Filed 8/27/18 P. v. Chiles CA2/1

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE, Plaintiff and Respondent, v. RAHEEN MARIO CHILES, Defendant and Appellant.	B280041 (Los Angeles County Super. Ct. No. SA093454)

APPEAL from a judgment of the Superior Court of Los Angeles County, Mark E. Windham, Judge. Affirmed.

Donna Ford, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Shawn McGahey Webb and Blythe J. Leszkay, Deputy Attorneys General, for Plaintiff and Respondent.

Raheen Mario Chiles appeals from a judgment of conviction for residential burglary and possession of burglary tools, contending the trial court erred in denying his *Batson*/*Wheeler* motion[1] and in admitting evidence of prior uncharged misconduct. We affirm.

BACKGROUND

In the early afternoon of July 19, 2016, Chiles and Jenny Ochoa, carrying bolt cutters and a flashlight, broke open a self locking gate leading from the driveway of a private residence to a guesthouse. Chiles went to the guesthouse and, without knocking or announcing himself, opened the door to enter. He found the owner inside, and when challenged, backed away. Outside, Ochoa said they were looking for "Maria," then both Chiles and Ochoa left through the now-broken gate. The owner followed for a short distance and took pictures of them with his cell phone, then called police. Police detained Chiles and Ochoa in a nearby park, where the owner identified them.

Chiles told police the next day that he had been looking for his friend Anna, who used to live at the main house. He said that when he and Ochoa entered the backyard through the gate, which was unlocked, they called out, "Hello," but left when the owner came out of the guesthouse. Chiles denied that either he or Ochoa went inside the guesthouse.

At trial, three witnesses testified that in the very early morning of February 26, 2016, Ochoa entered an occupied residence and stole a wallet, which contained eight 20-dollar bills, and a large-screen television, which Chiles, who was waiting outside, carried away.

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[1] *Batson v. Kentucky* (1986) 476 U.S. 79; *People v. Wheeler* (1978) 22 Cal.3d 258.

Chiles offered no evidence, but during closing argument his counsel argued that he had entered the property to look for someone named Maria.

He was convicted of first degree burglary and possession of burglary tools, with findings that he had committed two prior serious or violent felonies, and was sentenced to 12 years in prison. (Pen. Code, §§ 459, 466, 664.)

DISCUSSION

A. *Batson/Wheeler* Motion

Chiles contends the trial court erred in denying a *Batson/Wheeler* motion he made after the prosecutor exercised peremptory challenges to excuse two Hispanic men from the jury.

1. Pertinent Proceedings

a. Prospective Juror No. 6746

During voir dire, Prospective Juror No. 6746 stated, "You can't just convict somebody because of what an eyewitness might say." He also stated he would reserve judgment until after having heard from both sides, but could not find Chiles guilty based only on the eyewitness testimony of any police officer or anyone a police officer might have coached. He related a story about a time he had been pulled over and treated unfairly by a police officer, who then falsified a traffic citation. He said, "I believe the officer was just, you know, probably racist or something," and he had "seen other cases where officers lied just because of their position, so–so I wouldn't just take one officer and a couple of witnesses because officers can make a witness talk, so I don't think I could take one witness. [¶] If I see evidence and intent and broken door lock, then, maybe I would." He said he would be suspicious of any witness because "the police have higher power, they could probably intimidate the witness into

saying something else," and "[j]ust having to take their word for it and putting someone under sentence because an officer has something to say. [¶] . . . [¶] I don't think that is fair." He said, "The only way I will be able to believe a witness is [if] there is the evidence there, and, you know, the intent to be seen. You don't have to show it to us, but someone has to corroborate, take a picture or something that they broke into somewhere, then I will believe the witness." Finally, Prospective Juror No. 6746 said, "just because a police officer has the higher position to say something, he might convince the witness to say something, too." After the prosecutor's challenge to Prospective Juror No. 6746 for cause was denied, the prosecutor exercised a peremptory challenge to have him excused.

b. Prospective Juror No. 9946

Prospective Juror No. 9946 related that his uncle had been unfairly accused of burglary in three cases, two of which resulted in convictions, and it had tainted his perception of police. He said that police had profiled him as a Mexican-American and pulled him over several times unnecessarily. He said that he sympathized with or "tend[ed] to favor Mexican Americans" and was "suspicious of facts," and police officers had an "implicit bias," although he could accept their testimony.

