Filed 11/29/17 P. v. Harvey CA2/2

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE, Plaintiff and Respondent, v. VINCENT HARVEY, Defendant and Appellant.	B271588 (Los Angeles County Super. Ct. No. MA066540)

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

Karyn H. Bucur, 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, Senior Assistant Attorney General, David C. Cook and Tita Nguyen, Deputy Attorneys General, for Plaintiff and Respondent.

* * * * * *

A jury convicted Vincent Harvey (defendant) of two firearm offenses based on a gun found beneath the passenger seat of the car he was driving. Defendant argues that these convictions must be overturned because the trial court abused its discretion in admitting evidence that he was under the influence of codeine and that codeine had been seized from the car to show defendant's knowledge of items within the car. We conclude there was no abuse of discretion, and affirm.

FACTS AND PROCEDURAL BACKGROUND

I. Facts

On June 18, 2015, two Los Angeles County Sheriff's Department Deputies saw a sedan cut off another car as it continued through an intersection from the right-turn-only lane. The deputies activated the patrol car's overhead lights. Just as the sedan rolled to a stop alongside the curb, a juvenile opened the sedan's front passenger door and "sprinted" away holding his waistband, dropping a loaded .25-caliber gun as he fled. The deputies approached the car, and found defendant behind the wheel. In plain view, they saw (1) two Styrofoam cups in the center console that contained a bluish-green type of liquid that smelled like Sprite or 7-Up mixed with cough syrup, (2) a bottle of Sprite behind the front passenger seat, and (3) a medicine bottle with its label torn off that was later determined to contain codeine. "Cocktails" of cough syrup and soda are not uncommon. Atop the passenger seat was a marijuana blunt; beneath that seat was a loaded, nine-millimeter Smith and Wesson semiautomatic gun. The glove compartment contained four more medicine bottles, all with their labels ripped off, and one of which was tested and found to contain codeine. Defendant himself was "almost zombie-like": He had droopy eyelids, kept nodding off,

asked the deputies to repeat questions, and asked questions the deputies had already answered. All of these are "signs and symptoms consistent with a person . . . who may have consumed some type of cough syrup [with] a controlled substance in it." Defendant refused to submit to any field sobriety tests.

II. Procedural Background

In the operative first amended information, the People charged defendant with: (1) carrying a concealed firearm in a vehicle when that firearm is loaded and not registered to the carrier, a "wobbler" offense (Pen. Code, § 25400, subds. (a)(1) & (c)(6)); (2) driving under the influence of a drug, a misdemeanor (Veh. Code, § 23152, subd. (f)); (3) possessing a controlled substance (Health & Saf. Code, § 11350), a misdemeanor; (4) driving on a suspended license (Veh. Code, § 14601.1, subd. (a)), a misdemeanor; and (5) carrying a loaded firearm in a vehicle in a city (Pen. Code, § 25850, subd. (a)), a misdemeanor.

Defendant entered pleas of no contest to driving under the influence, possessing a controlled substance, and driving on a suspended license.

Defendant then moved to exclude, from the upcoming trial on the remaining gun charges, any evidence pertaining to the offenses to which he had entered pleas. The trial court partially granted the motion, and partially denied it. The court ruled that the suspended license count was irrelevant to any issue in the pending trial, but admitted evidence that defendant was exhibiting signs and symptoms of being under the influence of codeine as well as evidence that codeine was found in the car to prove defendant's knowledge of the gun in the car. The court explained its reasoning: "[I]f [defendant] is under the influence,

that connects him to the controlled substances that are in the vehicle, and if he is connected to some items in the vehicle . . . , then [that] also connects him or could be viewed by the jury to be probative of whether he's connected to other items in the vehicle."

The matter proceeded to trial. The court instructed the jury that "evidence of other behavior by the defendant and evidence that the defendant committed other offenses" was to be considered, if at all, only "for the limited purpose of deciding" "whether the defendant knew the firearm was in the vehicle" and "whether the defendant knew he was carrying a firearm."

