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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

IRVIN LEE BRIGGS,

Defendant and Appellant.

F065162

(Kern Super. Ct. No. BF135929A)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Kern County. John R. Brownlee, Judge.

Gideon Margolis, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Michael P. Farrell, Assistant Attorney General, Michael A. Canzoneri and Barton Bowers, Deputy Attorneys General, for Plaintiff and Respondent.

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* Before Gomes, Acting P.J., Kane, J. and Peña, J.

INTRODUCTION

Appellant/defendant Irvin Lee Briggs was involved in an argument with two men. He obtained a semiautomatic handgun and fired multiple shots at them while they were in the parking lot of a commercial business. No one was injured from the gunshots.

Defendant was charged and convicted of count II, discharging a firearm at an inhabited dwelling house or occupied building (Pen. Code¹, § 246); count III, possession of a firearm by a felon (§ 12021, subd. (a)(1)); and count IV, assault with a firearm (§ 245, subd. (a)(2)), with an enhancement for personally using a firearm (§ 12022.5, subd. (a)). The jury found him not guilty of count I, attempted murder, and deadlocked on the lesser included offense of attempted voluntary manslaughter. As to all counts, the court found he had a prior serious felony conviction (§ 667, subd. (a)), one prior strike conviction (§§ 667, subds. (b)-(e) & 1170.12, subds. (a)-(e)), and served four prior prison terms (§ 667.5, subd. (b)). He was sentenced to an aggregate second strike term of 23 years.

On appeal, defendant contends the trial court abused its discretion when it permitted the prosecution to impeach his trial testimony with his prior conviction for robbery in 2000. Defendant contends the evidence was prejudicial, the prior conviction was remote to the charged offenses, and the court should have sanitized the nature of the offense. We affirm.

FACTS

Around 8:00 a.m. on March 3, 2011, witnesses at the Kern Schools Federal Credit Union saw an incident occur between defendant and two other men in the parking lot. Defendant was by himself. The other two men appeared to be with each other. The two men were arguing and yelling at defendant. One of the two men kept his hand in his pocket, and a witness thought that man might have had a weapon.

¹ All further statutory citations are to the Penal Code unless otherwise indicated.

As they continued to argue and yell, defendant appeared to walk away from the two men, but the two men followed him. One of the two men pushed defendant, and they started to shove each other. A woman who happened to be driving near the dispute yelled at the three men “to stop being ghetto,” and they stopped fighting.

The two men walked away from defendant. Defendant stayed in the parking lot. Within 10 seconds, a white SUV appeared on the street. Defendant waved at the SUV, and it pulled into the parking lot. Defendant walked up to the passenger side, opened the door, and asked the driver, “[W]here’s the gun at?” Defendant leaned into the vehicle and pulled out a handgun. The SUV immediately left the area.

Defendant racked a round into the handgun and fired a shot at the two men. Defendant racked the gun and again fired at the two men. Defendant walked toward the men and continued to fire gunshots in succession, without pausing. The two men ran away and were not hit. After defendant finished firing, he picked up his backpack and walked away.

The investigation

The police responded to the scene and found six spent shell casings on the ground, all within a radius of five feet. There was a bullet strike in the wall of the credit union building, about five to six feet above the ground. The bullet was embedded too far into the wall to recover. There was a spent bullet on the ground, just outside the building. The recovered bullet and shells were nine-millimeter Luger rounds, and consistent with being fired from a semiautomatic handgun.

Several days after the shooting, defendant appeared at the sheriff’s department and turned himself in. Bakersfield Police Officer Jerry Whisenhunt transported him to the police department. Whisenhunt had prior encounters with defendant and noticed he had shaved his head since their previous meeting. Defendant said he had shaved his head “a couple of days ago.” Defendant also said he had been visiting his mother in Los Angeles. Defendant had a bus pass dated March 8, 2011, from Lancaster.

Peter Collins was later identified as one of the two men who argued with defendant, and who was later fired on by defendant. At trial, Collins was called as a prosecution witness, but invoked his right to remain silent and refused to answer questions.

DEFENSE

Officer Douglas Mansker testified that around 9:20 a.m. on the same day as the shooting, he responded to a dispatch in a different part of town, regarding a man running down the street and removing his clothes. Mansker had to draw his weapon to detain the man, who was later identified as Peter Collins. Collins appeared confused, disoriented, and under the influence of PCP.

