Filed 2/10/17 P. v. Castellanos CA2/5

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE, Plaintiff and Respondent, v. MICHAEL CASTELLANOS, Defendant and Appellant.	B271835 (Los Angeles County Super. Ct. No. BA439834)

APPEAL from a judgment of the Superior Court of Los Angeles County, Bernie C. LaForteza, Judge. Affirmed.

Narine Mkrtchyan, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, and Susan Sullivan Pithey, Supervising Deputy Attorney General, for Plaintiff and Respondent.

INTRODUCTION

Defendant and appellant Michael Castellanos (defendant) was convicted of assault with a deadly weapon (Pen. Code, § 245, subd. (a)(1)[1]). On appeal, defendant contends that the trial court abused its discretion in admitting evidence of racial slurs exchanged between defendant and the victim and that the admission of such evidence violated his constitutional rights to a fair trial and due process. We hold the trial court did not err and affirm the judgment.

BACKGROUND

At trial, the prosecution introduced the following evidence concerning defendant's assault of victim Reginald McCoy:

On September 15, 2015, McCoy, an African-American, was sitting on the stairs that led up to his apartment, helping two children with their homework. McCoy shared his apartment with others, including defendant and his girlfriend. Defendant, who appeared to McCoy to be angry and intoxicated, approached McCoy and told him to "Move the fuck out of my way." McCoy responded, "Go right on ahead." Defendant passed by McCoy and climbed the stairs up to the apartment. Stopping in front of the apartment door, defendant threw two beer cans at McCoy and then went inside the apartment. McCoy remained seated on the stairs and continued to help the children with their homework.

Defendant then came down the stairs, saying "Get the fuck out of my way." McCoy responded, "Look, I'm trying to help somebody with their homework. If you want to go somewhere, just go somewhere." Defendant then raised up his shirt and

---

[1] All statutory references are to the Penal Code unless otherwise noted.

showed McCoy the black handle of a knife that was located in the waistband of defendant's pants. McCoy said, "Look, just back the hell away from me."

Defendant then called McCoy a "Nigger." In response, McCoy called defendant a "Beaner." Thereafter, defendant removed the knife from his waistband and attempted to stab McCoy with it.

McCoy described the knife as six inches long, having a pointed edge and appearing to be a cooking knife. Initially, defendant attempted to stab McCoy when they were only two feet apart, but McCoy dodged the attempted strike. McCoy testified that, if he had not done so, the knife would have "touched" him.

Defendant attempted to stab McCoy a second time. During defendant's second attempt, McCoy backed away from defendant, but defendant came towards him and from three feet away tried to stab McCoy again. McCoy, however, "moved out of the way." If McCoy had not done so, defendant "would . . . have made contact with [him] with the knife."

McCoy kept moving away from defendant, yet defendant tried to stab McCoy three more times. After the fifth attempt to stab McCoy, defendant's girlfriend came down the stairs and took the knife from defendant, which ended the altercation.

Defendant did not testify at trial or present any evidence in his defense.

The jury found defendant guilty of assault with a deadly weapon. He was ultimately sentenced to 11 years in state prison. Defendant timely appealed.

DISCUSSION

Defendant raises one issue on appeal: whether the trial court erred in admitting evidence of the racial slurs exchanged between defendant and the victim at trial. We review such evidentiary ruling for abuse of discretion. (*In re Roberto C.* (2012) 209 Cal.App.4th 1241, 1249.) "A trial court abuses its discretion when its ruling 'fall[s] "outside the bounds of reason."' [Citations.]" (*People v. Waidla* (2000) 22 Cal.4th 690, 714.) In other words, the trial court's decision to admit or exclude evidence "will not be disturbed except on a showing the trial court exercised its discretion in an arbitrary, capricious, or patently absurd manner that resulted in a manifest miscarriage of justice [Citation]." (*People v. Rodriguez* (1999) 20 Cal.4th 1, 9-10.)

I. Defendant's Motion in Limine

Before trial, defendant moved in limine to exclude the evidence of racial slurs. At a pre-trial hearing, the trial court confirmed its understanding of defendant's motion, describing it as follows: "As to [the] defense motion to exclude any mention of the racial slurs, apparently there [are] some racial names that were both—stated on both sides during this incident. It's my understanding that the defense wants to exclude that."

Because the trial court had granted defendant's motion to strike from the information the penalty allegation that the assault was a hate crime in violation of section 422.75, subdivision (a), defense counsel contended at the hearing that the motion to exclude racial slurs should consequently be granted. Defense counsel argued: "The hate crime allegation was

dismissed. Therefore, I don't feel it's relevant, and it's more inflammatory than probative."

In opposition, the prosecutor asserted a different theory of how the racial slurs demonstrated motive: "The People's position, your Honor, is that this does go to motive. Based on my reading of the police report, what initially started the confrontation in the first place was because the defendant walked by Mr. McCoy, called him a racial slur. At some point later in the argument, Mr. McCoy called the defendant a racial slur. [¶] I do believe it goes to motive. . . . [I]t seems that the defendant then responded with the knife after being called that racial slur. So I think it does go to motive, and its probative value, it does not substantially outweigh its prejudicial—any prejudicial effect."[2]

Defense counsel declined to respond to the prosecutor's position, and the trial court thereafter denied defendant's motion, stating: "I do find it to be relevant as to motive even though motive is—people do not have to prove it, but it is corroborative of the—to corroborate motive as to why this incident occurred. I have conducted a 352 analysis. I do find the probative value is not outweighed by the prejudicial effect and, therefore, will deny the motion to exclude."

