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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE, Plaintiff and Respondent, v. MARCO ANTONIO CASILLAS, Defendant and Appellant.	2d Crim. No. B281363 (Super. Ct. No. 2014018724) (Ventura County)

A jury found Marco Antonio Casillas guilty of first degree murder (Pen. Code, §§ 187, subd. (a), 189, subd. (a)) and found true the special circumstances allegation that he committed the murder while he was engaged in burglary (Pen. Code, § 190.2, subd. (a)(17)(G)). The trial court sentenced Casillas to life without the possibility of parole (LWOP). We affirm.

FACTS

In June 1997, James Bush lived with his mother Gail Shirley in a house in Ventura. Bush was 16 years old. On June 24, Bush and Shirley left the house at 8:40 a.m. so that Bush

could take his driver's test. When they returned at about 10:00 a.m., Shirley did not notice anything amiss.

Shirley and Bush left the house again at about 10:30 a.m. to run some errands. The doors were locked and the windows were secured with stop locks, which permitted them to be only partially opened. When they returned at about 11:45 a.m., they noticed some things in the house were slightly askew. Bush showed Shirley how the stop lock on his bedroom window had been moved and the screen had been removed.

Shirley went to the den to call 911. Bush went to the study to check for missing items. Shirley heard the front door slam. She thought Bush had fallen. When he was not at the front door, she went to the study. She found Bush lying on the floor with stab wounds to his neck and stomach. Bush told her his assailant had just run out.

Ventura Police Officer Michael Van Atta was less than a mile away from Bush when the 911 call came in. Van Atta administered CPR to Bush until the paramedics arrived. Bush died at the hospital.

Witnesses

Lorayne Snyder lived a few houses away from Bush. Sometime before noon on the day of the murder, a short Hispanic man, teenage or possibly 20 years old, came to the door. He spoke to Snyder's husband. Snyder was near the door. She referred the young man to a house across the street where a Hispanic family lived. She watched as the young man crossed the street and knocked on the door. A young girl answered the door and pointed to Bush's house. Snyder saw the young man standing at Bush's front door. Then she stopped watching.

Yomaira Falcon was 10 or 11 years old when she lived near Bush's house. She was home alone when a short Hispanic man in his late teens or early 20's knocked on her door. The young man asked if anyone was at home. She said her parents were upstairs, and asked him to leave. She saw him walk across the street toward Bush's home.

On the morning of the murder, Lauren Semchenko, 11 years old, and her friend Heather McNally were riding their bicycles. They saw a young man run out from an area in front of Bush's home. The man had a long knife in his hand. He slowed to put the knife in his waistband, tucked his shirt over it and continued to run. McNally yelled at the man. He appeared to be surprised and scared. The man wore a green, long-sleeved plaid shirt. McNally believed he was about 14 years old. Semchenko also believed he was about 14 years old.

McNally told her mother about the encounter because it was unusual. Her mother contacted the police. The police interviewed McNally and Semchenko separately. Semchenko helped the police complete a composite sketch of the man. McNally reviewed the sketch and declined to make changes. But McNally believed the hairline was different and the sketch appeared a little too feminine.

Rochelle Stock saw a Hispanic man who was not very tall and who appeared to be in his late teens in the neighborhood. He wore a green and black plaid shirt. He looked "very, very nervous" and anxious. He kept looking around. She told the police the composite drawing looked like the man she saw.

A Department of Motor Vehicles photograph taken of Casillas around the time of the murder shows him wearing a green plaid shirt. When Casillas was arrested, a newspaper

published the picture. Semchenko recognized the picture as that of the man she saw on the day of the murder.

Investigation

Ventura Police Detectives William Dzuro and Harold Scott investigated the crime scene. A screen had been removed from Bush's bedroom window and a sliding lock had been moved. The detectives determined that the window was the point of entry. Detectives lifted 23 latent prints from around the house. Detectives lifted a partial palm print from the window sill at the point of entry. Because the sun shining on the window sill would have quickly dried out the palm print, Detective Scott believed the palm print was left on the window sill after 10:00 a.m. on the day of the murder.

Detective Dzuro opened the closet doors in Shirley's dressing room and found fresh feces on top of some clothing in a laundry basket. The detective took a sample for DNA testing.