The prosecutor exercised a second peremptory challenge to ask that Prospective Juror No. 9946 be excused.

2. *Batson/Wheeler* Motion

Codefendant Ochoa's counsel, joined by Chiles, objected under *Batson/Wheeler* to the prosecution's peremptory challenges of Prospective Jurors Nos. 6746 and 9946. In support of the objection, counsel argued that both prospective jurors were

Hispanic, had made several pro-prosecution statements, and said they could be fair despite their bias against police.

The court stated it found Prospective Juror No. 6746 to have been "an unpredictable person because he said these things about how easy it would be to convict while at the same time also not believing police officers." The court stated that Prospective Juror No. 9946 "went on [at] some length about his belief that police were prejudice[d] against Latinos, that he was sympathetic to Latinos. He did say he could set that aside." The court concluded that the defendants had not made a prima facie case, and invited the prosecutor to respond. The prosecutor noted that she had also excused two Caucasian women and an Asian man, but declined to explain why she challenged Prospective Jurors Nos. 6746 and 9946.

3. Legal Standard

" 'Both the federal and state Constitutions prohibit any advocate's use of peremptory challenges to exclude prospective jurors based on race. (*Batson*, *supra*, 476 U.S. at p. 97; *Georgia v. McCollum* (1992) 505 U.S. 42, 59; *Wheeler*, *supra*, 22 Cal.3d at pp. 276-277.) Doing so violates both the equal protection clause of the United States Constitution and the right to trial by a jury drawn from a representative cross-section of the community under article 1, section 16 of the California Constitution.' " (*People v. Lenix* (2008) 44 Cal.4th 602, 612.) The "exercise of even a single peremptory challenge solely on the basis of race or ethnicity" violates these constitutional principles and "constitutes structural error, requiring reversal." (*People v. Gutierrez* (2017) 2 Cal.5th 1150, 1157-1158.)

"The *Batson* three-step inquiry is well established. First, the trial court must determine whether the defendant has made a

prima facie showing that the prosecutor exercised a peremptory challenge based on race. Second, if the showing is made, the burden shifts to the prosecutor to demonstrate that the challenges were exercised for a race-neutral reason. Third, the court determines whether the defendant has proven purposeful discrimination. The ultimate burden of persuasion regarding racial motivation rests with, and never shifts from, the opponent of the strike. [Citation.] The three-step procedure also applies to state constitutional claims." (*People v. Lenix*, *supra*, 44 Cal.4th at pp. 612-613; *People v. Gutierrez*, *supra*, 2 Cal.5th at p. 1158.)

Chiles argues the trial court erred when it found he failed to make a prima facie showing that the prosecutor excused Prospective Jurors Nos. 6746 and 9946 due to their ethnicity.

To make a prima facie showing of impermissible discrimination, a defendant must produce "evidence ' "sufficient to permit the trial judge to draw an inference that discrimination has occurred." ' " (*People v. Jones* (2013) 57 Cal.4th 899, 916.) It is not enough merely to complain that members of a cognizable group have been challenged, nor that the jury as finally constituted contains few if any members of that group. (*People v. Arias* (1996) 13 Cal.4th 92, 136, fn. 15 [assertion of group bias based solely on number and order of exclusion of protected group members and final jury composition insufficient].)

