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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

NOAH BATTLE,

Defendant and Appellant.

A132037

(Solano County Super. Ct. No.
FCR261974 & FCR253558)

This is an appeal from final judgment after a jury convicted defendant and appellant, Noah Battle, of corporal injury to a spouse or cohabitant and assault with a deadly weapon by means likely to produce great bodily injury. Appellant challenges the judgment on the ground that the trial court erred in admitting lay opinion testimony by the investigating officer relating to appellant's credibility. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

On January 13, 2009, an information was filed in Solano County charging appellant with attempted murder (count one) (Pen. Code, §§ 664/187),¹ corporal injury to a spouse or cohabitant (count two) (§ 273.5, subd. (a)), and assault with a deadly weapon by means likely to produce great bodily injury (count three) (§ 245, subd. (a)(1)). The information further alleged an enhancement for causing great bodily injury as to all counts (§ 12022.7, subd. (e)).

¹ All further statutory references are to the Penal Code unless otherwise indicated.

The information related to the repeated stabbing of Danielle Writt at about 3:30 a.m. on December 23, 2008. In February 2010, an initial trial concluded with the jury acquitting appellant of the attempted murder count but failing to reach a verdict on the remaining two counts. The case was thus retried, after which the jury found appellant guilty of both the corporal injury and assault counts. The jury also found true the great bodily injury enhancement. This result stemmed from the following evidence presented at trial.

A. The Prosecution's Case.

Appellant and Danielle Writt had a volatile on-again-off-again three-year relationship that produced a daughter in 2008. A week after their daughter was born, appellant moved out of Writt's apartment and into his parent's home in Fairfield. Occasionally, however, appellant stayed at Writt's apartment.

At trial, Writt testified that, on the day in question, appellant picked her and their daughter up from her apartment and drove them to a shopping mall in Fairfield. On the drive, appellant and Writt began to argue over her plans to join Writt's sister at a comedy club for New Year's Eve. During this argument, appellant threatened Writt that she would regret going to the comedy club. The subject was eventually dropped.

Later that evening, appellant's parents cared for the couple's baby while appellant and Writt went to a bar for drinks. At around 3:00 a.m., appellant's father dropped them off at Writt's apartment. There, Writt walked into the kitchen to make the baby's bottle and then proceeded into the living room where she saw appellant sitting on the couch, shaking his leg, flaring his nose, and clenching his fists. Writt tried sitting on appellant's lap, but he forced her off, so she returned to the kitchen to check on the bottle.

Appellant followed Writt into the kitchen and, once there, punched the wall with his right fist. Writt, becoming nervous, tried unsuccessfully to grab a pan from the kitchen sink. At the same time, appellant grabbed a ten-inch knife from a knife holder on the kitchen counter. As Writt struggled with appellant, he used the knife with his right hand to stab her below her left breast.

At some point, the knife's handle broke, but appellant nonetheless continued to stab Witt several more times, in the left ear and throat, twisting the blade as it penetrated her skin. Witt begged appellant to stop, but not until she mentioned the baby could fall off of the bed did he drop the knife and leave to check on the baby. Witt, gushing with blood, then grabbed a pair of appellant's boxers to try to stop her ear from bleeding before escaping to the apartment manager's downstairs unit.

Maureen Sesser, the apartment manager, was asleep on her couch when Witt came to her apartment begging for help and screaming: "Noah tried to kill me." Upon opening the front door, Sesser saw Witt bleeding profusely from her head, face, and possibly her leg. Sesser let Witt into her apartment, where Witt then called her sister and appellant's parents, telling them she had been stabbed. Minutes later, Sesser saw appellant standing on the balcony outside Witt's apartment, yelling "she cut me first" and holding up his right hand. When Sesser told appellant she had called 911, appellant responded that he "should just jump over the fence." Sesser then urged appellant to go inside Witt's apartment to wait for the police to arrive. Although Sesser was 15 to 20 feet away, she did not see an injury on appellant's right hand.

Once the police arrived, Witt was taken to North Bay Hospital by ambulance. However, due to the seriousness of her injuries, she was later airlifted to John Muir Hospital and then transported to Stanford Hospital where she remained for a week and a half, enduring several surgeries.

For a long time after her surgeries, Witt could not completely close her left eye without using eye drops. She also required speech therapy to improve her slurred speech, and physical therapy to learn to eat with the stitches in her throat. Her face remains permanently paralyzed, rendering her unable to smile or speak from one side of her mouth. Photographs depicting her injuries were shown to the jury.

