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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE,

Plaintiff and Respondent,

v.

ADAN MEJIA,

Defendant and Appellant.

B229268

(Los Angeles County
Super. Ct. No. NA086335)

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

Susan Morrow Maxwell, 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, Senior Assistant Attorney General, Daniel C. Chang and Stephanie A. Miyoshi, Deputy Attorneys General, for Plaintiff and Respondent.

* * * * *

Defendant Adan Mejia was charged by information with assault with a deadly weapon (Pen. Code. § 245, subd. (a)(1), count 1), criminal threats (Pen. Code, § 422, count 2), and forgery of a public seal (Pen. Code, § 472, counts 3 and 4), with an enhancement for personal use of a deadly and dangerous weapon (Pen. Code, § 12022, subd. (b)(1)). Defendant entered a plea of no contest to counts 3 and 4, and proceeded to trial on the remaining counts. A jury convicted defendant on counts 1 and 2, and found the weapon allegation to be true. Defendant was sentenced to three years and eight months in prison. On appeal, defendant contends the trial court failed to adequately investigate juror misconduct, erroneously denied his petition for disclosure of juror information, and failed to record its ruling on his petition in a minute order. Finding no reversible error, we affirm.

BACKGROUND

On May 15, 2010, Isis Zea had a party at her Long Beach apartment. Early the next morning, she was cleaning up when her partner noticed defendant standing at their apartment's metal security door. One of Zea's guests, who had stayed the night, told defendant to leave in English. Defendant responded in Spanish, "I want to come in." He shook the door and said, "I want to be with you." Zea walked up to the security door and asked defendant to leave. Defendant stepped back, and then walked up to three of Zea's windows, trying to look inside. Zea stepped outside and told defendant to leave, threatening to call the police. Defendant told her, "I want to be in there with you. I want to be in there with you." Zea told him, "You have got nothing to do here. Please leave."

Defendant walked away towards the alley. Zea noticed a group of young men in the alley, and asked if defendant was with them. She asked them to "please take him away" because she was calling the police. The men ran away. Two other men then approached defendant and punched him twice in the face. Zea told them to leave him alone and that she had called the police. The men ran away.

About 15 to 20 minutes later, Zea took her recycling out to the alley. Her neighbor, Altagracia Nunez noticed a man hunched between the recycling bins. As Zea

approached the recycling bins, she saw defendant crouched down between the bins. He removed two knives from beneath his jacket and said, “I am going to kill you, you bitch,” three or four times in Spanish. He lunged at Zea with the knives, and Zea was cut as she put up her right arm to protect herself. Defendant called her a “whore” and made repeated threats to kill her. Zea kicked defendant, causing him to lose his balance and fall over. Her partner ran at him with a mop. Defendant told Zea, “I am coming back and I am going to kill you, I swear. I am going to kill you. I promise it, you whore. Whore.” He ran away.

Zea called police. She described defendant as “Latin,” between 20 and 25 years old, thin with curly hair, wearing blue jeans, a white t-shirt, and a baggy hooded jacket. Nunez described Zea’s assailant as thin, with a dark complexion, Latin, five feet four inches tall, wearing blue jeans and a hooded sweater.

On July 18, 2010, Zea identified defendant at a field show up at Paisano Market. She was “100 percent” sure defendant was the person who attacked her.

Defendant was convicted of all counts submitted to the jury, and the deadly weapon allegation was found true. He filed a timely notice of appeal.

DISCUSSION

Defendant contends the trial court did not adequately investigate potential juror misconduct, and abused its discretion by not conducting an evidentiary hearing on defendant’s petition for the release of juror information. He contends these errors rendered his trial “fundamentally unfair.” Defendant also contends the reasons for the denial of his petition for the release of juror information were not stated in a minute order, and therefore the case should be remanded so that the court may state its reasons. We find no abuse of discretion, and find any error in failing to state the reasons for the court’s rulings in a minute order was harmless.

Before opening statements, the jury was instructed to “promptly report to the Court any incident within your knowledge involving an attempt by any person to improperly influence any member of this jury, or to tell a juror his or her view of the evidence of this case.” The jury was also instructed to not communicate with “court

staff, attorneys, witnesses, or a party,” and to report any improper communications to the bailiff. The jury was further instructed that “[i]f you have any question or request, please write it down on a piece of paper, hand it to the bailiff, she will give it to me; I will consider it after hearing from the lawyers before I give you my response in open court.”

Over the course of the trial, jurors submitted several notes to the court, requesting a diagram of the alley where the attack took place and defendant’s booking photo, and asking whether defendant had an alibi or a criminal history, among other questions. During deliberations, additional written notes were sent to the court by the jury, requesting a read-back of testimony.

