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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.

SUZANNE IRENE TAYLOR,

Defendant and Appellant.

A138296

(Solano County
Super. Ct. No. FCR286428)

In re SUZANNE IRENE TAYLOR

on Habeas Corpus.

A141507

Defendant Suzanne Irene Taylor appeals from a judgment convicting her of one count of petty theft with a prior. She contends her trial attorney provided ineffective assistance of counsel by failing to investigate and present evidence regarding her mental health history and by failing to object under Evidence Code section 352¹ to the admission of her prior shoplifting convictions. We affirm.

Factual and Procedural History

Defendant was charged with a single felony violation of Penal Code section 666, petty theft with three prior petty theft convictions. Prior to trial, outside of the presence of the jury, defendant admitted the three prior convictions alleged in the Information. The following evidence was presented at trial:

¹ All statutory references are to the Evidence Code unless otherwise stated.

At approximately 12:45 p.m. on July 3, 2011, WinCo Foods loss-prevention officer Dennis Danielson observed defendant and her four-year-old son enter the grocery store via closed-circuit TV. Defendant's entire store visit was recorded and the video recording was subsequently placed into evidence.

Danielson became suspicious of defendant when he "saw her reach into the bottom of her shopping cart and moved a couple of canvas bags around and opened them up." Danielson continued to monitor defendant and watched her take merchandise off the shelf and place it inside the large canvas bags that she had brought into the store.

When defendant went to the checkout counter, Danielson observed that, "She moved loose, unconcealed items out of the bottom of the cart onto the belt . . . [and] she put her purse on top of the [canvas] bags." Defendant did not place the items inside the canvas bags onto the conveyer belt, and the bags "were pushed to the back of the cart." Defendant also left "two 30 packs of Coors Light beer, and then also a large Tide powder" box on the bottom of the shopping cart.

Defendant paid for the items she had placed on the conveyer belt by check. She then bagged her groceries and left the store. Danielson left his office and stopped defendant just outside the store, identifying himself as the WinCo loss prevention officer. He "asked her if she had neglected to pay for any merchandise. [¶] . . . [¶] Originally, she said 'No' and I pointed to the two bags in the bottom of the cart and the items under the cart. [¶] . . . [¶] . . . She said that was her mom's groceries from earlier." Danielson then detained defendant until she was cited by the police and released.

Defendant testified that she went to the store to purchase supplies for a Fourth of July barbeque and pool party. This was the first party that she had ever planned and it was very important to her because it was her first opportunity to have her family meet and socialize with her new fiancée and his family. While shopping, she placed certain toiletry items into her reusable canvas bags "to separate them, so it's away from [her four-year-old son]," while he was finishing his lunch inside the shopping cart.

Defendant explained that she was feeling a lot of anxiety while in the store. She testified that she suffers from "vertigo" and "anxiety, asthma, bronchitis and . . . eczema

. . . and also chronic pain.” She had been prescribed several medications for her medical conditions, but had not taken them that morning. In addition, her son “was fidgeting a lot and he was arguing, and plus I just — I had really a lot of anxiety that day because I didn’t eat breakfast. . . . The night before, Jeff [her fiancée] and I got into a huge fight. That still was on my mind.” As defendant was at the checkout counter, “I was grabbing the items and putting them on the conveyor belt and paying attention to [her son]. He was just acting very nerve-wracking, and I’m trying to figure out, okay, what can I do to make him, excuse me, make him shut up. . . . ¶] . . . And that process of thinking what I was doing, he just was nerve-wracking, and I wasn’t clear about anything that morning.” She claimed she told the cashier she had items underneath her cart but she could not pick them up. She did not notice she had not placed the reusable bags on the conveyer belt.

Defendant acknowledged that she had made some mistakes in the past and had been arrested for shoplifting. On cross-examination, defendant admitted that she had three prior shoplifting convictions. Defense counsel then asked whether she had accepted responsibility and completed any type of probation for those crimes, to which defendant responded that she had. On redirect, the prosecutor asked defendant whether she had “therapy to help [her] for [her] compulsive stealing,” to which she responded “yes.”

The jury found defendant guilty as charged. Imposition of sentence was suspended and defendant was placed on three years of formal probation. Defendant filed a timely notice of appeal.

Discussion

Defendant asserts that she was denied her constitutional right to effective assistance of counsel. Under the standard set forth in *Strickland v. Washington* (1984) 466 U.S. 668, 687, in order to succeed on a claim of ineffective assistance of counsel, the defendant must show both that counsel’s performance was deficient and that the deficient performance prejudiced her defense.

1. *Defendant's Mental State*

Defendant contends her trial attorney's "failure to investigate, interview, and subpoena exculpatory witnesses constituted deficient performance which resulted in the utter failure to corroborate and support [defendant's] sole defense offered at trial, that she lacked the specific intent to steal the merchandise from WinCo Foods." She claims that had her attorney properly prepared for trial, her primary-care physician could have been called to testify regarding defendant's mental health issues and the medications she had been prescribed at the time. This evidence, she suggests, would have supported her claim that she simply forgot to pay for the items because her mind was "so obscured and clouded on that day because of her pre-existing medical conditions and mental state, along with the medications she was taking, . . . [and that she] was ultimately pushed over the edge due to the heightened stress and anxiety she experienced on that day."

