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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION SEVEN

THE PEOPLE,

Plaintiff and Respondent,

v.

DAVID CHAVEZ,

Defendant and Appellant.

B234522

(Los Angeles County
Super. Ct. No. TA115954)

APPEAL from a judgment of the Superior Court of Los Angeles County,
Kelvin D. Filer, Judge. Affirmed.

Linda Acaldo, under appointment by the Court of Appeal, for Defendant and
Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney
General, Lance E. Winters, Senior Assistant Attorney General, Lawrence M. Daniels and
Michael R. Johnsen, Deputy Attorneys General, for Plaintiff and Respondent.

A jury convicted David Chavez of attempted premeditated murder and assault with a firearm and found true several related firearm-use enhancements. On appeal Chavez contends the trial court erred in excluding evidence to impeach the People's principal witness. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

1. The Information

Chavez was charged in an amended information with two counts of attempted willful, deliberate and premeditated murder. (Pen.Code, §§ 664, 187, subd. (a).)¹ As to both counts the information specially alleged Chavez had personally used a handgun (§ 12022.5, subd. (a)) and had personally used and intentionally discharged a firearm (§ 12022.53, subds. (b), (c)).

2. The Trial

According to the evidence presented at trial, on December 25, 2010 multiple shots were fired at Cristian Contreras and his brother, Mario Olivares, in front of their house in Lynwood. Contreras and Chavez were friends and members of the same criminal street gang, the Lynwood Traviesos.

In 2004 Chavez had provided the police with information regarding a fellow gang member's involvement in a murder. A video recording of his statement was played at the trial that ensued and was seen by other Traviesos members. Thereafter, Chavez was labeled an informant (a "snitch") by his gang and became a target for attack by any Hispanic gang member in Southern California.² Contreras did not care about Chavez's betrayal and continued to socialize with him. However, he did not tell other Traviesos members he was still friends with Chavez.

¹ Statutory references are to the Penal Code unless otherwise indicated.

² Detective John Ganarial testified as an expert on Hispanic street gangs and their subculture. He explained, even though the Lynwood Traviesos was no longer an active gang, once a gang member has been labeled a snitch, he is open to attack by other Hispanic gang members.

In April 2010 a high ranking member of another Hispanic gang visited Contreras at his home. The senior gang member told Contreras he “better do something” about Chavez. Contreras understood this to mean, if he did not injure Chavez in some way, Contreras himself would be targeted. While the two men spoke in Contreras’s driveway, Chavez drove up. Contreras did not want to hurt Chavez but could not think of a way to alert him to leave. He approached Chavez’s car and punched him through the open window. Chavez drove away. The next day Contreras entered a drug treatment program to treat his methamphetamine and alcohol addiction. He remained in the program for eight months and did not have any contact with Chavez during that time.

Contreras concluded his rehabilitation program on December 25, 2010. That morning he rode his bicycle to Chavez’s home to “make peace” and “try to explain.” Told that Chavez was not there, Contreras returned to his own house. When Contreras pulled into his driveway, he saw Chavez driving a black Pontiac Grand Am down the street. Steering with his left hand, Chavez held a black nine millimeter handgun in his right hand; he shot toward Contreras’s home several times through the open passenger-side window. Contreras took cover behind a white van parked in front of his house. Hearing gunshots, Olivares came out of the house as Chavez was turning the car around a grass median dividing the street. Olivares testified Chavez made eye contact with him and shot a few more times in his direction while driving away. Los Angeles County Sheriff’s Deputy Juan Rodriguez responded to the scene about five minutes after the shooting.

Based on Contreras and Olivares’s identification of Chavez as the shooter, Deputy Rodriguez went to Chavez’s home. After speaking to Maria Vega, a neighbor across the street, Rodriguez discovered Chavez standing in Vega’s laundry room. A black Pontiac Grand Am was parked in Chavez’s driveway. Rodriguez found three bullet casings matching a nine millimeter handgun in the car. Forensic analysis later established the casings and bullet fragments recovered from the crime scene had come from the same weapon.