Before the case was submitted to the jury, the court clerk received a “telephone call from an unidentified juror regarding reporting juror misconduct. The caller [did] not wish to give her juror number and [hung] up.” Defense counsel asked the court to “conduct an inquiry.” The court believed an inquiry was unnecessary because there was no actual report of misconduct, and made clear its preference to again instruct the jury to submit any “questions or concerns” to the court in writing.

Defense counsel wanted each juror questioned individually, and the prosecutor agreed that an inquiry should be made. The court denied the request, reasoning there was scant evidence of any misconduct, and that it would be harmful to have the “jurors pitted against each other.” The court then brought the jurors into court and instructed the jury as follows: “. . . I just wanted to make sure that if you wanted to contact the court, please write it on a piece of paper, if you have any question or request, and give it to the bailiff, she will give it to me. I will talk to both attorneys in open court and address you once we are ready to address you. [¶] It is very important that you communicate it through a piece of paper because we want to have a record and we don’t want you to just have informal conversation with any of my staff, so it is very important that you do it in writing. You are more than welcome to do so, if there is a question and request.” No notes concerning any misconduct were received.

The trial resumed, the matter was later submitted to the jury, and the jury reached a verdict. After the jury was polled, defense counsel again requested an inquiry into the

alleged misconduct. The court refused to conduct an inquiry, observing that “I gave all jurors an opportunity to report any type of conduct, any type of concern, in writing, and they did not. So at this point I am not going to conduct further inquiry.”

Before sentencing, defendant filed a petition requesting the disclosure of juror information. In his declaration in support of the petition, defendant’s trial counsel averred that “[o]n or around 11/18/10 at 8:00 a.m., the court clerk of Dept. SOC received a phone call from a woman who identified herself as a juror on the instant case. This juror said words to the effect of that she would like to report jury misconduct but would like to do so anonymously. The clerk inquired as to the identity of the juror, whereupon the juror hung up the phone. [¶] . . . [¶] The court rejected the joint request of the defense and the prosecution [to question the jurors individually about the alleged misconduct].” Counsel also stated, ~~that~~ “I attempted to talk to the jurors after the case. I was only able to talk to one juror, a white male. This juror said words to the effect of that it would have helped if the defendant had denied the crime.” The court denied the petition, finding defendant had not established good cause to obtain juror information.

1. Investigation of Juror Misconduct

“The trial court has the discretion to conduct an evidentiary hearing to determine the truth or falsity of allegations of jury misconduct, and to permit the parties to call jurors to testify at such a hearing. [Citation.] Defendant is not, however, entitled to an evidentiary hearing as a matter of right. Such a hearing should be held only when the court concludes an evidentiary hearing is ‘necessary to resolve material, disputed issues of fact.’ [Citation.] ‘The hearing should not be used as a “fishing expedition” to search for possible misconduct, but should be held only when the defense has come forward with evidence demonstrating a strong possibility that prejudicial misconduct has occurred. Even upon such a showing, an evidentiary hearing will generally be unnecessary unless the parties’ evidence presents a material conflict that can only be resolved at such a hearing.” (*People v. Avila* (2006) 38 Cal.4th 491, 604.)

Defendant contends the trial court abused its discretion when it failed to investigate the alleged juror misconduct after receiving the anonymous call. The trial

court had discretion to conduct an individual inquiry of each juror, but the anonymous call, which did not disclose any facts about the alleged misconduct, did not demonstrate that a hearing was necessary. It was unclear whether the call concerned defendant's case, or whether it was a prank phone call. Rather than examine the jurors individually to ask if they had made or knew of anyone else making a phone call about misconduct, or whether they knew of any misconduct (questions that strike us as unlikely to discover useful information from a typical juror), the trial court reasonably assembled all the jurors to remind them to report any questions or concerns in writing, and the court explained why a written record was necessary. No message concerning juror misconduct was received. We can find no abuse of discretion, and surely no denial of defendant's constitutional right to a fair trial.

Further, the trial court did not err when it denied defendant's renewed request to conduct an investigation after the jury reached its verdict. It does not matter that one of the court's stated reasons—not wanting to pit the jurors against each other—no longer existed after the jury rendered its verdict. The court rightfully determined that an anonymous call claiming jury misconduct of an undetermined nature was insufficient to merit further investigation. Any further inquiry would have amounted to a fishing expedition, and therefore, we can discern no abuse of discretion.