One of Bush's neighbors found a folding knife in the neighborhood. The blade matched cuts in the T-shirt that Bush was wearing and contained cotton fibers that matched the T-shirt. The police were unable to lift fingerprints from the knife.

In 1997, DNA technology had not advanced enough to identify a person from feces. California did not begin to add palm prints to its fingerprint database until 2003.

In February of 2002, the police obtained a DNA profile from the fecal matter left at Bush's house. In March of 2014, nearly 17 years after Bush's death, a latent print examiner found a match between Casillas's palm print and the palm print left on Bush's window sill. Casillas's probation officer obtained a buccal swab from Casillas. The DNA taken from the fecal material matched Casillas's DNA.

Fingerprint Expert

Martin Collins is a latent print supervisor with the California Department of Justice. Collins testified the palm print left in Bush's window sill was made by Casillas's right palm. Collins also identified a print from Bush's hallway closet as Casillas's left thumbprint. Collins testified he excluded Shirley and Bush as potential contributors to a print taken from a dressing room closet door knob, but he could not exclude Casillas. Collins testified that prints shown on four other exhibits were inconclusive. He said that neither Shirley, Bush, Casillas, nor anyone else could be excluded. He agreed with the prosecutor's statement that Casillas could not be excluded as a potential contributor to those prints. At the prosecutor's request, Collins circled "not" on a notation on top of the exhibits stating, "Unidentified: Defendant (is/is not) excluded."

Interview with Casillas

In April 2014, Ventura police detectives went to Casillas's place of work where he was on work furlough from a different offense. The detectives asked if Casillas could provide some general information about burglaries to help them in their work. They told Casillas he was not required to talk to them. They sat outside at a picnic table. The detectives surreptitiously recorded the conversation.

Casillas told the detectives that unless the burglar was a drug addict, most burglars commit burglaries for the thrill of doing something bad. The detectives asked Casillas about his 1997 burglary conviction. He said he met a girl at a club who called him the next day to ask for a ride. They stopped at a house. She went in the house and came out with some things. When a police car drove by he panicked and drove off. The police

pulled him over. They wrongly believed he was the girl who committed the burglary because he had long hair and no girl was ever found. He was 18 years old. He pleaded guilty and served three years in prison.

When he got out of prison, he got involved with people who burglarized places. He got caught with stolen property, and did 16 months in prison. He was released on parole. After he completed parole, someone offered him a stove for $50. He bought the stove and listed it on Craigslist. He was arrested. Casillas said that when he got married, he stopped associating with people who are a bad influence on him.

The detectives showed Casillas pictures of people who were arrested at the same time as he was. Casillas recognized Ruben Ramirez. He said he and Ramirez committed a burglary together in Oxnard. Ramirez was arrested for burglary and he was arrested for receiving stolen property. Casillas also recognized Juan Gutierrez. He said Gutierrez burglarized his house while he was away.

The detectives showed Casillas photographs of homes in Ventura, including Bush's home. He denied he burglarized Bush's home or any home in Ventura. He denied carrying any weapons during the burglaries.

Detectives seized Casillas's computer pursuant to a search warrant. His computer contained numerous bookmarks on internet topics related to DNA including DNA from human feces and how to cheat a DNA swab test. His laptop showed searches for unsolved murders in Ventura County and the elements necessary for the crime of murder in California.

Prior Convictions

Casillas was convicted of burglary in 1996. A neighbor of the victim saw Casillas knock on the victim's front door. Then Casillas entered the victim's side yard and came out of the victim's front door about ten minutes later. Casillas had a black bag on his shoulder. The neighbor called the police. The police saw Casillas get into his car with the black bag. A police officer detained Casillas, then arrested him for giving a false name. The officer spread the items in the black bag on the hood of his car just as the victim was arriving home. The victim identified the items as her property.

Casillas was convicted of receiving stolen property in 1997. Police officers responded to a call about a residential burglary involving two suspects. When the officers arrived at the victim's home, they arrested one of the suspects. Officers saw Casillas crawl into a nearby home through the window. Casillas ignored their command to stop. Casillas left the house through the front door. He told the officers that the house belonged to a relative and that he had been in the house for about four hours. An officer searched Casillas and found jewelry that had been taken in the burglary.

