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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
(Shasta)

THE PEOPLE,

Plaintiff and Respondent,

v.

ALBERT CURTIS SANCHEZ,

Defendant and Appellant.

C071137

(Super. Ct. No. 09F3322)

A jury convicted defendant Albert Curtis Sanchez of second degree robbery and first degree murder during the commission of robbery. The trial court sentenced defendant to life without the possibility of parole plus seven years. Defendant confessed to the brutal beating of Timothy Alcorn. His trial defense was that the beating did not cause Alcorn's death. Prior to trial he moved the court to allow evidence he contended proved someone else was responsible for killing Alcorn. The trial court allowed some, but not all of the third party culpability evidence. The subject of this appeal is

defendant's claim that the trial court erred to the extent it did not allow third party culpability evidence. We shall affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

Timothy Alcorn, who was homeless and living in a tent in a greenbelt area off of Masonic Avenue in Redding, was beaten to death on April 18, 2009. Defendant confessed that he and his friends Jared Voss and John Thompson were "hanging out" just as the sun was setting, wondering what they should do since they had no money and no weed, when they saw a "bum" (Alcorn) walk by. The bum bought some beer, and defendant came up with the idea of knocking the bum over the head and taking his beer. Defendant did not think there would be any investigation because it was "just a bum." Defendant found a wooden table leg near a dumpster and two other steel bars. Defendant came up behind Alcorn and hit him in the back of the head with the wooden leg, breaking the wooden leg. Voss and Thompson each hit Alcorn once with the steel bars, but they did not hit Alcorn forcefully. Defendant, however, "kind of got carried away" because "it felt good." He picked up the black metal bar that one of the others had discarded and hit Alcorn three times before the metal bar broke. Alcorn was knocked out on the ground and bleeding. Defendant picked up the silver metal bar and hit Alcorn "a couple times." Defendant hit Alcorn on the back right side of the head and on the left side of the head. Defendant's swing was like he was hitting a baseball.

Defendant searched Alcorn's pockets, and found his wallet. Defendant knew from the wallet that the man's name was Tim. Defendant took Alcorn's beer and threw his wallet in the trash. Defendant dragged Alcorn into a bush and put a jacket over his head before leaving the scene. Defendant and Voss threw the weapons under some trees. Defendant was 90 percent sure Alcorn was dead when he left him. However, he went to the spot where he had left Alcorn later, and Alcorn was no longer there. He thought perhaps Alcorn had walked away.

Around 8:30 p.m. on Saturday, April 18, 2009, Ryon McCullough and his girlfriend were at the AM/PM on Lake Boulevard and Masonic Avenue. As they were leaving, a man identified as Alcorn walked in front of them. He was stumbling and bloody, and looked as though he had been beaten. His hair was matted with blood, he had blood on his face, and his shirt was covered in blood. The blood appeared to be fresh. He was not walking in a straight line, and looked as though he was drunk. McCullough asked Alcorn if he had been beaten up. Alcorn said yes, and asked for a cigarette. McCullough called 911. After placing the call, he looked for Alcorn, but did not see him anywhere.

On April 20, two days after the beating, Thomas Smitherman, a friend of Alcorn's family who had heard Alcorn was missing, went searching for him in the greenbelt area south of Masonic Avenue. Smitherman found Alcorn's bloody body in some manzanita brush. Alcorn appeared to have been dead for a while. Michael Darling, the crime scene technician, opined that Alcorn had been assaulted at a location different from where the body was found. The body was found at a location where there were no scuff marks, and the grass was not packed down. Also, there was no room for anyone to have stood with Alcorn and beaten him without also breaking off some of the brush, and none of the brush was broken. There was a lot of blood on the ground where the body was discovered. On a trail near the body there were several blood drops, which appeared to have come from a person bleeding as he walked down the trail.

At another location within the greenbelt closer to Masonic Avenue, was an area with two blood pools and a lot of blood drops on some of the rocks. One of Alcorn's friends found Alcorn's jacket near the blood pools.

Several days after finding Alcorn's body, Smitherman took Alcorn's brother to the location where he had found Alcorn's body. While they were looking around, Smitherman noticed two table legs in some bushes that he had not seen previously. One was wooden, was broken off, and appeared to have blood on it. The other was metal.

