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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re MANUEL R., a Person Coming
Under the Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

MANUEL R.,

Defendant and Appellant.

G049389

(Super. Ct. No. J149878)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Nick A. Dourbetas Judge. Affirmed.

Mark L. Christiansen, under appointment by the Court of Appeal, for Defendant and Appellant.

Christopher Beesley, Deputy Attorney General for Plaintiff and Respondent.

* * *

We appointed counsel to represent appellant on appeal. Counsel filed a brief which set forth the facts of the case. Counsel did not argue against the client, but advised the court no issues were found to argue on appellant's behalf. Appellant was given 30 days to file written argument in appellant's own behalf. That period has passed, and we have received no communication from appellant. We have examined the record and found several issues which we discuss, but we find no issues entitling defendant to any relief. (*People v. Wende* (1979) 25 Cal.3d 436.) The judgment is affirmed.

I

FACTS

On March 14, 1994, Manuel R. (Manuel) was stopped and subsequently arrested by Corporal Perales of the Santa Ana Police Department. At the time, Manuel was 15 years old. He attempted to pull a .25-caliber Raven semiautomatic weapon out of his waistband. Perales subdued defendant.

Manuel was transported to the hospital for treatment of his wrist. At the hospital, he was advised with his *Miranda*¹ rights "based on the form provided by the Santa Ana Police Department." Perales asked defendant about the gun. That line of questioning turned into questions about the murder of Valentina Roque that occurred the previous night. Manuel was taken to the Santa Ana Police station and interviewed a second time by Perales and Investigator Reid. That interview was recorded.

During the recorded interview, Perales asked Manuel to tell Reid "exactly what you told me." Manuel responded: "Last night I was . . . I went . . . I was walking over by, towards Washington, looking for some friends and they had a gun and then they told me that the lady was screaming at them right there in that. They . . . so they gave me

¹ *Miranda v. Arizona* (1966) 384 U.S. 436.

the gun and then I started shooting.” Manuel said the two others who were with him were named Chris Torres and Jose Lamas.

On March 16, 1994, the Orange County District Attorney’s Office filed a petition against Manuel charging him with a violation of Penal Code section 12021, subdivision (d) (probationer prohibited from possessing a firearm), a violation of Penal Code section 417, subdivision (c) (exhibiting a firearm at a peace officer), and a violation of Penal Code section 186.22, subdivision (a) (active participation in a gang) based on Manuel’s arrest on March 14, 1994. At that time, Manuel was not charged with the murder of Roque. Manuel pled guilty to the allegations in the petition and the matter was adjudicated on June 21, 1994.

At the time the current petition was filed on August 10, 2009, Manuel was serving a 31 years to life sentence for a different crime. He was housed at High Desert State Prison in Susanville. The current petition alleges Manuel was born in December 1978, and that with malice aforethought he killed Valentina Roque on March 13, 1994 in violation of Penal Code section 187. (Unless otherwise indicated, all statutory references are to the Penal Code.) The petition alleges two enhancements. Pursuant to section 12022, subdivision (a)(1), the petition alleges Manuel was vicariously armed with a firearm when the offense was committed, and pursuant to section 186.22, subdivision (b), it alleges he committed the offense for the benefit of, at the direction of, and in association with “6th Street & Highland Street” a criminal street gang. On October 21, 2013, the court ordered the section 186.22, subdivision (b) enhancement stricken.

The juvenile court heard from numerous witnesses over a three-day period. The minute order states: “Court finds allegations of petition 007 dated 8-10-09 as to count 1 and enhancement pursuant to 12022(a)(1) PC true beyond a reasonable doubt. [¶] Court finds count 1 to be a felony, 1st degree, with maximum term of confinement of 25 years to life, plus 1 year for enhancement. [¶] If [Manuel] was able to be sentenced to prison, he would complete the determinate term first and then proceed to the life term.

