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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

DARNEY RAY WHITE,

Defendant and Appellant.

G044741

(Super. Ct. No. 10CF2329)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, John Conley, Judge. Affirmed.

James M. Crawford, 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, Teresa Torreblanca and Karl T. Terp, Deputy Attorneys General, for Plaintiff and Respondent.

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Defendant Darney Ray White argues that his conviction for false personation (Pen. Code, § 529, former subd. 3)¹ should be reversed on two grounds. First, he claims he should have been allowed to impeach the victim of the false personation (his brother) with three prior convictions rather than two. Second, he claims there was insufficient evidence to convict him of false personation as there was no evidence his brother was ever in danger of prosecution. Because neither of defendant's arguments has merit, we affirm the judgment.

I

FACTS

Because of the limited issues on appeal, we need not review the underlying facts of this case at length. Suffice to say that defendant was arrested for pimping and pandering during an undercover operation. When approached by police in the field, he twice gave his name as "Dana White" and reported his date of birth as June 19, 1968. After his arrest, a booking form was completed with the information defendant provided. He again identified himself as Dana White. Defendant also signed his booking form with the name Dana Rene White. The arresting detective conducted an investigation into defendant's identity, comparing the booking photograph with the record of Dana White's driver's license, and determined that he had two different individuals with the same name. He found a photograph that matched defendant's booking photograph with the name Darney Ray White, Jr.

Defendant was charged with three counts, including pimping (§ 266h, subd (a)), count one); pandering (§ 266i, subd. (a)(1), count two); and as relevant here, false personation (§ 529, former subd. 3, count three.) It was further alleged defendant had a

¹ All statutory references are to the Penal Code unless otherwise noted. Section 529 was amended effective October 1, 2011. We refer to the relevant provision in effect at the time of defendant's arrest as section 529, former subdivision 3.

prior serious felony conviction (§ 667, subds. (d), (e)(1), § 1170.12 subds. (b), (c)(1)) and had served three prior prison terms (§ 667.5, subd. (b)).

Defendant's brother, Dana White,² testified at trial. He lived in Monterey and had never been to Orange County before the trial. After defendant's arrest, Dana received a call from defendant asking him to bail defendant out of jail. Dana called a bail bondsman, and based on the information he received, he called the police to inform them that he was not the person in custody. At trial, he identified the booking photo as including his name but defendant's photograph. Defense counsel elicited testimony that Dana had been convicted of receiving stolen property, a felony, in 2005, and petty theft with a prior, also a felony, in 1998.

The jury found defendant guilty as charged on all counts, and the court made true findings regarding the prior conviction sentencing enhancement. Defendant, representing himself at sentencing, was sentenced to a total prison term of eight years, comprised of eight years on count one, eight years on count two (stayed pursuant to section 654), and four years on count three, to be served concurrently with count one. The court struck defendant's prison term priors for purposes of sentencing.

Defendant now appeals.

II

DISCUSSION

A. Admissibility of Dana's Third Prior Conviction

Defendant argues that the trial court violated his constitutional right to confront witnesses against him by allowing defendant to impeach Dana's testimony with two prior convictions (receiving stolen property, a felony, in 2005, and petty theft with a prior, also a felony, in 1998), but not a 1994 robbery conviction. Defendant sought to

² For the ease of the reader and to avoid confusion, we refer to Dana White by his first name. No disrespect is intended. (*In re Marriage of Smith* (1990) 225 Cal.App.3d 469, 475-476, fn. 1.)

admit the 1994 robbery “just to show this is not someone that recently started picking up crimes of moral turpitude.” The trial court found that convictions prior to 1995 were inadmissible as more prejudicial than probative under Evidence Code section 352.