2. Summary Denial of Petition for Juror Information

Under Code of Civil Procedure section 237, all personal identification information of jurors sitting on criminal cases must be sealed upon the recording of the jury's verdict. (Code Civ. Proc., § 237, subd. (a)(2).) A person wishing access to that information may petition the court for release of the information, and must support that petition with a declaration that includes facts sufficient to establish good cause for the release of the juror information. (*Id.*, subd. (b).) The court must set the matter for hearing if the petition and supporting declaration establish a prima facie showing of good cause for release of the information, but it need not set the matter for hearing if there is a showing of facts that establish a compelling interest against disclosure. (*Ibid.*) The former jurors must be given notice of a hearing on a motion to release their personal identification

information, and any of the jurors may appear to oppose the request. (*Id.*, subd. (c).) Following the hearing, the records must be made available to the requesting party unless the court sustains a former juror's opposition to the petition. (*Id.*, subd. (d).) The trial court's determination of whether to hold a hearing is reviewed for an abuse of discretion. (*People v. Jones* (1998) 17 Cal.4th 279, 317; *People v. Castorena* (1996) 47 Cal.App.4th 1051, 1065 [trial court's failure to question jurors regarding a juror misconduct claim "presents an issue of abuse of discretion, not one of constitutional magnitude"].)

There was no abuse of discretion in the present case. The trial court was required to hold a hearing only if defendant presented facts sufficient to establish a prima facie showing of good cause for release of the information. (Code Civ. Proc., § 237, subd. (b).) To be sufficient to make a prima facie showing, the facts presented must be credible, and credibility determinations rest with the trial court. (See, e.g., *People v. Mills* (2010) 48 Cal.4th 158, 173; *People v. Dykes* (2009) 46 Cal.4th 731, 809.) The court had discretion to conclude that an unidentified caller's complaint of unspecified misconduct was not credible, and therefore did not merit further inquiry, especially after a further invitation to report any issues in writing did not lead to any juror sending a note to report juror misconduct.

Moreover, counsel's declaration concerning one juror's remark "to the effect of that it would have helped if the defendant had denied the crime," did not demonstrate good cause for further inquiry. Counsel's vague declaration provided no context for the juror's comment, and on its face the comment does not show the jury improperly considered defendant's failure to testify in reaching its verdict. The statement conveys nothing more than the juror's interest in defendant's account of events, and does not imply the evidence presented by the prosecution was insufficient. The jury had been instructed that "[a] defendant in a criminal trial has a constitutional right not to be compelled to testify. You may not draw any inference from the fact that a defendant does not testify. Further, you must neither discuss this matter nor permit it to enter into your deliberations in any way." Also, the jury was instructed that "[i]n deciding whether or not to testify, the defendant may choose to rely on the state of the evidence and upon the

failure, if any, of the People to prove beyond a reasonable doubt every essential element of the charge against him. No lack of testimony on defendant's part will make up for a failure of proof by the People so as to support a finding against him on any essential element." The jury is presumed to have followed these instructions, and counsel's declaration does not indicate otherwise. (*Rufo v. Simpson* (2001) 86 Cal.App.4th 573, 598-599.) The trial court properly found that defendant had not made the prima facie showing required to warrant a hearing under Code of Civil Procedure section 237.

3. Minute Order

Lastly, defendant complains that the trial court failed to memorialize its ruling on his petition for juror information in a minute order. Code of Civil Procedure section 237 provides: "If the court does not set the matter for hearing, the court shall by minute order set forth the reasons and make express findings either of a lack of a prima facie showing of good cause or the presence of a compelling interest against disclosure." (Code Civ. Proc., § 237, subd. (b).) The court's failure to state its reasons in a minute order is not reversible error because the court stated its reasons for denying appellant's request on the record. After noting that "nothing new" regarding the anonymous call was set forth in counsel's declaration, the court went on to find that "I don't believe that there is good cause." Because the court's statement of reasons for denying defendant's motion are reflected in the reporter's transcript, there would be no practical benefit in requiring a minute order repeating the same information.

Defendant's cited authority, *People v. Bonnetta* (2009) 46 Cal.4th 143, is not persuasive, as it addresses Penal Code section 1385. Penal Code section 1385 permits a judge to dismiss an action on its own motion "in furtherance of justice," with the requirement that "[t]he reasons for the dismissal must be set forth in an order entered upon the minutes." (*Id.*, subd. (a).) The need for a statement of reasons for a trial court's dismissal under Penal Code section 1385 is entirely different than the need to state reasons for a ruling on a petition for disclosure of juror information under Code of Civil Procedure section 237. The concern expressed in *Bonnetta*, that a trial court may misuse the "“great power”" of dismissal and invade the executive branch's prosecutorial

powers, is not present here, where section 237 provides that juror information is presumptively sealed after the jury in a criminal case records its verdict. (*Bonnetta*, *supra*, at p. 150; Code Civ. Proc., § 237, subd. (a)(2).) Notwithstanding the mandatory nature of the language of section 237, we decline to elevate form over substance in this case, in light of the well-developed record which leaves no doubt as to the reasons for the court's denial of the petition.

DISPOSITION

The judgment is affirmed.

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GRIMES, J.

WE CONCUR:

RUBIN, Acting P. J.

FLIER, J.