[¶] Court is legally unable to impose a disposition due to the law and age of [Manuel], being 34 years old. [¶] If the law allowed it, this court would sentence [Manuel] to the maximum term of life.” The minute order further states: “Court orders [Manuel] released own recognizance, as to juvenile matters only and orders [Manuel] be returned to state prison to finish serving his life commitment (previously imposed on adult cases.)”

II

DISCUSSION

Jurisdiction

The juvenile court retains jurisdiction when the ward reaches adulthood. “Under Welfare and Institutions Code section 602 juvenile court jurisdiction is based on age at the time of the *violation* of a criminal law or ordinance. It is therefore possible that a person might commit a murder at age 17, be apprehended 50 years later, and find himself subject to juvenile court jurisdiction at age 67. [Citations.]” (*Rucker v. Superior Court* (1977) 75 Cal.App.3d 197, 200.)

Delay in Prosecution

One of the areas counsel states might be helpful for the court to consider during its review is: “Was the delay in prosecution from 1994 to August 2009 unjustified and prejudicial such that it violated Due Process under the California and federal constitutions?”

Manuel’s trial was continued over 20 times, almost always at Manuel’s request. On September 18, 2013, Manuel filed a motion to dismiss the petition for denial of due process and his constitutional right to a speedy trial. Manuel’s conclusion states: “Although there is a reason for the delay in the prosecution, it is not outweighed by the prejudice suffered by [Manuel] in defending himself against this very serious charge.”

Prior to trial, the court and counsel agreed the court would hear all of the trial evidence before ruling on the motion. Therefore, the evidence submitted in the moving and opposition papers as well as the evidence introduced at trial will be discussed here.

Included in Manuel's motion to dismiss is the declaration of Dr. Richard A. Leo, a visiting professor at the University of California, Los Angeles, who was formerly an associate professor of psychology and an associate professor of criminology at the University of California, Irvine. Leo's declaration states he has been informed by the deputy alternate defender that Manuel has little memory of speaking with Perales the first time, or of speaking with Perales and Reid later at the police station. Leo concludes: "Without such crucial information from [Manuel] himself, I informed [the deputy alternate defender] I am unable to assist in a proper evaluation of this case. Without a subject's recollection, I am unable to evaluate any interrogation techniques that may have been psychologically coercive and/or could have increased the risk or contributed to an involuntary and/or false or unreliable statement, admission or confession."

Another declaration, of Ralph Rocha, an investigator with the alternate defender's office, states he attempted to get Manuel's medical records concerning his treatment for a broken arm on March 14, 1994, but they have been destroyed. Rocha also states he was unable to locate witness Chris Torres. He lists various attempts he made from July 16, 2013 to September 17, 2013 to locate Torres.

Manuel declared: "Although I know I am the person interviewed on the second recorded interview, those words are not true. I did not shoot anyone on March 13. I do not remember everything about my whereabouts on March 13 and March 14, but here is what I do remember: [¶] (1) At the time of my arrest on March 14 [C]hris Torres, and some girls went to a house instead of school and hung out for several hours. . . . [¶] . . . [¶] (8) I was taken to the hospital. I remember being in a lot of pain and being given medication, but I don't remember what it was or how much. . . . I

remember the officer asking me general questions about where I got the gun. . . . It was all a blur once I got to the hospital. . . . [¶] (9) I do not remember ever confessing at the hospital. [¶] (10) I don't remember being transferred from the hospital to the police station. . . . [¶] (11) After the interview was done, I told my mom how they pressured me and my mom told me to be quiet. . . . [¶] (12) Although I can't remember specifically, I believe I confessed at the police station because I wanted to get out of the situation and out of custody. I thought if I said what they wanted to hear, the constant pressure and the police questioning would stop. . . . [¶] . . . [¶] (14) The night before my arrest, I remember being at home, watching the show 'Cops' on television. . . .”

