Filed 7/23/12 P. v. Yancy CA2/7

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THE PEOPLE, Plaintiff and Respondent, v. CHRISTOPHER YANCY, Defendant and Appellant.	B228563 (Los Angeles County Super. Ct. No. PA058905)

APPEAL from a judgment of the Superior Court of Los Angeles County, Harvey Giss, Judge. Affirmed.

Mark Allen Hart, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Victoria B. Wilson, Supervising Deputy Attorney General, Noah P. Hill, Deputy Attorney General, for Plaintiff and Respondent.

A jury convicted Christopher Bernard Yancy of murder and found true a special allegation he had used a deadly or dangerous weapon. On appeal Yancy contends the court erred in denying his request for a mistrial after the jury was told Yancy's codefendant had been convicted and was serving a life sentence. Yancy also argues the court's instruction to the jury on aiding and abetting in accordance with former CALCRIM No. 400 was prejudicial error. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

1. *The Information*

Yancy was charged in an information with murder (Pen. Code, § 187, subd. (a)).[1] It was specially alleged Yancy had personally used a deadly and dangerous weapon within the meaning of section 12022, subdivision (b)(1), in committing the offense. Yancy pleaded not guilty and denied the special allegation.

2. *The Evidence at Trial*

Beatrice Brothers lived in her own home with her adult son, Sidney Cole, and his young children. Brothers's childhood friend, Bobby Gates, lived with his girlfriend, Catherine Hoskins, in a converted garage in the back of Brothers's house. Brothers's daughter, Lachelle Robinson, and Robinson's daughter, Mimi, lived in a house across the street.

In the early morning of December 5, 2005, Cole woke up Robinson at her home and told her to go to Brothers's residence immediately. Soon after Robinson arrived, Yancy and his uncle, Sam Persons, Brothers's boyfriend, knocked on Brothers's door. They had come at Brothers's request. Brothers told Robinson, Yancy and Persons that Gates had molested one or more of her grandchildren.

Gates, who had been called into the house by Brothers, was taken to the garage, where Brothers, Persons and Yancy took turns beating him with a stick while he was confined to a chair. Yancy told police, "It wasn't just me killing that man. . . . Everybody took part in this shit." Yancy explained in his interview with police that he,

---

1 Statutory references are to the Penal Code unless otherwise indicated.

Persons and Brothers were all "outraged" and wanted to beat Gates for "raping kids." According to Yancy, Brothers sodomized Gates with a rod during the attack. At some point, Yancy claimed, he had had enough and left while the others continued to beat Gates. When Yancy left, Gates was still alive, and nothing had been stuffed down his throat.

Gates's body was found on December 6, 2005 near a freeway in Lakeview Terrace. The body was wrapped in a blue tarp that had been lit on fire. Gates's wrists were bound behind his back with a shoestring and a braided cord. A shirt or cloth had been stuffed in Gates's mouth, and his eyes were covered with a blindfold. Gates had suffered bruising to his face, chest, abdomen, back, arms and legs, with lacerations on his forehead and face.

The Los Angeles County deputy coroner who performed the autopsy opined Gates died primarily from asphyxiation caused by a cloth stuffed down his throat although blunt force trauma was also a contributing cause of death. The deputy coroner acknowledged his autopsy report identified no damage to Gates's anus. However, he had not checked the area carefully because he had had no information that Gates had been sodomized. He also testified the body had been so badly burned it would have been difficult to confirm that fact in any event.

The People presented four different theories to support a charge of murder as to Yancy: (1) Yancy himself committed the murder; (2) he aided and abetted the murder; (3) he committed torture, a felony (§ 206) that resulted in Gates's death; or (4) he aided and abetted the torture, resulting in death. Either of the last two theories would qualify the offense as first degree felony murder.

Yancy did not testify at trial. His defense theory was that, at most, he was guilty of manslaughter, either voluntary manslaughter based on heat of passion or involuntary manslaughter based on a misdemeanor battery resulting in death.

3. *Jury Instructions*

The jury was instructed with CALCRIM Nos. 520 (murder); 521 (degrees of murder); 540A and 540B (first degree felony murder based on torture or aiding and

abetting torture); 810 (elements of torture); 570 (voluntary manslaughter based on killing in heat of passion); 522 (provocation reducing first degree murder to second degree or voluntary manslaughter); and 580 (involuntary manslaughter based on misdemeanor battery). The jury was also instructed with former CALCRIM No. 400 (general principles of aiding and abetting), which advised the jury that a "person is equally guilty of the crime whether he or she committed it personally or aided and abetted the perpetrator who committed it" and CALCRIM No. 401 (aiding and abetting: intended crimes).

