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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

CHARLES EDWARD COLEMAN, JR.,

Defendant and Appellant.

E059753

(Super.Ct.No. INF1201578)

OPINION

APPEAL from the Superior Court of Riverside County. John V. Stroud, Judge.

(Retired judge of the Sacramento Super. Ct. assigned by the Chief Justice pursuant to art.

VI, § 6 of the Cal. Const.) Affirmed.

Christopher Nalls, 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, Charles C. Ragland and Stacy Tyler, Deputy Attorneys General, for Plaintiff and Respondent.

A jury convicted defendant and appellant Charles Coleman of assault with a deadly weapon other than a firearm (Pen. Code, § 245, subd. (a)(1))¹ but acquitted him of attempted murder (§§ 664/187, subd. (a)). The jury also found true the allegations that defendant had personally inflicted great bodily injury on the victim (§ 12022.7, subd. (a)), as well as used a deadly weapon when he stabbed the victim eight to nine times (§ 12022, subd. (b)(1)). After defendant waived the right to a jury trial on the issue of his prior offenses, the trial court found that he had two prior strike convictions,² and served a previous prison term. The trial court then denied an oral motion to strike one of the priors and sentence defendant as a second-strike, rather than as a third strike, offender.³ It sentenced defendant to a total of 35 years to life in state prison, comprised of 25 years to life on the section 245 charge under the three strikes law (§§ 667, subds. (c), (e)(1), 1170.12, subd. (c)(1))), plus a 10-year determinate sentence for the great bodily injury, serious felony prior, and prison prior enhancements.

On appeal, defendant contends that the court abused its discretion by denying an oral request to strike one of his prior strike convictions. We disagree and affirm the judgment.

¹ Unless otherwise specified, all statutory references are to the Penal Code.

² These consisted of a 2001 conviction for robbery (§ 211) and a 2008 conviction for criminal threats (§ 422).

³ *People v. Superior Court* (1996) 13 Cal.4th 497 (*Romero*).

FACTUAL AND PROCEDURAL BACKGROUND

Defendant and the victim are related by marriage and had known each other for nearly a decade by the time of trial. However, their relationship has not always been easy; on June 1, 2012, the victim contacted local police with questions about obtaining a restraining order against defendant. He complained that defendant had threatened to “smoke him” over something the victim had said to defendant’s mother.

On June 15, 2012, which was the day of the stabbing, defendant and the victim were drinking and playing beer pong with family members at the apartment of defendant’s girlfriend. Defendant took the victim outside and threatened to kill him over something the victim had said to defendant’s mother, which caused the victim to leave the get-together. When the victim returned to retrieve the bicycle he had left at defendant’s girlfriend’s apartment, defendant met the victim on the doorstep. It appeared to the victim that defendant, who was holding a pocketknife with a five-inch blade, had been waiting for the victim to return for the bicycle. After a brief verbal exchange, defendant “just started stabbing” the victim. The victim pushed defendant away, but defendant threw the victim to the ground and stabbed him two more times. While the stabbing was taking place, defendant said he was going to kill the victim.

The victim was able to walk away from the scene. He started knocking on doors to ask for assistance because he was bleeding heavily and feared he would die. Officers later found the victim lying in front of a nearby apartment with “holes in his chest.” In

all, defendant stabbed the victim eight to nine times in the chest, shoulder, neck, and back.

While waiting for medical assistance after the stabbing, the victim told local police that “Chucky” had stabbed him. When asked again after paramedics arrived, the victim identified his assailant as “Charles.” Continuing to provide more detail, the victim told the investigating officer who interviewed him at the hospital after the incident that he had been stabbed by “Charles Coleman.” In fact, the victim began that interview by stating he was “so glad” the officer was there and asking immediately, “Did you get who did it?” When the investigating officer responded in the negative, the victim spontaneously volunteered that a man named Charles was the culprit. The victim also indicated that he “want[ed to] press charges” because “it was attempted murder.” Near the end of the interview, the victim identified defendant, without hesitation, from a photographic lineup.⁴

⁴ By the time of trial, however, the victim claimed not to know who had stabbed him. To explain why he identified defendant from the photographic lineup, the victim asserted: “It looks like I circled somebody that looks like a family member I was hanging out with. It doesn’t look like somebody that I circled that did it to me.” When asked, “You know for sure it wasn’t [defendant]?” the victim responded, “Yeah. I know for sure. He’s a family member; why would he do that?” At trial, the People played audio recordings of the victim’s interviews with investigating officers immediately after the stabbing and at the hospital where he had received medical treatment, because his statements in the recordings were inconsistent with his testimony. It is from these recordings that we derive the factual summary provided immediately *ante*