Officer Mansker testified that Collins did not have a weapon, and he did not say anything about a disturbance or shooting. However, Collins's fingerprint was found at the employee entrance to the credit union, and the credit union's surveillance videotape showed Collins trying to open the employee entrance.

Later that afternoon, Officer Ryan Kroeker spoke to Collins at the jail. Collins was calm, and he did not appear under the influence. Collins said he smoked PCP the previous night with some friends, and it gave him a "bad trip." He smoked marijuana in the morning, which reactivated the PCP, and he began "tripping" again.

Defendant's testimony

Defendant, who was 40 years old, testified that he was convicted of robbery in 2000 or 2001, and second degree burglary in 2005. In March 2011, he was living with his cousin, Calvin, near the credit union. Defendant attended Bakersfield College. Defendant's other cousin, Sheridan Rogers, was murdered in 2010 and the suspect was "still loose."

Defendant testified that on the morning of March 3, 2011, he walked to the bus stop to go to school. He heard a noise, turned around, and saw two men walking behind him. Defendant did not know them. One man was later identified as Collins. The other

man had his right hand in his pocket. The men kept asking him, “[W]hat’s up[?]” and used a racial expletive.

The men continued to walk toward defendant. As they got closer, defendant saw that Collins was holding a revolver and the hammer was pulled back. The other man kept his hand in his pocket, and defendant thought he also had a gun. The men looked mean and scary, and defendant thought they were “tripping” on something. Defendant was afraid these two men were responsible for the murder of his cousin.

Defendant testified the two men turned around, walked away from him, and headed toward a car. Defendant continued walking to the bus stop, but the men ran towards him. Defendant thought they were going to kill him. Collins swung at defendant and hit him in the head. The other man stood by and kept his hand in his pocket. Defendant was dazed and backed into the street to get help. Defendant thought Collins was high on something. Collins repeatedly swung at defendant until a woman shouted to stop “being ghetto.” Collins yelled that she should mind her own business. Collins and the other man walked back to their car.

Defendant testified that his cousin, Calvin, who lived in the area, drove by in his white SUV. Defendant called out to Calvin, walked up to the passenger side of the vehicle, and asked Calvin if he had his gun with him. Defendant did not wait for Calvin to respond. He reached into the vehicle and grabbed the weapon.

Defendant knew Calvin kept the gun loaded, and he racked the slide to frighten the two men. The men looked at him, but they continued to walk away. Defendant again racked the slide and fired three or four shots in the air. The men ran away. Defendant put the gun in his pocket, grabbed his backpack, and walked away. Defendant later threw the gun in a trash can.

Defendant testified he left Bakersfield and visited his mother in Los Angeles. He knew he was wanted because he saw himself on the news. He returned to Bakersfield and surrendered.

Verdict and sentence

Defendant was charged with count I, premeditated attempted murder (§§ 187, subd. (a); 189; 664), with an enhancement for personally and intentionally discharging a firearm (§ 12022.53, subd. (c)); count II, discharging a firearm at an inhabited dwelling house or occupied building; count III, possession of a firearm by a felon; and count IV, assault with a firearm, with an enhancement for personally using a firearm.

Defendant initially pleaded not guilty by reason of insanity. He later withdrew his insanity plea, and a jury trial was held on the substantive offenses. Defendant was convicted of counts II, III, and IV. The jury found him not guilty of count I, attempted murder. It deadlocked on the lesser included offense of attempted voluntary manslaughter, and the court declared a mistrial on that count.

THE COURT PROPERLY ADMITTED DEFENDANT'S PRIOR CONVICTION FOR ROBBERY

Defendant contends the court abused its discretion when it permitted the prosecution to impeach his trial testimony with his prior convictions for both burglary in 2005 and robbery in 2000. Defendant argues his burglary conviction, by itself, would have been sufficient to impeach his testimony, and the court should have excluded his 2000 robbery conviction because the use of two prior convictions was prejudicial, the robbery conviction was too remote, and the nature of the robbery offense should have been sanitized.

A. Background

Prior to trial, the prosecution moved to impeach defendant's expected trial testimony with three prior felony convictions: unlawfully taking or driving a vehicle in 1991, robbery in 2000, and second degree burglary in 2005.

Defense counsel argued the robbery conviction could not be used for impeachment because it was 12 years old and too remote, and the crime of robbery itself was too

prejudicial. Counsel further asserted that the prosecution's impeachment request could be accomplished with just the prior conviction for burglary.