Chavez testified in his own defense, insisting he had acted in self-defense. According to Chavez, on the morning of December 25, 2010 his neighbor told him Contreras had come by his house looking for him. After Chavez had been labeled a snitch, he and Contreras were no longer friends. He felt “scared and nervous” and drove to Contreras’s house to tell him to “leave me alone.” Chavez brought his gun with him and explained he always carried a weapon because “they want to kill me.” Approaching the house, he saw Contreras standing in the driveway. Chavez stopped in front of the driveway, and Contreras pulled a black or blue steel revolver from his pants. Contreras did not point the gun at him. Chavez maintained Contreras shot first, but was unsure where Contreras was aiming or how many times he fired. Chavez shot back, drove his car around the median and shot a few more times. Chavez saw Contreras near the white van but did not see Olivares. Chavez returned to his house, parked his car in the driveway and cried.³

Jorge Haro, who lived across the street from Chavez, testified he had heard several gunshots, a short pause, and then several more gunshots. Haro believed each set of shots came from a different gun because the second set sounded louder than the first.

3. The Evidence Code Section 402 Hearing

Defense counsel had evidence that in 2002 Contreras engaged in conduct amounting to assault with a firearm. At a pretrial hearing pursuant to Evidence Code section 402, counsel argued the question who fired first—Chavez or Contreras—was the crux of his defense and evidence of Contreras’s uncharged act of moral turpitude was critical to challenging his credibility. Chavez’s counsel did not estimate the court time required to establish the prior act.

The People objected, arguing because Contreras was not convicted or even charged with the offense, evidence he had engaged in the act would require multiple witnesses resulting in a minitrial on the issue. The court excluded the testimony under

³ When he was apprehended, Chavez told Detective John Ganarial he did not know about the shooting and was tired of Traviesos gang members threatening and shooting at him.

Evidence Code 352,⁴ finding it would require an undue consumption of trial time, confuse the jury and create a “mini-trial as to what was going on at that time.”

4. *The Verdict and Sentence*

The jury convicted Chavez of the attempted premeditated murder of Contreras (count 1) and the lesser included offense of assault with a firearm on Olivares (count 2) and found the firearm-use allegations true in connection with count 1 only. Chavez was sentenced to an aggregate state prison term of life plus 20 years.⁵

DISCUSSION

1. *Governing Law*

Evidence of past misconduct involving moral turpitude is admissible to impeach a witness’s testimony even if the misconduct did not result in a felony or misdemeanor conviction. (See *People v. Wheeler* (1992) 4 Cal.4th 284, 297, fn. 7 (*Wheeler*) [Cal. Const., art. I, § 28, subd. (d), “makes immoral conduct admissible for impeachment whether or not it produced any conviction, felony or misdemeanor”]; see also *People v. Castro* (1985) 38 Cal.3d 301, 314 [misconduct involving moral turpitude may suggest a “readiness to lie”].) However, such evidence is subject to exclusion under Evidence Code section 352. (*Wheeler*, at p. 297, fn. 7.) As the *Wheeler* Court explained, “[I]mpeachment evidence other than felony convictions entails problems of proof, unfair surprise, and moral turpitude evaluation which felony convictions do not present. Hence, courts may and should consider with particular care whether the admission of such evidence might involve undue time, confusion, or prejudice which outweighs its probative value.” (*Id.* at pp. 296-297.) We review the trial court’s ruling under Evidence

⁴ Evidence Code 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.”

⁵ Chavez was sentenced to life for attempted willful, deliberate and premeditated murder (count 1), plus 20 years for the section 12022.53, subdivision (c), enhancement. The court sentenced Chavez to a concurrent three-year term for the aggravated assault (count 2).

