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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

KENNETH ISSAC CROPLEY,

Defendant and Appellant.

A130342

(Sonoma County
Super. Ct. No. SCR578310)

Defendant Kenneth Issac Cropley appeals a judgment entered after court trial in which he was found guilty of two counts of assault with a deadly weapon. (Pen. Code, § 245, subd. (a)(1).)¹ He contends his waiver of his right to a jury trial was not voluntary, knowing, and intelligent. We conclude the trial court properly accepted his waiver, and shall affirm the judgment.

I. BACKGROUND

Defendant was charged in counts one and two with assaulting Jeffrey Lang Ramsey and Lorie Diane Colie,² respectively, with a deadly weapon, a baseball bat. (§ 245, subd. (a)(1).) Count one also alleged that defendant personally inflicted great bodily injury on Ramsey. (§ 12022.7, subd. (a).)

¹ All statutory references are to the Penal Code.

² Colie's name is not spelled consistently in the record. We use the spelling she provided when she testified at trial.

Evidence at trial showed defendant became involved in an argument with Colie, who rented a room in a house defendant managed. Afterward, when Colie was in her upstairs bedroom with Ramsey and another person, defendant banged on her door with a baseball bat, making a hole in the door, and entered the room. He continued to swing the bat, and hit Colie in the face. He then began hitting Ramsey in the ribs, face, and buttocks with the bat. The two men continued to struggle, went through the bedroom door, and rolled down the stairs. They started fighting again, and defendant continued to hit Ramsey with the bat. Colie ran downstairs, grabbed the bat from defendant, and hit him with it. Ramsey got on top of defendant and held him down until the police arrived; he hit him a couple of times. Ramsey suffered a fractured rib and injuries to his face.

Defendant testified in his own defense. His version of events was that he went upstairs with the bat after Ramsey threatened to get a knife and kill defendant, that Ramsey charged him with a knife, and that he used the bat in self-defense. The door to the bedroom had been damaged before the incident. Defendant fell down the stairs, was knocked out, and awoke to find Ramsey sitting on top of him, digging and clawing at his chest and eyes. Colie hit him with a baseball bat. Defendant testified he suffered four broken ribs and damage to his lung, and that he had been blinded in one eye as a result of the incident.

The trial court found defendant guilty of both counts, found the enhancement allegation true, and sentenced him to a total prison term of four years.

II. DISCUSSION

A. Waiver of Right to Jury Trial

During the pretrial period, the court held two *Marsden* hearings. (*People v. Marsden* (1970) 2 Cal.3d 118.) At the first hearing, defendant said he wanted counsel to call a witness, apparently Ramsey, to testify that Colie was lying. Defense counsel told the trial court that defendant believed Colie and Ramsey should be charged with crimes based on the incident, and the court explained that only the District Attorney had the right to bring charges. Defense counsel explained that the District Attorney's office had said Ramsey might not be called as a witness because he had charges pending in an unrelated

case. Defense counsel also said Ramsey was in custody, and that he might subpoena him if the prosecution did not call him as a witness.

Two weeks later, defendant made another *Marsden* motion, seeking “a new public defender, whatever you call these guys, someone who will try to help me out,” by speaking to potential witnesses, “these people that got me thrown in jail.” His counsel told the court defendant wanted him to subpoena prosecution witnesses who had given damaging statements to the police, in order to prove they were lying. The trial court explained to defendant that parties normally did not call witnesses who were likely to hurt their case, but instead relied on cross-examination. The trial court denied both *Marsden* motions.

Before trial, defendant’s counsel told the court defendant was willing to waive his right to a jury trial. After an unrecorded bench conference, the following exchange took place:

“THE COURT: Mr. Crolley, this matter has been sent to me for trial. [¶] I’m happy to hear this case as a court trial, but first I want to talk with you about your understanding of what the procedure is. Is that agreeable to you that we just talk for a minute?

“THE DEFENDANT: Yes.

“THE COURT: Now, Mr. Crolley, it’s my understanding that you would be willing to give up your right to have a trial by a jury coming in, 12—what happens is that a group of people comes in and your attorney selects 12 people. [¶] Is that something that you want or something that you would agree that I could make the decision?

