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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.

JOHN JARAMILLO,

Defendant and Appellant.

B277223

(Los Angeles County  
Super. Ct. No. TA140038)

APPEAL from the judgment of the Superior Court of Los Angeles County. Michael J. Shultz, Judge. Affirmed.

Lori Nakaoka, 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, Steven E. Mercer and Esther Kim, Deputy Attorneys General, for Plaintiff and Respondent.

\* \* \* \* \*

A jury convicted defendant and appellant John Jaramillo of one count each of assault with a firearm, possession of ammunition, and possession of a firearm by a felon. Defendant contends the trial court committed evidentiary errors and abused its discretion in denying his motion brought pursuant to *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497 (*Romero*).

We affirm.

### **FACTUAL AND PROCEDURAL BACKGROUND**

Defendant was charged by information with assault with a semiautomatic firearm (Pen. Code, § 245, subd. (b); count 1), possession of ammunition (§ 30305, subd. (a)(1); count 2), and possession of a firearm by a felon (§ 29800, subd. (a)(1); count 3). It was further alleged, as to count 1, that defendant personally used a semiautomatic handgun in the commission of the offense. It was also alleged defendant had suffered one prior serious or violent felony within the meaning of the Three Strikes law (§§ 667, subds. (b)-(j), 1170.12), and had suffered four prior prison terms (§ 667.5, subd. (b)).

The charges arose from an incident that occurred on the night of May 5, 2016. Testimony at trial established the following material facts. Danny Jones went to defendant's home around 10:00 p.m. to visit with defendant's brother, Robert. When he arrived, Robert was not there, so Mr. Jones started to show defendant and Robert's son, Jessie, his new remote control helicopter. Defendant became angry and told Mr. Jones that he still owed him money for the car speakers he had sold him. Mr. Jones said he did not owe him any money because he had brought the speakers back and given them to Robert. Defendant continued to insist Mr. Jones owed him the money and that he had made him look stupid.

Defendant told Mr. Jones that before he showed up at the house, he had been planning to go to Mr. Jones's motel room and rob him to get back his money. Defendant told Mr. Jones he should not be hanging around and better leave. Mr. Jones saw that defendant had a semiautomatic handgun. Defendant displayed it, pulled out the clip filled with bullets, showed the clip to Mr. Jones, then snapped the clip back into the gun. Defendant held the gun with his finger on the trigger. Mr. Jones turned to leave. He did not believe defendant would shoot him over some inexpensive speakers. As he started to walk away, he heard the gun go off right next to his ear and saw the muzzle flash. Mr. Jones said it felt like defendant hit him in the back of his head with his arm and the gun went off.

Mr. Jones ran to his truck and drove away. When he got back to his motel, he called defendant's brother Robert. Robert told him to call the police and report what happened, so he did. On cross-examination, Mr. Jones explained that he called Robert before calling the police because Robert and defendant are in a gang, and he was fearful about the situation he would be in by calling the police. Mr. Jones also conceded on cross-examination that he had used methamphetamine several hours before the incident.

Mr. Jones testified at trial in jail clothes, having been arrested on a bench warrant after failing to appear at the original trial date. Before Mr. Jones took the stand to testify, defense counsel requested that if Mr. Jones was allowed to testify that he had been threatened about coming to court, that he not be allowed to say the two individuals who made the threats were gang members. The court denied the request. Defense counsel also asserted her belief there was a hold on Mr. Jones from San

Bernardino Superior Court and she wanted to inquire about any pending charges against Mr. Jones. After Mr. Jones denied knowing what the hold could be about, the court denied any further questioning in that regard. We reserve a more detailed discussion of these evidentiary rulings to the discussion section below.

The jury found defendant guilty as charged. The court denied defendant's *Romero* motion and sentenced defendant as a second-strike offender to an aggregate state prison term of 22 years four months.

This appeal followed.

## **DISCUSSION**

### **1. The Evidentiary Rulings Pertaining to the Victim's Testimony**

Defendant contends the trial court improperly admitted testimony from Mr. Jones about threats made to him by gang members, and also improperly excluded impeachment evidence. "A trial court's exercise of discretion in admitting or excluding evidence is reviewable for abuse [citation] and will not be disturbed except on a showing the trial court exercised its discretion in an arbitrary, capricious, or patently absurd manner that resulted in a manifest miscarriage of justice [citation]."