We review the court’s evidentiary rulings for abuse of discretion. (*People v. Williams* (1997) 16 Cal.4th 153, 197; *People v. Lucas* (1995) 12 Cal.4th 415, 448-449.) The trial court’s discretion “is as broad as necessary to deal with the great variety of factual situations in which the issue arises, and in most instances the appellate courts will uphold its exercise whether the conviction is admitted or excluded.” (*People v. Collins* (1986) 42 Cal.3d 378, 389.) We may only overturn the trial court’s ruling if it “falls outside the bounds of reason.” (*People v. Williams* (1998) 17 Cal.4th 148, 162.)

We need not belabor this issue; defendant has come nowhere close to establishing an abuse of discretion or prejudice. “Past criminal conduct involving moral turpitude that has some logical bearing on the veracity of a witness in a criminal proceeding is admissible to impeach, subject to the court’s discretion under Evidence Code section 352.’ [Citations.]” (*People v. Smith* (2007) 40 Cal.4th 483, 512.) The trial court has “wide latitude” to restrict cross-examination and may impose reasonable limits on the introduction of such evidence. (*Delaware v. Van Arsdall* (1986) 475 U.S. 673, 679.) “[U]nless the defendant can show that the prohibited cross-examination would have produced ‘a significantly different impression of [the witnesses]’ credibility’ [citation], the trial court’s exercise of its discretion in this regard does not violate the Sixth Amendment. [Citation.]” (*People v. Frye* (1998) 18 Cal.4th 894, 946, disapproved on another ground in *People v. Doolin* (2009) 45 Cal.4th 390, 421, fn. 22.)

In most of the cases defendant relies upon, the defendants were prevented from any use of prior convictions to impeaching witnesses. (See, e.g., *People v. Adams* (1983) 149 Cal.App.3d 1190, 1193.) Here, defendant was allowed to impeach Dana with two prior convictions, both felonies. Further, one of those felonies made mention of a prior offense (petty theft *with a prior*) so the jury was made aware that Dana had also

been convicted of other offenses. Defense counsel's stated goal of demonstrating that Dana had not just "recently started picking up crimes of moral turpitude" was equally as effective with a 1998 conviction as with a 1994 one. There is no indication, actually or inferentially, that adding a third prior conviction would have made any difference whatsoever in the jury's assessment of his credibility. The trial court's decision, therefore, did not violate the Sixth Amendment. (*People v. Frye, supra*, 18 Cal.4th at p. 946.)

Further, while defendant argues that Dana was a "critical witness" for the prosecution, without whose testimony he could not have been convicted on count three, he is simply incorrect. Although Dana did testify that defendant did not have his permission to use his name, the lack of permission is not an element of the crime. (§ 529; see also part II.B, *post.*) Indeed, had Dana not testified at all, substantial evidence of defendant's guilt, in the form of police testimony, would still exist. Thus, even if we had concluded that excluding the 1994 conviction was erroneous, it was not prejudicial under even the most stringent standard. (See *Chapman v. California* (1967) 386 U.S. 18.)

B. Sufficient Evidence on Count Three

Defendant claims there is insufficient evidence to convict him of false personation because Dana was never placed at the risk of criminal prosecution as a result of defendant's impersonation³ of him. We disagree with defendant's reading of the relevant statute and conclude that substantial evidence supports his conviction.

"Our role in considering an insufficiency of the evidence claim is quite limited. We do not reassess the credibility of witnesses [citation], and we review the record in the light most favorable to the judgment [citation], drawing all inferences from the evidence which supports the jury's verdict. [Citation.]" (*People v. Olguin* (1999) 31

³ The terms "personate" and "impersonate" are synonymous. (See *People v. Casarez* (2012) 203 Cal.App.4th 1173, 1179, fn.3)

Cal.App.4th 1355, 1382.) Before a verdict may be set aside for insufficiency of the evidence, a party must demonstrate “that upon no hypothesis whatever is there sufficient substantial evidence to support [the conviction].” [Citation.]” (*People v. Bolin* (1998) 18 Cal.4th 297, 331.) “It is not our function to reweigh the evidence, reappraise the credibility of witnesses, or resolve factual conflicts, as these are functions reserved for the trier of fact.” (*People v. Tripp* (2007) 151 Cal.App.4th 951, 955.)

