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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.

VICTOR MATHIEU,

Defendant and Appellant.

B271177

(Los Angeles County
Super. Ct. No. VA127423)

APPEAL from a judgment of the Superior Court of Los Angeles County, John A. Torribio, Judge. Affirmed.

Heather L. Beugen, 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 Scott A. Taryle and Rene Judkiewicz, Deputy Attorneys General, for Plaintiff and Respondent.

Victor Mathieu appeals from his judgment of conviction of assault with a semiautomatic firearm (Pen. Code,¹ § 245, subd. (b)) and possession of a firearm by a felon (§ 29800, subd. (a)(1)), with true findings on a great bodily injury enhancement (§ 12022.7, subd. (a)) and a firearm enhancement (§ 12022.5). On appeal, Mathieu argues that the trial court prejudicially erred when it excluded evidence of an out-of-court statement made by Mathieu’s wife in which she admitted that she, and not Mathieu, committed the shooting at issue in this case. We affirm.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

I. The Charges

The Los Angeles County District Attorney charged Mathieu with one count of assault with a semiautomatic firearm (§ 245, subd. (b)) and one count of possession of a firearm by a felon (§ 29800, subd. (a)(1)). As to the assault count, it was alleged that Mathieu personally inflicted great bodily injury upon the victim (§ 12022.7, subd. (a)), and personally used a firearm during the commission of the offense (§ 12022.5). It also was alleged that Mathieu had served four prior prison terms within the meaning of section 667.5, subdivision (b), and had two prior serious or violent felony convictions within the meaning of section 667, subdivision (a)(1), section 1170, subdivision (h)(3), and/or the “Three Strikes” law (§§ 667, subs. (b)-(i), 1170.12, subd. (a)-(d)). Mathieu pleaded not guilty to each count and denied the enhancement allegations.

¹ Unless otherwise stated, all further statutory references are to the Penal Code.

II. The Prosecution Evidence

On October 30, 2012, at approximately 11:00 a.m., Darryl Glover, the victim in this case, went to the Roadway Inn motel in Artesia, California. Glover planned to meet Heather Brownridge, an acquaintance he had known for two months and occasionally paid for sex. Brownridge had called Glover earlier that day and asked him for a ride home. When Glover arrived at the motel, he parked his white Jeep in the parking lot directly in front of Room 113, where Brownridge was waiting for him. The motel room was registered to Mathieu, but Brownridge was the only one present in the room when Glover arrived.

At 11:23 a.m., Mathieu drove up in a grey Audi, parked his vehicle in the motel parking lot, and then joined Brownridge and Glover in Room 113. A minute later, Kiesha Patterson arrived in a black SUV, parked her vehicle, and also went inside the room. Glover did not know Mathieu or Patterson, but he had seen Mathieu on one prior occasion at a house where Glover dropped off Brownridge.

Once inside the room, Mathieu asked Glover if he had brought money for a car. Glover was aware that Brownridge was in the process of buying a car and wanted his help to pay for it, but he did not know that she was buying the car from Mathieu or that she expected Glover to pay Mathieu for the car at that time. When Mathieu asked for payment, Glover answered that he did not have any money. Glover also told Mathieu, "I don't know you. I don't even know who you are. I ain't got nothing to say to you." During the conversation, Mathieu became agitated, and at one point, he said to Glover, "This ain't going nowhere." Mathieu then closed the door of the motel room, which made Glover uneasy.

Glover decided to leave and headed toward the door. As Glover was reaching for the door handle, Mathieu pulled out a gray semiautomatic handgun. Mathieu was standing about 12 feet away from Glover when he displayed the gun. At that time, Brownridge was standing behind a bed and Patterson was sitting on a bed. Mathieu was the only person in the room that Glover saw with a gun. Upon seeing the gun, Glover opened the door and ran out of the room. As Glover was running away, he heard a single gunshot from the direction where Mathieu was standing. The shot struck Glover in the back.