The court extensively reviewed defendant's record and found he was convicted of the vehicle offense in 1991, his parole was revoked in 1993, 1995, and 1997, and he was discharged in 1998. He was convicted of robbery in March 2000, his parole was revoked in 2003, and he was convicted of burglary in 2005 and sentenced to three years. He was arrested in the instant case in 2011.

The court excluded the 1991 vehicle conviction because it was too remote. However, the court found defendant had not led "a crime-free life" since the vehicle conviction in 1991, and particularly since the robbery conviction in 2000. It granted the prosecution's motion to impeach him with both the robbery and burglary convictions. The court found the probative value of the two prior convictions outweighed any prejudicial effect.

Defense counsel asked the court to sanitize the prior robbery conviction. The court denied the request because that would result in defendant being asked whether he had been convicted of a crime of moral turpitude: "The jury sits there and goes ... moral turpitude, holy cow. What, did he burn down an orphanage or what did he do, you know."

The court subsequently instructed the jury about the limited admissibility of defendant's prior convictions, and "not to consider [the prior convictions] for any other purpose except for the limited purpose of determining defendant's credibility."

B. Impeachment

Article I, section 28, subdivision (f) of the California Constitution authorizes for impeachment purposes "the use of any felony conviction which necessarily involves moral turpitude," subject to the trial court's exercise of discretion under Evidence Code section 352. (*People v. Castro* (1985) 38 Cal.3d 301, 306.) " 'No ... defendant who

elects to testify in his own behalf is entitled to a false aura of veracity.’ [Citation.]” (*People v. Tamborrino* (1989) 215 Cal.App.3d 575, 590.)

Robbery and burglary are crimes of moral turpitude. (*People v. Gray* (2007) 158 Cal.App.4th 635, 641; *People v. Collins* (1986) 42 Cal.3d 378, 395.) “ ‘[T]he admissibility of any past misconduct for impeachment is limited at the outset by the relevance requirement of moral turpitude. Beyond this, the latitude [Evidence Code] section 352 allows for exclusion of impeachment evidence in individual cases is broad.’ [Citations.] When determining whether to admit a prior conviction for impeachment purposes, the court should consider, among other factors, whether it reflects on the witness’s honesty or veracity, whether it is near or remote in time, whether it is for the same or similar conduct as the charged offense, and what effect its admission would have on the defendant’s decision to testify. [Citations.]” (*People v. Clark* (2011) 52 Cal.4th 856, 931 (*Clark*).

“A trial court’s exercise of discretion in admitting or excluding evidence is reviewable for abuse [citation] and will not be disturbed except on a showing the trial court exercised its discretion in an arbitrary, capricious, or patently absurd manner that resulted in a manifest miscarriage of justice [citation].” (*People v. Rodriguez* (1999) 20 Cal.4th 1, 9-10.)

C. Analysis

The court did not abuse its discretion when it permitted the prosecution to impeach defendant with his prior conviction for robbery, in addition to the burglary conviction. First, it is settled that both robbery and burglary are crimes of moral turpitude. In addition, convictions for robbery, burglary, and other theft-related offenses “are probative on the issue of the defendant’s credibility. [Citations.]” (*People v. Mendoza* (2000) 78 Cal.App.4th 918, 925 (*Mendoza*).

Second, defendant’s robbery conviction was not too remote, even though it occurred in 2000 and defendant committed the instant offenses in 2011. As the court

explained, and the record demonstrates, defendant had not led a crime-free life in the interim. “If a prior felony conviction has been followed by a legally blameless life, remoteness is important. [Citation.] Thus, the court may consider defendant’s conduct subsequent to the prior conviction. [Citations.]” (*People v. Tamborrino, supra*, 215 Cal.App.3d at p. 590.) “[C]onvictions remote in time are not automatically inadmissible for impeachment purposes. Even a fairly remote prior conviction is admissible if the defendant has not led a legally blameless life since the time of the remote prior. [Citations.]” (*Mendoza, supra*, 78 Cal.App.4th at pp. 925-926.) For example, in *People v. Green* (1995) 34 Cal.App.4th 165 (*Green*), the court admitted a 20-year-old prior conviction because “his 1973 conviction was followed by five additional convictions in the years 1978, 1985, 1987, 1988, and 1989. Accordingly, ‘the systematic occurrence of [defendant’s] priors over a 20-year period create[d] a pattern that [was] relevant to [his] credibility.’ [Citation.]” (*Id.* at p. 183.)

