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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

DEMARICE TERRELL,

Defendant and Appellant.

B290904

(Los Angeles County
Super. Ct. No. BA451396)

APPEAL from a judgment of the Superior Court of Los Angeles County, Robert Perry, Judge. Affirmed.

Law Office of Corey Evan Parker, Corey E. Parker, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Noah P. Hill and Theresa A. Patterson, Deputy Attorneys General, for Plaintiff and Respondent.

A jury convicted Demarice Terrell of the October 22, 2016 robbery and murder of Anthony Gomez at the Gas Company Lofts apartment building in downtown Los Angeles. Terrell was sentenced to life in prison without the possibility of parole. Terrell contends the trial court violated state law and his federal constitutional rights on several grounds and that there was insufficient evidence to support his convictions for robbery and first-degree felony murder. Finding no error, we affirm.

BACKGROUND

Early in the afternoon of October 22, 2016, after arranging to meet Gomez to buy marijuana, Terrell drove himself, his business partner, Adnan Sinanovic, and Sinanovic's girlfriend, Jade Jackson, to downtown Los Angeles. During the drive, Terrell told Sinanovic that he actually planned to steal the marijuana from Gomez by paying for it with fake money Terrell and Sinanovic used when making music videos.

Terrell parked a few blocks away from Gomez's apartment building. When he exited the car, Terrell took a .40 caliber handgun and the fake money with him in a bookbag, and walked to meet Gomez outside his apartment building. Sinanovic and Jackson waited in the car.

Around 2:05 p.m., Gomez told his girlfriend, Brittney Orr, that he was going downstairs to meet a prospective marijuana buyer and walked out of his second-floor apartment. Gomez returned about five minutes later with Terrell.

After entering the apartment, Terrell sat at a table where several large plastic bags of marijuana were displayed. Gomez left the room and went to the rear of the apartment when Terrell asked to see more marijuana. Orr, who had remained in the room with her back to Terrell, heard the apartment door shut.

When Orr turned around Terrell had left and taken at least one large package of marijuana with him.

Gomez chased after Terrell, telling Orr to lock the door behind him as he ran out of the apartment. Moments later Orr and a neighbor heard several gunshots. The neighbor found Gomez lying in the hallway a few doors down from Gomez's apartment. He had been shot three times at close range with a .40 caliber semi-automatic handgun, and died as a result. Terrell's gold necklace and Medusa pendant were on the floor close to Gomez's body.

Minutes after the shooting, surveillance video showed Terrell fleeing the apartment building through an emergency exit. Terrell left a trail of marijuana down the stairwell behind him. Shortly thereafter, Sinanovic picked up Terrell who was walking along the nearby street. When he got in the car, Terrell was carrying a large plastic bag of marijuana which he did not previously have. Terrell also was not wearing his gold necklace and pendant. The three left downtown Los Angeles and checked into a Motel 6 where they stayed the night.

On October 27, 2016, Terrell, Sinanovic, and Jackson were arrested at a friend's home. Upstairs police found a suitcase containing several fake New Jersey identification cards — one with Terrell's photo using the alias Dwayne Lamont Cox, two with Jackson's photo and the alias Annrita Davis, and one with Sinanovic's photograph and the alias Scott William Cox. The suitcase also contained several fake "quality control manager" identification cards for Terrell, Jackson, and Sinanovic using similar pseudonyms, together with Visa debit cards using the names Scott W. Cox and Dwayne L. Cox (an alias Terrell had previously used).

The People filed an information on October 5, 2017, charging Terrell and Sinanovic with first-degree murder, robbery, residential burglary, and conspiracy to commit robbery and burglary. The information also alleged that Terrell personally and intentionally discharged a handgun causing great bodily injury and death, had been convicted of a prior serious offense (Pen. Code, § 667, subd. (a)(1)) and had served a prior prison term (Pen. Code, § 667.5, subd. (b)). Before trial, Sinanovic pleaded guilty to voluntary manslaughter and residential burglary, and was offered a reduced sentence in exchange for testifying against Terrell.

On May 17, 2018, the jury found Terrell guilty of first-degree murder and robbery, and found true the firearm allegations as to those counts. The jury deadlocked as to the burglary and conspiracy counts, and the trial court declared a mistrial on those counts. Terrell admitted the prior conviction. Based on the jury's verdict, the trial court sentenced Terrell to life in prison without the possibility of parole. Terrell filed a timely notice of appeal.