The relevant version of section 529 states, in pertinent part: “Every person who falsely personates another . . . and in such assumed character either: [¶] . . . [¶] 3. Does any other act whereby, if done by the person falsely personated, he might, in any event, become liable to any suit or prosecution, or to pay any sum of money, or to incur any charge, forfeiture, or penalty, or whereby any benefit might accrue to the party personating, or to any other person” The offense is punishable as either a misdemeanor or a felony. (§ 529; *People v. Rathert* (2000) 24 Cal.4th 200, 208.)

In contrast, section 148.9, which punishes falsely identifying oneself to a police officer to evade proper identification, is strictly a misdemeanor. Because of this distinction, “[t]here necessarily must be something to distinguish an act punishable as a felony under section 529 from an act punishable as a misdemeanor under section 148.9.” (*People v. Cole* (1994) 23 Cal.App.4th 1672, 1676 (*Cole*).) In *People v. Robertson* (1990) 223 Cal.App.3d 1277, the court identified one of the distinctions between the two crimes: “[R]egarding section 529, subdivision 3, the prosecution must establish in addition to the act of impersonation itself an ‘act’ which, *had it been done by the person falsely personated*, might have subjected that person to either a suit or some kind of debt or fine. . . .” (*Id.* at p. 1281, italics added.)

Thus, in addition to the initial action of false personation, the defendant in a case under section 529, former subdivision 3 must commit some additional act which, had that act been done by the individual being impersonated, would subject them to “any

suit or prosecution.” The extent of the “additional act” has been the subject of considerable case law.

In *Cole*, the court held that the defendant’s act of providing a false middle name and birth date to the arresting officer did not qualify as additional acts under the statute. (*Cole, supra*, 23 Cal.App.4th at p. 1676.) The evidence has been held to be sufficient to uphold a conviction under section 529, however, when the defendant took additional steps to perpetrate the fraudulent identity. In *People v. Chardon* (1999) 77 Cal.App.4th 205 (*Chardon*), the court held that by signing her sister’s name to a traffic citation, the defendant “exposed her sister not only to liability for the citation but also to potential criminal liability for failing to appear at the scheduled hearing.” (*Id.* at p. 212.) In *People v. Stacy* (2010) 183 Cal.App.4th 1229, the defendant refused to take a second mandatory breathalyzer test and provide a blood sample. The court held that the defendant’s refusal to complete the mandatory testing put the impersonated individual “at risk of liability for refusing to submit to and/or complete the chemical testing requirements under Vehicle Code sections 23612 and 23577. Indeed, such charges were ultimately levied against [the] defendant when her true identity was learned.” (*Id.* at pp. 1235-1236, fn. omitted.)

Here, the evidence was uncontroverted that defendant not only fraudulently misidentified himself to the arresting officer, but that he continued the fraud during the booking process. He signed Dana’s name on the booking form. Like the act of signing the citation in *Chardon*, this was sufficient to place Dana in significant legal jeopardy. It is irrelevant that it was unlikely that Dana would have been arrested in Monterey while defendant was in custody. Section 529, former subdivision 3 “plainly encompasses an impersonator’s commission of *any* act that *might* result in a liability.” (*People v. Rathert, supra*, 24 Cal.4th at pp. 209-210.) Just as the impersonation victim in *Chardon* had only potential liability, the same is true here. By permitting himself to be booked into jail under Dana’s name, defendant exposed his brother to significant criminal liability. His

acts were more than sufficient to satisfy the statute, and therefore substantial evidence supports his conviction.

III

DISPOSITION

The judgment is affirmed.

MOORE, J.

WE CONCUR:

O'LEARY, P. J.

BEDSWORTH, J.