---

[2] The prosecutor's proffer regarding the timing of when defendant and McCoy made their racial slurs differed somewhat from the timing later established at trial. Defendant thus claims the prosecutor's argument at the hearing "was not based on [a] correct recitation of anticipated facts at trial," but defendant does not advance any theory of how that should affect our analysis here, if at all. It does not; according to both the prosecutor's proffer and the trial testimony, the racial slurs were made close in time and prior to the assault.

II. Analysis

On appeal, defendant contends the evidence of racial slurs should not have been admitted because it was not relevant (see Evid. Code §§ 350, 351) and because any probative value it may have had was substantially outweighed by the danger of prejudice its admission presented (see Evid. Code § 352), thereby violating his constitutional rights to a fair trial and due process. We agree with the trial court that evidence of racial slurs made by defendant and the victim was relevant as to defendant's motive in committing the assault and find no abuse of discretion in admitting such evidence.

With respect to relevance, "evidence of motive makes the crime understandable and renders the inferences regarding defendant's intent more reasonable. 'Motive is not a matter whose existence the People must prove or whose nonexistence the defense must establish. [Citation.] Nonetheless, "[p]roof of the presence of motive is material as evidence tending to refute or support the presumption of innocence."' [Citation.]" (*People v. Roldan* (2005) 35 Cal.4th 646, 707, disapproved on another ground in *People v. Doolin* (2009) 45 Cal.4th 390, 421, fn. 22; accord *People v. Scheer* (1998) 68 Cal.App.4th 1009, 1017-1018 [motive may be probative of ultimate issues such as intent, identity, or commission of the criminal act itself].)

Here, the defendant's and victim's exchange of racially charged insults immediately prior to defendant making multiple stab attempts with a six-inch knife was relevant evidence that defendant meant to assault the victim.[3] Evidence of the victim

---

[3] A conviction for assault with a deadly weapon required proof beyond a reasonable doubt that defendant acted willfully, i.e., "willingly or on purpose." (See CALCRIM No. 875.)

calling defendant a "beaner" was relevant to show that defendant may have reactively decided to assault the man who had just insulted him. Evidence of the defendant calling the victim a "nigger" was relevant to show that defendant may have possessed at the time of the assault sufficient anger toward and/or dislike for the victim such that he intended to physically harm him.

In so finding, we do not agree with defendant's contention that such evidence was admitted to show defendant's motive was racism. We acknowledge that admitting the evidence to show racist motive may not have been a relevant purpose, particularly because the hate crime allegation had been stricken. But, as we have discussed above, the discussion at the pre-trial conference regarding defendant's motion in limine makes abundantly clear that the prosecutor offered and the trial court accepted a different relevant basis to admit both the defendant's and the victim's statements to show motive.

With respect to whether the probative value of the racial slur evidence was substantially outweighed by any danger of prejudice, defendant argues "[t]he word 'Nigger' thrown out in a drunken state of mind against the complaining witness impermissibly colored [defendant] as a racist and prejudiced the jury against him, rendering their verdict based not on objective assessment of the facts but on emotion or prejudice." While such a racial epithet is repugnant, we do automatically assume its admission into evidence at trial necessarily created undue prejudice. "The unfortunate reality is that odious, racist language continues to be used by some persons at all levels of our society. While offensive, the use of such language by a defendant is regrettably not so unusual as to inevitably bias the jury against the defendant." (*People v. Quartermain* (1997) 16 Cal.4th

600, 628 [rejecting Evidence Code, section 352 challenge to admission of defendant's use of racial epithets].)

In this particular case, there was no indication the admission of such evidence would have subjected (or did subject) defendant to any such inevitable jury bias. There was no suggestion before or during trial that defendant should be cast as a racist. Nor was there any argument or intimation that defendant assaulted the victim for reasons based on race, as opposed to the anger and dislike for the victim that surfaced during their increasingly heated interaction. Indeed, consistent with the theory of relevance that formed the basis for admission into evidence, the prosecutor briefly and rather innocuously characterized in closing argument the racial slurs for the jury's consideration as follows: "[T]he defendant then pulled out the knife, called [the victim a] name. [The victim] told you that, frankly, he called him names back. Right? Both parties are exchanging derogatory terms with each other." Nothing in the record suggests that admission of the racial slur evidence was unduly prejudicial.

For the foregoing reasons, we do not find anything capricious, arbitrary, or patently absurd about the trial court's evidentiary ruling. (See *People v. Rodriguez, supra,* 20 Cal.4th at pp. 9-10.) We therefore hold the trial court did not abuse its discretion when admitting evidence of racial slurs by the defendant and victim

Moreover, even if the trial court had erred, we find admission of two racial slurs exchanged between defendant and the victim during a heated exchange was harmless under either Chapman v. California (1967) 386 U.S. 18, 24 [harmless beyond a reasonable doubt standard] or People v. Watson (1956) 46 Cal.2d

818, 836 [reasonable probability of a more favorable result standard]. The uncontroverted and undisputed testimony from the victim established that defendant repeatedly attempted to stab him with an object that appeared to be a knife. Our review of the record discloses no basis to believe the result at trial would have been different if the racial slur evidence had been excluded.

Finally, because we conclude the admission of the racial slur evidence was not error and did not prejudice defendant, we hold that admission of such evidence did not render defendant's trial fundamentally unfair and accordingly reject defendant's claim that his constitutional rights were violated. (*People v. Partida* (2005) 37 Cal.4th 428, 439.)

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

KIN, J.*

We concur:

KRIEGLER, Acting P. J.

BAKER, J.

* Judge of the Superior Court of the County of Los Angeles, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.