The prosecutor's opposition papers state John Breceda pled guilty to violating section 187 for his involvement in Roque's murder. The opposition further states Breceda and Jose Leon were dealing drugs in front of Roque's apartment complex when Manuel walked up and joined them. Roque started yelling at them to stop dealing drugs near her home. It was at that point that Breceda gave Manuel a .25-caliber semiautomatic gun and told him to shoot Roque, and Leon urged Manuel to shoot her. The opposition papers state: “According to Breceda, Victim came down to the street level and confronted Leon, Breceda, and [Manuel] from a distance of about 5 feet. [Manuel] shot victim in the chest and fired several more times as he backed up. [Manuel], Breceda, and Leon fled the area. Victim managed to get back into her apartment. Victim's adult son saw Victim walking out from her bedroom to the living room where she collapsed and died. Victim's son said he did not see his mother leave the apartment and told police he owned a .25 semi-auto that he kept in his dresser. When police asked to see the weapon, it was gone. Initially, there was no indication that Victim had been shot outside the apartment. Police arrested Victim's son and daughter-in-law. The next day, a patrol officer went to FI [Manuel] near a liquor store and [Manuel] pulled a .25 semi-auto on the officer. During the struggle, the officer broke [Manuel's] arm. On the trip to the hospital, the officer asked [Manuel] about the .25 semi-auto and Manuel

admitted it was the gun from the murder the day before.” The opposition papers further state ballistics tests on the gun and bullet performed at the crime laboratory proved to be inconclusive. The case against victim’s son was thereafter dismissed. Ballistics tests were repeated by the Santa Ana Police Department in 2001, and the results were again inconclusive. Further analysis of the gun and bullet were performed in 2009, and the new results indicated the gun taken from Manuel was the gun used to kill Roque. At that point, Manuel was charged.

Breceda was called as a witness in the 2013 trial, at which time he was in custody on another matter. In March 1994, he was 14 years old, two weeks short of his 15th birthday. He recalled filling out an advisement of constitutional rights form, which states: “In Orange County, on March 13th, 1994, I and a companion, Manuel . . . were on a sidewalk near victim Roque’s apartment. Roque yelled at [Manuel] and myself because she believed we were selling drugs. I then handed [Manuel] a loaded .25 semiautomatic gun and told [Manuel] to shoot Roque. [Manuel] took my gun and shot Roque causing her subsequent death.” The following question about the form was asked of Breceda: “And is it your testimony today that that’s an incorrect statement?” Breceda answered: “I’m not saying it’s an incorrect statement; I just don’t remember. I signed it, obviously, and I admitted to it so.”

Roque’s son, Santos Alvarez Roque, stated about the night his mother was shot: “I was getting ready for work. My wife was in the kitchen fixing my lunch. That’s when my mother came down the hall and she said that someone had shot her and she was holding herself” on her chest. He and his wife grabbed her and he dialed 911. Alvarez Roque testified on the night his mother was shot, his .25-caliber semiautomatic pistol was not in the cabinet where it was kept. He never saw it again.

Thomas Dickan, a forensic scientist at the Orange County crime laboratory, was asked about the presence of gunshot residue on the hands of Alvarez Roque and his wife. Dickan was asked the following question: “Now, you said that by contacting a

surface contaminated with gunshot residue, for example, if a person goes to the aide of someone who has been shot and touches that person either amongst their clothes or their body, gunshot residue can transfer. Is that fair to say?” Dickan responded: “If there is gunshot residue on the surface that the person contacts, yes.”

Rocky Edwards, a forensic firearm and tool mark examiner, was shown the gun taken from Manuel and the bullet removed from Roque and testified: “I was requested to look at this evidence on several occasions. And during the time period of when I was asked to look at it in the beginning, I examined it through the comparison microscope and saw some similarities, but that was it. I didn’t pursue anything further with that. [¶] I knew it had already been examined by Dan Gammie from the Orange County Sheriff’s Department and his conclusions were inconclusive, and I didn’t see anything other that would make me feel otherwise. [¶] As time went by, though, there’s some techniques and some things that happened that gave me some ideas from examiners in the past that had done certain techniques, certain things, and also technology has improved since then as far as how I’m able to examine evidence. And so I used that technology and those techniques on this case. . . . [¶] So with that said I then was requested to do an examination using those techniques and I did that in this case, and it was quite revealing of what I was able to see.” After going into lengthy explanations about forensic examination changes over the years, Edwards concluded: “In my opinion the autopsy bullet was fired from that pistol.”

