Filed 3/28/12 P. v. Stankewitz CA2/6

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE, Plaintiff and Respondent, v. SHAWN RAY STANKEWITZ, Defendant and Appellant.	2d Crim. No. B232240 (Super. Ct. No. F450292) (San Luis Obispo County)

Shawn Ray Stankewitz appeals a judgment following his conviction of assault with a deadly weapon or force likely to cause great bodily injury (Pen. Code, § 245, subd. (a)(1)) with jury findings that he inflicted great bodily injury on Christopher Layng (*id.*, § 12022.7).[1] We conclude, among other things, that: 1) the trial court did not err by admitting evidence of flight, and 2) the court did not abuse its discretion by requiring Stankewitz to wear restraints during trial. We affirm.

FACTS

In August 2010, Tammy Brown-Silva was living with her boyfriend Chris Layng. On August 11, they went to the residence of their friend Eli Reese to help him pack so he could move.

[1] Reference to section 12022.7 is to the version in effect prior to repeal effective January 1, 2012

Stankewitz came to the house and began talking to Reese in a "belligerent" manner. Layng told Stankewitz to "have some respect." Brown-Silva told Layng to "stay out of it."

Layng began to walk down a "grassy" hill area near a set of stairs. Stankewitz approached him with a metal "bar" in his hand and struck Layng who tried to block the blow with his arm. Stankewitz struck Layng two more times with the bar. Layng lost "his footing" on the hill and fell off a retaining wall onto the street. Brown-Silva took Layng to the hospital.

Police Officer Vince Johnson received a "dispatch" about an assault that occurred at the Reese residence. While on patrol, he spotted Stankewitz. He testified, "We both kind of exchanged looks. He looked at me and looked away." Stankewitz then "took off running." He ran into a restaurant. Johnson pursued him and arrested him.

Police Officer Eric Jensen interviewed Layng at the hospital. He told Jensen that Stankewitz struck him on the arm and twice on the "left side of his torso" with a crow bar.

Jensen interviewed Stankewitz after his arrest. Stankewitz told Jensen that he did not assault anyone and he "wasn't at Reese's house."

Jensen contacted Reese who said he saw Layng "falling off the wall and Mr. Stankewitz standing over him with a . . . large bar."

At trial, Stankewitz testified that he never hit Layng with a metal pry bar and he did not do anything to cause him to fall over the retaining wall. He went to the house to pick up "car parts" and he spoke with Reese. He did not argue with Layng.

As he approached the residence, Stankewitz saw a lady named Crystal and a man named Mike. They were drug dealers. Mike was arguing with Layng, who was "very obnoxious" and "loud." Mike was holding a "retractable baton" called an "asp," an item used by police. Layng ran past Stankewitz; Layng then ran "across the yard," jumped "off the retaining wall," and hurt his ankle. Mike ran to Crystal's car, jumped in, and they fled.

Stankewitz testified that he never fled from police. He walked into the restaurant to use the bathroom. As he walked out of the restroom, a police officer surprised him by pointing a "taser in [his] face."

When questioned by police, Stankewitz never mentioned Mike's involvement in the incident. He did not know Mike's last name.

DISCUSSION

Admitting Evidence on Flight

Stankewitz contends the trial court abused its discretion by allowing the prosecution to present evidence that he fled from police. He argues that to avoid undue prejudice to the defense, the trial court was required to exclude this evidence. We disagree.

Evidence of a defendant's flight from the police "is admissible as evidence of the defendant's consciousness of guilt." (*People v. Garcia* (2008) 168 Cal.App.4th 261, 283.) "[T]he trial court enjoys broad discretion in assessing whether the probative value of evidence is outweighed by its prejudicial effect . . . ." (*Ibid.*) "[I]ts assessment will not be disturbed on appeal absent a showing it exercised its discretion in an arbitrary, capricious or patently absurd manner that resulted in a miscarriage of justice." (*Ibid.*)

At trial, Stankewitz's counsel objected to evidence that the prosecution intended to introduce about Stankewitz fleeing from the police. He claimed there was a prior warrant for his arrest, and consequently "there [were] a number of different reasons he could have been running" away that were unrelated to consciousness of guilt for committing the charged assault. The trial court stated it "was not inclined to allow the district attorney to put before the jury the fact that there was a Ramy warrant for Mr. Stankewitz's arrest at the time he was arrested for this offense." But the defense could elect to do so in its case. The court told defense counsel, "I'll just leave it to you . . . how you want to approach the situation if you were going to argue that Mr. Stankewitz was running from Officer Johnson because of the warrant that he knew was probably out there for him or because he had a guilty conscience for whatever had transpired just moments earlier. So I'll let you consider that." The court ruled, "[I]f he's running and if there's some contact thereafter, I think all of that is admissible."

