun, and stated his DNA would not be found on it.¹

¹ The district attorney asked the court to take judicial notice of "its file, in particular of the fact that the minor is on probation." Pedro's lawyer stated she did not object. The court stated, "So, the court will take judicial notice of the fact that the minor

Following the jurisdiction hearing, the court found Pedro committed the offenses of possession of a firearm by a probationer and obstruction of a peace officer (Pen. Code, § 148, subd. (a)(1)). In June 2014, the court continued Pedro as a ward of the juvenile court and imposed a 187-day commitment to a local juvenile facility, with credit for 67 days, and placed him on GPS monitoring for 120 days.

II

DISCUSSION

Substantial Evidence Supports the Juvenile Court's Finding Pedro Possessed a Firearm

Pedro challenges the sufficiency of the evidence to support the juvenile court's finding he possessed a firearm. Penal Code section 29815 provides, "(a) Any person who, as an express condition of probation, is prohibited or restricted from owning, possessing, controlling, receiving, or purchasing a firearm and who owns, purchases, receives, or has in possession or under custody or control, any firearm . . . is guilty of a public offense" We "review the whole record in the light most favorable to the judgment . . . to determine whether it discloses substantial evidence," that is, "evidence which is reasonable, credible, and of solid value – such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt." (*People v. Johnson* (1980) 26 Cal.3d 557, 578; see *Jackson v. Virginia* (1979) 443 U.S. 307, 317-320.)

Pedro contends the testimony he possessed and discarded a firearm was inherently improbable. (*People v. Turner* (1983) 145 Cal.App.3d 658, 671; see *People v. Marshall* (1997) 15 Cal.4th 1, 35 [judgment may not be based on speculation].) He elaborates: "[Officer] Huynh testified that he saw appellant discard the gun from forty to fifty feet away. However, [Officer] Miller testified that appellant and Vasquez were 60 to 70 yards away from Huynh. This vast difference in space described by the two officers, when coupled with the fact that, Huynh while involved in the chase was radioing

is on probation." The record reflects as a condition of probation, Pedro was expressly prohibited from using or possessing dangerous, illegal or deadly weapons.

dispatch and climbing a fence calls into question his ability to have kept the two subjects in focus and renders Miller's perception infinitely more credible. In addition Huynh's lack of observational ability, and unwillingness to admit he may be mistaken are amplified by the fact that Huynh testified he was absolutely positive that [Jose] was wearing a dark blue shirt and not a dark grey shirt when in fact, [Jose] was wearing a dark grey shirt. [Jose] matched the description of the male with the hat seen in the laundry room with the gun and was the one wearing a hat when apprehended. In addition, the DNA evidence showed that [Jose] could not be excluded as a major contributor to the DNA on the gun that was recovered while appellant was excluded. While appellant could not be excluded as a minor contributor, the expert testified that no one could be excluded. Appellant even told the officers after he was arrested to test the gun and his DNA would not be found on the gun. It would seem that if appellant had been the one holding the gun during the police pursuit, he would have been a major contributor to the DNA."

"Unless the appellate court can say that the testimony is so obviously and inherently improbable as to leave the court no recourse without self-stultification, except to reverse the judgment, the reviewing court should not interfere with the verdict and the judgment of the trial court upon that ground. [Citation.] Such improbability must 'plainly appear before the reviewing court should assume the functions of the [trier of fact].' [Citation.] 'Contradictions and inconsistencies in the testimony of a witness alone will not constitute inherent improbability' [citation], and 'it is not sufficient that the testimony may disclose circumstances which are unusual' [citation]." (*People v. Moreno* (1938) 26 Cal.App.2d 334, 336-37.) The improbability in the testimony must be intrinsic and its falsity apparent on its face without resort to comparison with other evidence. (*People v. Ennis* (2010) 190 Cal.App.4th 721, 729 [appellate court may reject testimony only when it is "unbelievable per se, physically impossible or wholly unacceptable to reasonable minds"']).)

Huynh testified Pedro discarded the firearm. As the cases above dictate, improbability in testimony must be intrinsic, and falsity must be facially apparent without comparing other evidence. Huynh's observations were not inherently improbable under this standard. But even comparing Huynh's testimony against the other evidence, there is no basis to conclude Huynh's testimony was improbable. For example, there is no basis to conclude Miller's estimate of distances was more accurate than Huynh's. Notably Miller came upon the scene after Pedro and Jose fled from the Toyota, and Miller was driving by in his car. Huynh was out of his car and following the suspects on foot. Miller did not see anyone discard a weapon, and his testimony the person in the Pendleton was following the other person corroborated Huynh's testimony. Pedro also faults Huynh's "unwillingness to admit he may be mistaken" about the color of Jose's shirt. The misdescription, dark blue versus dark gray, does not appear particularly significant, and Huynh ultimately agreed on the color after viewing Jose's shirt as an exhibit.

Pedro also states Jose "matched the description of the male with the hat seen in the laundry room with the gun and was the one wearing a hat when apprehended." As recounted above, the 911 caller reported seeing a male in his 20's wearing jeans, a black t-shirt, and a black hat with a black gun. The other male wore a dark gray shirt and a blue hat. Jose was wearing a dark gray shirt and blue hat at the time officers detained him, so neither he nor Pedro matched the description of the person with the gun. Moreover, the description of the gun as black did not match the description of the silver gun discarded during the pursuit. As for the DNA evidence, it showed Jose could not be excluded as the major contributor of the DNA, and Pedro was excluded as the major contributor. But the criminalist found DNA from at least three individuals on the gun. She also testified a person touching an item does not leave "nearly as much DNA compared" to other means of transferring DNA. A person who is a "shedder" will leave more DNA than a nonshedder, and a person might touch an item and not leave a

detectable amount of DNA. Accordingly, the exclusion of Pedro as the major contributor of DNA on the gun did not undermine Huynh's testimony he saw Pedro discard the gun.

Substantial evidence supports the juvenile court's finding Pedro possessed a firearm, which was expressly prohibited under the terms and conditions of his probation. Accordingly, we must affirm.

III

DISPOSITION

The judgment is affirmed.

ARONSON, J.

WE CONCUR:

RYLAARSDAM, ACTING P. J.

IKOLA, J.