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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

v.

LEROY ROBERTS,

Defendant and Appellant.

B279633

(Los Angeles County
Super. Ct. No. GA093223)

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

Mathew Alger, 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, Steven E. Mercer, Acting Supervising Deputy Attorney General, and Michael C. Keller, Deputy Attorney General, for Plaintiff and Respondent.

A jury found defendant and appellant Leroy Roberts guilty of first degree residential burglary. On appeal, defendant contends the trial court abused its discretion when it would not permit defense counsel to discuss three well-publicized cases of police shootings of African-American males and instructed the jury to disregard counsel's comments about those unrelated cases.

We find no abuse of discretion in limiting the argument of counsel because the trial court allowed counsel to nevertheless make the central point of that argument without further specific reference to the three cases. We affirm the judgment of conviction.

FACTUAL BACKGROUND

In the middle of the day on May 6, 2014, Concepcion S. (the witness) was sitting in her home looking out the window when she saw two African-American males in a gray car drive slowly in front of her house. The vehicle pulled into the across-the-street neighbors' driveway.¹ The driver, whom the witness later identified as defendant, got out of the car and went to the front porch of the house. Defendant knocked on the front door several times and then "kicked the door down." Defendant entered the home for "a minute or two," but returned to the driver's seat of

¹ The witness answered "yes" when the prosecutor asked her if the victim's house was "right next door" to hers, but as she described the door being kicked in, it was apparent the victim's house was across the street. She testified she could see right into the victim's house "from my window, it is exactly direct [T]here's a mirror on the wall so I saw the mirror and the door was opened up."

the vehicle and spoke briefly to the passenger, who was later identified as Glen Edmondson. Edmondson entered the home.² When Edmondson went into the house, defendant backed the car out of the driveway and parked on the street.

The witness called 911 as soon as defendant kicked down the neighbors' door.³ She watched the police arrive and saw defendant's arrest.

Two City of Alhambra police officers responded to the "residential burglary . . . in progress" call reporting that two African-American males driving a gray sedan were observed breaking into a home. Sergeant Tai Seki, in uniform and driving a marked patrol vehicle, was the first to arrive at the home. He parked 30 to 40 feet behind the gray vehicle, but did not get out of his car. The car had tinted windows, and Sergeant Seki initially did not see anyone inside. Shortly after he parked, however, the vehicle's brake lights blinked once and the front passenger door opened. An eighteen-inch screwdriver flew out. He recognized the screwdriver as the type of prying tool often used in burglaries.

Seconds later, defendant stepped out of the vehicle from the passenger side and just "stood there looking at [the detective]" who was still in his vehicle. Sergeant Seki, still alone, exited his vehicle and, because he "felt the need to protect [himself], pulled [his] gun out, and pointed it at [defendant]." Sergeant Seki ordered defendant to the ground; defendant complied and was handcuffed. Defendant gave the officer a false name. After

² The witness did not see Edmondson again until she identified him at the scene of his detention, blocks away.

³ The witness's 911 call was played for the jury.

handcuffing defendant, Sergeant Seki noticed that the driver's seat of defendant's vehicle was in "a reclined position" That, in addition to the tinted windows, made it difficult to see if anyone was seated behind the wheel of the car.

Corporal Wilfredo Ruiz was within two blocks of the house in response to the burglary broadcast when he saw an African-American male walking eastbound on Emerson Avenue. Corporal Ruiz approached individual, later identified as Edmondson, in a marked patrol vehicle, "contacted him and advised him to stop." Edmondson replied, "I didn't do anything," and then ran from Corporal Ruiz and three other officers who also responded. The officers engaged in a foot pursuit during which Corporal Ruiz observed Edmondson with his hand in front of him reaching "near his front waistband." The officers set up a perimeter containment and apprehended Edmondson, who was no longer wearing the multi-colored sweater he was wearing when initially stopped.⁴ While canvassing the area, Corporal Ruiz recovered a blue jewelry box containing jewelry.