DEFENSE

Falcon's Interview

Falcon's description of the person who knocked on her door differed from that of other witnesses. Falcon, who was 11 years old at the time, described the person who knocked on her door as having baggy eyes and a five-o'clock shadow with hair shaved on both sides but combed back on top. He had an accent like a Mexican gangster. He wore a T-shirt with a logo on it, long, bluish, baggy pants, and a black shiny belt. He had a green hat

that he took off before knocking on the door and put on backwards as he was leaving.

Investigation

Kenneth Moses is a crime scene investigator with extensive experience in fingerprint analysis. Moses criticized the crime scene investigation as conducted more like a burglary investigation than a homicide investigation. No fingerprint expert was called to the scene; the detectives failed to use chemical, non-chemical or light sources available at the time to help identify additional latent prints; and areas of the house that appeared undisturbed were not processed for prints. Moses believed that there could have been other prints on the window sill, that it was a mistake not to lift prints from the knife by using super glue, and that some of the unidentified prints had more than enough characteristics for an identification.

Casillas did not testify.

DISCUSSION

I.

In reviewing the sufficiency of the evidence, we view the evidence in a light most favorable to the judgment. (*People v. Johnson* (1980) 26 Cal.3d 557, 578.) We discard evidence that does not support the judgment as having been rejected by the trier of fact for lack of sufficient verity. (*People v. Ryan* (1999) 76 Cal.App.4th 1304, 1316.) We have no power on appeal to reweigh the evidence or judge the credibility of witnesses. (*People v. Stewart* (2000) 77 Cal.App.4th 785, 790.) We presume the trier of fact drew every reasonable inference that could be drawn in favor of the judgment from the evidence. (*People v. Kraft* (2000) 23 Cal.4th 978, 1053.) We must affirm if we determine that any

rational trier of fact could find the elements of the crime beyond a reasonable doubt. (*Johnson*, at p. 578.)

Here, the evidence including the reasonable inferences that could be drawn therefrom shows: Casillas had prior convictions for burglary and receiving stolen property, and admitted to police detectives that he had committed those crimes. On the day of the murder, Casillas was seen knocking on doors to determine whether anyone was home. Bush and his mother left their home at about 10:30 a.m. to run errands. When they left, nothing was amiss. Casillas was seen standing at Bush's front door. Having discovered no one was at home, Casillas went around the side of the house and entered through a window, leaving his palm print on the sill. Casillas rummaged through the house and defecated in a closet, leaving a sample of his DNA. When Bush and his mother returned home, they noticed some things in the house were askew. Bush went to search the house. He found Casillas in the study. Casillas stabbed Bush and escaped. Casillas was seen coming from Bush's house with a knife. Semchenko identified Casillas from a picture in a newspaper as the person she saw with the knife.

There is more than sufficient evidence from which a reasonable jury could find Casillas killed Bush during the commission of a burglary.

Casillas argues there was no evidence he was in Bush's house at the time Bush was murdered. He argues he could have been there between 8:40 and 10:00 a.m. when Bush and Shirley were out of the house for Bush's driver's test.

But when Shirley and Bush returned from the driver's test, Shirley noticed nothing amiss. It was only after they returned home from running errands at 11:45 a.m. that they noticed signs

of a burglary. There is substantial evidence that Casillas was in Bush's house when Bush was stabbed.

Moreover, Casillas was compelled by incontrovertible evidence to admit that he broke into Bush's house on the day of the murder. Casillas asks the jury to believe that he broke into Bush's house, deposited a palm print and his DNA, and left the house before Bush returned from his driver's test. Thereafter, some unknown person broke into Bush's house and stabbed him. Any reasonable juror would recognize Casillas' defense as pure fantasy.

Casillas argues even if there is substantial evidence that he was in Bush's house when Bush was stabbed, there is no substantial evidence to support the special circumstances finding. Casillas points out the court instructed the jury that he could be found guilty of murder as the perpetrator or alternatively as an aider and abettor. Casillas asserts that if the jury found him guilty as an aider and abettor, there is no substantial evidence to support a finding of special circumstances.

It is true the trial court instructed the jury on alternate theories for murder. But the court did not instruct the jury on alternate theories for special circumstances. Instead, the court instructed that to find special circumstances, the jury must find the defendant committed burglary; the defendant intended to commit burglary; and the "defendant did an act that caused the death of another person." (CALCRIM No. 730.) We presume the jury followed the trial court's instructions. (*People v. Johnson* (2015) 61 Cal.4th 734, 770.) Thus, we conclude the jury found Casillas was the direct perpetrator of the murder.

