

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF
CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE,

Plaintiff and
Respondent,

v.

HERBERT J. COLEMAN,

Defendant and
Appellant.

B271292

(Los Angeles County
Super. Ct. No. MA067448)

APPEAL from a judgment of the Superior Court of Los Angeles County, Shannon Knight, Judge. Affirmed.

William G. Holzer, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant

Attorney General, Susan Sullivan Pithey, Deputy Attorney General, for Plaintiff and Respondent.

* * * * *

Appellant Herbert J. Coleman appeals from the judgment after his conviction for carrying a concealed dirk or dagger. He claims the trial court erred in admitting evidence that he was wearing a mask and gloves shortly before he was detained. We affirm.

FACTUAL BACKGROUND

1. Prosecution Case

Just after midnight on November 22, 2015, appellant entered the lobby of the Palmdale station of the Los Angeles County Sheriff's Department. He was wearing a mask resembling the mask in the movie *Scream* (Dimension Films 1996), as well as black gloves and dark clothing, and had something tucked under his arm. The lobby was empty, but Deputy Sheriff Sheila Haywood, located in a secured area of the station, observed appellant on the surveillance camera monitors.¹ Haywood sent out a radio call to all Palmdale deputy sheriffs describing a masked person in the lobby of the station and requesting assistance. Appellant walked around

¹ Although Haywood could not see appellant's face, there was no dispute at trial that appellant was the person Haywood saw.

the lobby area for a few minutes, peered into the windows into the secured area, then left.²

Deputy Sheriff John Schnereger responded to Haywood's call, and saw appellant walking from the station towards the parking lot carrying a Scream mask, a pair of black gloves, and a picture frame. Schnereger stopped appellant and patted him down to search for weapons. Schnereger felt "the handle and sharp blade of two knives" in appellant's back pockets. The knives were completely in the pockets, with no parts exposed. The knives were identical kitchen knives with serrated blades and black handles, approximately eight inches long.

Deputy Sheriff James Murphy observed Schnereger searching appellant. He testified that he could not see the knives before Schnereger pulled them out of appellant's pockets.

2. Defense Case

Appellant testified that he went to the Palmdale station on November 22 in regards to a break-in that had taken place at his home on Halloween. He was carrying, but not wearing, the mask and gloves, as well as a picture frame. The mask was part of his Halloween costume; as a result of the break-in, he had not been able to take a friend and her child trick-or-treating, and intended to visit this friend after he left the sheriff's station.

Appellant acknowledged he had the knives, but testified that 3 1/2 or 4 inches of each knife were visible outside of his pockets.

² No video recording was presented at trial. The surveillance video recorder was on an automatic loop, and the relevant footage was not preserved before it was recorded over.

3. Rebuttal

Deputy Sheriff Donald Chavez also responded to Haywood's call for assistance. After appellant was detained Chavez asked him why he had been wearing the mask in the station lobby. Appellant answered that he did not want to be videotaped.

PROCEDURAL BACKGROUND

A jury found appellant guilty of one count of carrying a concealed dirk or dagger (Pen. Code, § 21310). He admitted the truth of an allegation of a prior conviction for a serious and/or violent felony (Pen. Code, §§ 667, subd. (d), 1170.12, subd. (b)). He was sentenced to the low term of 16 months, doubled to 32 months, because of the prior strike, along with various credits and fines.

DISCUSSION

Appellant claims the trial court erred in denying his motion to exclude evidence of the mask and gloves under Evidence Code section 352. We reject this argument.

1. Applicable law

A court 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.” (Evid. Code, § 352.) “The trial court enjoys broad discretion in determining the relevance of evidence and in assessing whether concerns of undue prejudice, confusion, or consumption of time substantially outweigh the probative value of particular evidence.” (*People v. Clark* (2016) 63 Cal.4th 522, 572, reh'g. den. Aug. 10, 2016.) “ ‘A trial court’s exercise of discretion in admitting or excluding

evidence is reviewable for abuse . . . 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.’” (*People v. Brown* (2003) 31 Cal.4th 518, 534, citation omitted, quoting *People v. Rodriguez* (1999) 20 Cal.4th 1, 9-10.) As for the elements of the crime at issue, the prosecution was required to prove (1) the defendant carried on his person a dirk or dagger; (2) the defendant knew that he was carrying it; (3) it was substantially concealed on the defendant’s person; and (4) the defendant knew that it could readily be used as a stabbing weapon. (CALCRIM No. 2501.)