We need not consider the adequacy of trial counsel's performance in this regard because the absence of this additional evidence undoubtedly was harmless. (See *In re Crew* (2011) 52 Cal.4th 126, 150 ["If a claim of ineffective assistance of counsel can be determined on the ground of lack of prejudice, a court need not decide whether counsel's performance was deficient."].) Assuming that trial counsel should have introduced evidence of defendant's mental health history, the impact that such evidence might have had on defendant's ability to form the requisite specific intent at the time of the crime is highly speculative. In contrast, the evidence that defendant actually possessed the specific intent to steal at the time of the crime is overwhelming. Her movements in the store carefully placing items into the bag she had brought with her and then placed under her purse, which she pushed to the rear of the grocery cart, were recorded and shown to the jury. Defendant's conduct after she was stopped by Danielson is particularly compelling. Rather than offer immediately to pay for the items, defendant claimed they belonged to her mother from a prior trip. Rather than admit she had forgotten to pay for the items because of her stress, she lied. Her suggestion at trial that it was her four-year-old son who, upon being approached by Danielson, said "Mom, grandma's things are down

below” and “Grandma’s stuff, we forgot” is completely lacking in credibility.

Accordingly, it is not reasonably likely that the jury would have found defendant not guilty had additional evidence been introduced to support her claim that she forgot to pay and did not intend to steal the items.²

2. *Defendant’s Prior Shoplifting Convictions*

Defendant argues that her trial attorney’s performance was deficient because she failed to object to the prosecutor’s question on redirect about whether she had completed her treatment for “compulsive stealing.” In her reply brief, she expands her argument slightly, arguing that her attorney rendered ineffective assistance by failing “to request a [section 402] hearing seeking to exclude the highly prejudicial evidence of [defendant’s] prior misdemeanor convictions before placing her on the witness stand.”

Prior to trial, defendant’s attorney filed a motion in limine to exclude defendant’s prior shoplifting convictions. The court reserved ruling on the motion until defendant decided if she would testify. Prior to her testimony, the court raised the matter again, indicating that the evidence would potentially be admissible for impeachment, depending on how the defendant testified. The court stated that if defendant’s intent became an issue, the prior convictions likely would be admissible to show an absence of mistake or other basis under section 1101, subdivision (b). As noted above, on direct examination defense counsel questioned defendant regarding the prior convictions. Following her testimony the court observed that defense counsel “chose to get right into the priors without a [section] 352 analysis by the court. I just want to make sure there’s nothing

² Contrary to counsel’s suggestion at oral argument, the exhibits to the habeas corpus petition establish that defendant’s second attorney who represented her at trial did review defendant’s medical records that had been obtained by her prior attorney and decided not to introduce them at trial and that in light of those records no further investigation was warranted. The declaration of Dr. Louisa Lurkis, attached as an exhibit to the habeas petition, does not alter our conclusion that the significance of additional evidence concerning defendant’s medical conditions would have been slight and its impact on the outcome of trial highly speculative at most. Counsel’s decision not to further investigate this issue prior to trial was not prejudicial. Accordingly, we will also deny defendant’s consolidated petition for habeas corpus (A141507).

anybody wanted to put on the record in that regard, because I didn't know what the underlying facts exactly were of those prior convictions. Doesn't seem like anybody did anything inappropriate, but I didn't get a chance to put that on the record. Just for anybody's—if anybody's wondering, I would have permitted the facts to have come out the way they did, if there had been a [section] 352 analysis, in light of defendant's testimony. They are not particularly inflammatory in any way, from what I heard, and certainly not prejudicial to the defendant in light of her testimony. And I think it was, in fact, more probative than prejudicial in light of the testimony presented. And I don't think the jury will be confused, and it certainly only took a couple of minutes."

The record on appeal does not provide any explanation for counsel's decision to bring out the prior shoplifting arrests on direct examination without awaiting a section 402 hearing. Counsel undoubtedly anticipated that the court would permit the prosecution to question defendant about her three convictions—as the court confirmed it would have done—and sought to lessen the impact of that cross-examination by bringing out the arrests on direct examination. In all events, counsel's decision not to challenge the admissibility of the priors was not prejudicial because the trial court stated clearly that it would have admitted the evidence and such a ruling unquestionably would have been proper. Because the priors were properly admitted, any deficiency in counsel's failure to object to the prosecutor's question regarding defendant's completion of therapy as a term of her probation was also harmless.

Accordingly, defendant was not deprived of the adequate assistance of counsel.

Disposition

The judgment is affirmed. Defendant's consolidated petition for habeas corpus is denied.

Pollak, J.

We concur:

McGuiness, P. J.

Siggins, J.