4. *The Verdict and Sentence*

The jury found Yancy guilty of second degree murder and found true the special allegation he had used a deadly weapon in committing the offense. Yancy was sentenced to an aggregate state prison term of 16 years to life.

DISCUSSION

1. *The Trial Court Did Not Err in Denying Yancy's Mistrial Motion*

a. *Relevant proceedings*

Brothers, Yancy and Persons were tried separately for their respective roles in Gates's homicide.[2] During Yancy's trial, while testifying on direct examination, Robinson explained she could not remember details of the incident. After several unsuccessful attempts at eliciting testimony from her about the killing, the court deemed her to be a hostile witness and permitted the prosecutor to refer to her prior testimony in Brothers's case. The trial court then advised the jury that Robinson was "being questioned regarding her testimony at the trial of Beatrice Brothers. I read to the jury already before the trial began and I'll read it again, the evidence will show that another person or persons may have been involved in the commission of the crime charged against the defendant. There may be many reasons why someone who appears to have

---

2 Brothers was convicted of first degree murder in a trial that concluded prior to Yancy's trial. This court reversed Brothers's first degree murder conviction in *People v. Brothers* (Dec. 12, 2011, B225376) [nonpub. opn.]) based on instructional error and remanded the case for a new trial.

been involved might not be a codefendant in this particular trial. You must not speculate about whether that person or those other persons have been or will be prosecuted. Your duty is to decide whether the defendant on trial here committed the crime against him."

"Now this is the testimony from 2010 proceedings in March of this year in the trial of Beatrice Brothers. You are not to concern yourself with the verdict in that particular case. It would be hearsay. It's irrelevant to these proceedings. And there may have been different issues connected with that case than . . . with this particular case. But so that you don't scratch your head and jump to conclusions that are inappropriate, I'm giving you this background information to tell you we've already had one trial against one person named as a defendant before this trial began. And that's where this testimony is coming from, or alleged testimony regarding this witness's statements made at that particular proceeding."

After the prosecutor asked Robinson whether she had testified at her mother's trial six months earlier, Robinson blurted out, "Yeah. [T]hat's a big shocker. Has your mother ever been sentenced to life in prison?" Yancy immediately moved for a mistrial. The court denied the motion and admonished the jury to disregard the comment. The court invited Yancy's counsel to prepare an additional admonishment to the jury to supplement the court's warning if she thought it necessary. Yancy's counsel did not prepare an additional instruction.

Later, during cross-examination of Paul Gliniecki, the deputy medical examiner, defense counsel referred to Gliniecki's prior testimony in an earlier trial involving the attack on Gates. After the court confirmed the testimony was from Brothers's trial, defense counsel questioned the court's reference to Brothers, explaining she had thought they were not allowed to identify the defendant in the prior trial. The court responded, "All right. [It] [c]ame out yesterday when [Robinson] testified that her mother had been convicted in the trial as one of the defendants in this case." The court reiterated its admonition that references to a defendant in a prior trial are to have "no impact or significance in any way whatsoever upon [the jury's] independent determination in this case, because the defendants are different, and testimony might be different as it relates to

specific defendants in the case." Defense counsel resumed her questioning of the witness.

Later that afternoon, after the jury had been dismissed for the day, defense counsel made a second request for mistrial based on the court's statement that Brothers had been convicted in the prior trial. Defense counsel argued Robinson had said her mother was serving a life sentence, but had never stated she had been convicted for Gates's death. The court denied the motion, once again inviting defense counsel to prepare her own curative statement if she felt the several the court had already given were inadequate. Defense counsel did not prepare any additional statement.

b. *The challenged comments were cured by the court's careful admonitions to the jury*

The trial court should grant a mistrial "only when a party's chances of receiving a fair trial have been irreparably damaged." (*People v. Bolden* (2002) 29 Cal.4th 515, 555; accord, *People v. Gonzalez* (2011) 52 Cal.4th 254, 291 ["we have stated that a trial court should grant a mistrial only if the defendant will suffer prejudice that is incurable by admonition or instruction"].) We review the trial court's ruling denying a mistrial for abuse of discretion. (*Bolden,* at p. 555; *People v. Ayala* (2000) 23 Cal.4th 225, 282.)

Yancy contends the court should have granted a mistrial after it told the jury Brothers had been convicted in her earlier trial based on the same attack. Evidence regarding the disposition of a codefendant's case is not admissible to prove the guilt of a defendant. (*People v. Cummings* (2009) 4 Cal.4th 1233, 1322; *People v. Leonard* (1983) 34 Cal.3d 183, 188-189; see *People v. Neely* (2009) 176 Cal.App.4th 787, 795 ["[t]he rationale for this rule is that a guilty plea or conviction of a participant is irrelevant to whether another person was positively and correctly identified as a coparticipant, and merely invites the inference by association"].)

