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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Defendant and Appellant,

v.

JAMAR LEE HENDRIX,

Defendant and Appellant.

E051556

(Super.Ct.No. RIF148516)

OPINION

APPEAL from the Superior Court of Riverside County. B.J. Bjork, Judge.
(Retired judge of the Riverside Super. Ct. assigned by the Chief Justice pursuant to art. VI, § 6 of the Cal. Const.) Affirmed.

John L. Staley, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Alana R. Butler and James D. Dutton, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant and appellant Jamar Lee Hendrix appeals from his convictions stemming from his battery upon, and noncooperation with, a prison guard and the resulting four-year prison term. Specifically, defendant argues the trial court erred when it admitted evidence of his criminal record and mistrust of law enforcement. As discussed *post*, we conclude that the challenged evidence is admissible and so affirm the conviction.

FACTS AND PROCEDURE

On the morning of October 15, 2008, at the California Rehabilitation Center (CRC) in Norco, Corrections Officer Scott Borsheim saw defendant enter inmate dorm No. 107 against the flow of inmates leaving the dorm to attend classes. Shortly thereafter, Officer Borsheim contacted defendant as defendant was leaving the dorm and determined that defendant was assigned to dorm No. 110, and so had entered dorm No. 107 without permission. Defendant explained that he was in the dorm to get coffee and showed Officer Borsheim a large bag of coffee. Defendant stated he did not have anything else on him.

Officer Borsheim took defendant into a small office and said he was going to search defendant. Officer Borsheim did not close the door. Defendant, who was becoming more defensive and argumentative, said “no,” placed both hands behind his back and appeared to be tucking something down his waistband. Officer Borsheim heard the sound of plastic rustling. Officer Borsheim said he would get the sergeant to come over and defendant again said, “no.” Defendant, for some reason, then removed his shoes, pants, and shirt, leaving on only his socks and two pairs of boxer shorts. This

made Officer Borsheim even more suspicious, because, as he said, “If they’re carrying contraband when you are doing a pat-down, they try to put on as many layers of clothes so that you might not feel that when you are patting them down.” Defendant again said, “no,” when asked if he was hiding anything.

Officer Borsheim told defendant to drop his boxers. After initially refusing, defendant did so. Defendant then refused to turn around when told to do so. Officer Borsheim suspected defendant may have hidden some contraband between his buttocks. Officer Borsheim stated he was going to handcuff defendant and call for the Sergeant. Officer Borsheim grabbed the handcuffs and was reaching for the microphone to call the sergeant when defendant ran toward him; defendant turned sideways in an attempt to squeeze between Officer Borsheim, a desk, and a metal cabinet to exit the office. As defendant did so, he struck Officer Borsheim in the chest with his shoulder, causing Officer Borsheim to fall back against the credenza on the desk.

Defendant ran into the wall to the right of the doorway, face first, instead of going out the door. Officer Borsheim attempted to handcuff defendant, but defendant turned around and pushed Borsheim as he attempted to gain control over defendant’s arms. The struggle lasted about 10 seconds. Defendant bent down, possibly trying to duck under Officer Borsheim’s arms, and hit Borsheim hard on the chin with his forehead as defendant stood up. “That knocked me pretty good.” Officer Borsheim dropped the handcuffs and stumbled back. Defendant broke free and fell as he tried to exit the dorm. Officer Borsheim eventually subdued defendant by pinning him to the floor.

On May 12, 2010, the People filed a first amended information charging defendant in count 1 with battery by an inmate on a nonconfined person (Pen. Code, § 4501.5), and in count 2 with obstructing a correctional officer (Pen. Code, § 69). The People also alleged appellant had served a prior prison term. (Pen. Code, § 667.5, subd. (b).) On May 13, the jury found defendant guilty of both counts. At sentencing on August 6, 2010, defendant admitted the prior prison term. The trial court sentenced defendant to four years in state prison, consisting of three years for the battery, a stayed sentence under Penal Code section 654 for obstructing a correctional officer, and a consecutive one-year term for the prior prison term enhancement. This appeal followed.

DISCUSSION

Defendant testified on his own behalf regarding his version of events. He denied committing battery upon Officer Borsheim, instead claiming that he panicked during the encounter in the office and may have accidentally brushed against the officer while running toward the office door. He also denied having purposely clipped Officer Borsheim in the chin with his head. Defendant portrayed himself as afraid of Officer Borsheim and bewildered by the officer's actions. Defendant testified that Officer Borsheim told him, within the confines of the small office, to undress and then to turn around. Defendant testified that he was afraid, "Because I don't know why he shut the door. I never been in that type of predicament before."

On direct examination by defense counsel, defendant also testified that after he ran out of the office, Officer Borsheim charged him and roughed him up, and that he had never been roughed up before at CRC. This is consistent with his other testimony

depicting himself as surprised and taken aback by Officer Borsheim's behavior toward him. As the People point out, defendant portrayed himself as someone who was startled at being treated in this manner by Officer Borsheim, had never been strip searched before, had never been busted with contraband, had never gotten into any kind of trouble, and had exhibited overall good behavior.