“THE DEFENDANT: Well, I would rather have you do it than the 12 people.

“THE COURT: Okay.

“THE DEFENDANT: Where I could give you all the information which they do not have in their files yet about this incident.

“THE COURT: Okay. Okay. [¶] Now, if that occurs, you understand, then, that it is up to me to make the decision as to whether or not there’s proof beyond a reasonable doubt that you committed this offense. [¶] Do you understand that?

“THE DEFENDANT: And what is this offense that you are talking about?”

“THE COURT: Well, have you had an opportunity to talk to [defense counsel] about the two counts on which you are being charged, sir?”

“THE DEFENDANT: No.

“THE COURT: You haven’t had a chance to talk to [defense counsel] about it?”

“THE DEFENDANT: Well, I want to find out what the two things are.”

The trial court explained the charges, and defendant said he wanted to ask some questions of Ramsey, and for Ramsey to testify “[o]f things that happened and did not happen.” The court replied, “Okay. [¶] *It would be my understanding that if you waived jury, the prosecutor has Mr. Ramsey under subpoena, but the prosecutor is going to ask me to read the preliminary hearing transcript so I can find out what Mr. Ramsey has to say.*” (Italics added.) The exchange continued:

“THE COURT: . . . [¶] So your feeling is that it’s important to you to have this guy, Mr. Ramsey, come in and have questions asked of him and to see what it is that I would be—you wish me to see him in person so you can question him. Is that—and so that I can see and judge the facts and make the determination?”

“THE DEFENDANT: Exactly. [¶] Because all the information that you got from the gal, Laurie Cole, you know, I gave him a big long list of when we were in court that she told them. [¶] There’s about a good ten to 15 lies that she told the cops or whoever she reported it to.

“THE COURT: Uh-huh.

“THE DEFENDANT: I wrote all the lies down and gave him a copy of them.

“THE COURT: Okay.

“THE DEFENDANT: And I would like to have Mr. Ramsey in here to show—or to tell of those lies that she said. [¶] Like I never even made it into her bedroom. [¶] I never swatted her with a baseball bat. [¶] And I want him to—it just seems outrageous how when I’m unconscious, he blinded me forever in my eyeball, raking and poking and stabbing my eyeball where she punched me with the baseball bat[,] broke four of my ribs, punctures my lung with the baseball bat, and nothing happened to them.

“THE COURT: Well, I would need to take a look at all of these facts, sir. I would need to see everything that comes forward. I would need to hear your testimony, her present testimony. [¶] But at the present time, you would be agreeable to what is called a waived jury, give up your right to have the 12 people make the decision and have the judge make the decision.

“THE DEFENDANT: Yes. And hopefully I’d be able to give you all of that information, you know, have Jeff Ramsey in here to tell all the lying statements that Ms. Laurie Cole told, reported, you know?

“THE COURT: I am finding your waiver of a jury is competent, but it is based upon a desire to have an actual trial.”

After a pause, the discussion continued:

“THE DEFENDANT: Can I please ask a question?

“THE COURT: Of course.

“THE DEFENDANT: Since I’ve been in here for five months, I’ve gone to Court about 12, 13 times dealing with this incident. [¶] We heard her story. [¶] Is there a reason why for all of this time I’ve gone there, I’ve never got to tell mine or [defense counsel] has gotten to speak to me for my story here in court[?]

“THE COURT: That’s what a trial is for, sir, and that’s why we’re here.

“THE DEFENDANT: So in Court she says—only one side gets to tell their story.

“THE COURT: No. That’s when at a trial you get a chance to tell your side of the story.

“THE DEFENDANT: Okay. Okay. [¶] . . . [¶] I thought maybe all you heard was her story and that’s all we were going to go by.

“THE COURT: Well, no. [¶] No. And that is not something that I think would be appropriate. [¶] I think as a judge, I’m sworn to give everybody a—their day in court, due process requires that I hear both sides. And I assure you that I and every judge in this Court is sworn to uphold that law.”