Here, Robinson's outburst and the court's mistaken reference to it as having informed the jury Brothers had been convicted were each followed by detailed admonitions to the jury not to consider any disposition in Brothers' trial in considering Yancy's guilt. The court carefully explained to the jury there may have been different

issues connected with Brothers's case and the evidence in the two trials could be different. We presume the jury followed those admonitions and find no error. (See *People v. Gonzalez, supra,* 52 Cal.4th at p. 292 ["Here the trial court struck Berber's testimony and properly admonished the jury. Although Soliz asserts the admonitions were inadequate, we see no basis for the assertion and presume, as always, that the jury followed the court's instructions. [Citation.] We therefore conclude the trial court did not err in denying Soliz's motion for mistrial."]; see generally *People v. Waidla* (2000) 22 Cal.4th 690, 725 [jury presumed to follow court's instructions and admonitions].)

2. *Instructing the Jury with Former CALCRIM No. 400, While Erroneous, Was Not Prejudicial*

Yancy contends the trial court erred when it instructed the jury with a former version of CALCRIM No. 400, which told the jury a person is "equally guilty of the crime whether he or she committed it personally or aided and abetted the perpetrator who committed it."[3] The Supreme Court held in *People v. McCoy* (2001) 25 Cal.4th 1111 (*McCoy*), a case in which two defendants were tried together on murder charges, that instructing an aider and abettor and a perpetrator are "equally guilty" is error when the degree of the homicide depends on the defendant's mental state. In such a case "an aider and abettor may be guilty of greater homicide-related offenses than those the actual perpetrator committed" if the aider and abettor had a more culpable mens rea than the perpetrator. (*Id.* at p. 1114 [recognizing a scenario in which the perpetrator could have committed voluntary manslaughter in the heat of passion with the assistance of his coparticipant, who, rather than acting in the heat of passion, harbored implied malice].)

Extending the Supreme Court's analysis, Division Two of this court in *People v. Samaniego* (2009) 172 Cal.App.4th 1148 and Division Three in *People v. Nero* (2010) 181 Cal.App.4th 504 held instructing that an aider and abettor and a perpetrator are "equally guilty" was also improper in a homicide case to the extent it did not recognize

---

3 CALCRIM No. 400 has since been revised to remove the "equally guilty" language. It now reads, "A person is guilty of a crime whether he or she committed it personally or aided and abetted the perpetrator."

an aider and abettor could be guilty not only of a greater, but also a lesser homicide offense than the perpetrator. (*Samaniego*, at p. 1165; *Nero*, at p. 510.)

We agree the instruction is erroneous to the extent it suggests a defendant can be guilty of murder, even if he or she acted in the heat of passion, based solely on the greater culpable mental state of his or her coparticipants.[4] However, Yancy's defense at trial was that each of the defendants—he, Persons and Brothers—had become enraged after hearing accusations Gates had sexually abused Brothers's grandchildren. It was Yancy's theory that each had acted under the influence of that passion during the sustained attack on Gates.[5] For the erroneous instruction to have had any effect in this case, the jury would have had to have found that Yancy had acted in the heat of passion while one or more of his coparticipants had acted with express or implied malice. It is simply not conceivable on this record that the jury could have found the children's grandmother and/or her boyfriend had not acted in the heat of passion, but that Yancy, who, by his own admission, did not know Brothers or any of her grandchildren, had. Accordingly, any error in instructing with former CALCRIM No. 400 in this case was harmless beyond a reasonable doubt. (See *People v. Williams* (2001) 26 Cal.4th 779, 797 [an instruction that "omits or misdescribes an element of a charged offense" is reversible constitutional error unless it is harmless beyond a reasonable doubt]; *People v. Samaniego, supra*, 172 Cal.App.4th 1148, 1165.)

---

4 In rejecting his involuntary manslaughter defense, the jury plainly did not believe Yancy's theory that he merely committed a misdemeanor battery and was not involved in the application of deadly force. Yancy does not contest this inference. He argues the jury could have believed he aided and abetted the homicide while acting in the heat of passion, thus negating malice, but nonetheless found him guilty of murder based on the "equally guilty" language in former CALCRIM No. 400.

5 In addition to highlighting Yancy's statement to police that they were all "outraged" at Gates for molesting Brothers's grandchildren, Yancy's counsel emphasized during closing argument, "[Yancy] had to have been provoked. We know he was provoked. He was outraged. Everybody was outraged."

DISPOSITION

The judgment is affirmed.

PERLUSS, P. J.

We concur:

WOODS, J.

JACKSON, J.