After Glover was shot, he continued running to a Del Taco restaurant across the street. He hid behind a car in the drive-thru and asked the driver to call 911. As Glover was waiting for help, he saw Patterson's black SUV leave the motel parking lot. Mathieu was inside the SUV and looked directly at Glover as the vehicle drove away.

Los Angeles County Sheriff's Sergeant Jorge Chavez was the first officer to respond to the scene. As the paramedics were treating Glover on the ground, Sergeant Chavez questioned him about the shooting. Glover told Sergeant Chavez that he had been in Room 113 at the Roadway Inn with an unnamed man and two women, whom he identified as "Sexy" and Keisha.² Glover also told Sergeant Chavez that he and the man got into an argument, that the man pulled out a gun and shot him, and that the man then drove away in a black SUV.

Sheriff's Deputy Santoyo accompanied Glover in an ambulance as he was being transported to the hospital. Glover

² At trial, Glover testified that he knew Brownridge by the nickname "Sexy."

told Deputy Santoyo that his friend, “Sexy H.,” had called him and asked him to pick her up from Room 113 at the Roadway Inn. When Glover entered the room, Sexy H. was with her friend, Keisha. Sexy H. telephoned an unknown man, and a short time later, a man arrived at the motel. Glover and the man began to argue about Sexy H. and whose girlfriend she was. As the argument continued, the man reached behind his back, pulled out a silver-colored handgun, pointed it at Glover, and fired a shot. Glover ran out of the room and across the street, stopping at a Del Taco restaurant to hide. Glover saw the shooter leave the motel in a black SUV. Glover had seen the shooter before with Sexy H., but did not know his name.

Sheriff’s Detective Roger McNichols, the investigating officer on the case, arrived at the scene at around 12:30 p.m. He observed a bullet strike on the door of Room 113, and a nine-millimeter shell casing on the carpet inside the room. The location of the shell casing was inconsistent with the gun being fired from the bathroom or the area where the beds were. Brownridge was present at the scene and was searched for weapons before being transported to the sheriff’s station for questioning. No firearms were found on her person. The officers who responded to the scene also searched Room 113, Glover’s Jeep, and Mathieu’s Audi, and did not find any firearms. During the search of Glover’s vehicle, officers found cocaine and \$1,740 in cash in the center console.

At trial, Glover admitted that he had prior convictions for transporting marijuana and possessing marijuana for sale. He also admitted that he had \$1,740 in cash and less than a gram of cocaine inside his Jeep when he went to the motel to pick up Brownridge, and that he brought the money with him in case he

decided to help Brownridge buy a car. Glover denied, however, that he ever told Brownridge or Mathieu about the money that he had in his vehicle. Glover also denied that, during the time he was in the motel room, he ever threatened Mathieu or engaged in a physical altercation with him.

Glover underwent multiple surgeries for his gunshot wound and was hospitalized for a month. While in the hospital, Glover was shown six-pack photographic line-ups that included Mathieu and Patterson. Glover identified Mathieu as the person who shot him, and Patterson as the person who arrived at the motel in the black SUV. Detective McNichols and his team obtained a warrant for Mathieu's arrest and conducted surveillance of his past known addresses, but were unable to locate him. Two years after the shooting, Mathieu was arrested by the Riverside County Sheriff's Department.

III. Defense Evidence

Mathieu testified on his own behalf. According to his testimony, Mathieu was married to Patterson and was friends with Brownridge. He was registered at the Roadway Inn on the day of the shooting. Earlier that day, he brought Brownridge to Room 113 in his silver Audi. Brownridge was in the process of buying the Audi from Mathieu through installment payments. Mathieu told Brownridge that she could not keep the car unless she paid him the balance of about \$1,500 that she owed. Mathieu left Brownridge at the motel and went to meet Patterson for breakfast. Later that morning, Brownridge called Mathieu to tell him that a friend had agreed to help her pay for the car. Mathieu drove back to the motel in the Audi and asked Patterson to follow him in her black Kia SUV in case the sale was completed.