(*People v. Rodriguez* (1999) 20 Cal.4th 1, 9-10.) We discuss each ruling in turn.

#### **a. The gang evidence**

Defense counsel argued that if Mr. Jones testified about being threatened not to come to court, he should not be allowed to say that the two men who threatened him were gang members. The only objection stated on the record was that such evidence was not relevant because there was no gang allegation

and Mr. Jones had said he simply forgot about the trial date and that was the reason he failed to appear. However, Mr. Jones also said that he had been threatened by two gang members from the neighborhood. The court overruled defendant's relevance objection, finding the fact Mr. Jones believed the men to be gang members was relevant to his fear, credibility and state of mind and he could be questioned about any and all possible reasons for his failure to appear that had resulted in his arrest.

Defendant argues to this court that the evidence should not have been allowed under Evidence Code section 352, and because the admission of such evidence violated his constitutional right to a fair trial. Defendant's relevance objection did not preserve these grounds for appeal. (See, e.g., *People v. Valdez* (2012) 55 Cal.4th 82, 138 [objection that testimony was irrelevant and lacked foundation insufficient to preserve appellate argument that evidence was inadmissible under section 352]; *People v. Partida* (2005) 37 Cal.4th 428, 438-439 [constitutional argument not embraced by trial court objection is forfeited on appeal].)

In any event, defendant's argument is without merit. As relevant here, Evidence Code section 780 provides that the jury "may consider in determining the credibility of a witness any matter that has any tendency in reason to prove or disprove the truthfulness of his testimony at the hearing, including . . . [¶] . . . [¶] (f) The existence or nonexistence of a bias, interest, or other motive. [¶] . . . [¶] [And] (j) His attitude toward the action in which he testifies or toward the giving of testimony." "[E]vidence that a witness is afraid to testify or fears retaliation for testifying is relevant to the credibility of that witness and is

therefore admissible. [Citations.] An explanation of the basis for the witness's fear is likewise relevant to [his] credibility and is well within the discretion of the trial court. [Citations.] [Citations.] Moreover, evidence of a 'third party' threat may bear on the credibility of the witness, whether or not the threat is directly linked to the defendant." (*People v. Mendoza* (2011) 52 Cal.4th 1056, 1084 (*Mendoza*).)

Mr. Jones testified he forgot about the original trial date and therefore failed to appear. He also said he was not feeling well that day and he had been told not to appear by two men, who he knew to be gang members. He said they told him "it would be in [his] best interest not to show." The court instructed the jury with a modified version of CALCRIM No. 303 as follows: "Evidence that a third party communicated with Mr. Jones and attempted to influence his testimony have [*sic*] been admitted to assist you in assessing Mr. Jones' credibility, his state of mind, his bias or prejudice and/or his actions and attitude toward these proceedings. [¶] This alleged communication is in no way attributed to the defendant and you are not to consider this evidence in any way against the defendant. Again, evidence that third parties may have tried to influence Mr. Jones' testimony is admitted solely to evaluate Mr. Jones' credibility as a witness."

Admission of the gang evidence was relevant to Mr. Jones's credibility and was well within the trial court's broad discretion in controlling the examination of witnesses. Any possible prejudice was mitigated by the court's instruction to the jury limiting the use of such evidence. (*Mendoza, supra*, 52 Cal.4th at p. 1088 ["any potential for prejudice" from the third party threat evidence "was eliminated by the trial court's express instructions

that the jury was to consider such evidence for the sole purpose of determining the credibility of these witnesses”].)

Because there was no evidentiary error, even if we were to consider a section 352 or due process objection, we need not address defendant’s conclusory contention that his trial counsel provided ineffective assistance in failing to state all the grounds for exclusion of the evidence.

**b. The impeachment evidence**

Defendant contends the trial court improperly excluded impeachment evidence related to alleged pending charges against Mr. Jones in San Bernardino County.