The court conducted a lengthy hearing, including taking testimonial evidence on the motion to dismiss. During the hearing, defense counsel conceded the prosecution had a justification for the delay. Several pages of the reporter’s transcript are consumed with the juvenile court’s explanation of its ruling on the motion. Basically, the court found that Manuel lacked credibility. The court concluded: “In applying all these facts to [Manuel’s] motion to dismiss for due process violation, there has been no prejudice shown and the motion to dismiss is denied.”

“A defendant seeking relief for undue delay in filing charges must first demonstrate resulting prejudice, such as by showing the loss of a material witness or other missing evidence, or fading memory caused by the lapse of time. [Citation.] Prejudice to a defendant from precharging delay is not presumed. [Citations.]” (*People v. Abel* (2012) 53 Cal.4th 891, 908-909.) Although “under California law, negligent, as well as purposeful, delay in bringing charges may, when accompanied by a showing of prejudice, violate due process. . . .” (*People v. Nelson* (2008) 43 Cal.4th 1242, 1255.) “If the delay was merely negligent, a greater showing of prejudice would be required to establish a due process violation.” (*Id.* at p. 1256.) If the defendant fails to meet the burden of showing prejudice, there is no need to determine whether the delay was justified. (*Serna v. Superior Court* (1985) 40 Cal.3d 239, 249.)

The due process clause always protects defendants against fundamentally unfair treatment by the government in criminal proceedings, and requires a dismissal if it were shown at trial that a delay caused substantial prejudice to a defendant’s rights to a fair trial and that the delay was an intentional device to gain tactical advantage over the accused. (*Doggett v. U. S.* (1992) 505 U.S. 647, 666 (dis. opn. of Thomas, J.)) The initial burden of showing prejudice as a result of prefiling delay is on the accused. (*Serna v. Superior Court, supra*, 40 Cal.3d at p. 249.) “[T]he burden shifts to the prosecution to justify the delay. The court then balances the harm against the justification. [Citation.]” (*People v. Garcia* (2014) 223 Cal.App.4th 1173, 1177.)

“Prejudice may be shown by “loss of material witnesses due to lapse of time [citation] or loss of evidence because of fading memories attributable to the delay.” [Citations.]” (*People v. Cowan* (2010) 50 Cal.4th 401, 430.) “We review for abuse of discretion a trial court’s ruling on a motion to dismiss for prejudicial prearrest delay” (*Id.* at p. 431.)

As noted, the juvenile court concluded Manuel made no showing of prejudice. Even assuming Manuel made a minimal showing of prejudice, and the burden

shifted to the prosecution to justify delay, the result here would be the same. Defense counsel conceded the prosecution had justification for the delay. From a totality of the circumstances in this record, it is obvious that even had the juvenile court found some showing of prejudice, and balanced the harm against the justification, the motion would have been denied.

Welfare and Institutions Code section 782

In Manuel's brief, he states: "If this was a dismissal pursuant to Welfare and Institutions Code section 782, it would have the effect of dismissing the petition and erasing the adjudication." He argues *People v. Haro* (2013) 221 Cal.App.4th 718, precludes use of an adjudication as a prior serious felony.

The jurisdictional law in effect when Roque was murdered stated: "Any person who is under the age of 18 years when he or she violates any law of this state or of the United States or any ordinance of any city or county of this state defining crime other than an ordinance establishing a curfew based solely on age, is within the jurisdiction of the juvenile court, which may adjudge such person to be a ward of the court." (Welf. & Inst. Code, § 602.) The court may retain jurisdiction over any person who is found to be a person described in Welfare and Institutions Code section 602 by reason of the commission of murder "until that person attains 25 years of age if the person was committed to the Department of Corrections and Rehabilitation, Division of Juvenile Facilities." (Welf. & Inst. Code, § 607, subd. (b).)