When Mathieu returned to the Roadway Inn, he saw Glover standing outside Room 113. Mathieu did not know Glover and had never seen him before. Glover followed Mathieu into the motel room where Brownridge was waiting. Patterson arrived a few minutes later and sat down on one of the two beds in the room. Mathieu noticed that Glover was wearing gloves and sweating profusely, which gave Mathieu “bad vibes.” When Mathieu asked Glover if he was going to help Brownridge pay for the car, Glover became hostile and told Mathieu that he did not have any money. Brownridge reminded Glover that he had said he would help her. Glover responded that all he had was a bottle of prescription drugs, which he poured onto a counter to show Mathieu. Glover also told Mathieu that the drugs were worth triple the value of the Audi. Mathieu refused to accept the drugs as payment for the car because he did not want to go back to jail.

Brownridge became angry that Glover was refusing to help her, and in response, Glover “flipped out.” Mathieu tried to ignore Glover and told Brownridge she could pay him for the car later. The argument continued to escalate, and Mathieu became afraid of Glover. At that point, Mathieu, Glover, and Brownridge were standing near a refrigerator in the room, and Patterson was sitting on one of the beds. Mathieu walked toward the door, opened it, and told Brownridge and Glover to leave. Glover went to close the door and said, “Ain’t nobody leaving.” Mathieu saw Glover fiddle with the front pockets of his sweater and then pull out a gun.

As soon as Mathieu saw the gun, he rushed toward Glover. The two men got into a physical fight by the door. During the fight, Mathieu saw Brownridge run to the bathroom, but did not notice where Patterson was inside the room. Mathieu also saw

Glover's gun fall to the floor. Mathieu ended up on his back by the front of the door with Glover leaning over him. Mathieu then heard a gunshot and saw smoke. Glover stepped over Mathieu and ran out of the room. As Glover was running, he screamed, "He shot me, he shot me."

Mathieu got up, closed the door, and tried to calm the women down. Brownridge began collecting the pills that Glover had poured onto the counter while Mathieu and Patterson left the motel in Patterson's SUV. Mathieu did not know what happened to the gun, but believed it may have been thrown away. Mathieu never called 911 to report the shooting or made any attempt to talk to the police. He was arrested two years later in Perris, California.

At trial, Mathieu denied that he fired the shot or had a gun with him in the motel room. He also denied that Brownridge shot Glover. When asked if Patterson shot Glover, Mathieu refused to answer. He also refused to answer whether he saw Patterson holding the gun when the shot was fired. Mathieu admitted that he had prior felony convictions for crimes involving dishonesty in 1991, 1997, and 2003.

IV. Verdict and Sentencing

The jury found Mathieu guilty as charged of assault with a semiautomatic firearm and possession of a firearm by a felon. The jury also found true the great bodily injury enhancement and the firearm enhancement. The trial court sentenced Mathieu to state prison for a term of 25 years to life, plus a consecutive term of 18 years.

DISCUSSION

On appeal, Mathieu argues that the trial court erred when it excluded evidence of an out-of-court statement made by Patterson in which she allegedly admitted to shooting Glover. Mathieu asserts that Patterson's statement was admissible under Evidence Code 1230 as a declaration against penal interest, and that the trial court's decision to exclude the statement constituted an abuse of discretion and a violation of Mathieu's constitutional right to due process and to present a defense.