The homeowner arrived to find her front door broken in and the bedroom "in shambles" with "everything . . . scattered all over the place." The back screen door was off the hinges. She later identified the blue box and the jewelry items as hers. The homeowner did not give anyone permission to enter her home or remove anything from it.

PROCEDURAL BACKGROUND

The Los Angeles County District Attorney charged defendant in an information with first degree residential

⁴ The sweater was later recovered from a nearby trash can.

burglary in violation of Penal Code section 459.⁵ The District Attorney alleged defendant had suffered a prior serious felony conviction within the meaning of section 667, subdivision (a)(1) and two prior serious or violent felony convictions within the meaning of sections 667, subdivisions (b) through (j) and 1170.12.

The jury found defendant guilty as charged. The trial court subsequently found defendant had suffered two prior strike convictions, with one qualifying as a serious felony under section 667, subdivision (a)(1).

The trial court sentenced defendant under the Three Strikes law to a term of 25 years to life, plus a consecutive five-year term under section 667, subdivision (a)(1), for an aggregate sentence of 30 years to life. The trial court subsequently ordered that defendant's 30-year sentence be served consecutively to a 60-years-to-life sentence imposed against him for his recent murder conviction.

DISCUSSION

A. Sua Sponte Ruling Limiting Argument

1. *Background*

In her closing, defense counsel argued: "The District Attorney [is] going to point to [defendant's] presence in the gray car as . . . conclusive evidence. However, there [are] other interpretations, other rational conclusions about why he was in the car and who was the actual person who kicked in the door. ¶ . . . [T]he District Attorney will argue or could argue that

⁵ All further statutory references are to the Penal Code.

[defendant] getting out of the car and, basically, tossing the screwdriver and lying down and submitting himself to the police are signs of consciousness of guilt, that he gave himself up because he was guilty. [¶] Certainly, there's another explanation for that. Certainly, the explanation is that in the age of [Tamir] Rice from [Cleveland] . . . , in the age of Walter Scott from South Carolina, in the age of Michael Brown—”

At that point, the trial court interjected: “The court [is] going to sustain its own objection on relevance grounds. [¶] . . . [¶] You're not to consider those comments, members of the jury. [¶] Move on.”

Defense counsel continued: “. . . [H]e was getting out of the car. Because he was an African American male, [defendant] was fearful of being shot, or . . . he was fearful of being harmed, . . . he stepped out [of the car] in order to be submissive to the police officers. [¶] And, certainly, from my questions with Sergeant Seki there, the screwdriver could possibly be used as a weapon. So part of the thinking is do I want to be caught with something that could be perceived - - not as a screwdriver used to screw in . . . screws [but] as a weapon, you toss that thing out. [¶] So when you're in the car, you see it. I have no weapon.”

2. *Legal Principles and Standard of Review*

In conducting closing argument, attorneys for both sides have considerable latitude: “The right of counsel to discuss the merits of a case, both as to the law and facts, is very wide, and he has the right to state fully his views as to what the evidence shows, and as to the conclusions to be fairly drawn therefrom. The adverse party cannot complain if the reasoning be faulty and the deductions illogical, as such matters are ultimately for the

consideration of the jury. [Citations.] Counsel may vigorously argue his case and is not limited to ‘Chesterfieldian politeness.’ [Citations.] An attorney is permitted to argue all reasonable inferences from the evidence [Citation.] Only the most persuasive reasons justify handcuffing attorneys in the exercise of their advocacy within the bounds of propriety.” (*Grimshaw v. Ford Motor Co.* (1981) 119 Cal.App.3d 757, 798-799, most internal quotation marks omitted.) The rules are the same for criminal cases. (*Cassim v. Allstate Ins. Co.* (2004) 33 Cal.4th 780, 795.)

