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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE,

Plaintiff and Respondent,

v.

JONATHAN DANIEL VOS,

Defendant and Appellant.

B242338

(Los Angeles County
Super. Ct. No. NA 089484)

APPEAL from a judgment of the Superior Court of Los Angeles County,
James B. Pierce, Judge. Affirmed.

Katharine Eileen Greenebaum, under appointment by the Court of Appeal, for
Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney
General, Lance E. Winters, Assistant Attorney General, Linda C. Johnson and
Blythe J. Leszkay, Deputy Attorneys General, for Plaintiff and Respondent.

* * * * *

Defendant Jonathan Daniel Vos appeals from a judgment convicting him of assault by means likely to produce great bodily injury, in violation of Penal Code section 245 subdivision (a)(1).¹ Defendant contends the trial court committed reversible error in allowing the prosecution to impeach him by proof of a similar prior felony conviction without proper sanitation. We disagree, and affirm the conviction.

FACTS

1. Prosecution Evidence

On June 29, 2011, about 2:00 a.m., Bladimir Acosta walked to his friend's apartment after a few drinks at a local bar. After his friend's roommate asked him to leave, Acosta contacted another friend, Jackie Jones, to pick him up. As he waited outside the apartment building for Jones, Acosta began to urinate in the street. Acosta noticed two men, defendant and Nicholas Ichikawa,² crossing the street towards him. Defendant yelled, "What the fuck are you doing pissing on my street?" Defendant kicked the rear tire of Acosta's bicycle and, thereafter, both defendant and Ichikawa walked away.

After this interaction with defendant, Acosta called Jones and asked her to hurry up. While Acosta was on the phone with Jones, defendant and Ichikawa ran towards Acosta, pushed and beat him, causing him to fall to the ground. Defendant and Ichikawa continued to beat Acosta's head and upper body areas as Acosta struggled to fight back. In fear for his life, Acosta reached for his pocketknife and began swinging it in a slashing motion. After approximately 10 swings, defendant and

¹ Undesignated statutory citations are to the Penal Code.

² Ichikawa was a codefendant in this matter. On April 30, 2012, an amended information was filed against Ichikawa, charging him with assault by means likely to produce great bodily injury, in violation of section 245 subdivision (a)(1). The information further charged special allegations against Ichikawa, in violation of section 1203, subdivision (e)(4), alleging that Ichikawa suffered two prior felony convictions. On May 3, 2012, a jury returned a verdict of guilty against Ichikawa. On June 26, 2012, Ichikawa filed a notice of appeal, but pursuant to his request for dismissal, the appeal was dismissed on January 29, 2013.

Ichikawa stopped hitting Acosta, who immediately got up and ran away from the scene.

Zachary Sandoval testified that he witnessed the altercation from an apartment balcony across the street. According to Sandoval, defendant and Ichikawa attacked Acosta. Defendant and Ichikawa held onto Acosta's shirt and continued to beat him, as Acosta attempted to fight back by swinging his arms. After about five minutes, Acosta broke free from the fight.

2. Defense Evidence

Defendant testified on his own behalf.

According to defendant, on June 29, 2011, defendant noticed Acosta urinating in the street. Feeling "[p]erturbed" by Acosta's failure to conceal himself, defendant yelled: "What the fuck are you doing? There's a restroom around here somewhere. Why don't you go find it, and get the fuck out of here?" Defendant kicked Acosta's bicycle tire and then continued walking home.

About five to 15 minutes after reaching his home, defendant went back outside to retrieve his laptop from his truck. Once outside, defendant heard loud crashing noises. Defendant walked towards the front of the apartment complex and discovered Acosta kicking down the panels of a fence. As defendant approached Acosta, defendant said, "What the fuck are you doing? Quit doing that." Defendant attempted to keep Acosta from further damaging the property by placing himself between Acosta and the fence. When defendant approached, Acosta struck defendant in the stomach. Defendant struck Acosta in self-defense, and a fist fight ensued. It continued for about 40 seconds, until defendant realized he had been stabbed multiple times by Acosta. As defendant turned to flee, Acosta stabbed him in the back. Once defendant was finally able to get away, he saw Acosta run away from the scene of the incident.