After further discussion and an unrecorded bench conference, the following exchange took place:

“THE COURT: Mr. Cropley, I was just speaking to the district attorney about— with, of course, your attorney there, protecting your rights, sir, and the district attorney’s office is agreed to also waive their right to a jury trial to be set in August. [¶] At this point all the witnesses will be brought in and you will have the opportunity to talk to them, cross-examine them, confront them. Is that agreeable to you, sir?”

“THE DEFENDANT: Well, do you got a list of who these so-called witnesses are?”

“THE COURT: Yes. They’ll present that list and your attorney will be able to go over the list with pickup [*sic*].”

“THE DEFENDANT: Hopefully I’ll be able to get them before the 11th because I want some of those same people as my witness.”

After some discussion of briefing and in limine motions, the court and defendant had the following discussion:

“THE COURT: Now, Mr. Cropley, you have the right to have a jury trial in this matter, and at a jury trial, only—there is—you have the right to see the witnesses in front of the jury, and you have the right to cross-examine those witnesses in front of the jury. [¶] And you have the right to subpoena witnesses but your attorney is going to cooperate with you in doing—to present them in front of a jury, and also you have the right to remain silent and the right to testify on your own behalf. [¶] Since we’re not having a jury, only as it relates to a jury trial do you give up those rights as to it relates to a jury trial [*sic*]. [¶] You’re still going to have all of those rights, it’s just that everything will be presented.

“THE DEFENDANT: I may still bring those witnesses in and ask them questions, wouldn’t I?”

“THE COURT: Yes. Absolutely.

“THE DEFENDANT: Yeah, well—

“THE COURT: The only thing I’m asking you is do you understand that you have all of these rights and they’re not going to be presented to a jury.

“THE DEFENDANT: They’re going to be done in front of you, aren’t they?”

“THE COURT: Yes, they are.

“THE DEFENDANT: That would be no problem. That would be no problem. [¶] I want to hear their story because, as I say, probably most of these witnesses that she has are going to be my witnesses to what they did to me. I’m sure that some of these people did to me while I was unconscious and how they’ve damaged me physically [*sic*].

“THE COURT: I heard this from you a couple times, several times, but I just want it to be understood, first of all, that you understand your right to have a trial by jury. Do you understand that right, sir?

“THE DEFENDANT: Yes.

“THE COURT: And do you give up your right to a jury trial and have me as the judge only address the issues that are presented?

“THE DEFENDANT: Yes.”

B. Was the Jury Trial Waiver Voluntary?

Defendant contends the trial court offered him a benefit in return for waiving his right to a jury trial and his waiver was therefore involuntary. “The Sixth Amendment, made applicable to the states in this context by the Fourteenth Amendment of the federal Constitution, confers upon a defendant in a criminal prosecution the right to a trial by jury. [Citations.] The right to a trial by jury is recognized to be a ‘fundamental constitutional right.’ [Citations.] Similarly, article I, section 16 of the California Constitution confers upon a defendant in a criminal prosecution the right to a trial by jury. [Citations.] . . . [¶] Nonetheless, the practice of accepting a defendant’s waiver of the right to jury trial, common in both federal and state courts, clearly is constitutional. [Citations.] As with the waiver required of several other constitutional rights that long have been recognized as fundamental, a defendant’s waiver of the right to jury trial may not be accepted by the court unless it is knowing and intelligent, that is, ‘ ‘made with a full awareness both of the nature of the right being abandoned and the consequences of the decision to abandon it,’ ’ ’ as well as voluntary ‘ ‘in the sense that it was the product of a free and deliberate choice rather than intimidation, coercion, or

deception.’ ” ’ [Citations.]” (*People v. Collins* (2001) 26 Cal.4th 297, 304-305, fn. omitted (*Collins*).

A court may not promise leniency or otherwise offer to reward a defendant for waiving the right to a jury trial. (*Collins, supra*, 26 Cal.4th at pp. 305-309, italics omitted; see also *People v. Dixon* (2007) 153 Cal.App.4th 985, 990.) In *Collins*, our high court concluded a defendant’s jury trial waiver was not voluntary where the trial court had told the defendant “ ‘there might well be a benefit’ ” in waiving a jury trial because “ ‘just by having waived jury’ and thus not taking two weeks’ time to try the case, ‘that has some effect on the court,’ ” and that “ ‘by waiving jury, you are getting some benefit.’ ” (*Collins, supra*, 26 Cal.4th at pp. 302, 309, italics omitted.) This exchange, concluded the high court, “presented a ‘substantial danger of unintentional coercion[]’ ” and violated the defendant’s right to due process of law. (*Id.* at p. 309.)