DISCUSSION

Terrell contends the court erred by not granting a mistrial after the jury heard evidence Terrell may have committed a prior robbery, by admitting evidence of fake identification and debit cards linked to Terrell, and by applying an incorrect standard to deny Terrell's motion for acquittal. Terrell also contends the evidence at trial was insufficient to support his murder and robbery convictions. We find no error in denial of Terrell's mistrial motion or the trial court's evidentiary rulings. The evidence at trial supported Terrell's robbery and murder

convictions. Consequently, the acquittal motion was properly denied.

A. Mistrial Motion

At trial, the prosecutor marked for identification a list of text messages between Terrell and Jackson that Detective Sergio Ortiz had extracted from Terrell's cell phone. Ortiz testified that an October 18, 2016 text message from Terrell to Jackson read "We just hit it[.]" which in street vernacular meant "We just committed a robbery." The court sustained a defense objection, ordered the testimony stricken, and told the jury: "Ladies and gentlemen. I know one of the charges is during a robbery, but the focus of this case is solely on what happened where a man was killed and that's it. All right. I'm shutting you off. That's enough of this. No more."

The following morning Terrell objected that the list of text messages in the exhibit still included the language of the stricken text message as well as other improper and irrelevant statements. The prosecutor stated that she had inadvertently failed to redact all objectionable language from the exhibit, and offered to remove all but a few pages before the evidence was admitted. Terrell still argued that the court's instruction to disregard Ortiz's testimony was insufficient and sought a mistrial, which the trial court denied.¹

¹ Terrell argues here that his motion for mistrial was predicated on improper admission of evidence that Terrell had a fake identification card, and bases his argument on that assertion. The argument at trial, however, was not made on that basis. Indeed, it appears the only evidence the jury ultimately received was the "we just hit it" statement and Ortiz's translation. The exhibit Terrell contends was improper was

Terrell contends the trial court abused its discretion when it denied his motion for a mistrial. (See *People v. Ayala* (2000) 23 Cal.4th 225, 282.) We disagree.

A trial court must grant a mistrial when it becomes aware of prejudice that is incurable by admonition or instruction and the defendant's chances of receiving a fair trial have been irreparably damaged. (*People v. Collins* (2010) 49 Cal.4th 175, 198.) The text message the jury heard about made no reference to criminal activity. And the trial court directed the jury to disregard Ortiz's testimony about that text message in its entirety. The jury is presumed to have obeyed the trial court's instructions and disregarded the evidence. (*People v. Szarvas* (1983) 142 Cal.App.3d 511, 524.) The record contains no evidence the jury did otherwise, and we find no abuse of discretion in denying Terrell's mistrial motion.

B. Evidentiary Error

Terrell contends evidence of his fake identification and debit cards was irrelevant, inadmissible character evidence under Evidence Code section 1101, and unduly prejudicial under Evidence Code section 352. At trial, the prosecutor argued evidence of the fake identification and debit cards linked Terrell, Jackson, and Sinanovic together and corroborated Sinanovic's accomplice statements. Terrell, Jackson, and Sinanovic all had similar fake identification cards, and several motel rooms, including the room where the three stayed after Gomez's murder, had been rented using either Jackson's or Terrell's fake identification card. The court overruled Terrell's objections.

marked for identification only and shown to the witness. Nothing in the record demonstrates that the exhibit was ever published to the jury before the statements at issue were redacted.

Evidence of a defendant's prior uncharged misconduct is admissible only to prove a relevant fact other than the defendant's propensity to commit crime. (Evid. Code, § 1101; *People v. Rogers* (2006) 39 Cal.4th 826, 862.) Whether evidence of a defendant's prior bad acts is admissible generally depends on “ ‘(1) the materiality of the facts sought to be proved, (2) the tendency of the uncharged crimes to prove those facts, and (3) the existence of any rule or policy requiring exclusion of the evidence.’ ” (*People v. Kelly* (2007) 42 Cal.4th 763, 783.) Thus, even relevant evidence may be excluded if its probative value is substantially outweighed by the probability that admission of the evidence will create substantial danger of undue prejudice. (Evid. Code, § 352.) We review a trial court's evidentiary rulings for abuse of discretion. (*People v. Grimes* (2016) 1 Cal.5th 698, 711.)

Terrell has not demonstrated that the trial court's evidentiary rulings were erroneous. The fake identification and debit cards at issue had probative value other than to prove a propensity for criminal activity. To convict Terrell of conspiracy, for example, the prosecution needed to prove that there was a criminal agreement between Terrell and at least one other person. (Pen. Code, § 182.) The fact that Terrell, Sinanovic, and Jackson all had similar fake identification cards and that Terrell and Jackson had used them to rent motel rooms under their aliases had a tendency to show that the three individuals had been together and had the opportunity to plan the robbery during the relevant time period. More generally, the same evidence also supported the reasonable inference that Terrell and the others were attempting to shield their identities to avoid detection by the police. Evidence that the three individuals had spent

significant time together also established that Sinanovic had personal knowledge about the crucial incriminating evidence he provided about the events surrounding Gomez's death.