I. Relevant Background

Prior to trial, the court conducted an Evidence Code section 402 hearing concerning the admissibility of a statement made by Patterson to a defense investigator in which she allegedly admitted to being the shooter. Defense counsel explained that Patterson originally was charged in this matter as an accessory after the fact, and that her case was resolved following the preliminary hearing. Defense counsel proffered that, if called as a witness, Patterson would testify that she was present in Room 113 at the Roadway Inn during a violent confrontation between Glover and Mathieu, that she saw Glover retrieve a firearm from his waistband, that the firearm fell to the ground as Glover and Mathieu struggled for it, and that she grabbed the firearm and fired a single shot in defense of Mathieu and herself. Defense counsel also offered into evidence a written statement prepared by the investigator that documented her March 2015 interview with Patterson, including Patterson's admission that she was the person who shot Glover. When called to testify at the evidentiary hearing and asked about the events surrounding the shooting,

however, Patterson asserted her Fifth Amendment privilege against self-incrimination and was excused by the trial court.

Defense counsel thereafter requested that the trial court allow his investigator to testify about Patterson's statement that she was the shooter, arguing that the statement was admissible as a declaration against penal interest. The prosecutor objected to the admission of the statement on the grounds that it was not inculpatory because Patterson claimed that she had acted in self-defense, and was not reliable because Patterson made the statement to a defense investigator rather than to the police. With respect to the inculpatory nature of the statement, defense counsel argued that Patterson would not have had knowledge of the law on self-defense or defense of others, and that the evidence showing that Glover was shot in the back could contradict her claimed defense. With respect to the reliability of the statement, defense counsel asserted that other witnesses would corroborate Patterson's account that she was present in the motel room and in close proximity to the fight between Glover and Mathieu, and that the physical evidence found inside the room would further support her admission that she was the shooter. Defense counsel also claimed that Patterson's refusal to speak to the police when she was arrested gave her statement to the defense investigator more credibility because "nobody in their right mind would make such a statement to police officers about shooting another person." Defense counsel contended that Patterson's statement was so exonerating that its exclusion would violate Mathieu's constitutional right to a fair trial, and would force Mathieu to testify that Patterson was the shooter.

After hearing the argument of counsel, the trial court excluded the evidence of Patterson's out-of-court statement. The

court concluded that the statement was made “under highly suspect circumstances where it’s the wife of the defendant coming in belatedly saying she’s the shooter.”

II. Relevant Law

Evidence Code section 1230 sets forth an exception to the hearsay rule for a declaration against penal interest. It provides, in relevant part, that “[e]vidence of a statement by a declarant having sufficient knowledge of the subject is not made inadmissible by the hearsay rule if the declarant is unavailable as a witness and the statement, when made, was so far contrary to the declarant’s pecuniary or proprietary interest, or so far subjected him to the risk of civil or criminal liability, . . . that a reasonable man in his position would not have made the statement unless he believed it to be true.” (Evid. Code, § 1230.) “To demonstrate that an out-of-court declaration is admissible as a declaration against interest, ‘[t]he proponent of such evidence must show that the declarant is unavailable, that the declaration was against the declarant’s penal interest when made and that the declaration was sufficiently reliable to warrant admission despite its hearsay character.’ [Citation.]” (*People v. Grimes* (2016) 1 Cal.5th 698, 711.)

“The focus of the declaration against interest exception to the hearsay rule is the basic trustworthiness of the declaration. [Citations.] In determining whether a statement is truly against interest within the meaning of Evidence Code section 1230, and hence is sufficiently trustworthy to be admissible, the court may take into account not just the words but the circumstances under which they were uttered, the possible motivation of the declarant, and the declarant’s relationship to the defendant.’ [Citation.]”

(*People v. Geier* (2007) 41 Cal.4th 555, 584 (*Geier*) [overruled on other grounds by *Melendez-Diaz v. Massachusetts* (2009) 557 U.S. 305].) “[I]n this context, assessing trustworthiness “requires the court to apply to the peculiar facts of the individual case a broad and deep acquaintance with the ways human beings actually conduct themselves in the circumstances material under the exception.” [Citation.]” (*Ibid.*)

We review a trial court’s decision on admissibility under Evidence Code section 1230 for an abuse of discretion. (*People v. Grimes, supra*, 1 Cal.5th at p. 711.) “A trial court’s decision to admit or exclude evidence is a matter committed to its discretion “and 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.]’ [Citations.]” (*People v. Masters* (2016) 62 Cal.4th 1019, 1056.)