II.

Casillas contends the trial court erred in failing to give sua sponte instructions defining accomplice liability for special circumstances.

Where there is evidence from which a jury could have based its special circumstances verdict on an accomplice theory, the court must instruct that the jury must find the defendant intended to aid another in the killing. (*People v. Jones* (2003) 30 Cal.4th 1084, 1117.)

Here, the prosecutor expressly asked the trial court to omit any reference to aiding and abetting from the special circumstances instruction because the prosecutor was proceeding on the theory Casillas was the actual killer. Casillas did not object. The court omitted reference to aiding and abetting from the instruction.

The trial court did not err. There is no substantial evidence that Casillas committed the burglary with any other person. No person saw two or more people acting in concert on the day of the murder. They saw a single person knocking on doors, standing in front of Bush's house, and emerging from the area of Bush's house with a knife. There were inconclusive fingerprints in the house. But fingerprint experts could not eliminate Bush, Shirley, or Casillas himself as donors of those fingerprints. Such inconclusive fingerprints do not constitute substantial evidence of an accomplice. Fingerprint, palm print, and DNA evidence identified only one person who had no legitimate reason for being in the house. That person is Casillas.

Casillas points out that the trial court gave an accomplice instruction for murder. He reasons that for the court to give such an instruction, it must have found substantial evidence of an

accomplice. He concludes there must be substantial evidence of an accomplice for special circumstances. Whether the court believed there was substantial evidence of an accomplice is irrelevant. There simply is no such evidence. The jury was instructed that to find special circumstances, it had to find that Casillas caused Bush's death. The jury so found. They did not find an accomplice caused Bush's death.

III.

Casillas contends the trial court erred in admitting evidence that had little or no probative value, but that inflamed the jury's passion.

Evidence Code section 352 (section 352) provides: "The court in its discretion may exclude evidence if its probative value is substantially outweighed by the probability that its admission will (a) necessitate undue consumption of time or (b) create substantial danger of undue prejudice, of confusing the issues, or of misleading the jury."

(a) 911 Call

Prior to trial, Casillas moved to exclude a recording of Shirley's 911 call. Casillas offered to stipulate that the call was made, the time of the call, and that Bush was stabbed during the call.

Shirley began the call while Bush searched the house for other signs of burglary. Shirley described how her home was burglarized and how she believed the burglar gained entrance. Bush interrupted her and told her he had been stabbed. Shirley could be heard pleading with her son to breathe while Officer Van Atta tried to revive him.

The trial court found the call admissible as a spontaneous utterance. (Evid. Code, § 1240.) The trial court denied Casillas's

motion to exclude the recording of the call, and the call was played for the jury.

After the call was played for the jury, the court called a recess. The court said it called a recess because several members of the audience were emotional and several jurors were weeping.

Here, the 911 call was highly probative as contemporaneous evidence of the circumstances of the murder. Nor was it unduly prejudicial. The prosecution in a murder case is entitled to present evidence of the circumstances attending to the murder scene even if the evidence is grim, duplicates testimony, depicts uncontested facts, or triggers an offer to stipulate. (*People v. Boyce* (2014) 59 Cal.4th 672, 687-688.) That jurors were moved to tears does not mean the evidence was unduly prejudicial.

(b) Exhibit 57

People's Exhibit 57 contains two photographs. One shows a closed blue body bag on a gurney. The other shows Bush's head and unclothed upper body. Casillas objected that the photograph of the body bag was not relevant and the photograph of Bush's upper body was duplicative of other photographs. The prosecutor stated that the medical examiner selected the photographs to explain her examination.

At trial, the medical examiner, Dr. Janice Frank, testified that the body arrives in the autopsy room in a blue plastic bag. She said photograph A on exhibit 57 shows the body in a pouch and that photograph B of the exhibit shows the body after the bag has been opened and pushed back. Frank used the photographs in exhibit 57 to illustrate the autopsy procedure. The evidence was neither duplicative nor unduly prejudicial.

(c) Fingerprints Not Excluded

At trial, the prosecutor introduced five exhibits containing photographs of unidentified fingerprints lifted from Bush's house. At the top of each exhibit is a printed notation, "Unidentified: Defendant (is/is not) excluded." Casillas objected that the notation was pointless if the results were inconclusive, and that the notation had the effect of singling out Casillas. The trial court overruled the objection.