Witt also described to the jury other instances of appellant's violence against her. According to Witt, days after she gave birth to their daughter, appellant shattered her eye

orbit, requiring fourteen stitches, when she asked him to turn off the hallway light.² On two other separate occasions, appellant punched Writt for refusing his sexual advances and choked her for not having cigarettes. On cross-examination, Writt admitted having sustained a prior felony conviction for slapping a man.

Lead investigator, Officer Troy Oliver of the Fairfield Police Department, also testified, describing a search of the apartment following the stabbing that led to recovery of a knife blade from the kitchen floor. Officer Oliver also described a subsequent interview he conducted of appellant. During this interview, appellant admitted punching the wall and stabbing Writt, but claimed she stabbed him first as he attempted to calm her down. Appellant also stated during the interview that the knife handle broke after Writt stabbed him, and he then used the blade portion of the knife to stab her in the chest. He acknowledged to Officer Oliver that, after stabbing her in the chest, he “just went overboard and he stabbed her in the ear,” even though “he could have done something other than what he did,” including “just [leaving] and avoid[ing] the whole situation.” During the interview, Officer Oliver examined appellant’s injured palm and swollen hand but did not see any other cuts on his body.

B. The Defense’s Case.

At trial, appellant again claimed he stabbed Writt in self defense after she first stabbed him during an argument. Specifically, appellant claimed he and Writt were having a heated discussion about a Child Protective Services (CPS) representative’s recent visit to her apartment. During this discussion, Writt suggested to appellant that she was seeing someone else, to which he replied, “well, I cheated on you too.” In response, Writt grabbed a nine-inch knife with her right-hand. Appellant walked towards her, angrily slapping the wall. However, as Writt became increasingly upset and began to extend the knife toward him, appellant told her to “stop” and “calm down.” At this point, Writt pierced appellant’s palm with the extended blade, which she held in her right hand.

² On cross-examination, appellant admitted injuring Writt’s eye orbit during an argument days after their daughter’s birth, a crime for which he was later convicted of felony domestic violence.

When appellant saw blood coming from his hand, he grabbed the smooth part of the blade from Writt, causing the knife to “snap.” Appellant, worried that Writt would reach for another knife, used the blade to then stab her in the chest, and then again in her ear.

In addition to appellant’s testimony, the defense presented several witnesses to testify about Writt’s propensity for violence. In particular, appellant’s father testified that Writt had once stabbed appellant while the three of them were driving in a car together. Silas Scott described an argument he observed between Writt and appellant, during which Writt threatened to kill appellant while holding a box-cutter. Finally, Patrick Harrod described an incident at his house during which he observed a deep puncture wound on appellant’s shoulder, which Writt admitted she had caused by stabbing appellant with a plumbing tool.

C. The Verdict and Sentencing.

On November 17, 2010, the jury in the second trial convicted appellant of count two, corporal injury to a spouse or cohabitant; count three, assault with a deadly weapon by means likely to produce great bodily injury; and found true the enhancement of great bodily injury as to each count. After denying appellant’s new trial motion, the trial court sentenced him to an aggregate prison term of ten years. This appeal followed.

DISCUSSION

Appellant contends the trial court prejudicially erred by permitting the investigating officer, Officer Oliver, to testify over a defense objection that appellant’s account of how he was injured on the day in question was inconsistent with the actual type of his wound. Appellant reasons that lay opinion testimony regarding a defendant’s veracity is generally inadmissible because such testimony invades the province of the jury and that, in this case, admission of such testimony was highly prejudicial. As such, he seeks reversal of the judgment.

We review a trial court’s evidentiary determinations for abuse of discretion. (*People v. Rowland* (1992) 4 Cal.4th 238, 264.) Because a trial court has wide discretion in deciding to admit or exclude evidence, an abuse of discretion is established only where

the trial court acts in an arbitrary or irrational manner, exceeding all bounds of reason. (*People v. Kelly* (1992) 1 Cal.4th 495, 523; *People v. Preyer* (1985) 164 Cal.App.3d 568, 573-574.)

In conducting our review, we keep in mind that “[o]nly relevant evidence is admissible.” (Evid. Code, § 350.) Evidence is relevant if it has “any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the action.” (*Id.*, § 210.) Relevant evidence includes evidence that “will aid the trier of fact in appraising the witness’ credibility and in assessing the probative value of the witness’ testimony.” (*People v. Sergill* (1982) 138 Cal.App.3d 34, 40.)