Our "[r]eview of a trial court's denial of a *Wheeler/Batson* motion is deferential, examining only whether substantial evidence supports its conclusions. [Citation.] . . . We presume that a prosecutor uses peremptory challenges in a constitutional manner and give great deference to the trial court's ability to distinguish bona fide reasons from sham excuses." (*People v. Lenix*, *supra*, 44 Cal.4th at pp. 613-614; *People v. Gutierrez*,

supra, 2 Cal.5th at pp. 1158-1159.) In examining whether a defendant has made a prima facie showing of discrimination we consider whether the defendant or victim is a member of an identified group challenged during voir dire, whether the prosecutor challenged a disproportionate number of members of that group, or whether the prosecutor engaged in only desultory voir dire. (*People v. Scott* (2015) 61 Cal.4th 363, 384.)

4. Analysis

Here, nothing in the record indicates that either Chiles or his victim is Hispanic. Chiles's attorney on appeal claims that the name "Raheen Mario Chiles" is "clearly Hispanic," but even if that were relevant, no evidence supports the claim. The record is similarly silent as to how many in the venire were Hispanic, how many aside from Prospective Jurors Nos. 6746 and 9946 were challenged, or how many remained on the empaneled jury. And Chiles makes no claim—and our examination of the record shows he could make none—that the prosecution engaged in only desultory voir dire. In short, nothing in the record indicates the prosecution impermissibly discriminated against any identifiable group during jury selection.

Because we conclude the trial court properly determined that no prima facie case was made, we need not review the adequacy of the prosecution's justifications for exercising peremptory challenges. (*People v. Farnam* (2002) 28 Cal.4th 107, 135.)

B. Evidence of Uncharged Misconduct

During trial, Chiles and Ochoa's prior victims, a husband and wife, testified that Chiles and Ochoa burglarized their home in February 2016, taking a television and wallet. The investigating police detective testified about the identification of

Chiles and Ochoa as the culprits. Chiles ultimately pleaded no contest to receiving stolen property in the incident, a fact of which the jury was never apprised.

The trial court instructed the jury that if the prosecution failed to prove the prior offense by a preponderance of the evidence, the jury must disregard the evidence entirely. The court further instructed that the jury could use the evidence only for its intended purpose: "If you decide that the defendant committed the offense, you may, but are not required to, consider that evidence for the limited purpose of deciding whether or not: [¶] The defendant acted with the intent to commit a larceny within [¶] this case; or [¶] The defendant's alleged actions were the result of mistake or accident. [¶] In evaluating this evidence, consider the similarity or lack of similarity between the uncharged offenses and the charged offenses. [¶] Do not consider this evidence for any other purpose. [¶] Do not conclude from this evidence that the defendant has a bad character or is disposed to commit crime. [¶] If you conclude that the defendant committed the uncharged offense, that conclusion is only one factor to consider along with all the other evidence. It is not sufficient by itself to prove that the defendant is guilty of theft or second degree commercial burglary in this case. The People must still prove every charge beyond a reasonable doubt."

Chiles contends the trial court erred in admitting evidence of his prior crime. We disagree.

Under Evidence Code section 1101, evidence of other offenses or misconduct is inadmissible to prove criminal propensity but may be admitted to prove a material fact such as intent. (Evid. Code, § 1101, subds. (a) & (b); *People v. Kelly* (2007) 42 Cal.4th 763, 783.) Evidence of an uncharged offense is

relevant to prove intent where the uncharged offense is "sufficiently similar to support the inference that the defendant ' "probably harbored the same intent in each instance." [Citations.]' " (*People v. Ewoldt* (1994) 7 Cal.4th 380, 402.)

Because evidence of an uncharged offense is highly prejudicial, it must have substantial probative value, and the trial court must carefully analyze it under Evidence Code section 352 to determine if its probative value is "substantially outweighed by the probability that its admission [would] . . . create substantial danger of undue prejudice, of confusing the issues, or of misleading the jury." (Evid. Code, § 352; see *People v. Ewoldt*, *supra*, 7 Cal.4th at p. 404; see also *People v. Humiston* (1993) 20 Cal.App.4th 460, 481 ["evidence of prior bad acts always involves the risk of prejudice regardless of its probative value"].)