Third, the prior robbery conviction and the charged offenses were not similar. (Cf. *Clark, supra*, 52 Cal.4th at p. 932.) As to the fourth factor, defendant has not argued that the court’s evidentiary ruling affected his decision to testify, and it has no application to this case since defendant actually took the stand. (See, e.g., *Mendoza, supra*, 78 Cal.App.4th at p. 926.)

Defendant argues the court abused its discretion when it permitted impeachment with his prior convictions for burglary *and* robbery. Defendant asserts the prior burglary conviction was sufficient for impeachment purposes by itself, since it was an offense of moral turpitude, and relevant and probative of credibility. This argument is meritless. “[T]here is no limitation on the number of prior convictions with which the defendant’s credibility can be impeached. [Citations.]” (*Mendoza, supra*, 78 Cal.App.4th at p. 927.) As the California Supreme Court has recognized, “a series of crimes may be more probative of credibility than a single crime. [Citations.] ‘ “[W]hether or not more than one prior felony should be admitted is simply one of the factors which must be weighed

against the danger of prejudice. [Citation.]” ’ [Citation.]” (*Clark, supra*, 52 Cal.4th at p. 932-933; see also *Mendoza, supra*, 78 Cal.App.4th at pp. 923, 927 [10 prior convictions]; *Green, supra*, 34 Cal.App.4th at p. 183 [six prior convictions]; *People v. Muldrow* (1988) 202 Cal.App.3d 636, 646, [six prior convictions].)

In this case, the court’s decision to permit impeachment with two prior convictions of moral turpitude, which were not similar to the charged offenses but were probative of defendant’s credibility, was not an abuse of discretion. Impeachment of defendant with only one prior conviction “would have given him a ‘false aura of veracity’ because it would suggest that defendant has led a generally legally blameless life, whereas he has not been able to remain crime-free for any significant period of time” since his robbery conviction. (*Mendoza, supra*, 78 Cal.App.4th at p. 927.)

Defendant further argues the court abused its discretion when it denied his motion to sanitize the nature of his prior robbery conviction. There is no requirement that a court must sanitize a prior felony conviction, even if the prior offense is similar to the charged crime. (See, e.g., *People v. Dillingham* (1986) 186 Cal.App.3d 688, 695; *People v. Gutierrez* (2002) 28 Cal.4th 1083, 1139.) As the California Supreme Court has explained, however, sanitizing the prior conduct does not necessarily alleviate the potential for prejudice. (*People v. Barrick* (1982) 33 Cal.3d 115, 127, abrogated by statute on another point as stated in *People v. Collins, supra*, 42 Cal.3d at p. 393.) A trial court’s attempt to sanitize a prior conviction of moral turpitude, by reference to it only as a “serious felony,” represents an attempt “to tread between the pitfalls of identifying the prior conviction as an offense similar or identical to the charged offense [citation], and not identifying the felony at all. [Citation.]” (*People v. Barrick, supra*, 33 Cal.3d at p. 127.) By precluding any reference to the precise offense, the court prevents “direct prejudice” to a defendant, but “removes one risk of harm only to create a number of others equally grave.” (*People v. Rollo* (1977) 20 Cal.3d 109, 119, italics in original, superseded by statute on another point as recognized in *People v. Castro, supra*, 38

Cal.3d 301.) Such a sanitizing device may infringe on the jury's role as "arbiter of the probative effect" of the convictions upon the defendant's credibility and, as noted by the court in this case, invite the jury's speculation that the offense involves "some form of unspeakable conduct" or a conviction of a nature that is "especially damaging to the defendant's credibility." (*People v. Rollo, supra*, 20 Cal.3d at pp. 118, 119; see also *People v. Massey* (1987) 192 Cal.App.3d 819, 825.) The court did not abuse its discretion by declining to do so.

Finally, the witnesses testified that defendant fired toward the two other men; defendant testified he fired shots in the air to scare them. The court could have properly concluded that admission of defendant's unsanitized prior conviction "was necessary to inform the jury fully as to defendant's credibility." (*People v. Johnson* (1991) 233 Cal.App.3d 425, 459.) The jury was properly instructed as to the limited admissibility of defendant's prior convictions, and we presume the jury followed the instruction. (*Clark, supra*, 52 Cal.4th at p. 934; *People v. Holt* (1997) 15 Cal.4th 619, 622.)

DISPOSITION

The judgment is affirmed.