Defendant argues that the record of the *Marsden* hearings shows that he wished to have Ramsey’s statements brought to light, and that the trial court improperly promised him a benefit—that it would read Ramsey’s former testimony—if he waived his right to a jury trial. He relies on the trial court’s statement, “It would be my understanding that if you waived jury, the prosecutor has Mr. Ramsey under subpoena, but the prosecutor is going to ask me to read the preliminary hearing transcript so I can find out what Mr. Ramsey has to say.” He also argues that the record shows he was not familiar with trial procedures, and likely believed the trial court’s reference to a preliminary hearing transcript meant the court would read a prior written statement Ramsey had made.³

We find nothing in the court’s statements to suggest that it was offering defendant a benefit in exchange for giving up his right to a jury trial, that it would review evidence that would not be available to a jury if defendant chose to have a jury trial, or that defendant would in any way be treated more leniently as a result of his waiver. On this record, there is no basis to conclude defendant’s waiver was involuntary.

³ Ramsey did not, in fact, testify at the preliminary hearing. Nor did he testify at trial, apparently because he asserted his Fifth Amendment privilege against self-incrimination.

C. Was the Waiver Knowing and Intelligent?

Defendant argues that the record shows he did not fully understand his rights, that therefore the trial court had a duty to explain to him that a jury could find him guilty only if all 12 jurors agreed, and that without such an explanation his waiver was not knowing and intelligent.

Our Supreme Court in *People v. Tijerina* (1969) 1 Cal.3d 41, 45-46 (*Tijerina*), rejected an argument that a jury waiver was ineffective because the defendant was not told the jury's verdict must be unanimous. The court reasoned, "Defendant asserts that his waiver of the right to a jury trial was ineffective, on the ground that he was not told that a jury's verdict must be unanimous. Defendant was represented by an attorney at both the preliminary hearing and at the trial, and he was carefully questioned before his waiver of a jury trial was accepted. He stated that he knew what a jury trial was, and he was also told that 'That is when twelve people sit over here in the box and hear all the evidence.' Under these circumstances, the court was not required to explain further to defendant the significance of his waiver of a jury trial. [Citations.]" (Fn. omitted.) Similarly, the court in *People v. Wrest* (1992) 3 Cal.4th 1088, 1105, stated, "There is no constitutional requirement that appellant understand 'all the ins and outs' of a jury trial in order to waive his right to one." As noted in *People v. Castaneda* (1975) 52 Cal.App.3d 334, 344, there is no requirement for "a specific formula or extensive questioning beyond assuring that the waiver is personal, voluntary and intelligent. [Citations.]"

While acknowledging these authorities, defendant contends they do not govern here because the record shows he did not understand the legal process, and therefore his waiver was not knowing and intelligent. (See *People v. Panizzon* (1996) 13 Cal.4th 68, 83 [noting in context of accepting guilty or no contest plea that if questioning provides reason to believe defendant does not understand rights, court must inquire further to ensure knowing and intelligent waiver].) Defendant points out that he expressed confusion about whether he would be able to call witnesses and tell his own side of the story at trial and about whether it was appropriate for a defendant to call witnesses who would offer damaging testimony, and that he appeared not to understand that only the

District Attorney could decide whether to bring charges against someone. Although he was represented by counsel, defendant argues, these areas of confusion show his counsel had not been able to convey to him the mechanics of trial, and the trial court was therefore obliged to explain the nature of a jury trial in more detail, in particular the need for a unanimous verdict.

The record provides no basis to conclude defendant did not understand the nature of a jury trial. The court explained twice that a jury would involve 12 people deciding his case, explained to him to the nature of a trial, reiterated several times his right to a jury, and received defendant's waiver more than once. The trial court properly accepted the waiver.

III. DISPOSITION

The judgment is affirmed.

RIVERA, J.

We concur:

RUVOLO, P. J.

REARDON, J.