On cross-examination, the prosecutor elicited testimony regarding several instances of defendant's prior criminal history, a description of his 2002 conviction for resisting arrest, and defendant's testimony that he mistrusted law enforcement personnel and believed they had lied about him numerous times. The particular instances of challenged testimony are set forth *post*. Defendant contends the court erred in admitting any of this testimony because: (1) it was not relevant under Evidence Code section 351;¹ (2) its prejudicial nature outweighed its limited probative value under section 352; (3) it was not admissible under section 1101, subdivision (b), to show intent or absence of mistake or accident; and (4) it was not admissible for impeachment.

Before examining the challenged instances of testimony individually, we set forth the legal framework underlying defendant's evidentiary challenges.

“Subdivision (a) of section 1101 prohibits admission of evidence of a person's character, including evidence of character in the form of specific instances of uncharged misconduct, to prove the conduct of that person on a specified occasion. Subdivision (b) of section 1101 clarifies, however, that this rule does not prohibit admission of evidence

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

of uncharged misconduct when such evidence is relevant to establish some fact other than the person's character or disposition." (*People v. Ewoldt* (1994) 7 Cal.4th 380, 393, superseded by statute on another point as stated in *People v. Britt* (2002) 104 Cal.App.4th 500, 505.) Prior act evidence is admissible when relevant to prove "motive, opportunity, intent, preparation, plan, knowledge, identity, [or] absence of mistake or accident" (§ 1101, subd. (b).)

"The admissibility of other-crimes evidence depends on three principal factors: (1) the materiality of the fact sought to be proved or disproved; (2) the tendency of the uncharged crime to prove or disprove the material fact; and (3) the existence of any rule or policy requiring the exclusion of relevant evidence, e.g., Evidence Code section 352. [Citations.]" (*People v. Sully* (1991) 53 Cal.3d 1195, 1224.)

Under section 352, the trial court has the discretion to admit evidence that is relevant to prove a material fact as long as its probative value is not outweighed by its prejudicial effect. (*People v. Daniels* (1991) 52 Cal.3d 815, 856.) Although "[e]vidence of uncharged offenses 'is so prejudicial that its admission requires extremely careful analysis' " (*People v. Ewoldt, supra*, 7 Cal.4th at p. 404), a trial court's decision to admit evidence under section 352 will not be overturned absent a clear abuse of discretion (*People v. Brown* (1993) 17 Cal.App.4th 1389, 1396). The decision to admit such evidence rests within the sound discretion of the trial court, and the trial court's exercise of its discretion will not be reversed unless there is a clear abuse of discretion. (*People v. Clark* (1992) 3 Cal.4th 41, 127.)

1. *Mistrust of Law Enforcement*

On cross-examination, the prosecutor asked defendant whether he had felt mistreated by Officer Borsheim or by law enforcement on previous occasions:

“Q: Now, you felt that you were mistreated in this instance; is that correct?”

“A: Yes.

“Q: This isn’t the first time that you felt mistreated by law enforcement, is it.?”

“A: No.

“Q: Well, there was a time back in—”

At this point, defense counsel objected and asked for a sidebar. Counsel and the judge had an off-the-record conference in chambers, and then the cross-examination continued.

“Q: Now, I asked you, this isn’t the first time you felt you were mistreated by law enforcement; is that right?”

“A: No.

“Q: When else have you felt mistreated by law enforcement, sir?”

“A: I just always—I have felt like that numerous times.”

2. *2002 Misdemeanor Resisting Arrest Conviction*

The prosecutor then elicited testimony from defendant that he had been convicted of resisting arrest (Pen. Code, § 148) in 2002 while being arrested for possessing PCP:

“Q. Okay. In 2002, were you arrested for a [Penal Code section 148, subdivision (a)(1),] which is resisting a peace officer?”

“A. Well, see, I wasn’t arrested. I was charged with that.

“Q. All right. What were you originally arrested for?

“A. Possession of PCP.

“Q. Were you arrested also for anything else?

“A. Yes. While in custody—that is why I was already arrested.

“Q. So while you were in custody, what happened?

“A. I had a—I had a guy—I had an experience with a law enforcement.

“Q. All right. What happened during that experience, sir?

“A. Well, see, I was—at the time I used in my—when I was a youth, I used to use drugs, and I used to use PCP, and I was—they say that I was under—under the influence and stuff like that, but they shot and attacked me, though, basically, and I got into an altercation with them.

“Q. Ultimately you pled guilty to a misdemeanor count of 148(a)(1), which is resisting police officer; is that correct?

“A. Yeah. Just resisting, a misdemeanor.

“Q. In fact you resisted more than one individual on that date; isn't that correct?

“A. No.

“Q. Just one individual?

“A. It wasn't about resisting. That is just what I pled to.”

3. Second Transportation of Drugs Conviction and Mistrust of Police

Defense counsel had already asked defendant to admit that he had previously been convicted of transporting drugs for sale. (Health & Saf. Code, § 11352.) On cross-examination, the prosecutor asked defendant for more detail, clarified that defendant had

two such convictions, and drew defendant's response that the police had lied about him having drugs on his person these two times and had lied other times:

"Q. [Health and Safety Code section] 11352 is transportation for sales. Have you ever been convicted of that, sir?

