

Digest: People v. Ramirez

Darrell J. Greenwald

Opinion by Corrigan, J., expressing the unanimous view of the court.

Issue

Is the crime of grossly negligent discharge of a firearm under section 246.3(a) of the California Penal Code¹ a necessarily lesser-included offense of the crime of discharge of a firearm at an inhabited dwelling under section 246 of the California Penal Code?²

Facts

Police responded to an apartment where a man was reportedly holding a gun to a woman's head.³ When ordered outside by the police, Defendant, Jessie Jose Ramirez, fired several shots from a shotgun out of the front and rear windows of the apartment.⁴ In all, ten spent shells were found in

¹ In full, section 246.3(a) reads:

Except as otherwise authorized by law, any person who willfully discharges a firearm in a grossly negligent manner which could result in injury or death to a person is guilty of a public offense and shall be punished by imprisonment in a county jail not exceeding one year, or by imprisonment in the state prison.

CAL. PENAL CODE § 246.3(a) (West 2009).

² In full, section 246 reads:

Any person who shall maliciously and willfully discharge a firearm at an inhabited dwelling house, occupied building, occupied motor vehicle, occupied aircraft, inhabited housecar, as defined in Section 362 of the Vehicle Code, or inhabited camper, as defined in Section 243 of the vehicle Code, is guilty of a felony, and upon conviction shall be punished by imprisonment in the state prison for three, five, or seven years, or by imprisonment in the county jail for a term of not less than six months and not exceeding one year. [¶] As used in this section, 'inhabited' means currently being used for dwelling purposes, whether occupied or not.

CAL. PENAL CODE § 246 (West 2009).

³ *People v. Ramirez*, 201 P.3d 466, 467 (Cal. 2009).

⁴ *Id.* at 467–68. After police identified themselves, knocked on the door and ordered the occupants out, a shotgun was fired through the window knocking one officer backwards and spraying him with glass. *Id.* at 467. Once the officers took cover, several more shots were fired through the window, as well as from a rear window. Police again ordered the occupants out of the apartment. *Id.* The defendant's wife, Samantha, and their five-year-old daughter, came out first. *Id.* at 467–68. As Samantha emerged, she told officers that the defendant had put down his gun. *Id.* at 468. Then the defendant,

Defendant's apartment.⁵ Although no one was struck by any of the rounds fired by Defendant, several of the shots struck three neighboring apartments.⁶

Defendant was convicted, *inter alia*, of "ten counts of grossly negligent shooting and three counts of shooting at an inhabited dwelling."⁷ He was sentenced to fifteen years to life, plus thirty years and four months.⁸ On appeal, Defendant argued that three of the grossly negligent shooting convictions must be reversed because that crime is a necessarily lesser-included offense of shooting at an inhabited dwelling.⁹ The Court of Appeal affirmed Defendant's convictions.¹⁰ The Supreme Court of California granted Defendant's appeal from the appellate court's decision.¹¹

Analysis

As a preliminary matter, the parties agreed that three of the grossly negligent shooting counts and the three counts of shooting at an inhabited dwelling were based on the same acts.¹² Then the Court observed that under section 954 of the California Penal Code, "a single act or course of conduct can lead to convictions 'of any number of the offenses charged,'"¹³ but added that a judicially created exception to section 954 prohibits multiple convictions based on necessarily included offenses.¹⁴

The court identified "two tests for determining whether one offense is necessarily included in another: the 'elements' test and the 'accusatory pleading test,'"¹⁵ but noted that only the statutory elements test was proper for "deciding whether a defendant may be convicted of multiple *charged* crimes."¹⁶ The court settled on the "elements" test for deciding the case at bar because, here, the

Jessie Jose Ramirez, came out of the apartment with his hands up. *Id.* As the defendant exited he told the officers, "I'm your man, the gun's on the couch." *Id.*

⁵ *Id.* at 468.

⁶ *Id.* One of the shotgun slugs fired pierced three walls of another apartment and was directed at a bedroom where an eight-month-old baby was sleeping. *Id.* Another slug broke the window to a different apartment, hit the living room wall, and caused minor injuries to the occupant. *Id.*

⁷ *Id.* The defendant was also convicted of the attempted deliberate and premeditated murder of a police officer, assault with a firearm upon a police officer, being a felon in possession of a firearm, and child endangerment. *Id.* at 468 n.4.