Of particular significance in this case, “[u]nless precluded by statute, any evidence is admissible to support or attack the credibility of a witness if it establishes a fact that has any tendency in reason to prove or disprove the truthfulness of the witness’ testimony.” (*People v. Taylor* (1986) 180 Cal.App.3d 622, 629; see also *People v. Zambrano* (2004) 124 Cal.App.4th 228, 242 (*Zambrano*)). Consistent with this principle, evidence in the form of lay opinion testimony is admissible to the extent “such an opinion . . . is permitted by law, including but not limited to an opinion that is: [¶] (a) [r]ationally based on the perception of the witness; and [¶] (b) Helpful to a clear understanding of his testimony.” (Evid. Code, § 800.)

Thus, a witness should not be asked to opine if another person was telling the truth if such questioning is merely argumentative or designed to elicit irrelevant or speculative testimony. “However, in its discretion, a court may permit such questions if the witness to whom they are addressed has personal knowledge that allows him to provide competent testimony that may legitimately assist the trier of fact in resolving credibility questions.” (*People v. Chatman* (2006) 38 Cal.4th 344, 384; see also *Zambrano, supra*, 124 Cal.App.4th at p. 240 [“a proper attack on a witness’s credibility does not consist solely of berating the witness; it requires presenting or eliciting additional evidence which bears on the witness’s credibility”].) For instance, lay opinion testimony regarding the veracity of a statement made by a defendant or other witness “may be appropriate when necessary to clarify a particular line of testimony. . . . Even if a ‘were they lying’

question calls for inadmissible opinion on another person's veracity, asking one or two such questions, if necessary to clarify a witness's testimony, may not be a 'reprehensible method' of persuading a jury. [Citation.]" (*Zambrano, supra*, 124 Cal.App.4th at p. 242.)

Turning now to our case, the following facts are relevant. Over a defense objection, the prosecution sought to qualify Officer Oliver as an expert witness on defensive and offensive wounds, and to have him testify as a lay witness on the type of wound suffered by appellant and on his opinion as to whether this wound was consistent with appellant's explanation as to how it was inflicted. To lay a foundation, Officer Oliver was permitted to testify that he was familiar with knife wounds from investigating more than 200 cases and reading more than 200 police reports involving knife wounds. Officer Oliver had also on many occasions spoken with medical experts and victims regarding knife wounds. Officer Oliver then described a slice wound as an open cut and a stab wound as a deeper penetration through the skin. When asked to describe how he distinguishes slice wounds from stab wounds, Officer Oliver stated that the nature of the cut and how it was sustained will depend on the direction the blade is pointed. For example, the officer explained, if someone were injured while holding a knife blade, it would look more like a slice wound than a stab wound. He then described the difference between an offensive wound and defensive wound, noting that a defensive wound could occur as an injury to the under arms while someone is being attacked with their arms up.

When cross-examined, Officer Oliver acknowledged lacking medical training or certification on whether or not a wound was defensively or offensively inflicted. He also acknowledged, with respect to appellant's wound, that although he measured its length, he did not measure its depth (because it had already been stitched up), and did not compare it to the knife blade in question.

The trial court thereafter declined to qualify Officer Oliver as an expert on defensive and offensive wounds, but allowed him to provide lay opinion testimony on the type of wound suffered by appellant and his reasons for disbelieving appellant's account

of the manner in which it was inflicted. Following this ruling, Officer Oliver testified as follows:

“Q. Did the defendant explain to you how he got those injuries?

“A: He indicated that Ms. Writt cut him.

“Q. Did he explain how that happened?

“A: He claims that the cut came from when Ms. Writt had the knife.

“Q. Did he show you what position he was in when this was to have taken place?

“A: Yes.

“Q. Can you let the jury know what the defendant said and what he showed you.

“A: The defendant told me that she had grabbed a knife. He stuck his hands up like this (indicating), and was yelling at her to calm down.

“PROSECUTION: For the record, the officer has held up both arms, in kind of a right-angle manner. Both arms.

“THE COURT: Well, he’s held out both arms, and hands, palms outward, at about head height. Your height, in terms of the thumbs of each hand.

“Q. Now, when the defendant indicated that he had held his hands up, what did he say Ms. Writt was doing?

“A: That she was swinging a knife.