The trial court as well has “great latitude in . . . limiting the scope of closing summations. . . . [It] may ensure that argument does not stray unduly from the mark, or otherwise impede the fair and orderly conduct of the trial. In all these respects [the trial judge] must have broad discretion.” (*Herring v. New York* (1975) 422 U.S. 853, 862 (*Herring*).) The trial judge’s limitations on closing argument are reviewed under the abuse of discretion standard. (*People v. Edwards* (2013) 57 Cal.4th 658, 743.)

Citing *Herring, supra*, 422 U.S. 853, the California Supreme Court has acknowledged the criminal defendant’s “well-established constitutional right to have counsel present closing argument to the trier of fact,” but observed, “[t]his right is not unbounded . . . the trial court retains discretion to . . . ensure that argument does not stray unduly from the mark.” (*People v. Marshall* (1996) 13 Cal.4th 799, 854-855 (*Marshall*).)

3. Analysis

Defendant contends the trial court abused its discretion when it prevented his attorney from discussing by name three

highly-publicized cases involving police shootings of young African-American males. According to defendant, the three police shootings were matters of common knowledge and historical fact that his counsel should have been able to discuss and present as an alternative explanation for defendant's decision to toss the screwdriver from the car, exit the vehicle, and comply with Sergeant Seki's commands.

The challenge to the trial court's ruling overlooks the fact that defense counsel did argue defendant's decision to toss the screwdriver, exit the vehicle, and submit to police authority had nothing to do with consciousness of guilt and everything to do with a reasonable fear the officer might shoot him or consider him to be armed or aggressive because he was a young African-American male. Defendant has failed to demonstrate that his attorney's inability to cite unrelated cases by name in any way diminished counsel's ability to proffer an explanation for his conduct. The trial court's ruling was well "within its discretion to control the scope of closing argument [while not precluding] defendant from making his central point." (*Marshall, supra*, 13 Cal.4th at p. 854 [no error where counsel was not permitted to argue in detail the evidence or outcomes of specific capital cases in the same county, but was allowed to argue the defendant's crimes did not involve the types of heinous conduct present in other case]; see also *People v. Sanders* (1995) 11 Cal.4th 475, 554 [no error where counsel was prevented from mentioning Charles Manson by name but argued "there were 'worse cases' than defendant's in terms of the number of victims and the nature of the crime"]; *People v. Pelayo* (1999) 69 Cal.App.4th 115, 122 ["The trial court's discretionary decision to prohibit reference to another trial involving different facts was not erroneous as a

matter of law. . . . [S]ummary must be based upon the evidence in the case. ‘Counsel may refer the jury to . . . common experience, history, or literature [citation], but he may not dwell on the particular facts of unrelated, unsubstantiated cases. . . . [T]he court properly denied defense counsel license to read newspaper clippings about unrelated specific crimes, hearsay material which could only confuse the jury with irrelevant facts’[.].)

Moreover, the trial court’s ruling based on relevance was correct on the merits. Defendant presented no evidence at trial from which the jury could have reasonably inferred he was aware of the facts or circumstances of the three shootings, much less that his conduct in throwing the screwdriver and then submitting to police authority was a direct response to those shootings.

B. In Camera Review

Before trial, and after an in camera review, the trial court concluded there were no discoverable records in Sergeant Seki’s personnel file. (*Pitchess v. Superior Court* (1974) 11 Cal.3d 531.) Defendant contends, and the Attorney General agrees, we should conduct an independent in camera review of the personnel records reviewed by the trial court in response to defendant’s *Pitchess* motion.

We have independently reviewed the transcript of the in camera proceeding and, based on the trial court’s description of the contents of the personnel file, conclude the trial court did not abuse its discretion in finding there were no discoverable documents. (*People v. Hughes* (2002) 27 Cal.4th 287, 330.)

DISPOSITION

The judgment of conviction is affirmed.

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DUNNING, J.*

We concur:

KRIEGLER, Acting P. J.

BAKER, J.

* Judge of the Orange Superior Court, appointed by the Chief Justice pursuant to article VI, section 6, of the California Constitution.