According to defendant, Acosta appeared intoxicated. Defendant presented testimony from Officer Richardson, the responding officer, who testified that he

smelled alcohol on Acosta's breath. According to Officer Richardson, Acosta stated he was "buzzed" from the alcohol, but felt that he was still under control.

During defendant's direct examination, defendant admitted his 2004 felony conviction for assault by means likely to produce great bodily injury. On cross-examination, defendant also described the nature, the date, case number and county of his 2004 conviction.

PROCEDURE

On April 30, 2012, an amended information was filed against defendant, charging him with one count of assault by means likely to produce great bodily injury, in violation of section 245 subdivision (a)(1). The information further alleged that defendant suffered a 2004 conviction for the same crime.

At the start of trial, outside the presence of the jury, defendant sought a tentative ruling on the admissibility of the prior felony conviction. Defendant requested the court sanitize the prior conviction to reduce its prejudicial effect.

The trial court ruled that the prior conviction would be admissible, without sanitation, for impeachment purposes. The trial court provided the following explanation:

"[The Court:] And while my concerns are the same as you enunciated, namely, that 245 has both violent elements as well as credibility elements. It's the credibility elements that I think are -- would be very valuable for a jury to have before it to make that critical issue as to who was the aggressor and who wasn't.

"On the other hand, I don't think sanitation resolves that dispute because, if the court were to sanitize it as you suggest and say something to the effect we've had all these discussions in chambers, of calling this, well, he was convicted previously of a crime of moral turpitude, and leave it at that without describing fully to the jury, then you have a juror possibly speculating that it could be much worse than it is. Namely, it could be murder that he was previously convicted of. It could be moral turpitude.

“. . . Could be a sexual crime or rape or child molest, and they’d be speculating as to what type of crime it was as opposed to being directed this is the crime he was convicted on such and such a date. . . . And you could only use this for the issue of resolving any issues of credibility. . . .

“I think it’s much preferable for the court to delineate the actual crime so [the jurors] don’t start speculating in the other direction. And, again, could be speculation. It could be much worse for the defendant. It is a critical issue. I recognize it.”

Prior to submitting the case to the jury, the trial court gave a jury instruction limiting the jurors’ consideration of the prior conviction for purposes of evaluating defendant’s credibility only. On May 3, 2012, a jury returned a verdict, finding defendant guilty of assault by means likely to produce great bodily injury, in violation of section 245 subdivision (a)(1). Subsequently, on May 31, 2012, defendant admitted to suffering a prior assault conviction (§ 245, subd. (a)(1)) in October 2004. Defendant was sentenced to the upper term of four years for the assault, plus one year for the admitted prior conviction resulting in a prior prison term (§ 667.5, subd. (b)), for a total of five years in state prison.

DISCUSSION

In the trial court, defendant moved to sanitize his 2004 felony conviction to make sure the jury would not use it as evidence of his propensity to commit assaults. Defendant argued the prior should be referred to as a “crime of moral turpitude.” In the alternative, defendant proposed to characterize the prior as a “felony assault.” Defendant acknowledged that “felony assault” was not substantially different from the charged offense, and also acknowledged the phrase “a crime of moral turpitude” may lead to speculation. Finding defendant’s proposals for sanitation more likely to increase prejudice, the court admitted defendant’s prior conviction without sanitation.³

³ Although the court gave defense counsel additional time to propose alternative ways to sanitize the prior conviction, defense counsel provided no other suggestions.~(2RT 241)

On appeal, defendant now argues the trial court committed prejudicial error by refusing to sanitize his prior felony conviction.

A witness may be impeached by a prior conviction of a felony involving moral turpitude subject to the trial court’s discretion under Evidence Code section 352. (*People v. Clark* (2011) 52 Cal.4th 856, 930.) In determining the admissibility of such evidence, the court “‘should consider with particular care whether the admission of such evidence might involve undue time, confusion, or prejudice which outweighs its probative value.’”⁴ (*Id.* at p. 932.)