At trial, the People's fingerprint expert testified the latent prints shown on the exhibits were inconclusive, and that no one, including Bush, the Shirleys, and Casillas could be excluded. Over Casillas's objection, the expert was allowed to circle "not" on the notation.

The notation on the exhibits simply reflected the prosecution's expert's testimony that Casillas could not be excluded. Casillas was free to offer the same exhibits with a different notation reflecting his expert's testimony. Casillas argues his own notation would add to the confusion. But no more so than experts testifying for opposing parties.

(d) Detective Scott's Testimony

During direct examination, the prosecutor asked Detective Scott without objection what he did with the palm print he took from Bush's home. Scott replied that he kept it on his desk for the next two and a half years until he retired, and compared it to every palm print that came across his desk. The next day at the end of direct examination, the prosecutor asked Scott the same question. This time Casillas objected to the question as asked and answered. The trial court overruled the objection; Scott gave the same answer, but this time he showed some emotion.

Afterward, the court stated it forgot the prosecutor had asked the same question the day before.

Casillas argues the related question and answer interjected more emotion into an already emotional trial. But the error was harmless by any standard. The trial evoked emotions because of its facts. A sixteen-year-old boy was brutally murdered in his own home. There is nothing to suggest Scott's brief display of emotion had any effect on the outcome of the trial.

(e) Detective Conroy

Detective Sean Conroy interviewed Falcon, who was 10 or 11 years old when she encountered a young Hispanic man at her door. On direct examination, the prosecutor asked Conroy his impression about Falcon's ability to remember and relate details. Casillas objected that the question calls for speculation. The trial court overruled the objection.

In overruling the objection, the court instructed the jury that the evidence was being admitted only "for the limited purpose of assessing the capacity and competency of [Falcon] to relay information and for no other purpose."

Conroy answered: "My impression was that she is an 11-year old and she was relating things as best she could; but she was young and immature, and the sequence of events and her descriptions needed to be put in a context of her youth." When the prosecutor asked Conroy if Falcon seemed "somewhat confused" in relating the information, Conroy answered, "Yes. Yes. We tried to clear those up in a gentle way. You can't cross-examine an 11-year old. You know, you have to be very gentle with them."

The admission of lay opinion testimony is within the discretion of the trial court and will not be disturbed absent a

clear abuse of discretion. (*People v. Mixon* (1982) 129 Cal.App.3d 118, 127.) That a person seemed somewhat confused is an observation a lay person is competent to make. The court did not abuse its discretion.

Casillas argues that if the trial court was referring to Falcon's competency as a witness under Evidence Code section 701, that is a question for the trial court outside the presence of the jury. (Citing *People v. Knox* (1979) 95 Cal.App.3d 420, 431.) Evidence Code section 701, subdivision (a) (hereafter section 701) provides: "(a) A person is disqualified to be a witness if he or she is: [¶] (1) Incapable of expressing himself or herself concerning the matter so as to be understood, either directly or through interpretation by one who can understand him; or [¶] (2) Incapable of understanding the duty of a witness to tell the truth."

First, Casillas never objected under section 701. Second, "somewhat confused" is far from the findings required under section 701.

Casillas argues Conroy's testimony that Falcon was somewhat confused is inadmissible because Conroy did not offer any specifics as to why it was his impression. But Conroy testified Falcon was young and immature and had difficulty with the sequence of events and her descriptions. If Casillas needed more specifics than that, he could have asked. Casillas points out that Semchenko and McNally were also young. But for any chronological age there is a wide range of maturity and abilities.

IV.

Casillas contends the trial court erred in admitting his two prior convictions and a recording of a 2014 interview with police detectives while he was on work furlough.

Casillas argues the recording of the interview constitutes propensity evidence in violation of Evidence Code section 1101 (hereafter section 1101). Section 1101, subdivision (a) prohibits evidence of a person's character or trait when offered to prove his or her conduct on a specified occasion. Subdivision (b) of the section provides: "Nothing in this section prohibits the admission of evidence that a person committed a crime, civil wrong, or other act when relevant to prove some fact (such as motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake or accident, or whether a defendant in a prosecution for an unlawful sexual act or attempted unlawful sexual act did not reasonably and in good faith believe that the victim consented) other than his or her disposition to commit such an act."