Alcorn suffered 13 distinct lacerations on his head caused by a blunt instrument. Most of the lacerations were on the left side of the head, but there were also some on the top and right side. The scalp lacerations were consistent with the table legs and metal bars recovered from the scene, which matched defendant's description of the weapons he used to beat Alcorn. Alcorn suffered brain injuries that corresponded to the scalp lacerations.

A forensic pathologist from the Shasta County Coroner's Office testified that Alcorn suffered from neuronal necrosis, which occurs when an area on the hippocampus loses blood flow, resulting in nerve cell death from lack of oxygen. This type of injury is not visible until four hours after injury, indicating Alcorn died a minimum of four hours from the time of the beating. Had Alcorn died immediately, his brain would have looked quite different. The pathologist also testified that all of the blows were inflicted in a short period of time, because there was no indication of clotting or healing to differentiate the wounds, and all of the blows contributed to the "overall effect."

The pathologist further testified that a person receiving the injuries reflected in Alcorn's autopsy could have lost consciousness initially, but still have gotten up and walked around and talked. However, once the brain started swelling, there would have been more bleeding, and he would have become unconscious, lapsed into a coma, and eventually died.

Masonic Avenue, which runs in a north-south direction, cuts into the greenbelt in question, which lies to the west, south, and east of Masonic Avenue. Starting at the south end of Masonic Avenue, and working south into the greenbelt, the evidence was recovered as follows: (1) northernmost and closest to Masonic Avenue were the larger piece of the wooden table leg (found by Smitherman), a broken piece from the black metal bar (found by Smitherman), and the silver metal bar, which had Alcorn's blood on

it;¹ (2) further south was the clearing where the two blood pools, Alcorn's jacket, and the smaller broken-off part of the wooden table leg, which contained defendant's fingerprint, were found; (3) slightly further south was the black metal bar, which had Alcorn's hair and blood, and defendant's palm print on it; (4) still further south is where Alcorn's body was found.²

The prosecution's theory was that after beating Alcorn in location (2), defendant and his two friends fled out of the greenbelt, throwing their weapons into areas (1) and (3). Alcorn did not die immediately, but got up, threw off his jacket, and walked to the AM/PM that was located at the north end of Masonic Avenue at its intersection with Lake Boulevard. After speaking with McCullough, Alcorn headed south on Masonic Avenue and back into the greenbelt. Alcorn was trying to make his way back to his home camp, but fell, lapsed into a coma, and died in area (4). The distance from the site of the beating to the AM/PM, and back to the location where Alcorn's body was found is approximately a half-mile.

Dr. Terri Haddix, a neuropathologist, testified as an expert witness for defendant. She opined that after sustaining the full complement of injuries shown on the autopsy, Alcorn would have had an immediate loss of consciousness and ultimately would have lapsed into a coma. Even if Alcorn had been conscious, the injuries would have affected

¹ Some metal pieces matching the black metal bar were found further north, but there is no indication these pieces were used to kill Alcorn.

² One of defendant's arguments is that Smitherman found weapons near the location of Alcorn's body, and that this was not close to the area where defendant and his friends beat Alcorn. Our review of the records, including the exhibits, indicates the weapons Smitherman found were much closer to the site of the beating than the site at which the body was discovered.

his ability to move. The defense expert stated, “. . . I don’t think he would be capable of coordinated, volitional activity to be able to maintain balance, to be able to walk or any of that, if he were even conscious.”

Nisha Wilson Sanchez was defendant’s girlfriend at the time of the incident, and his wife by the time of trial. She testified that on the day Alcorn was killed, she had a chance meeting with her cousin, Ramon Contreras as she was going to work. She said Contreras asked her if she had seen Alcorn, that he was looking for Alcorn to get his money, and that he was going to get “it” no matter what.

Nisha Sanchez admitted that when she spoke to police investigators on April 22, after Alcorn’s murder, she told them she had not seen Contreras on the day of Alcorn’s murder. She also admitted that the following day, after defendant had been arrested for Alcorn’s murder, she talked to another police investigator and never mentioned seeing Contreras. She admitted she told the investigators that defendant, Voss, and Thompson came to her house the day after the murder and that they were acting unusually quiet.

