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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.

JIMMY ROBERT NEWSOM,

Defendant and Appellant.

2d Crim. No. B236708
(Super. Ct. No. 2010011466)
(Ventura County)

Jimmy Robert Newsom appeals from judgment after conviction by jury of assault with a deadly weapon by means likely to produce great bodily injury. (Pen. Code, § 245, subd. (a)(1).) The trial court sentenced him to two years in state prison. We reject Newsom's contentions that the court abused its discretion when it allowed the prosecutor to ask questions about his personal beliefs, and that it did not err when it denied Newsom's motion to discharge retained counsel. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Newsom and Joe Allevi were neighbors in an apartment complex. In the summer of 2007, Newsom loaned two books to Allevi's teenage daughter. Allevi described the books as "white hate" and "skinhead" material. He returned them to Newsom and told him, "keep it to yourself."

After a year of verbal hostility, Newsom struck Allevi three times in the back with a piece of rebar. Allevi testified that he had been bending over his barbeque

when Newsom came up behind him and hit him. Newsom testified that Allevi was the aggressor. There were no other witnesses. The rebar left three red marks on Allevi's back. When sheriff's deputies responded to Allevi's call for help, they found Newsom in the doorway of his apartment, holding a piece of rebar.

Testimony About Personal Opinions and Beliefs

During his direct examination, Newsom testified about his personal interests and beliefs. He said he is a Jehovah's Witness and an avid reader who studies economics, history, and religion. He talked about the books he was currently reading and offered opinions about them. He said that he has "a tendency to quote from books" and believes "books are substance. . . . So if I can quote something that was written in a book, then I got substance, and that's the way I think, and that's the way I feel." He said he is not a white supremacist and does not admire Adolph Hitler.

Newsom said he loaned *A Human Devil*, by Adam Weishaupt and *Paved With Good Intentions, The Failure of Race Relations in Contemporary America* by Jared Taylor to Allevi's daughter to help her "get a little head start" on her college education. Newsom's attorney asked him to "characterize" the books and Newsom described their contents.

Newsom volunteered that he had been unfairly arrested in the past for a hate crime after he "forced . . . off the property" a "homosexual pedophile" neighbor, Roderick Savalo, and that he told Savalo to "get his filthy faggot ass out of there." Newsom was not convicted of that offense.

On cross-examination, the prosecutor asked Newsom about some highlighted passages in the books. Newsom said he "consistently" highlights parts of books that strike him as particularly noteworthy. The prosecutor asked him to read two highlighted portions aloud. Newsom complied without objection. One passage discussed the Illuminati. Newsom testified, without objection, that the Illuminati was evil because it sought to manipulate the minds of the masses.

Defense counsel objected when the prosecutor asked Newsom to read a publication of the Poverty Law Center that quoted Jared Taylor. The court sustained the

objection. The prosecutor asked Newsom whether Jared Taylor has said that "[w]hen blacks are left entirely to their own devices, Western Civilization, any kind of civilization disappears?" Newsom said he had never heard that. The prosecutor asked Newsom about the Illuminati, Jews, "Blacks," and homosexuals. Newsom said he had no problem with any ethnic group but he thinks homosexuals are perverts.

Request to Discharge Retained Counsel

After the verdict, and three weeks before the sentencing hearing, Newsom moved orally to "replace his current counsel." He said, "I wanted to replace Mike [Ford, retained counsel] with the Public Defender's Office, and I want to file an appeal in my case. I don't feel like I got adequate representation." The public defender reported that Newsom qualified for the public defender's services.

The trial court denied the motion as untimely after commenting that, "it wouldn't delay trial. It wouldn't necessarily cause any other interference with the justice process. It might cause some delay." The court concluded, "Considering the timelines of this and the phase of the situation, your request is denied to have the Public Defender appointed. You may have other options available to you. You can discuss those with your current attorney."

Sentencing

Retained counsel appeared for Newsom at the sentencing hearing. The court expressed its view that this was "not a prison case," because Newsom was over 70 years old and had no prior criminal history. The court granted 36 months probation, but Newsom refused to accept the terms and conditions of probation. The court explained that his alternative was a two-year (low-term sentence). Newsom replied, "I'll take it." The court sentenced him to two years in state prison.

DISCUSSION

Personal Opinions and Beliefs

Newsom contends the court abused its discretion when it allowed the prosecutor to question him about his opinions and beliefs because the testimony was highly prejudicial and had limited probative value. (Evid. Code, § 352.) Newsom

forfeited the objection when he did not raise it at trial. (*People v. Marks* (2003) 31 Cal.4th 197, 228.) He also conceded that he had "opened" the door to questions about the books. He stated that those questions did not do "any damage" to his case.

The record does not reflect any objections to questions about Newsom's personal opinions and beliefs. Newsom raised three objections during cross-examination. His first objection was to the prosecutor's request that he read aloud an unauthenticated publication of the Poverty Law Center about Jared Taylor's views. The court sustained his hearsay and Evidence Code section 352 objections. His second objection was to the question, "Should I find another passage [that refers to Blacks]?" The court instructed the prosecutor to move on to another question and to "focus on why we are here." The prosecutor complied. The third objection was to the question, "What was it you called Roderick Savalo when you attacked him?" The court overruled Newsom's objection that the question assumed facts not in evidence. Newsom responded, as he had on direct examination, that he called the man a "filthy faggot." Newsom did not preserve his objection to testimony about his opinions and beliefs for appeal.

Request to Discharge Retained Counsel and Substitute The Public Defender

A criminal defendant has a right to discharge retained counsel, with or without cause. (*People v. Ortiz* (1990) 51 Cal.3d 975, 983.) But it appears Newsom requested the court to appoint the public defender to represent him in an appeal. Newsom received the benefit of highly competent representation on appeal. Our review of the record confirms that he received the same level of representation at trial.

At his sentencing hearing, Newsom did not renew his request for an attorney. Nor did he ask that a public defender represent him at that time. It is true that the trial court had already denied the motion to appoint counsel. But it is hard to imagine what the public defender could accomplish at the sentencing hearing. The public defender could have moved for a new trial. But Newsom did not unequivocally request this. And our review of the record leads us to conclude it unlikely such a motion would have been granted on any grounds including ineffective assistance of counsel.

In light of Newsom's ambiguous request for appointment of new counsel, our reading of the record in the light most favorable to upholding the order here under review compels us to affirm the trial court. (See, e.g., *People v. Superior Court (Ramos)* 235 Cal.App. 3d 1261, 1266.)

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED.

GILBERT, P.J.

We concur:

YEGAN, J.

PERREN, J.

Jeffrey G. Bennett, Judge
Superior Court County of Ventura

Linda L. Currey, 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, David F. Glassman, Deputy Attorney General, for Plaintiff and Respondent.