Code section 352 for an abuse of discretion. (*People v. Clark* (2011) 52 Cal.4th 856, 893; *People v. Williams* (2008) 43 Cal.4th 584, 634-635.)

2. *The Trial Court Did Not Abuse Its Discretion in Excluding Evidence of Contreras's Prior Uncharged Conduct*

The trial court here engaged in precisely the analysis directed by the Supreme Court in *Wheeler, supra*, 4 Cal.4th 284. As Chavez contends and the People acknowledge, the uncharged conduct involved moral turpitude and was relevant to impeach Contreras's testimony. Nonetheless, according to Chavez's offer of proof, Contreras's commission of the aggravated assault would require examination of several witnesses, creating a "mini-trial" on this collateral issue. Nothing in the record indicates the court abused its discretion in concluding allowing the evidence would require an undue consumption of time and risk confusing the jury. (See *People v. Rodriguez* (1994) 8 Cal.4th 1060, 1124-1125 ["[U]nder Evidence Code section 352, the trial court enjoys broad discretion in assessing whether the probative value of particular evidence is outweighed by concerns of undue prejudice, confusion or consumption of time. [Citation.] Where, as here, a discretionary power is vested in the trial court, its exercise of that discretion 'must not be disturbed on appeal *except* on a showing that the court exercised its discretion in an arbitrary, capricious or patently absurd manner that resulted in a manifest miscarriage of justice'"].)

Chavez argues his presentation of this damaging impeachment evidence would have required only one or two questions of a witness. However, his trial counsel gave no indication how much court time would be needed to present the pertinent evidence. The People, on the other hand, emphasized the defense's long witness list and suggested determining the circumstances surrounding the conduct would involve extensive litigation. The court considered the matter and found admitting the disputed evidence, which purportedly involved "some sort of love triangle," would require a substantial amount of time and alter the focus of the trial. The court's determination and its decision to exclude the evidence were well within its broad discretion. (See, e.g., *People v. Geier* (2007) 41 Cal.4th 555, 582 [no error in excluding evidence under Evid. Code, § 352

where “admission of the evidence would have necessitated a minitrial on the question of Sloan’s whereabouts on night of the murder thus creating the possibility ‘of confusing the issues, or of misleading the jury’”]; see also *Wheeler, supra*, 4 Cal.4th at p. 297, fn. 7 [when evidence purporting to show moral turpitude does not involve a prior felony conviction, “fairness, efficiency, and moral turpitude become more complicated issues”; “[c]ourts may take these facts into account when deciding under Evidence Code section 352 whether to admit evidence other than felony convictions for impeachment”].)

In light of our conclusion the trial court properly exercised its discretion under Evidence Code section 352 to exclude impeachment evidence, Chavez’s additional contention exclusion of the evidence violated his rights under the Sixth and Fourteenth Amendments to the United States Constitution is misplaced. “Although the right of confrontation includes the right to cross-examine the 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.’ (*Delaware v. Van Arsdall* (1986) 475 U.S. 673, 679 [106 S.Ct. 1431, 1435, 89 L.Ed.2d 674].) In particular, notwithstanding the confrontation clause, a trial court may restrict cross-examination of an adverse witness on the grounds stated in Evidence Code 352.” (*People v. Quartermain* (1997) 16 Cal.4th 600, 623; see also *Holmes v. South Carolina* (2006) 547 U.S. 319, 326 [126 S.Ct. 1727, 164 L.Ed.2d 503] [“[w]hile the Constitution thus prohibits the exclusion of defense evidence under rules that serve no legitimate purpose or that are disproportionate to the ends that they are asserted to promote, well-established rules of evidence permit trial judges to exclude evidence if its probative value is outweighed by certain other factors such as unfair prejudice, confusion of the issues, or potential to mislead the jury”].)

DISPOSITION

The judgment is affirmed.

PERLUSS, P. J.

We concur:

ZELON, J.

JACKSON, J.