Additionally, the probative value of the evidence is not substantially outweighed by the risk that its admission would create substantial danger of undue prejudice. The prosecution did not present evidence that Terrell had ever actually used the debit card or attempted to defraud a check cashing or other business before October 22, 2016 (which was the primary concern underlying Terrell's pretrial objections). Nor was there evidence that use of the fake identification cards violated any crime remotely related to any offense at issue here. Moreover, as we discuss below, there was overwhelming other evidence of Terrell's guilt.

Terrell also contends that the trial court was required to provide more specificity than it did when it ruled on the Evidence Code section 352 objection. That contention is without merit. (*People v. Triplett* (1993) 16 Cal.App.4th 624, 628-629.)

C. Sufficiency of the Evidence

When considering a sufficiency of the evidence claim on appeal, we "review the whole record in the light most favorable to the judgment below to determine whether it discloses substantial evidence" (*People v. Johnson* (1980) 26 Cal.3d 557, 578.) The evidence is sufficient if "reasonable, credible, and of solid value – such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt." (*Ibid.*)

At trial, Terrell presented an identity defense—he argued to the jury that he was not the person who committed either the robbery or the murder. Contrary to that theory, there was overwhelming evidence linking Terrell to the crimes. Terrell told

Sinanovic that he had arranged to meet Gomez to buy marijuana. Sinanovic testified that Terrell had a .40 caliber handgun with him when he left the car to go to Gomez's apartment. Orr identified Terrell as the person who came to Gomez's apartment, and stated that at least one large plastic bag of marijuana was missing from the table after Terrell left. Jurors could reasonably have concluded from Orr's testimony that Terrell took a bag of Gomez's marijuana when he abruptly left the apartment. Gomez was shot at close range with a .40 caliber handgun. Terrell's distinctive Medusa pendant was found next to Gomez's body. A surveillance video showed Terrell exiting the apartment building moments after the shooting. A trail of marijuana led down the stairwell to the emergency exit door Terrell used as shown in the surveillance video. Terrell returned to the car with Sinanovic and Jackson carrying a large bag of marijuana he did not previously have, and without his gold necklace and distinctive Medusa pendant.

The evidence that Terrell robbed and then murdered Gomez is overwhelming.

D. Acquittal Motion

After both sides rested at trial, Terrell moved for acquittal pursuant to Penal Code section 1118.1. The court denied the motion, explaining "I think there is a possible issue on the conspiracy charge, but I think that I should let it go to the jury and let them sort it out."

Pursuant to Penal Code section 1118.1, a court must order entry of judgment of acquittal if the evidence presented at trial "is insufficient to sustain a conviction of [a charged] offense or offenses on appeal." When ruling on a motion under section 1118.1 trial courts apply the same standard used by appellate

courts when reviewing the sufficiency of the evidence supporting a conviction. (*People v. Cole* (2004) 33 Cal.4th 1158, 1212-1213.) On appeal we independently review a trial court's denial of a section 1118.1 motion. (*People v. Magallanes* (2009) 173 Cal.App.4th 529, 533.)

Terrell's claim of error under Penal Code section 1118.1 fails because, as discussed above, there was sufficient evidence to support Terrell's robbery and murder convictions. (*People v. Cole, supra*, 33 Cal.4th at p. 1214; *People v. Hillhouse* (2002) 27 Cal.4th 469, 496, fn. 2.)

Terrell contends the court applied the incorrect standard when ruling on the acquittal motion. The court's ruling, however, reflects that the court asked the correct question, "simply whether the prosecution has presented sufficient evidence to present the matter to the jury for its determination." (*People v. Stevens* (2007) 41 Cal.4th 182, 200.) As Terrell correctly notes, when a Penal Code section 1118.1 motion for acquittal is presented at the close of the People's case-in-chief, the sufficiency of the evidence is measured as it stands at that point. (*People v. Camp* (1980) 104 Cal.App.3d 244, 247.) Terrell made his section 1118.1 motion after *both* sides had rested. It was proper for the court to consider the sufficiency of the evidence at the point in the trial when the motion was made. (*Stevens*, at p. 200.)

DISPOSITION

The judgment is affirmed.

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CHANEY, J.

We concur:

ROTHSCHILD, P. J.

BENDIX, J.