The jury found defendant guilty of both firearm-related counts.

The trial court imposed a 16-month jail sentence on the carrying a concealed firearm count, stayed a six-month jail sentence on the loaded firearm count under section 654, and ran the remaining sentences (six months for driving under the influence, 10 months for possessing a controlled substance, and six months for driving on a suspended license) concurrently to the 16-month term.

Defendant filed this timely appeal.

DISCUSSION

Defendant asserts that the trial court erred in admitting evidence that he was under the influence and that codeine was found in the car. We review evidentiary rulings for an abuse of discretion. (*People v. Thompson* (2016) 1 Cal.5th 1043, 1114 (*Thompson*).)

Although evidence of uncharged conduct is inadmissible to prove that a defendant has a propensity to commit a charged crime (Evid. Code, § 1101, subd. (a)), the People may introduce prior uncharged conduct to prove matters other than a

defendant's criminal disposition, such as his intent or knowledge (Evid. Code, § 1101, subd. (b); *People v. Williams* (2009) 170 Cal.App.4th 587, 607). When deciding whether to admit evidence of uncharged conduct, "'"a court must consider: (1) the materiality of the fact to be proved or disproved, (2) the probative value of the other crime evidence to prove or disprove the fact, and (3) the existence of any rule or policy requiring exclusion even if the evidence is relevant."'" (*Thompson*, *supra*, 1 Cal.5th at p. 1114.)

The trial court acted within its discretion. To begin, whether defendant knew that the gun was inside his car was a material fact because such knowledge is an element of both of the charged offenses and because defendant was disputing that element. (See CALCRIM Nos. 2521, 2530; *People v. Jurado* (1972) 25 Cal.App.3d 1027, 1030 ["knowledge of the presence and character of the object is an element of the offense"]; see *People v. Rubalcava* (2000) 23 Cal.4th 322, 331-332 [same, with respect to offense of carrying a dirk or dagger].) The evidence also had ample probative value for the reason detailed by the trial court: Defendant's intoxication by codeine tends to show he was aware of the codeine in the car, which tends to show that he was aware of the other objects in the car, including the firearm found near the bottle of Sprite used to make the codeine cocktail. Finally, the danger that the jury might construe this evidence as proof of defendant's general lawlessness was effectively eliminated by the court's instructions limiting the jury's use of this evidence to only the element of knowledge. (*People v. Clark* (2016) 63 Cal.4th 522, 589 ["We generally presume the jury follows its instructions."].)

Defendant raises two arguments. First, he argues that the evidence has *no* probative value or that its probative value is

substantially outweighed by the probability that its admission will create a substantial danger of undue prejudice under Evidence Code section 352. We disagree. Defendant's current argument that this evidence has *no* relevance to his knowledge is inconsistent with his position before the trial court that it had some "marginal relevance." Defendant's current argument otherwise lacks merit for the reasons explained above. Defendant relatedly asserts that the evidence was unnecessary in light of the evidence that he was the driver and registered owner of the sedan. Neither of these facts, however, establishes as a matter of law that defendant was aware of any and all items in the sedan. The evidence defendant now challenges was probative of that issue. Second, defendant argues that three cases—*People v. Pic'l* (1981) 114 Cal.App.3d 824, 855-856, overruled on other grounds in *People v. Kimble* (1988) 44 Cal.3d 480, 498, *People v. Goodall* (1982) 131 Cal.App.3d 129, 142, and *People v. Ghebretensae* (2013) 222 Cal.App.4th 741, 752-755—dictate a ruling in his favor. Again, we disagree. In each of those cases, the court *admitted* the evidence of uncharged acts to prove intent and knowledge. The trial court's ruling in this case was entirely consistent with this precedent.

DISPOSITION

The judgment is affirmed.

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_____, J.
HOFFSTADT

We concur:

_____, Acting P. J.
ASHMANN-GERST

_____, J.
CHAVEZ