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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

JASON A. HILL,

Defendant and Appellant.

B261987

(Los Angeles County
Super. Ct. No. TA123453)

APPEAL from a judgment of the Superior Court of Los Angeles County, Allen Joseph Webster, Jr., Judge. Affirmed.

Katharine Eileen Greenebaum, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler and Lance E. Winters, Assistant Attorneys General, Margaret E. Maxwell and Thomas C. Hsieh, Deputy Attorneys General, for Plaintiff and Respondent.

In this appeal after a remand, defendant Jason A. Hill challenges the denial of his motion for a new trial. He argues the trial court made errors of law, and the matter should be remanded to a new judge. We disagree and affirm the judgment of conviction.

FACTUAL AND PROCEDURAL SUMMARY

As we explained in our previous opinion, *People v. Hill* (Apr. 3, 2014, No. B244577 [nonpub. opn.], hereafter case No. B244577), defendant was convicted by jury of inflicting corporal injury upon a cohabitant. A deadly weapon enhancement was attached to the conviction. (Pen. Code, §§ 273.5, subd. (a)); 12022, subd. (b)(1).)¹ After the court discharged the jury and scheduled a bench trial on defendant's prior conviction, defendant moved to represent himself under *Faretta v. California* (1975) 422 U.S. 806 (*Faretta*). His motion was denied. At the bench trial,

¹ The record in case No. B244577 shows that, at defendant's trial, the victim, Judith Miles, testified he beat her with a belt sometime in April 2012, when she was pregnant with his baby. When Miles went to her father's house several days after the beating, she had visible bruises on her arms and legs. She told her father's girlfriend, Celeste Williams, that defendant had hit her with a belt. Miles's father and Williams took Miles to the hospital and reported the incident to police. Miles testified her father and Williams did not like defendant.

Defendant testified that Miles had been beaten up by associates of a woman named Faith, who had been pregnant with his child around the same time. He testified Miles and Faith had traded threats and insults on Facebook. He refused to provide more information about Faith, and claimed not to know her associates.

defense counsel requested a continuance to investigate new information provided by defendant in order to file a new trial motion. The request was denied. The court found that defendant had suffered that prior conviction, and sentenced him to state prison. On appeal, defendant raised no claim of trial error, challenging only the post-trial denial of his requests to represent himself and for a continuance. We reversed the judgment and remanded the case solely for a reconsideration of those requests. (case No. B244577, at pp. 2–3.)

On remand, Judge Webster, who had presided over the trial and sentencing, granted defendant’s renewed *Faretta* motion in June 2014. The next month defendant filed a motion for a new trial. Over the next five months, the court held several hearings, at which it appointed an investigator, granted defendant repeated continuances, and approved his repeated requests for ancillary funds. At a hearing in November 2014, defendant filed a peremptory challenge to Judge Webster under Code of Civil Procedure section 170.1, which was stricken as untimely and lacking merit.² On December 15, 2014, the court denied defendant’s requests for yet another continuance and for representation by counsel, along with his motion for a new trial, and reinstated the sentence.

This appeal followed.

² Defendant’s writ petition from the order striking the peremptory challenge was summarily denied in case No. B260176. Defendant did not file a peremptory challenge under Code Civ. Pro., § 170.6, subd. (a)(2) based on our reversal of Judge Webster in the prior appeal; assuming on remand, Judge Webster was assigned to conduct “a new trial on the matter,” any challenge under that provision should have been brought within 60 days of defendant’s notice that the case was remanded to Judge Webster.

DISCUSSION

On remand, defendant's motion for a new trial was based in part on a signed and notarized affidavit by Miles, the victim, in which she stated that she had been "intimidated to endorse a false accusation against" defendant and that she had been "forced by investigators and the district attorney to testify against [her] will at the threat of incarceration and also losing [her] daughter."³ Defendant argues the trial court improperly concluded the affidavit was not newly discovered evidence. This argument is based on an incomplete statement of the evidence and the court's findings.