A trial court's ruling on the admission or exclusion of evidence under Evidence Code section 352 will not be disturbed on appeal "*except* on a showing that the court exercised its discretion in an arbitrary, capricious or patently absurd manner that resulted in a manifest miscarriage of justice." (*People v. Jordan* (1986) 42 Cal.3d 308, 316.)

The principal factor affecting the probative value of the evidence of Chiles's uncharged offense is the tendency of that evidence to demonstrate the existence of a common design or plan. Burglary is a specific intent crime (Pen. Code, § 459), and the jury was instructed that it could find Chiles guilty of burglary only if it found he entered an occupied residence intending to commit theft. But Chiles's trial counsel argued to the jury that Chiles did not intend to steal any property when he entered the occupied residence in this case, but was merely looking for his

friend. "Mental state and intent are rarely susceptible of direct proof and must therefore be proven circumstantially." (*People v. Thomas* (2011) 52 Cal.4th 336, 355.)

The tendency of the evidence of Chiles's uncharged offense to rebut his defense is strong. His uncharged misconduct with Ochoa was committed in a manner nearly identical to that of the charged offense. On both occasions, only five months apart, he and Ochoa conspired to enter an occupied residence to steal items from within. "[I]f a person acts similarly in similar situations, he probably harbors the same intent in each instance." (*People v. Thompson* (1980) 27 Cal.3d 303, 319, overruled on another ground as stated in *People v. Scott* (2011) 52 Cal.4th 452, 470.) The charged and uncharged acts together thus suggested a planned course of action rather than two spontaneous events, and was convincing evidence that Chiles acted pursuant to a common design or plan to carry out the charged offense.

The unduly prejudicial impact of the evidence arises from its tendency to persuade jurors to infer Chiles had a propensity to commit crime. But the February 2016 offense was a single act that was no more inflammatory or egregious than the July 2016 offense, and the evidence concerning it was relatively brief, occupying only 16 pages in the reporter's transcript. The risk of undue prejudice was reduced by the trial court's instruction to consider the evidence only for the limited purpose of determining whether Chiles's actions were knowing and intentional, and its admonishment not to consider it for any other purpose, specifically not to infer from the evidence that Chiles was disposed to commit crime. A jury is presumed to have understood and followed the court's instructions. (*People v. Hinton* (2006) 37 Cal.4th 839, 864.)

Weighing these factors, we conclude the trial court acted within its discretion in finding the probative value of the evidence of Chiles's prior offense to establish intent was not substantially outweighed by any unduly prejudicial effect it might have had.

Chiles argues evidence of his part in the February 2016 burglary had no tendency in reason to prove his intent in the July 2016 burglary because the two events were dissimilar: They occurred at antipodes of the clock (2:00 a.m. and 2:00 p.m., respectively), and he neither entered the first victims' home in February nor took anything from the second victim in July. We disagree. That two burglars happen to exchange fungible roles from caper to caper is of no moment, and their willingness to commit crimes at any time of the day or night more indicates than negates their common intent.

Chiles argues evidence of the February 2016 offense lacked probative value because it was not relevant to prove a disputed fact because he presented no evidence at trial. We disagree. In pleading not guilty a defendant puts all elements of the crime at issue. (*People v. Balcom* (1994) 7 Cal.4th 414, 422-423.) "[T]he prosecution's burden to prove every element of the crime is not relieved by a defendant's tactical decision not to contest an essential element of the offense." (*Estelle v. McGuire* (1991) 502 U.S. 62, 69.) Even if the defendant offers no affirmative defense, the prosecution must prove intent beyond a reasonable doubt. (*People v. Soper* (2009) 45 Cal.4th 759, 777.) Here, Chiles pleaded not guilty to burglary, a specific intent crime. Therefore the People had the burden of proving all elements of the burglary, including intent, beyond a reasonable doubt. Chiles's conduct in February 2016 was relevant for this purpose.

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED.

CHANEY, J.

We concur:

ROTHSCHILD, P. J.

JOHNSON, J.