Stankewitz claims: 1) that because the jury did not know about the warrant, this flight evidence showing consciousness of guilt had to be excluded, 2) there could be multiple reasons why he fled, and 3) admission of this evidence placed the defense in the unfair position of having to disclose the prior offense or remain silent while the jury deliberates not knowing about the prior offense.

But Stankewitz's argument was rejected in *People v. Garcia*, *supra*, 168 Cal.App.4th at pages 284-286. There the issue was "whether evidence of consciousness of guilt should be excluded as unduly prejudicial when the defendant has committed an offense of which the jury is unaware and the evidence could relate to the undisclosed offense in addition to, or instead of, the charged offense at issue in the trial." (*Id.* at p. 284.) The Court of Appeal ruled that the evidence about consciousness of guilt should not be excluded. It quoted from a New York appellate case stating, "'It is common in cases of attempted flight to find that the defendant is charged with several crimes, or, at the time of flight, was guilty of some other offense . . . . To require as a matter of law that the admissibility of flight evidence depends on its unequivocal connection with guilt feelings over the particular crime charged would, therefore, operate to exclude such evidence from many cases in which it has always been regarded as admissible as a matter of course. . . . [¶] [W]e cannot assent to the argument that the admission of this evidence unfairly places the defendant in the position of either disclosing to the jury his [other offenses] or of remaining silent while the jury weighs the fact of flight unenlightened by knowledge of the dual reason for his detention. *It is for the defendant's benefit that he alone has the option whether to put the fact of [other offenses] before the jury as an explanation for his flight. If the alternative explanation is itself unsavory, and he chooses . . . not to disclose it,* that does not disable the People from relying on that part of the truth (the unexplained flight) that is clearly a proper part of their evidence-in-chief.'" (*Id.* at pp. 284-285, italics added.)

The Attorney General claims Stankewitz's suggestion on appeal that he was compelled to testify because the court admitted flight evidence is not credible. She notes that only a tiny portion of his testimony involved the flight issue. His major emphasis in testifying was to show that he did not commit the assault and to suggest that Mike was the

perpetrator. But whether he elected to testify to contest the charged offense evidence, the flight evidence, or both, the result is the same because the trial court did not err in admitting flight evidence. (*People v. Garcia*, *supra*, 168 Cal.App.4th at pp. 284-286.)

Stankewitz claims the trial court should not have given the jury a flight instruction. We disagree. Stankewitz testified that he did not flee from the police. He said he did not run; he simply walked into the restaurant to use the restroom. Officer Johnson testified Stankewitz fled when Stankewitz saw him and then ran into the restaurant. The jury's role was to resolve this conflict. Johnson's testimony was substantial evidence supporting the court's decision to give the jury the standard instruction on flight. (*People v. Pensinger* (1991) 52 Cal.3d 1210, 1245.) CALCRIM No. 372 provides: "If the defendant fled or tried to flee (immediately after the crime was committed) that conduct may show that he was aware of his guilt. If you conclude that the defendant fled or tried to flee, it is up to you to decide the meaning and importance of that conduct. However, evidence that the defendant fled or tried to flee cannot prove guilt by itself." This instruction was appropriate. It did not compel the jury to find flight and it gave jurors the freedom to decide whether flight amounted to consciousness of guilt or was the result of other factors. That there may be more than one explanation for defendant's conduct does not preclude the court from giving the flight instruction. (*People v. Pitts* (1990) 223 Cal.App.3d 606, 879.)

Stankewitz notes that in a section 402 hearing Johnson testified that he recognized Stankewitz from a "prior contact" because there was a bench warrant for his arrest. He argues that Johnson was not pursuing him because of the assault offense. But the issue is not the officer's state of mind, it is the defendant's. As the Attorney General correctly notes, "Even if Officer Johnson was *not* reacting to the assault dispatch when he gave chase, appellant still could have been fleeing because of his just-committed crime--and the jury should have been allowed that inference." Moreover, here the jury could reasonably find there was strong evidence of Stankewitz's consciousness of guilt about the assault on Layng. Jensen testified that during questioning Stankewitz denied being at Reese's house. At trial he presented a completely different version of events and tried to

suggest that "Mike," a person he never mentioned to police, was the perpetrator. The prosecution claimed Stankewitz invented Mike to be the perpetrator to shield himself. Stankewitz was unable to provide a last name for either Mike or Crystal. In addition, Stankewitz testified that he went into the restaurant after noticing that "four police cars went past [him]." He claimed he did not run. But flight may be found without evidence that the defendant ran. (*People v. Bradford* (1997) 14 Cal.4th 1005, 1055.)

The Restraints

Stankewitz contends the trial court committed reversible error by requiring him to wear restraints during trial. We disagree.

The prosecutor requested the trial court to place Stankewitz in restraints based on his violent conduct while in custody. The court granted that request.