"In ruling on a motion for new trial based on newly discovered evidence, the trial court considers the following factors: "1. That the evidence, and not merely its materiality, be newly discovered; 2. That the evidence be not cumulative merely; 3. That it be such as to render a different result probable on a retrial of the cause; 4. That the party could not with reasonable diligence have discovered and produced it at the trial; and 5. That these facts be shown by the best evidence of which the case admits." [Citations.]” (*People v. Delgado* (1993) 5 Cal.4th 312, 328.)

"The role of the trial court in deciding a motion for a new trial based upon a witness's recantation is to determine whether the new evidence is credible, i.e., worthy of belief by the jury." (*People v. Minnick* (1989) 214 Cal.App.3d 1478, 1482.) "While it is true, generally, that motions for new trial are looked upon with disfavor [citation] and that the recantation of a witness should be given little credence [citation], it is within the trial judge's

³ The affidavit has not been included in the record on appeal, but it was read it into the record.

discretion whether or not the showing merits the granting of a new trial. [Citation.]” (*Id.* at p. 1481.)

As defendant points out, the court repeatedly stated that Miles’s recantation was not newly discovered evidence because defendant himself testified at trial that Miles was lying. But the court also stated that it was exercising its discretion in denying the motion under all relevant factors, including the recanting witness’s lack of credibility. The court questioned the timing of Miles’s recantation and its paucity of detail, as well as defendant’s failure to assure Miles’s presence at any of the many hearings on his new trial motion on remand. The court also questioned defendant’s credibility, and the credibility of Miles’s affidavit, in light of the evidence at trial which pointed toward defendant’s guilt and defendant’s reluctance at the time to offer information relevant to third-party culpability. Notably, defendant does not review the evidence adduced at trial, nor does he challenge the court’s evaluation of that evidence or its credibility findings. We find no abuse of discretion under the circumstances.

In the motion for a new trial filed on remand, defendant also claimed he was entitled to retrial because the court’s incorrect rulings on his post-trial requests to represent himself and for a continuance in order to bring a new trial motion resulted in a miscarriage of justice and deprived him of a fair trial. Defendant analogized the court’s denial of his post-trial requests to a denial of the right to prepare for trial.

The trial court correctly explained that no claim of error with regard to the trial itself had been raised on appeal in case No. B244577, that the only claimed errors had occurred post-trial, and that those errors were being corrected on remand in that defendant was allowed to represent himself and to bring a motion

for a new trial. At times, however, the court went further to state, incorrectly, that, in our opinion in case No. B244577, we had found defendant had received a fair trial. Defendant concedes that, by itself, the court's misreading of our prior opinion is not a ground for a new trial. Nevertheless, on this appeal, he again raises no issue regarding the fairness of his trial. We need not consider issues not raised on appeal. (*People v. Spector* (2011) 194 Cal.App.4th 1335, 1372, fn. 12.) Further, while our prior opinion is not law of the case on issues neither raised nor resolved in case No. B244577, the doctrine of waiver precludes successive appeals based on issues ripe for consideration in the prior appeal and not brought in that proceeding. (*People v. Senior* (1995) 33 Cal.App.4th 531, 538.)

Defendant argues the case should be remanded to a new judge because Judge Webster appeared biased based on his incorrect rulings post-trial and his incorrect statements on remand. While we may disqualify a judge from further proceedings in a case "in the interests of justice," erroneous rulings, without more, require neither reversal nor disqualification. (See Code Civ. Proc., § 170.1, subd. (c); *Blakemore v. Superior Court* (2005) 129 Cal.App.4th 36, 59–60.) Since we find no claim of error that would require reversal, there is no need for a second remand to a different judge.

DISPOSITION

The judgment is affirmed.

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EPSTEIN, P. J.

We concur:

WILLHITE, J.

MANELLA, J.