DISCUSSION

Defendant made a motion to admit evidence of third party culpability. The evidence concerned the fact that early in the investigation the police had been suspicious of three people in the local transient population: Kenneth “Kenny” Trejo, his daughter Kendra Trejo, and Ramon “Goose” Contreras. The evidence defendant sought to have admitted fell into the following categories: (1) inconsistent statements Kenny Trejo made to the police, (2) Molly Levan’s statement that Kenny Trejo was angry and came to her tent looking for Alcorn shortly before Alcorn’s murder, (3) evidence that Contreras had seizures when questioned by police and lied to the police when interviewed, (4) testimony of defendant’s forensic pathologist that Alcorn would have been unable to walk and talk after receiving his injuries, and (5) testimony of Nisha Sanchez that Contreras had been looking for Alcorn the day before the murder and told her he would “take care of” Alcorn if Alcorn did not pay him his money.

The trial court allowed the testimony of defendant's expert witness in forensic pathology and the testimony of Nisha Sanchez. At issue here are the other three categories of evidence, which were excluded by the trial court.

The admission of third party culpability evidence is treated like any other evidence. "[I]f relevant it is admissible [citation] unless its probative value is substantially outweighed by the risk of undue delay, prejudice, or confusion [citation]." (*People v. Hall* (1986) 41 Cal.3d 826, 834.) To be relevant, such evidence "need not show 'substantial proof of a probability' that the third person committed the act," but it must "be capable of raising a reasonable doubt of defendant's guilt." (*Id.* at p. 833.) "[E]vidence of mere motive or opportunity to commit the crime in another person, without more, will not suffice to raise a reasonable doubt about a defendant's guilt: there must be direct or circumstantial evidence linking the third person to the actual perpetration of the crime." (*Ibid.*) Finally, the rules on third party culpability evidence set forth in *People v. Hall* did not repeal the Evidence Code, thus "[i]ncompetent hearsay is as inadmissible as it always was." (*People v. Huggins* (1986) 182 Cal.App.3d 828, 833.)

We review the trial court's decision to exclude evidence for abuse of discretion. (*People v. Chism* (2014) 58 Cal.4th 1266, 1291.) The trial court's exercise of its discretion to exclude evidence if it determines that the probative value is substantially outweighed by the risk of undue delay, prejudice, or confusion will be upheld on appeal unless the court exercised its discretion in an arbitrary, capricious, or patently absurd manner. (*People v. Thomas* (2012) 53 Cal.4th 771, 806.)

I

Kenny Trejo's Statements to Police

Kenny Trejo died a few months after giving a statement to police. Defendant's offer of proof regarding his statements was as follows. On April 21, three days after the murder: "Kenny initially denied having been in the Masonic Avenue area during the

previous few days, or that he knew Alcorn. Then, upon being shown a photo of Alcorn, admitted that he did know him as 'Tim,' and that he was his 'drinking partner.' He continued to deny having seen him in the previous few days. Shortly afterward, he admitted to recently having been in the area, but denied that he was looking for Alcorn. He said that Kendra and Contreras had been with him. He later admitted that he had lied, and they had seen Alcorn in the Masonic Ave. area over the weekend of April 17th through 20th. When told that Alcorn had been assaulted and killed, Kenny told investigators that was 'not supposed to happen to him.' He could not explain what he meant by that statement. He further stated that he 'could clear' his daughter Kendra. [¶] Kenneth voluntarily submitted to a voice stress analysis, which indicated deception regarding his participation of an attack on Alcorn. After the test, he stated that while they were there drinking, Contreras wandered off, returning after about an hour with two twelve packs of beer and blood on his shirt. Contreras told Kenny that he had just been in a fight and beaten [somebody] up. [¶] Eventually, Kenny admitted that the reason the three went to the Masonic Avenue area was to locate Tim Alcorn. Contreras had given Alcorn \$15.00 to buy beer. Alcorn, however, did not return with the money or the beer. Contreras was angry, and wanted to get his money from Alcorn. Kenny, Kendra and Contreras were sitting near the bus stop on Masonic when Contreras said he saw Alcorn and was going to get his money back. [¶] Kenny participated in a videotaped walk-through of the Masonic area, essentially confirming h[is] last statement. He added that the three went afterward to [the] home of his brother, Robert Trejo. When contacted, Robert denied this. A few months after this statement, Kenny Trejo died of a heart condition." (Fns. omitted.)