“Q. In your opinion was that consistent with the defendant’s injuries as depicted in No. 28?

“DEFENSE: Objection. 350. 352. Speculation.

“THE COURT: Overruled. I think it is more probative than prejudicial, in light of the officer’s training and experience and his personal observation of the wound and the defendant and the scene.

“A: No, I do not believe that is consistent.

“Q. And why do you say that?

“A. If he has his right hand up like this, or even both of his hands up — Ms. Writt is left-handed. So if she’s so-called ‘swinging the knife,’ the cut, as you can clearly see in the picture, is in here. [¶] If she’s left-handed, coming across, in my opinion the cut

would be in this area of the hand (indicating). [¶] And also, if she's swinging the knife — there's absolutely no cuts anywhere else on his arms, forearms, hands, or anywhere; just the one—inch cut right in here.”

Applying the evidentiary rules governing lay opinion testimony to these facts, we conclude there was no abuse of discretion in admitting Officer Oliver's testimony and, even if there had been, there was no resulting prejudice. In so concluding, we reason that the officer's challenged testimony was sufficiently grounded in his personal knowledge regarding knife wounds in general and appellant's wound in particular, such that his testimony was helpful to the jury in evaluating whether appellant's self-defense theory was credible. Moreover, even without Officer Oliver's testimony, the jury had ample evidence upon which to convict appellant of his crimes, such that a more favorable verdict would not have been reached had the testimony been excluded.

Specifically, with respect to Officer Oliver's relevant personal knowledge, we first note that it is beyond dispute that he was familiar with knife wounds from having investigated over 200 knife wound cases and from having discussed on numerous occasions knife wounds with both victims and medical experts. In addition, Officer Oliver personally examined appellant's knife wound shortly after the crime and, among other things, measured its length. He also interviewed appellant regarding how it was inflicted, observing appellant's demeanor as well as his reenactment of the stabbings. While Officer Oliver acknowledged on cross examination that he failed to measure the depth of the wound because it had already been stitched up and failed to compare the wound to the knife that inflicted it, “ [t]he question of the degree of knowledge goes to the weight rather than to the admissibility of the opinion.” [Citation.]” (*People v. Mixon* (1982) 129 Cal.App.3d 118, 131; cf. *People v. Melton* (1988) 44 Cal.3d 713, 744 [excluding lay opinion testimony from a witness with no personal knowledge of the facts].)

Further, with respect to the extent to which Officer Oliver's testimony aided the jury in its truth-finding mission, we note that appellant chose to take the stand to challenge the victim's and her landlord's accounts of what happened on the night in

question. As such, Officer Oliver’s testimony, coming from a third party with access to the relevant physical evidence (including the weapon and injuries) and law enforcement training, was helpful to the jury in deciding whose account was more credible. While appellant may challenge the technical and medical bases for Officer Oliver’s opinions, appellant’s competent counsel had ample opportunity to examine these alleged deficiencies at trial. (See *Chatman, supra*, 38 Cal.4th at p. 383 [it is “permissible to ask whether [the witness] knew of facts that would show a witness’s testimony might be inaccurate or mistaken, or whether he knew of any bias, interest, or motive for a witness to be untruthful”].)

Finally, even if we were to assume the trial court abused its discretion in admitting the testimony, we conclude based on the record as a whole that any such error was harmless. When confronting a claim of evidentiary error, “a ‘miscarriage of justice’ should be declared only when the court, ‘after an examination of the entire cause, including evidence’, is of the ‘opinion’ that it is reasonably probable that a result more favorable to the appealing party would have been reached in absence of the error.” (*People v. Watson* (1956) 46 Cal.2d 818, 836.) Here, we cannot reach such an opinion. Indeed, appellant himself admitted to police that, after stabbing Writt in the chest during a heated discussion, he “just went overboard and . . . stabbed her in the ear,” even though “he could have done something other than what he did,” including “just [leaving] and avoid[ing] the whole situation.” These admissions, particularly when considered in light of the gravity of Writt’s injuries (which were depicted in photographs and documented by medical records), provided a sufficient basis for the jury’s rejection of appellant’s self defense theory and its findings of guilt beyond a reasonable doubt.

Accordingly, for the reasons stated, we conclude the trial court’s decision to admit the above-described evidence provides no basis for reversing the judgment.

DISPOSITION

The judgment is affirmed.

Jenkins, J.

We concur:

Pollak, Acting P. J.

Siggins, J.