“Because the court’s discretion to admit or exclude impeachment evidence ‘is as broad as necessary to deal with the great variety of factual situations in which the issue arises’ [citation], a reviewing court ordinarily will uphold the trial court’s exercise of discretion [citations].” (*People v. Clark, supra*, 52 Cal.4th at p. 932.) Such discretion will not be disturbed absent a “clear showing [it] exceeded the bounds of reason, all of the circumstances being considered.” (*People v. DeJesus* (1995) 38 Cal.App.4th 1, 32.)

Defendant does not dispute that the evidence at issue here involves a crime of moral turpitude. (See *People v. Elwell* (1988) 206 Cal.App.3d 171, 177 [holding that assault by means likely to produce great bodily injury is a moral turpitude crime].) Instead, defendant argues the trial court abused its discretion when it allowed the prosecution to impeach him with his prior conviction without proper sanitation. Defendant demonstrates no abuse of discretion.

⁴ Defendant relies heavily on *People v. Beagle* (1972) 6 Cal.3d 441, 453-454. We focus on the standard in our Supreme Court’s decision in *People v. Clark, supra*, 52 Cal.4th 856, because that case follows the passage of Proposition 8 in 1982, which “led to the enactment of article I, section 28 of the California Constitution. Article I, section 28, subdivision (f)(2) provides in pertinent part that ‘relevant evidence shall not be excluded in any criminal proceeding’ Subdivision (f)(4) allows prior felony convictions to ‘be used without limitation for purposes of impeachment.’ (Cal. Const., art. I, § 28, subd. (f)(4).)” (*People v. Clark, supra*, at p. 931, fn. 20.)

The trial court properly weighed the probative value and prejudicial impact of the prior conviction. Recognizing that defendant's credibility was a critical factor for the jury to resolve, the court concluded the probative value of the evidence substantially outweighed its prejudicial impact. The trial court explained: "It's the credibility elements that I think are -- would be very valuable for a jury to have before it to make that critical issue as to who was the aggressor and who wasn't. [¶] . . . [¶] I think it's much preferable for the court to delineate the actual crime so [the jurors] don't start speculating in other directions. And, again, could be speculation. It could be much worse for the defendant. It is a critical issue. I recognize it." The court instructed the jury to limit the use of the prior to help determine defendant's credibility only. The court's actions as a whole tend to show that "the court was concerned that the evidence be presented in a manner that offered probative value, as opposed to prejudicial effect." (*People v. Little* (2012) 206 Cal.App.4th 1364, 1378.) The trial court properly exercised its discretion in applying Evidence Code section 352.

Defendant further argues the trial court erred in refusing to describe the prior as a crime involving moral turpitude. This argument lacks merit. (*People v. Little, supra*, 206 Cal.App.4th at p. 1379.) Because crimes involving moral turpitude include murder and torture, it would be "far safer to tell the jury what the crime was than to let the jury speculate." (*Ibid.*) Similarly here, as the trial court concluded, it was safer to describe the crime than to allow speculation.

Finally, defendant demonstrates no abuse of discretion in the trial court's conclusion that characterizing defendant's prior conviction as a "felony assault" would be problematic. Characterizing the prior conviction as a "felony assault" could cause the jury to speculate that defendant committed a more serious crime, such as sexual assault, resulting in a more prejudicial effect on defendant's case. Moreover, as defendant's trial counsel recognized, it provided him no substantial benefit. Defendant proposed no persuasive method of sanitizing his prior and excluding the prior would

have given him a “false aura of veracity.” (*People v. Massey* (1987) 192 Cal.App.3d 819, 825.)

In sum, defendant demonstrates no error in the trial court’s decision to admit the prior conviction without sanitation.

DISPOSITION

The judgment is affirmed.

FLIER, J.

WE CONCUR:

RUBIN, Acting P. J.

GRIMES, J.