At the hearing on defendant's motion to admit third party culpability evidence, the trial court asked defense counsel to explain witness by witness what testimony could be expected, and how defendant intended to "pass muster in terms of hearsay." The court then indicated it could not think of any hearsay exception that would apply to Kenny

Trejo's statements. Defense counsel replied, "And the statements themselves are not offered." Instead, he sought to offer without getting "in the gist of it," that Trejo "told completely inconsistent stories about whether or not he was in the Masonic Avenue area near the times in question[,] . . . told completely inconsistent stories about whether he knew Tim Alcorn[,] . . . [and] told completely inconsistent stories about whether he knew anything about Tim Alcorn's assault."

The trial court explained its eventual ruling: ". . . Kenny Trejo's statements that evidence -- basically, nothing other than he was dancing around the truth, whatever the truth may be, it simply invites jurors to speculate as to -- as to why he gave conflicting stories. Was he covering for someone else? Was he covering for Mr. Sanchez? Who knows? And so, I see no significance to that."

Defendant now argues that Kenny Trejo's actual statements to police should have been admitted, and that if they had been admitted, there is a significant likelihood the jury would have concluded that Ramon Contreras had the motive, opportunity, and intent to commit a violent act against Alcorn. However, defendant conceded at the hearing that Kenny Trejo's statements were inadmissible hearsay; he specifically asserted that he was *not* offering the substance of the statements, but only that Trejo had given inconsistent answers when questioned. By asserting that he was not offering the statements themselves, defendant has waived any claim on appeal that the statements were admissible.

Defendant argues that if there were any forfeitures on the part of trial counsel, he received ineffective assistance of counsel. We reject this claim. The argument requires that defendant prove that trial counsel's performance "fell below an objective standard of reasonableness under the prevailing norms of practice." (*In re Alvernaz* (1992) 2 Cal.4th 924, 937.) Defendant cannot show that his trial counsel's failure to offer statements that were inadmissible hearsay was unreasonable under the prevailing norms of practice.

We thus address the admissibility of defendant's limited offer of evidence, i.e., that Trejo gave the police inconsistent statements.

The fact that another transient, when questioned regarding the murder of one of his fellow transients, would not be immediately forthcoming with police, or would tell inconsistent stories, is not relevant to the material issues in defendant's trial for Alcorn's murder. As the prosecutor argued below, unless Kenny Trejo's statements were offered for the truth, they were irrelevant. Since defendant waived the admission of the statements themselves by asserting that he was not offering the statements themselves, Kenny Trejo's inconsistency in the face of police questioning is not admissible because it was not relevant.

The irrelevant evidence that Kenny Trejo gave inconsistent answers when questioned by police does not become any more relevant when considered in conjunction with Dr. Haddix's testimony that Alcorn would not have been able to walk or talk having suffered the type of injuries he suffered, or with Nisha Sanchez's testimony that Contreras had been looking for Alcorn in order to collect a debt from Alcorn. As indicated, third party culpability evidence is not relevant unless it raises a reasonable doubt as to the defendant's guilt. Evidence that does no more than show motive and opportunity does not raise a reasonable doubt as to guilt unless there is evidence, either direct or circumstantial, linking the third party to the actual perpetration of the crime. (*People v. Hall, supra*, 41 Cal.3d at p. 833.) Evidence that Kenny Trejo gave inconsistent answers when questioned does not rise to this level.

Assuming the admitted testimony of Dr. Haddix and Nisha Sanchez made the evidence slightly probative of some material issue, it was properly excluded under Evidence Code section 352, because its probative value, which was minimal at best, was substantially outweighed by the probability that its admission would necessitate undue consumption of time or confuse the issues.

Since there was no error under state law, we also reject defendant’s contention that exclusion of the evidence deprived him of a fair trial and violated the First, Fifth and Sixth Amendments to the federal Constitution. “ “[A]s a general matter, the ordinary rules of evidence do not impermissibly infringe on the accused’s [state or federal constitutional] right to present a defense.” [Citations.]’ (*People v. Robinson* (2005) 37 Cal.4th 592, 626-627, quoting *People v. Hall* (1986) 41 Cal.3d 826, 834; see also *Holmes v. South Carolina* (2006) 547 U.S. 319, 326-327, 164 L.Ed.2d 503 [although the federal Constitution prohibits exclusion of defense evidence under state rules that serve no legitimate purpose or that are disproportionate to the ends they are asserted to promote, application of well-established rules of evidence is permissible].)” (*People v. Linton* (2013) 56 Cal.4th 1146, 1202.)