Defendant is correct that, in appropriate circumstances, a “prosecution witness can be impeached by the mere fact of pending charges.” (*People v. Martinez* (2002) 103 Cal.App.4th 1071, 1080.) Nevertheless, the trial court retains broad discretion in controlling the examination of witnesses, including the scope of cross-examination of prosecution witnesses. “Although the right of confrontation includes the right to cross-examine adverse witnesses on matters reflecting on their credibility, ‘trial judges retain wide latitude insofar as the Confrontation Clause is concerned to impose reasonable limits on such cross-examination.’” (*People v. Quartermain* (1997) 16 Cal.4th 600, 623 (*Quartermain*), quoting *Delaware v. Van Arsdall* (1986) 475 U.S. 673, 679; accord, *People v. Brown* (2003) 31 Cal.4th 518, 545 (*Brown*) [cross-examination by the defense is “not a matter of ‘absolute right’”; the trial court retains broad authority to impose “‘reasonable limits on defense counsel’s inquiry based on concerns about harassment, confusion of the issues, or relevance’”].)

Here, the trial court concluded that defense counsel had not shown any basis for a good faith belief that any possible charges pending against Mr. Jones in San Bernardino involved a crime of moral turpitude. Mr. Jones was asked if he knew why he had a hold in San Bernardino and he said he did not know. He also denied being a gang member. Defense counsel's sole basis for claiming the right to inquire about any possible charges was based on defendant having told defense counsel that the charges concerned possession for sale. The court indicated it had reviewed Mr. Jones's rap sheet and found not one crime of moral turpitude except for a 36-year-old conviction for petty theft.

Defendant has not shown any abuse of discretion by the trial court in precluding this line of questioning, nor has defendant shown any possibility that if he had been allowed to ask such questions of Mr. Jones in front of the jury, the jury would have been provided “ ‘a significantly different impression” ’ ” of Mr. Jones's credibility. (*Brown, supra*, 31 Cal.4th at pp. 545-546; see also *Quartermain, supra*, 16 Cal.4th at pp. 623-624.)

## **2. The Denial of the *Romero* Motion**

Defendant contends the trial court abused its discretion in denying his *Romero* motion to strike his one qualifying strike from 2002. We disagree.

We review a court's ruling on a *Romero* motion under the deferential abuse of discretion standard. (*People v. Williams* (1998) 17 Cal.4th 148, 162 (*Williams*); accord, *People v. Carmony* (2004) 33 Cal.4th 367, 375-376 (*Carmony*) [holding abuse of discretion standard also applies to review of a trial court's decision declining to strike a prior strike].) A trial court is “presumed to have acted to achieve legitimate sentencing



objectives” and the decision to impose a particular sentence will not be set aside unless an affirmative showing is made that the sentence is irrational or arbitrary. (*Carmony*, at pp. 376-377.) “[A] trial court does not abuse its discretion unless its decision is so irrational or arbitrary that no reasonable person could agree with it.” (*Id.* at p. 377.)

In exercising its discretion whether to strike a prior strike allegation, the court considers various factors, including the nature and circumstances of the defendant’s present felonies and prior convictions, the defendant’s background, character, and prospects, and whether the defendant may properly be deemed outside the spirit of the Three Strikes law. (*Williams, supra*, 17 Cal.4th at p. 161.)

Defendant argued that his one prior qualifying strike from 2002 for a violation of Penal Code section 247, subdivision (b) (malicious discharge of firearm at motor vehicle or dwelling house) should be stricken because he had not suffered any other violent or serious felonies since that conviction, he was older (in his early 60’s) and less likely to commit serious offenses, and the victim’s testimony indicated that the firing of the gun was accidental.

In denying defendant’s *Romero* motion, the trial court explained that after the 2002 strike conviction, defendant continued to commit crimes and suffered numerous convictions, including both felony and misdemeanor convictions for possession of a firearm by a felon. The court found that defendant “fits well within the goals and concept of [the] Third Strike law.” The probation report demonstrates that defendant had an adult criminal history beginning in 1983 and continuing, with regularity, through 2016, including five convictions just in the

period of time after defendant's release from prison on his qualifying strike prior.

The Three Strikes law creates a sentencing norm and "carefully circumscribes the trial court's power to depart from this norm." (*Carmony, supra*, 33 Cal.4th at p. 378.) "[T]he law creates a strong presumption that any sentence that conforms to these sentencing norms is both rational and proper." (*Ibid.*) Defendant has failed to affirmatively show the trial court abused its discretion in denying his motion and sentencing him as a second-strike offender.

**DISPOSITION**

The judgment of conviction is affirmed.

GRIMES, J.

WE CONCUR:

BIGELOW, P. J.

RUBIN, J.