

CALIFORNIA'S IMPLAUSIBLE CRIME OF ASSAULT

MIGUEL A. MÉNDEZ*

I. INTRODUCTION: *PEOPLE V. WILLIAMS*

Williams and King were competing for the affections of King's former wife. King drove to his former wife's home to persuade her to accompany him and his two sons on an outing. When King knocked on the door, Williams opened it and told King to stay away from his former wife.

[Williams] then walked to his own truck and removed a shotgun, which he loaded with two 12 gauge shotgun rounds. [Williams] walked back toward the house and fired, in his words, a "warning shot" directly into the rear passenger side wheel well of King's truck. [Williams] testified that, at the time he fired the shot, King's truck was parked between him and King, and that he saw King crouched approximately a foot and a

* Professor of Law and Martin Luther King, Jr. Scholar, UC Davis School of Law; Adelbert H. Sweet Professor of Law, Emeritus, Stanford University. I want to thank my colleagues, Anupam Chander, Jack Chin, Floyd Feeney, Lawrence Friedman, Angela Harris, Elizabeth Joh, Donna Shestowsky, and Robert Weisberg, for their helpful comments. I alone, however, am responsible for any errors. I am especially grateful for the assistance provided by my research assistant, Daniel Shimell, and Peg Durkin and other members of the UC Davis School of Law Mabie Library.

half away from the rear fender well of the truck. [Williams] further testified that he never saw King's sons before he fired and only noticed them afterwards standing on a curb outside the immediate vicinity of King's truck. King, however, testified that both of his sons were getting into the truck when [Williams] fired.

Although [Williams] did not hit King or King's sons, he did hit the rear tire of King's truck. The shotgun pellets also left marks on the truck's rear wheel well, its undercarriage, and its gas tank.¹

Williams was charged with one count of shooting at an occupied motor vehicle and three counts of assault with a firearm, one count each for King and his two sons.² The trial judge instructed the jury that the crime of assault requires proof of the following elements:

1. A person willfully and unlawfully committed an act that by its nature would probably and directly result in the application of physical force on another person; and
2. At the time the act was committed, such person had the present ability to apply physical force to the person of another.³

The jury convicted Williams of assaulting King with a firearm, but deadlocked on the remaining counts.⁴ Williams appealed on the ground that the instruction failed to correctly define the mental state of assault. The Court of Appeal agreed and reversed his conviction, holding that the instruction was erroneous because it described the mental state as negligence instead of requiring the jury to find that at the time Williams fired the shotgun either his goal was to apply physical force or he was substantially certain that firing the gun could result in applying physical force.⁵

¹ *People v. Williams*, 26 Cal. 4th 779, 782–83, 29 P.3d 197, 199, 111 Cal. Rptr. 2d 114, 116–17 (2001).

² *Id.* at 783, 29 P.3d at 199, 111 Cal. Rptr. 2d at 117.

³ *Id.*

⁴ *Id.* California law also punishes a “person who, except in self-defense, in the presence of any other person, draws or exhibits any firearm, whether loaded or unloaded, in a rude, angry, or threatening manner, or who in any manner, unlawfully uses a firearm in any fight or quarrel.” CAL. PENAL CODE § 417(a)(2) (Deering 2008 & Supp. 2013). If the firearm is not capable of being concealed, the offense is a misdemeanor punishable in the county jail for not less than three months. *Id.* § 417(a)(2)(B). Williams used a shotgun.

⁵ *Williams*, 29 Cal. 4th at 783–84, 29 P.3d at 200, 111 Cal. Rptr. 2d at 117.