Here, the trial court admitted Casillas's prior 1996 conviction for burglary and a 1997 conviction for receiving stolen property to show intent. The court ruled inadmissible Casillas's 2013 conviction for receiving stolen property under Evidence Code section 352 as too remote in time. During the interview with detectives, Casillas discussed his 1996 and 1997 convictions as well as his 2013 conviction. The court allowed the entire conversation into evidence without redaction. The court stated it could not excise the part of the interview in which Casillas referred to the 2013 conviction without affecting the integrity of the interview.

The trial court instructed the jury with CALCRIM No. 375 that it could only consider evidence of Casillas's 1996 and 1997 convictions for the purpose of deciding whether he acted with the intent to commit burglary or had a plan or scheme to commit burglary in this case. The court drafted a special instruction

telling the jury not to conclude from the recording that the defendant has a bad character or is disposed to commit crime. Neither party wanted the special instruction.

To establish relevance on the issue of intent, the uncharged crimes need only be sufficiently similar to the charged offenses to support the inference that the defendant probably harbored the same intent. (*People v. Carter* (2005) 36 Cal.4th 1114, 1149.) Here, in both the 1996 burglary and the 1997 receiving stolen property convictions, Casillas entered by a back window and left by the front door. That is sufficient to support the inference that Casillas entered Bush's house with the intent to commit burglary.

Casillas argues he conceded intent to commit burglary. But the prosecution is not required to accept the defendant's concession. The prosecutor is entitled to prove the elements of the crime. (See *People v. Ewoldt* (1994) 7 Cal.4th 380, 400, fn. 4.) The trial court did not abuse its discretion in admitting Casillas's prior convictions.

As to the recording of the interview, the trial court properly ruled that evidence of Casillas's 1996 and 1997 convictions is admissible. There is no reason why such evidence cannot be supported by Casillas's admissions in a recorded interview.

The trial court's decision to allow into evidence Casillas's brief mention of his 2013 receiving stolen property conviction did not constitute an abuse of discretion. Casillas was on work furlough at the time the interview took place. The jury was entitled to consider the entire context of the interview. The trial court offered to instruct the jury that it should not conclude from the interview that Casillas has a bad character or is disposed to commit crime. Casillas rejected the offer.

V.

Casillas contends the trial court's exclusion of third party culpability evidence deprived him of the right to a complete defense.

Roy Miller was a confidential police informant. Eighteen months after Bush's murder, Miller told his probation officer that Raymond Perez and Russell Scott told him of their involvement in the murder. District Attorney's investigator Mark Volpei had been assigned to the Bush case. He worked with Miller in investigating Perez and Scott's alleged involvement. No physical evidence links Perez or Scott to Bush's house. Neither Perez nor Scott were arrested for Bush's murder. Both Perez and Scott died before trial.

Casillas moved the trial court to admit into evidence a three-page letter Miller wrote to investigators about his conversation with Perez and Scott in which they allegedly admitted involvement in Bush's murder, as well as police reports.

The prosecution objected on the grounds of hearsay and reliability. The trial court stated that the only basis for the admission of the evidence would be Evidence Code section 1237, past recollection recorded (section 1237).

The trial court held a hearing pursuant to Evidence Code section 402 on the admissibility of evidence. Miller testified at the hearing. Miller said that he and Perez and Scott were not friends, but they did drugs together. Miller met with them on many occasions in the 1990's and discussed various topics, including crimes they committed. They did a lot of meth. Everybody was stealing things.

Miller could not recall telling his probation officer that he had information on the Bush murder; meeting with police to

discuss the case; or telling Volpei that Perez told him he killed Bush. Miller did not recall writing the three-page letter in which he implicated Perez and Scott in Bush's murder, but he conceded it looked like his handwriting.

Miller said it is "more than likely" he told Volpei that Perez stabbed Bush. Miller added, "Like I said, I did a lot of things back then, a lot of drugs were involved, and I did everything I could possibly to stay out of jail or get less time, you know, so it is a good possibility I said a lot of things. What exactly they were, I couldn't tell you."

Miller said he did not know why he wrote the letter to Volpei, but he is "sure it was try[ing] to get myself out of trouble for something."