III. The Trial Court Did Not Err in Excluding Evidence of Patterson’s Out-Of-Court Statement

Based on the totality of the circumstances presented, we conclude that the trial court did not abuse its discretion in determining that Patterson’s statement that she shot Glover was not sufficiently reliable to qualify for admission as a declaration against penal interest. Patterson’s relationship with Mathieu and the circumstances surrounding her statement to the defense investigator reasonably could support a finding that her statement was not trustworthy. Patterson had been married to Mathieu for over 20 years, had helped him flee the scene immediately after the shooting, and had a motive to minimize his participation in the crime once he was arrested and charged. Given Mathieu’s prior serious felony convictions that could

subject him to an enhanced sentence if he were convicted, Patterson had a strong incentive to fabricate a defense that exculpated Mathieu from any criminal liability. As our Supreme Court has explained, “sometimes a declarant who makes an inculpatory statement may have a substantial incentive to exculpate others,” and “[a] trial court in that situation may reasonably conclude that the declarant’s incentive to protect [the defendant] renders the exculpatory portions of the statement inadmissible.” (*People v. Grimes, supra*, 1 Cal.5th at p. 716.)

The timing of Patterson’s statement further supported a finding that it lacked sufficient indicia of trustworthiness to be admissible. According to defense counsel, Patterson originally was arrested and charged as an accessory after the fact, and her case was resolved following a preliminary hearing. The first time that Patterson claimed any responsibility for the shooting was in an interview with the defense investigator retained by Mathieu’s trial counsel in this case. That interview took place two and a half years after the shooting, and only after Patterson’s own criminal case had been resolved. “The significant passage of time is a relevant circumstance to be considered when determining a statement’s reliability.” (*People v. Masters, supra*, 62 Cal.4th at p. 1057 [declarant’s statements admitting his involvement in planning the murder of a prison guard were properly excluded as unreliable where declarant waited for over a year to make the statements to prison authorities]; see also *People v. Smith* (2017) 10 Cal.App.5th 297, 304 [trial court did not err in excluding the statement of the defendant’s girlfriend to a defense investigator that exculpated the defendant in a driving under the influence case where the girlfriend “never came forward to police and only made the statement . . . nearly nine months after the accident”].)

As the trial court noted in ruling that Patterson's statement was not sufficiently reliable to warrant admission, the circumstances involving "the wife of the defendant coming in belatedly saying she's the shooter" were "highly suspect."

Moreover, while Patterson's statement was self-inculpatory to the extent that she admitted to being the shooter rather than a mere accessory after the fact, her statement as a whole reflected that she was claiming the shooting was justified because she was acting in self-defense or in defense of Mathieu. According to the written summary prepared by the defense investigator, Patterson disclosed the following about her state of mind when she shot Glover: "During the struggle, a gun fell from Glover's waist onto the floor. Patterson said she didn't see the gun before but when the gun fell from Glover's waist, she jumped across the bed and grabbed the gun. . . . As she was picking the gun up, she noticed Glover had gotten away from struggling with Mathieu by pushing him to the floor and was coming toward her. She was afraid Glover would get the gun from her after he had overpowered Mathieu. She pointed the gun and pulled the trigger. She wasn't aware the gun had fired until she heard the shot. She was afraid. Glover ran out the door." Patterson's statement to the investigator therefore demonstrated that, rather than accept responsibility for the shooting, she attempted to shift the blame onto the victim by stating that Glover was the aggressor in the physical confrontation with Mathieu, that she saw Glover "coming toward her" after "he had overpowered Mathieu," and that she fired the gun at Glover because "she was afraid."