Defendant did not testify on his own behalf at trial. After receiving *Miranda*⁵ warnings, he did, however, provide investigating officers with a recorded interview, which the People played for the jury. In the interview, defendant initially claimed that he was at his grandmother's house when the stabbing occurred, that no one in the family had gotten together on that night, and that he had not left the house on the night of the incident. Defendant then insisted he, "[n]ever heard of" the victim. Only after the interviewing officer said he knew an altercation had occurred did defendant volunteer that he knew someone named "Ghetto Horse," who matched the victim's description. As soon as the investigating officer said he had talked to the victim, defendant interrupted with, "He's a freaking liar." Defendant admitted having a conversation with the victim on a previous occasion because the victim had been disrespectful, especially to the women who were present. According to defendant, the victim "[i]s a disrespectful guy."

After hearing defendant describe the victim's allegedly unsavory character, the investigating officer indicated that he had seen video surveillance⁶ of the stabbing, and that defendant had been picked out of a photographic lineup. Defendant kept claiming that nothing had happened between him and the victim, and insisted that he "never put hands on" the victim. However, after the investigating officer said he had seen defendant stab the victim on the surveillance video and suggested that the victim may have

⁵ *Miranda v. Arizona* (1966) 384 U.S. 436.

⁶ No such video actually exists. The investigating officer testified that he had used a ruse to try to elicit more truthful responses from defendant, who appeared to be lying.

“pop[ped] off at [defendant] again,” defendant claimed that the victim “rolled up on” him, pulled a small knife from his pocket, and started swinging it. After continuing to insist for some time that he had struck but not stabbed the victim, defendant finally admitted that he “stuck that fool,” but he asserted that he did so in self-defense. This concession came only after the investigating officer suggested that a self-defense theory made sense. Defendant alleged that the victim had sliced his hand with the knife, even though the investigating officer testified that the wounds defendant exhibited were superficial and already covered in scabs. Defendant said he only stabbed the victim twice, even though the victim had eight to nine stab wounds.

Prior to sentencing, the trial court ordered the preparation of a probation report. The probation officer noted that defendant’s and the victim’s stories differed drastically, that defendant’s version of events changed as he was interviewed, and the wound on defendant’s thumb was “superficial.” Although defendant had been “polite” when answering questions, the probation officer concluded that his “tears appeared more for himself and his loss of freedom and not for the injuries he caused the victim, a family friend, or the reality that he could have killed the victim.” The probation officer also found the victim’s statement that he was not the instigator to be “sincere,” and expressed a fear that defendant was “a serious danger to the community,” especially because “he

has not benefited from previous local services provided by the Court, Parole, Probation, or the community.”⁷

At sentencing, the trial court indicated an “intention . . . to follow the recommendations of the probation department,” which were that defendant receive a determinate sentence of 10 years, followed by an indeterminate one of 25 years to life. After complaining that the probation report provided no additional information about the facts underlying defendant’s prior strike offenses, defense counsel asked the court to strike the prior conviction under section 422. He indicated his client had told him that this 2008 conviction for making criminal threats arose from a traffic incident involving defendant’s girlfriend. He concluded with: “And there were some words exchanged in a parking lot and [defendant] was subsequently arrested. That seems like a rather a [*sic*] minor 422.” In response, the prosecutor offered: “I did review the People’s case file on the prior 422. It did involve the defendant threatening a victim of a crime who was involved in a car accident. . . . [¶] The reason defendant was placed on probation is because at the time of trial, the victim was too afraid to come to court and participate in the trial.” By sentencing defendant to an indeterminate term of 25 years to life, the trial court denied defendant’s oral motion to strike.

⁷ Defendant explained to the officer who interviewed him that he had to attend anger management, parenting, and substance abuse classes in connection with a case involving one of his 11 children.

ANALYSIS

Defendant's sole contention on appeal is that the trial court erred in sentencing him as a defendant with three strikes rather than with only two strikes because his criminal history is much less severe than that of many other defendants. In particular, he complains that his 2008 conviction for criminal threats is "minor," such that it should not have affected his sentence for stabbing the victim. We discern no abuse of discretion in the trial court's conclusion that defendant is within the spirit of the three strikes law and, therefore, affirm the judgment.