Miller said he had a "give and take" relationship with Volpei and that Volpei had "got me out of a couple jambs [*sic*]." In speaking to Volpei about Bush's murder, Miller viewed Volpei as his "ticket out of jail." Miller agreed that he was "taking [Volpei] for a ride regarding this case and the information [he] provided."

The trial court found the evidence unreliable and excluded the evidence.

A criminal defendant has the right to present evidence of third party culpability. (*People v. Panah* (2005) 35 Cal.4th 395, 481.) But the right to present such a defense is subject to the rules of evidence. (*People v. Robinson* (2005) 37 Cal.4th 592, 626-627.)

Casillas relies on section 1237. That section provides: "(a) Evidence of a statement previously made by a witness is not made inadmissible by the hearsay rule if the statement would have been admissible if made by him while testifying, the

statement concerns a matter as to which the witness has insufficient present recollection to enable him to testify fully and accurately, and the statement is contained in a writing which: [¶] (1) Was made at a time when the fact recorded in the writing actually occurred or was fresh in the witness' memory; [¶] (2) Was made (i) by the witness himself or under his direction or (ii) by some other person for the purpose of recording the witness' statement at the time it was made; [¶] (3) Is offered after the witness testifies that the statement he made was a true statement of such fact; and [¶] (4) Is offered after the writing is authenticated as an accurate record of the statement. [¶] (b) The writing may be read into evidence, but the writing itself may not be received in evidence unless offered by an adverse party."

Section 1237, subdivision (a)(3) requires the witness to vouch for the truthfulness of the writing. Here, far from vouching for the truthfulness of the letter, Miller testified he did not recall writing the letter and in essence admitted he made up the accusation against Perez and Scott in order to curry favor with Volpei, Miller's ticket out of jail. The trial court did not abuse its discretion in refusing to admit evidence of third party culpability.

VI.

Casillas contends his LWOP sentence violates the Eighth Amendment's bar against mandatory life sentences for youthful offenders.

Casillas relies on cases holding that mandatory LWOP sentences for juvenile offenders violate the Eighth Amendment prohibition on cruel and unusual punishment. (*Miller v. Alabama* (2012) 567 U.S. 460.)

At the time of the murder, Casillas was 19 years old, not a juvenile. His LWOP sentence was mandated by law. Casillas did not object that his sentence violated the Eighth Amendment. His claim is forfeited on appeal. (*People v. Norman* (2003) 109 Cal.App.4th 221, 229.)

In any event, as Casillas acknowledges, Courts of Appeal have rejected his claim. In *People v. Argeta* (2012) 210 Cal.App.4th 1478, the defendant was sentenced to the equivalent of LWOP for murder and attempted murder. He committed the offenses only five months after his 18th birthday. He argued that the rationale to the sentencing of juveniles should apply to him. In rejecting his argument, the Court of Appeal said that although drawing the line at 18 may seem arbitrary, the line must be drawn somewhere. (*Id.* at p. 1482.) The court said it respects the line society has drawn and on which the United States Supreme Court has relied for sentencing purposes. (*Ibid.*)

Nor is Casillas entitled to a youthful offender parole hearing pursuant to Penal Code section 3051 (section 3051). Subdivision (h) of the section expressly provides that the section does not apply "to cases in which an individual is sentenced to life in prison without the possibility of parole for a controlling offense that was committed after the person had attained 18 years of age."

Casillas's equal protection challenge to section 3051 is also unavailing. Casillas points out that under section 3051, a person who was under 18 years of age when he committed an LWOP offense is entitled to a parole hearing after 25 years of incarceration. But a person who committed an LWOP offense when he was over 18 years of age is not entitled to a parole hearing.

The equal protection clause requires that persons similarly situated be treated equally. (*People v. Brown* (2012) 54 Cal.4th 314, 328.) But children and adults are not similarly situated for the purposes of sentencing. (*Miller v. Alabama*, *supra*, 567 U.S. at p. 471.) ["[C]hildren are constitutionally different from adults for purposes of sentencing"].) Treating persons who commit crimes as adults, such as Casillas, differently than persons who commit crimes as juveniles for the purpose of sentencing does not violate equal protection.

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED.

GILBERT, P. J.

We concur:

YEGAN, J.

TANGEMAN, J.

Matthew P. Guasco, Judge

Superior Court County of Ventura

Melanie K. Dorian and Nancy Tetreault, under appointments by the Court of Appeal, for Defendant and Appellant.

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