"A superior court convened as and exercising the special powers of a juvenile court is vested with jurisdiction to make only those limited determinations authorized by the legislative grant of those special powers. [Citation.]' [Citations.]" (*People v. Nguyen* (1990) 222 Cal.App.3d 1612, 1619.)

“[M]inors are capable of committing crimes even though they are not subject to punishment in the same fashion as adults.” (*People v. Aguirre* (1991) 227 Cal.App.3d 373, 379.) “Minors under the age of 16 who violate a criminal statute are under the exclusive jurisdiction of the juvenile court.” (*Id.* at p. 380.)

“A judge of the juvenile court in which a petition was filed may dismiss the petition, or may set aside the findings and dismiss the petition, if the court finds that the interests of justice and the welfare of the person who is the subject of the petition require that dismissal, or if it finds that he or she is not in need of treatment or rehabilitation. The court has jurisdiction to order dismissal or setting aside of the findings and dismissal regardless of whether the person who is the subject of the petition is, at the time of the order, a ward or dependent child of the court. . . .” (Welf. & Inst. Code, § 782.)

While *Haro* was a minor, he committed a robbery and was adjudicated a delinquent ward of the court. Following successful completion of probation and termination of the wardship, the juvenile court dismissed the delinquency petition pursuant to Welfare and Institutions Code section 782. (*People v. Haro, supra*, 221 Cal.App.4th at pp. 720-721.) In the crime for which the defendant had been convicted as an adult, stalking, his prior robbery adjudication was used as a strike under the “Three Strikes” law. (*Id.* at p. 718.) The Court of Appeal described the situation as follows: “Prior to the plea, the trial court denied defendant’s motion to dismiss the strike allegation based on the fact that the delinquency petition supporting the allegation was dismissed by the juvenile court pursuant to section 782. In accordance with the plea agreement, the trial court sentenced defendant to serve four years in state prison (middle term of two years, doubled) and imposed other orders. The plea agreement entitled defendant to challenge this decision on appeal. A certificate of probable cause was issued for this purpose.” (*Id.* at pp. 720-721.) The court concluded the juvenile court’s dismissal under Welfare and Institutions Code section 782 of the petition underlying

defendant's robbery adjudication precluded the use of that adjudication as a strike under the Three Strikes law. (*Id.* at p. 724.)

According to Manuel, “[i]n the absence of a dismissal, the Juvenile Court still disposed of the case. To find otherwise would be to insulate filings and trials at random such that so long as no disposition was announced the individual would have no recourse against the expense in time, money, anxiety, and stigma and no means of review.” As Manuel is having his adjudication reviewed in this appeal, so his argument about no means of review lacks merit.

“Juvenile delinquency laws are designed to provide the juvenile court maximum flexibility to craft suitable orders aimed at rehabilitating the particular ward before it. [Citation.]’ [Citation.]” (*In re James R.* (2007) 153 Cal.App.4th 413, 432.) A “juvenile court has broad discretion to determine what would best serve and protect the child’s interest and to fashion a dispositional order in accordance with this discretion” (*In re I.G.* (2014) 226 Cal.App.4th 380, 386-387.) Here the juvenile court was faced with an unusual set of facts. The police were unable to connect Manuel with the murder through forensic evidence until 15 years after the crime. At the time of the eventual adjudication, the teenager who committed the murder was 34 years old. The juvenile court released him on that crime. Thus, the court crafted a disposition appropriate for the situation. Under the extraordinary circumstances we find in this record, we cannot find the juvenile court abused its discretion in the disposition of Manuel’s juvenile case.

It could very well be that sometime in the future Manuel will have occasion to argue his juvenile adjudication for murdering Roque should not be used as a prior for some reason, or not be used during a parole hearing or not be used to determine his accommodations in prison. What should happen, if the significance of the present adjudication ever becomes an issue, is for another day.

III
DISPOSITION

The judgment is affirmed.

MOORE, ACTING P. J.

WE CONCUR:

ARONSON, J.

THOMPSON, J.