"A. Yes.

"Q. And you have been convicted of that more than once, isn't that correct?

"A. Yes.

"Q. And transportation for sales requires—you don't just carry drugs around out in the open, do you?

"[DEFENSE COUNSEL]: Objection. Foundation. Speculation. Vague.

"A. Yeah.

"[THE COURT]: Well, objection will be sustained, [prosecutor].

"[PROSECUTOR]: Thank you, your Honor.

"Q. You felt that for one of those convictions, that the police lied then also; isn't that right?

"A. To be honest with you, it's like four or five convictions that the police did lie. It's just one—it's like two of them—two of them arrests, it's the same officer and it's this team in San Diego.

"Q. Is that the drug team?

"A. Yeah.

"Q. Okay. And you say that they lied about what occurred; is that right?

"A. Yes.

“Q. What did they lie about?

“A. They lied about me having drugs, possessing them, and they—they just give you a sale and sale them, and they will—and they just give it to you.

“Q. Who just gives you—I’m sorry. I’m not following. Who gives you what?

“A. Well, Mr. Christopher Hall, he said that he seen me throw drugs and stuff like that. He just—he says this, and I said “Yeah. He’s lying.”

“Q. Okay. Have you ever possessed drugs for sale, sir?

“A. Have I ever possessed them for sale?

“Q. Yes.

“A. No.

“Q. Okay. So they lied; is that correct?

“A. Yes.

“Q. But you still pled guilty in one of those charges?

“A. I did.

“Q. All right. Now, what was the misunderstanding about them lying? Was there ever one where they said you had drugs when you really didn’t?

“A. Yes.

“Q. What happened there?

“A. He said I had drugs, and I didn’t have no drugs. He didn’t find them on me. He said he seen me throw them into a crowd of people, which was not true.”

Defendant claims the evidence of the 2002 resisting arrest offense was an abuse of discretion because it was irrelevant, unduly prejudicial, and inadmissible evidence of character or disposition. We disagree.

The evidence of defendant's prior act of resisting arrest falls within the purview of section 1101, subdivision (b), because it tended to prove defendant's intent when he pushed past Officer Borsheim on his way toward the office door, knocking Officer Borsheim back against a desk, and that the contact was intentional rather than a mistake or accident. Defendant made his intent relevant when he testified that he pushed Officer Borsheim only accidentally. In addition, we cannot say that the testimony was unduly prejudicial as balanced against its relevance and probity, in that the circumstances of the 2002 resisting arrest incident are no more inflammatory than the evidence of the currently charged offense. Based on the record in this case, we cannot say the trial court abused its discretion in admitting this relevant evidence tending to prove a material fact in this case.

Defendant also objects to the evidence that he mistrusted law enforcement and felt that law enforcement had lied and treated him badly in the past. This evidence is admissible because it is relevant to impeach defendant's credibility as a witness, particularly with regard to his testimony that he did not have a history of run-ins with law enforcement and portrayal of himself as a model prisoner who was not used to being in trouble with or "roughed up" by law enforcement. The People cite to *People v. Millwee* (1998) 18 Cal.4th 96, 129-131, with good cause. In that case, the defendant testified at his trial for murdering his mother that the gun had gone off accidentally. The trial court allowed into evidence the defendant's testimony, given in a separate trial for shooting

another person two days after shooting his mother, that the gun in that instance had also gone off accidentally. Our Supreme Court held that the evidence was not subject to exclusion under section 1101, subdivision (a), as propensity evidence because it was highly probative as to his credibility in that he sought to avoid responsibility in both cases by offering the same innocent explanation. Similarly, the evidence of defendant's behavior during previous arrests and mistrust of law enforcement is relevant and probative to impeach his statements that he had not been in trouble before and had not previously been "roughed up" or mistreated by law enforcement. It also impeaches his credibility when his testimony places the blame on Officer Borsheim for mistreating him and seeks to avoid responsibility for failing to cooperate with Officer Borsheim, just as he claimed that law enforcement had lied about him in the past.

Similarly, defendant's criminal record for transporting drugs for sale is admissible for impeachment purposes because it indicates moral turpitude in the sense of the intent to corrupt others. (*People v. Castro* (1985) 38 Cal.3d 301, 307.) The trial court did not abuse its discretion under section 352 because probative value of the evidence, to impeach defendant's credibility, was not outweighed by anything unduly prejudicial, such as details that would create an emotional bias against defendant. Defendant had already admitted on direct examination that he had a conviction for transporting drugs for sale; we do not see how the admission of a second such conviction, with no enflaming details, would be unduly prejudicial.

To conclude, the challenged evidence was admissible either under section 1101, subdivision (b), to show intent or absence of mistake, or as impeachment evidence, and

none of the evidence was made inadmissible because it was either irrelevant or unduly prejudicial.

DISPOSITION

The judgment of conviction is affirmed.

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RAMIREZ

P. J.

We concur:

HOLLENHORST
J.

MILLER
J.