Filed 1/23/06 P. v. Delgado CA2/5

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE, Plaintiff and Respondent, v. JESSE JOE DELGADO, Defendant and Appellant.	B180315 (Los Angeles County Super. Ct. No. YA055467)

APPEAL from a judgment of the Superior Court of Los Angeles County. Laura C. Ellison, Judge. Affirmed.

William D. Farber, under appointment by the Court of Appeal, for Defendant and Appellant.

Bill Lockyer, Attorney General of the State of California, Robert R. Anderson, Chief Assistant Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, Robert F. Katz, Supervising Deputy Attorney General, and Robert C. Schneider, Deputy Attorney General, for Plaintiff and Respondent.

Appellant Jesse Joe Delgado was convicted, following a jury trial, of one count of robbery in violation of Penal Code[1] section 211 and one count of commercial burglary in violation of section 459. The jury found true the allegations that appellant personally used a deadly or dangerous weapon in the commission of the crimes within the meaning of section 12022, subdivision (b)(1).

The trial court found true the allegation that appellant had suffered a prior violation of section 245, subdivision (a)(1), a serious felony conviction within the meaning of sections 667 and 1170.12, and served a prior prison term within the meaning of section 667.5, subdivision (b). The court sentenced appellant to the mid-term of three years on the robbery conviction, doubled to six years pursuant to section 11701.12, plus five years for the prior prison term pursuant to section 667.5.

Appellant appeals from the judgment of conviction, contending that there is insufficient evidence to support the trial court's finding that his prior conviction was a serious felony. We affirm the judgment of conviction.

Facts

Appellant entered a grocery store and concealed several items on his person. He was observed by a loss prevention officer, who pursued him after he left the store without paying for the items. Appellant threw a bottle of liquor at the officer, but was eventually arrested.

Discussion

Appellant contends that the evidence was insufficient to establish that his prior conviction for a violation of section 245, subdivision (a)(1) was a serious felony within the meaning of section 1192.7. Specifically, he contends that the documentation offered by the People is ambiguous and does not show whether a deadly weapon was involved in

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[1] All further statutory references are to that code unless otherwise indicated.

the assault and does not show whether great bodily injury was actually inflicted, or by whom. We see sufficient evidence to show that appellant was convicted of assault with a deadly weapon.

A violation of section 245, subdivision (a)(1) occurs when a defendant "commits an assault upon the person of another with a deadly weapon or instrument other than a firearm or by any means likely to produce great bodily injury." There is no requirement that great bodily injury actually be inflicted.

Section 1192.7 provides that a felony assault conviction is a serious felony if a deadly weapon is used in the commission of the assault or if the defendant *personally* inflicts great bodily injury on another. (§ 1192.7, subd. (c)(8); *People* v. *Luna* (2003) 113 Cal.App.4th 395, 398.) Thus a person who is convicted of felony assault under section 245, subdivision (a)(1) on the basis of aiding and abetting an accomplice who personally inflicts great bodily injury has not been convicted of a serious felony. Similarly, a person does not suffer a serious felony conviction when the basis of his felony assault conviction is the use of force likely to produce great bodily injury which did not actually result in great bodily injury.

On occasion, a defendant is charged with a violation of section 245, subdivision (a)(1) using the full language of the statute, or an abstract of judgment for a section 245, subdivision (a)(1) conviction uses the full language of the statute. When such a conviction is reviewed at a later date to determine whether it is a serious felony conviction, it can be unclear whether a deadly weapon was used, or whether the defendant inflicted great bodily injury. Appellant contends that that is the case here. We do not agree.

The abstract of judgment shows the crime as "245(a)(1) asslt w dwpn." Appellant does not dispute that the abbreviated phrase must mean "assault with a deadly weapon." He made no argument in the trial court that the phrase meant anything else, or that the People's evidence was in any way insufficient. He now contends, however, that this phrase does not mean that use of a deadly weapon was the basis of his conviction. He

argues that it could simply be a generic description of the crime or a general reference to the statute violated.

To support this argument, appellant points to another document included in the documents provided by the Department of Corrections, a document bearing the name of the Federal Bureau of Investigation on its heading. This document refers to appellant's conviction as "FORCE/ADW NOT FIREARM:GBI." Appellant contends that the use of the word "force" and the term "GBI" make the underlying nature of his conviction unclear.

We see no reason to give any weight to the FBI document. There is nothing to indicate who prepared the document, or why. It is the abstract of judgment that is the official record of appellant's conviction.

As appellant acknowledges, we have previously found that a similar entry of "ASSLT GBI W/DLY WPN" was sufficient to prove that a conviction under section 245 was a serious felony within the meaning of section 1192.7 (*People* v. *Luna*, *supra*, 113 Cal.App.4th at pp. 398-399.) He urges us to reconsider this decision as incompatible with our Supreme Court's decision in *People* v. *Rodriguez* (1998) 17 Cal.4th 253. We see no incompatibility, and thus no reason to reconsider our decision in *Luna*. We are not persuaded otherwise by the reasoning of our colleagues in Division 6 in *People* v. *Banuelos* (2005) 130 Cal.App.4th 601.

We also do not agree with appellant that the existence of the FBI document in this case distinguishes it from the situation before us in *People* v. *Luna*, *supra*. As we state, supra, we see no reason to give any weight to this document.

Disposition

The judgment is affirmed.

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ARMSTRONG,, J.

We concur:

TURNER, P.J.

KRIEGLER, J.