⁸ *Ramirez*, at 468.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.* (citing CAL. PENAL CODE § 954).

¹⁴ *Id.* at 468 (referencing *People v. Ortega*, 968 P.2d 48 (Cal. 1998) and *People v. Pearson*, 721 P.2d 595 (Cal. 1986)).

¹⁵ *Id.* (referencing *People v. Lopez*, 965 P.2d 713 (Cal. 1998)).

¹⁶ *Id.* (citing *People v. Reed*, 137 P.3d 184 (Cal. 2006)).

2010]

People v. Ramirez

465

case involved “the conviction of multiple alternative *charged* offenses.”¹⁷

The court observed that the “elements” test looks strictly to the statutory elements, not to the specific facts of a given case.¹⁸ The test is “whether all the statutory elements of the lesser offense are included within those of the greater offense . . . if a crime cannot be committed without also committing a lesser offense, the latter is a necessarily included offense.”¹⁹ On this basis, Defendant argued that “the crime of shooting at an inhabited dwelling (§ 246) cannot be committed without also committing a grossly negligent shooting (§ 246(a)).”²⁰ The Attorney General countered that unlike section 246, the language section 246.3(a) requires “the actual presence of a person in harm’s way.”²¹

Applying the “elements” test to the case at bar, the court found that section 246 requires the following elements: “(1) acting willfully and maliciously, and (2) shooting at an inhabited house.”²² Next, it recognized that section 246.3(a) requires the following elements: “(1) the defendant unlawfully discharged a firearm; (2) the defendant did so intentionally; (3) the defendant did so in a grossly negligent manner which could result in the injury or death of a person.”²³

First, the court dismissed the Attorney General’s argument, reasoning that the plain language and legislative history of the statute confirm that section 246.3(a) requires the likely presence of people in the area and not “that an actual person be in proximity to the grossly negligent shooting.”²⁴ Second, the Court compared the elements of both offenses and found that “[a]lthough the *mens rea* requirements are somewhat differently described, both are general intent crimes” and both offenses “require that the defendant willfully fire a gun.”²⁵ The court also reasoned that the offense of shooting at an inhabited building under section 246 is “grossly negligent because a significant risk

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.* at 469.

²¹ *Id.* In support of his argument, the Attorney General pointed to the following italicized language in section 246.3(a): “Except as otherwise authorized by law, any person who willfully discharges a firearm in a grossly negligent manner *which could result in injury or death to a person* is guilty of a public offense” *Id.* (citing CAL. PENAL CODE § 246.3(a)(italics added)).

²² *Id.*

²³ *Id.*

²⁴ *Id.* at 469–72.

²⁵ *Id.* at 472.

of injury or death is foreseeable.”²⁶ It then declared that “the high probability of human death or personal injury in section 246 is similar to, although greater than, the formulation of likelihood in section 246.3(a), which requires that injury or death ‘could result.’”²⁷ Finally, the court found that the only “difference between the two, and the basis for the more serious treatment of a section 246 offense, is that the greater offense requires that an inhabited dwelling or other specified object be within the defendant’s firing range.”²⁸ Thus, the court concluded that all the elements of section 246.3(a) are necessarily included in the more stringent requirements of section 246.²⁹ Accordingly, the court reversed the judgment of the Court of Appeal and remanded with directions to reverse three of the grossly negligent shooting counts against Defendant.³⁰

Holding

The court held that grossly negligent discharge of a firearm under section 246.3(a) of the California Penal Code is a necessarily lesser-included offense of discharge of a firearm at an inhabited dwelling under section 246 of the California Penal Code.³¹

Legal Significance

As a result of this case, a defendant may not be convicted under both section 246 and section 246.3(a) of the California Penal Code if both charges are based on the same act(s) of the defendant because the latter is a necessarily lesser-included offense of the former.

²⁶ *Id.* at 469.

²⁷ *Id.* at 472.

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*