"[A] criminal defendant may be subjected to physical restraints in the jury's presence upon 'a showing of a manifest need for such restraints.'" (*People v. Lewis and Oliver* (2006) 39 Cal.4th 970, 1031.) An appellate court reviews a trial court's decision to impose restraints under an abuse of discretion standard. (*People v. Hawkins* (1995) 10 Cal.4th 920, 944, overruled on other grounds in *People v. Lasko* (2000) 23 Cal.4th 101, 110.)

Stankewitz notes that on more than one occasion the trial judge said that he had been a gentleman in court. He argues that consequently there was no need for restraints. But the manifest need "requirement is satisfied by evidence that the defendant has threatened jail deputies, possessed weapons in custody, [or] threatened or assaulted other inmates . . . ." (*People v. Lewis and Oliver*, *supra*, 39 Cal.4th at p. 1031.)

Here the prosecutor presented "incident reports" from the San Luis Obispo County jail alleging that: 1) on August 20, 2010, Stankewitz "punched another inmate"; 2) on October 17, 2010, he was fighting with an inmate; 3) on November 28, 2010, he assaulted another inmate; and 4) on January 4, 2011, he struck an inmate giving him "a split lip." In addition, the jail's custodial staff determined that Stankewitz had to be placed in an "isolation" unit because of concerns about his conduct.

The trial court found that based on Stankewitz's conduct in custody and his status as an isolation unit inmate, there was "a concern about security" that justified the order requiring him to wear restraints. Stankewitz has not shown an abuse of discretion. In *People v. Hawkins*, *supra*, 10 Cal.4th at page 944, our Supreme Court held that an order requiring a defendant to wear restraints was proper where the defendant had an extensive criminal record and he had "three reported fistfights in prison." The court noted that "'violence or nonconforming conduct' while in custody" is a proper factor a court may consider in deciding to require restraints. (*Ibid.*) Here there were four violent incidents in custody and the last one occurred only one week before trial.

Stankewitz notes that his counsel made additional requests that he be free of restraints during the course of the trial and these requests were denied without evidence that he had been disruptive in court. But during trial, the prosecutor notified the court about a recent January 13th incident where jail authorities had discovered that Stankewitz possessed a "sharp object in his cell." Such objects are prohibited in jail because they can be used as weapons.

Stankewitz suggests the trial court erred by not conducting an evidentiary hearing to require the prosecutor to present testimony from jail staff about these incidents. "The trial court's decision to physically restrain a defendant cannot be based on rumor or innuendo." (*People v. Lewis and Oliver*, *supra*, 39 Cal.4th at p. 1032.) "However, a formal evidentiary hearing is not required." (*Ibid.*) Here the prosecutor's representations were supported by official reports that the court reviewed. Stankewitz made no showing that the jail authorities falsified these reports, that these incidents did not occur, or that he had not engaged in acts of violence while in custody. His counsel's primary objection was that his conduct in court demonstrated that he would not be violent if there were no restraints. Moreover, in the defense case during questioning initiated by his own counsel, Stankewitz testified that he had been placed in "administrative segregation" in jail for fighting with other inmates.

Stankewitz claims that, his conduct in custody aside, where there is no evidence that he intends to escape or has been disruptive in court, a trial judge lacks the

authority to shackle a defendant. But our Supreme Court has squarely rejected this claim. (*People v. Hawkins*, *supra*, 10 Cal.4th at p. 944 ["We have never placed such preconditions on the trial court's exercise of its discretion"].)

Moreover, the trial court took precautions to prevent the jury from learning about the restraints. It ordered that Stankewitz's right hand would be "free so he can write notes to assist" his counsel. It ordered that the restraints for his other hand and legs contain tape "so they won't rattle." The court required that during breaks the jury would exit before Stankewitz would leave the courtroom, and that if Stankewitz elected to testify, the court would "send the jury outside," have him "situated" in the witness chair, and be sworn "outside the jury's presence." The court said, "I would just tell the jury that he has been sworn in,""[s]o he doesn't have to stand or do anything to demonstrate that he's in restraints."

During trial, defense counsel informed the trial court that the restraints prevented Stankewitz from rising to show respect for the jury when it entered and left the courtroom. Sensitive to this concern, the court ordered "everyone to remain seated when the jury comes and goes so that won't be an issue."

We have reviewed Stankewitz's remaining contentions and conclude he has not shown error.

The judgment is affirmed.

NOT TO BE PUBLISHED.

GILBERT, P.J.

We concur:

YEGAN, J.

PERREN, J.

Michael Duffy, Judge

Superior Court County of San Luis Obispo

John Derrick, 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, Steven D. Matthews, Supervising Deputy Attorney General, Robert M. Snider, Deputy Attorney General, for Plaintiff and Respondent.