In *Romero, supra*, 13 Cal.4th 497, the California Supreme Court held that a trial court has discretion to dismiss prior strike conviction allegations under section 1385. (*Id.* at pp. 529-530.) As we review the denial of a *Romero* motion to strike for abuse of discretion, we ground our inquiry in two well-established principles. (*People v. Carmony* (2004) 33 Cal.4th 367, 375, 377 (*Carmony*).) First, defendant bears the burden of showing that the trial court's decision was " "irrational or arbitrary," " " and we will presume the trial court " "acted to achieve legitimate sentencing objectives" " " should he fail to make the necessary showing. (*Id.* at pp. 376-377.) Second, we will not reverse the trial court's order if all defendant shows is that reasonable people might disagree about its propriety. (*Id.* at p. 377.) "Taken together, these precepts establish that a trial court does not abuse its discretion unless its decision is so irrational or arbitrary that no reasonable person could agree with it." (*Ibid.*) Phrased differently, "[w]here the record demonstrates that the trial court balanced the relevant facts and reached an impartial

decision in conformity with the spirit of the law, we shall affirm the trial court's ruling, even if we might have ruled differently in the first instance' [citation]." (*Id.* at p. 378.)

To achieve greater unanimity in the statewide treatment of repeat offenders, the three strikes law purposefully limits a trial court's discretion in sentencing recidivist defendants. (*Carmony, supra*, 33 Cal.4th at p. 377.) The touchstone of the *Romero* analysis is " 'whether, in light of the nature and circumstances of his present felonies and prior serious and/or violent felony convictions, and the particulars of his background, character, and prospects, the defendant may be deemed outside the scheme's spirit, in whole or in part, and hence should be treated as though he had not previously been convicted of one or more serious and/or violent felonies.' [Citation.]" (*Ibid.*) In the words of one court, "extraordinary must the circumstance be by which a career criminal can be deemed to fall outside the spirit of the very scheme within which he squarely falls once he commits a strike as part of a long and continuous criminal record, the continuation of which the law was meant to attack." (*People v. Strong* (2001) 87 Cal.App.4th 328, 338 (*Strong*)). No abuse of discretion occurs when the trial court carefully considers and balances factors establishing the " 'entire picture' " of the defendant. (*In re Saldana* (1997) 57 Cal.App.4th 620, 627 (*Saldana*)).

Here, defendant insists his conviction for criminal threats was too minor to count as a strike, but no evidence in the record before us proves that the facts constituting the offense require this conclusion. First, defendant ignores the fact that the plea form he executed in conjunction with the charge for violating section 422 explicitly states that

defendant was pleading guilty to a “strike offense.” Second, he offers no reason why the trial court could not have accepted the prosecutor’s characterization of this prior conviction and based its sentencing decisions in part on the representation that the threats were so serious, the victim would not participate at trial. Finally, a finding that defendant had in fact been threatening enough to terrify the victim so badly that the victim would not testify at trial is consistent with the pattern of behavior between defendant and the man he stabbed, given that defendant threatened to kill him and then two weeks later inflicted an actual stabbing. On this record, we cannot say the trial court abused its discretion in concluding that the 2008 conviction for making criminal threats was not “minor” for purposes of sentencing under the three strikes law.

Defendant also insists that he cannot qualify as a “career criminal” because he incurred no charges between his 2001 robbery conviction and his 2008 conviction for making criminal threats. He again, however, omits an important fact; this time, defendant fails to recognize that he violated parole in 2005 in conjunction with his 2001 robbery conviction. Defendant’s criminal threats violation occurred in 2008, and the stabbing occurred in 2012. The closeness of these dates, and the fact that the most recent offense evidences an escalating pattern of threats and eventual violence, support the conclusion that defendant in fact has a significant criminal history.

The record also supports a finding that defendant’s prospects for rehabilitation were not overwhelmingly positive. The jury received evidence that defendant had lied to investigating officers about how the stabbing occurred, and the probation officer

concluded that the remorse defendant purported to show was only for himself. Also, defendant committed the current offense even after taking classes on topics such as anger management.

For these reasons, we conclude that the trial court properly balanced all relevant factors when it denied defendant's motion to strike his 2008 prior conviction for making criminal threats in violation of section 422. The court therefore did not abuse its discretion.

DISPOSITION

The judgment is affirmed.

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RAMIREZ
P. J.

We concur:

McKINSTER
J.

MILLER
J.