II

Molly Levan Testimony

Defendant’s offer of proof as to the proposed testimony of Molly Levan was: “About two days before the killing, Kenny Trejo appeared, angry and asking where Alcorn could be found, at the campsite of Molly Levan, who lived in the same transient camp as Alcorn.” At the hearing below, the prosecutor argued that Levan’s testimony had no connection to Ramon Contreras--the third party whom defendant hoped to prove had caused Alcorn’s death.

Defendant now argues that the evidence would have “bolstered” the evidence that “. . . Trejo was part of a conspiracy with Contreras to assault [Alcorn], and possibly also to commit robbery against him.”

First, there was no evidence to “bolster.” We have determined that the evidence proffered, i.e., that Kenny Trejo made inconsistent statements to the police about being in the Masonic Avenue area, knowing the victim, knowing anything about Alcorn’s assault, was irrelevant to the issues of defendant’s guilt. Second, the evidence that Trejo was angry and was looking for the victim two days before the victim was killed, is, if

anything, no more than evidence of motive to commit the crime. It does not provide any direct or circumstantial evidence tying Trejo or Contreras to the actual killing. Therefore, the evidence was insufficient to raise a reasonable doubt that defendant committed the crime, and the trial court correctly excluded it. (*People v. Hall* (1986) 41 Cal.3d 826, 833.)

III

Ramon Contreras's Seizures and Subsequent Lies to Police

Defendant made the following offer of proof concerning Contreras's actions when questioned by police four days after the killing: "When investigators told Contreras that investigators wanted to speak with him about the investigation, he stared blankly. He began to shake when asked to get out of the truck. When told by investigator Carney that they had a search warrant to take evidence from him, and that they wanted to talk to him further about the homicide investigation, his shaking suddenly became more pronounced and he began to moan. He then fell to the ground and continued to shake and moan. Fire Department personnel arrived and transported Contreras to the hospital by ambulance. Interviewed in his hospital bed, Contreras denied being in the Masonic Ave. area and even knowing anyone named Tim." The prosecutor noted in response to defendant's motion to admit the evidence, that the investigating officer knew Contreras to be a heavy alcohol user, and concluded at the time that the shaking was related to alcohol detoxification.

The trial court commented on the proffered evidence: ". . . I have no idea what that kind of conduct could mean. It could be absolutely and completely unrelated even to the events that were happening; could be just a coincidental thing that happened at that time; it could be somebody who's greatly under the influence who's affected by the mere movement of his body; it could be somebody who's not under the influence who needs to be; and it could be some unrelated medical anomaly. And so, my view is it would invite

rank speculation by the jury, people who know less about this than even I do, and without an expert it would be meaningless.”

Defendant argues the trial court erred in excluding the evidence. He claims that the evidence of Contreras’s seizures combined with Kenny Trejo’s statements to police showed Contreras had motive and opportunity to commit the crime. Therein lies defendant’s problem. As previously stated, to find third party culpability evidence relevant, it must raise a reasonable doubt as to defendant’s guilt, and to raise such reasonable doubt, it must do more than show that the third person had motive and opportunity to commit the crime. (*People v. Hall, supra*, 41 Cal.3d at p. 833.) “ ‘[I]f evidence of motive alone upon the part of other persons were admissible, . . . in a case involving the killing of a man who had led an active and aggressive life it might easily be possible for the defendant to produce evidence tending to show that hundreds of other persons had some motive or *animus* against the deceased’ [Citation.] Trials must reach an end, and that end must be logical. [Citation.]” (*Id.* at p. 835.)

Thus, even with the inconsistent statements of Trejo when questioned by police, which were properly excluded, the evidence that Contreras shook uncontrollably when taken in for questioning was nothing more than evidence of motive and opportunity to commit the crime, if that. Without some direct or circumstantial evidence linking Contreras to the actual murder, the evidence was inadmissible.

As to Contreras’s denying knowing the victim or being in the Masonic Avenue area, the statement was inadmissible hearsay. Considered alone, the statement had no relevance whatsoever. Even in combination with all the other third party culpability evidence defendant sought to have admitted, the statement did not raise a reasonable doubt as to defendant’s guilt, and was not direct or circumstantial evidence linking Contreras to the actual commission of the crime.

We need not consider defendant’s claim that the exclusion of all the evidence was cumulatively prejudicial because we conclude there was no error.

DISPOSITION

The judgment is affirmed.

BLEASE _____, Acting P. J.

We concur:

MAURO _____, J.

DUARTE _____, J.