As our Supreme Court has observed, "[e]ven when a hearsay statement runs generally against the declarant's penal interest . . . , the statement may, in light of circumstances, lack

sufficient indicia of trustworthiness to qualify for admission. . . .’ [Citation.]” (*Geier, supra*, 41 Cal.4th at p. 584.) In *Geier*, for instance, a wife made three inconsistent statements to the police about her involvement in her husband’s murder. (*Id.* at p. 583.) The trial court excluded evidence of her third statement in which she confessed to killing her husband, but claimed she had done so because they had just quarreled and he had hurt their daughter. (*Id.* at p. 584.) The Supreme Court held that the trial court did not abuse its discretion in ruling that the wife’s statement failed to meet the threshold requirement of trustworthiness to qualify as a declaration against interest. (*Id.* at p. 585.) The Court reasoned that the wife’s confession was “utterly inconsistent” with her prior statements in which she denied any involvement in the crime, that she “may have believed that [her] explanation minimized her culpability or excused her conduct altogether,” and that she may have been attempting to protect her lover and his associate who were also suspects in the crime by “taking the blame for the murder with an excuse.” (*Ibid.*; see also *People v. Butler* (2009) 46 Cal.4th 847, 852, 866 [trial court did not abuse its discretion in excluding declarant’s statement that he killed the victim in self-defense and the defendant was not involved because, among other factors, the declarant “attempted to justify his actions, rather than to incriminate himself,” which “seriously undermined the trustworthiness of the statement”].)

Mathieu argues that, unlike the declarant in *Geier*, Patterson did not make inconsistent statements about her involvement in the shooting. Rather, Patterson made a single statement to the defense investigator in which she admitted she was the shooter. Mathieu also asserts that Patterson’s statement was consistent with the eyewitness testimony that placed her in

the motel room at the time of the shooting and with the physical evidence that showed only one shot was fired. However, there was never any dispute about Patterson's presence at the scene of the shooting or the number of shots that were fired. Rather, the factual issue the jury had to resolve was whether Mathieu fired the single shot that struck Glover, and if so, whether he acted with the requisite criminal intent. Of the four individuals who were indisputably present in the motel room during the shooting, only Glover and Mathieu testified at trial. While Mathieu denied that he shot Glover, he refused to answer any questions about whether Patterson was the shooter. Glover, on the other hand, testified that he saw Mathieu pull out a gun while Patterson was sitting on a bed, that he ran out of the room as soon as he saw the gun, and that he heard a single gunshot from the direction where Mathieu was standing. The physical evidence corroborated Glover's testimony that the shot came from the area where he last saw Mathieu standing with the gun, rather than the area where he saw Patterson sitting on a bed. Accordingly, the mere fact that Patterson was present in the motel room when the shooting occurred and offered a different version of events two years later did not preclude the trial court from finding that her statement lacked sufficient reliability to qualify for admission.

Mathieu also contends that the exclusion of Patterson's statement violated his federal constitutional right to due process and to present a defense. However, as the California Supreme Court has recognized, except in unusual circumstances, “the ordinary rules of evidence do not impermissibly infringe on the accused's [constitutional] right to present a defense. Courts retain . . . a traditional and intrinsic power to exercise discretion to control the admission of evidence in the interests of orderly

procedure and the avoidance of prejudice.” [Citation.]” (*People v. Lawley* (2002) 27 Cal.4th 102, 155.) In this case, the totality of the circumstances, including Patterson’s relationship to Mathieu, her long delay in admitting her alleged involvement in the shooting, and her attempt to shift blame for the shooting onto the victim, provided a reasonable basis for the trial court’s conclusion that Patterson’s statement did not satisfy the threshold requirements for admission as a declaration against interest. Under these circumstances, the trial court did not abuse its discretion or violate Mathieu’s constitutional rights in excluding the proffered evidence.

DISPOSITION

The judgment is affirmed.

ZELON, J.

We concur:

PERLUSS, P. J.

SEGAL, J.