2. Analysis

Appellant argues the only issue in dispute in this case was whether the knives he was carrying were substantially concealed. Appellant asserts the evidence that he was wearing a mask and gloves in the sheriff’s station was of minimal relevance to the issue of concealment, and “only served to confuse the issues and inflame the jury’s fears and emotions against Appellant” since “a mask and gloves are hallmarks of robberies . . . and other violent crimes.” We disagree.

The court did not abuse its discretion in ruling that the evidence regarding the mask and gloves was relevant. As appellant acknowledges, the evidence was relevant to the third element, concealment. Evidence that appellant was concealing his face and hands could support an inference that he was concealing the knives as well, because his conduct and manner of dress suggested a desire to maintain secrecy.

The evidence was also relevant to the fourth element, knowledge that the knives could readily be used as stabbing

weapons. The jury instruction states that “[w]hen deciding whether the defendant knew the object could be used as a stabbing weapon, consider all the surrounding circumstances, including the time and place of possession.” (CALCRIM No. 2501.) Here, the fact that appellant was carrying the knives late at night while wearing a mask and gloves supports an inference that he was knowingly carrying the knives as weapons, as opposed to having them for some harmless purpose such as cooking or eating.

Moreover, we do not think it an abuse of discretion for the court to admit the evidence to provide the context in which appellant was detained and searched. Among other things, the unusual circumstances could help explain why the deputies would remember the details of this particular detention, and why they might have paid particularly close attention in their search for concealed weapons.³

We do not agree with appellant that the evidence was so inflammatory or likely to confuse the jury that it should have been excluded despite its relevance. Appellant accuses the prosecution of overemphasizing the mask and gloves, citing to numerous sections of the reporter’s transcript in which witnesses talk about them. But these portions do not suggest that the testimony was inflammatory or confusing. The prosecution examined three deputies about the radio call

³ Appellant suggests that the deputy detained appellant not because of the mask but because appellant told him he was carrying knives. At trial, however, the deputy’s testimony was clear that he was looking for appellant because the deputy had heard the report regarding the masked person in the sheriff’s station.

announcing that a masked person was in the station, and asked those deputies to confirm that the mask and gloves introduced into evidence were the same items they had seen the night of the incident. This testimony was not unduly prejudicial—given that the evidence of the mask and gloves was probative, the prosecution was entitled to have separate witnesses corroborate their existence and that they were the reason for the detention. It was also permissible to question Chavez, the rebuttal witness, about the mask to impeach appellant’s statement that he was not wearing the mask in the station. The testimony regarding the mask and gloves was constrained appropriately to the issues that made that evidence relevant. (See *People v. Zambrano* (2007) 41 Cal.4th 1082, 1138 [no abuse of discretion to admit evidence “logically related to the issues, and . . . presented in a nonsensational way”].)

Nor do we believe the introduction of the actual mask and gloves into evidence was unduly prejudicial. It would no doubt be helpful to the jury to see exactly what the mask looked like (especially those unfamiliar with the *Scream* movies) to assess, among other things, whether it was the sort of mask a witness would notice and remember, and whether it supported the inferences discussed above regarding concealment and knowledge that the knives could be used as stabbing weapons.

The prosecution’s arguments regarding the mask and gloves were also appropriately constrained. The mask and gloves were not mentioned at all in the prosecution’s opening statement. In closing, the prosecution mentioned the mask and gloves neutrally, simply recounting the testimony that

appellant had entered the station wearing the mask and the deputies detained him as a result. Contrary to appellant's contention, we see no effort on the part of the prosecution to "paint an unsavory picture."

The prosecution did speak at length about the mask in rebuttal argument, but this primarily was to attack appellant's credibility by emphasizing the inconsistency between appellant's testimony at trial that he was not wearing the mask in the station, and his statement to Chavez at the time of the incident that he was wearing it to avoid being videotaped. Appellant opened the door to this line of argument by choosing to testify and contradict his earlier statement, and the prosecution had the right to exploit the opportunity.

DISPOSITION

The judgment is affirmed.

FLIER, J.

WE CONCUR:

BIGELOW, P. J.

SORTINO, J.*

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.