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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
(Sacramento)

THE PEOPLE,

Plaintiff and Respondent,

v.

FRANCISCO CASTRO,

Defendant and Appellant.

C101046

(Super. Ct. No. 23FE001741)

A jury found defendant Francisco Castro guilty of second degree robbery. Castro appeals, arguing the trial court prejudicially erred in denying his request to instruct the jury on the mistake of fact defense in addition to the claim of right defense and in admitting testimony under the coconspirator's statement exception to the hearsay rule. We do not address Castro's assertions of error because, assuming but not deciding error occurred, Castro has failed to demonstrate prejudice. We accordingly affirm.

BACKGROUND

I

The Prosecution's Evidence

A. *The Victim's Testimony*

On the night of the robbery, J.A. was at a nightclub with his brother-in-law, D.R., and friends. They met Castro, whom they did not know, at the bar. Castro left the nightclub at some point. When J.A. went outside to get some air, Castro approached him. Castro lifted his shirt three times, revealing a firearm, and said he wanted to kill D.R. because he was dancing with Castro's girlfriend. Castro then left to see if D.R. was still inside the nightclub but returned a while later.

Castro said, "somebody had to pay for the mistakes of [J.A.'s] brother-in-law," and pushed a firearm into J.A.'s side.¹ Castro told J.A. to hand over the chain with a Mexican medallion² that was hanging around his neck, or he would shoot J.A. J.A. did as Castro demanded. J.A. estimated the value of the jewelry to be approximately \$15,000.

The prosecution showed the jury a video of a portion of the interaction between Castro and J.A. The video shows three men—J.A., Castro, and a man in a yellow jacket. The video shows Castro standing close to J.A. and talking to him. As J.A. started removing his chain, the man in the yellow jacket walked up and leaned in close to J.A.'s face. Simultaneously, Castro looked up at the camera taking the video. J.A. handed the chain to Castro and Castro walked away making a hand gesture in the direction of the man in the yellow jacket; the man in the yellow jacket moved out of the frame.

¹ J.A. testified he did not see the firearm but could feel it.

² The medallion was described as an old Mexican coin known as a Centenario.

The prosecutor asked J.A. whether the man in the yellow jacket said anything to him. Defense counsel objected to the question on hearsay grounds. The trial court overruled the objection with an instruction to the jury that any statement from the “other person in the yellow jacket . . . only comes in for the impact it had on the witness, as he heard it” and not for the truth of the matter asserted. J.A. testified the man in the yellow jacket said to give Castro the chain or Castro would shoot him. After J.A. gave Castro the chain and medallion, the man and Castro ran away together as D.R. chased after them. D.R. later returned to J.A.’s location. A recording of J.A.’s 911 call was played for the jury.

Following J.A.’s testimony, the trial court instructed the jury that it could consider J.A.’s testimony regarding the man in the yellow jacket’s statement for all purposes. Before doing so, the trial court heard argument regarding the admissibility of the statement and ruled the testimony was subject to the coconspirator hearsay exception in Evidence Code section 1223. The trial court found that J.A.’s testimony and the video constituted sufficient prima facie proof that there was a conspiracy.

B. The Victim’s Brother-in-Law’s Testimony

D.R. testified Castro briefly spoke to him at the bar. Castro told J.A. that he liked his chain and gave the group of friends an awkward look. After Castro left the nightclub, D.R. and a friend danced with two women who had previously been there with Castro. A little later, D.R. went outside on the balcony. He heard Castro yelling at him from below that he was going to “beat [his] ass” because he was dancing with Castro’s girlfriend. Castro then lifted his shirt to show D.R. something. D.R. saw something “on” Castro’s waistband that “looked like a gun” and “a big metal object” but he was not sure whether it was a firearm. D.R. then saw J.A. walking down the escalators toward Castro. When he saw Castro grab J.A., D.R. ran out of the nightclub and down the escalator. As he got to the bottom of the escalator, D.R. saw Castro and his friend running away. D.R. chased after them, but they got into a car in an alley and drove off.

C. Police Testimony

Sacramento County Police Officer Derek Calabrese testified that during a search of Castro's home he found a chain and medallion in a vest pocket in Castro's closet.

II

The Defense's Evidence

A. Police Testimony

As its first witness, the defense called Sacramento County Police Officer Chen Vang, who took D.R.'s statement, to testify. Officer Vang testified D.R. said Castro was kicked out of the nightclub, D.R. saw something when Castro lifted his shirt but he could not see exactly what it was, and both D.R. and J.A. chased after Castro following the robbery.

B. Castro's Testimony and the Prosecution's Rebuttal

Castro testified in his own defense and denied carrying a firearm the evening of the robbery. He said that once he was inside the nightclub, he noticed "a man with glasses" (i.e., J.A.) wearing a chain. He remarked to J.A. that "he had a unique chain or something like that" He said J.A. seemed drunk and aggressive and was later kicked out of the nightclub. When J.A. was kicked out, Castro went downstairs. J.A. then went downstairs "to confront" Castro. J.A. mentioned the chain and Castro said he had a chain "just like" the one J.A. was wearing but it was stolen about a year prior. Castro asked J.A. to see the chain and medallion and then told J.A. that it was his chain that had previously been stolen, noting it was "pretty rare," "unique," and "you don't just see this out here." J.A. argued that it was his chain instead. Notwithstanding J.A.'s protest, J.A. handed the chain to Castro when he asked for it. Castro said he thought he was taking back his chain that was previously stolen. After he took the chain, Castro jogged to his car and drove away.

As to his stolen chain, Castro testified he had it in Los Angeles when it went missing. A couple of days before his arrest, Castro saw his chain on social media—his friend was wearing it in Mexico. Castro sent his friend a message and arranged for his friend to return the chain to him.

After his arrest, Castro gave the police permission to search his house. When asked by the detective about his chain, Castro told “him something about [his] friend having it in Mexico.” The defense introduced photos of Castro wearing a chain and medallion. Castro confirmed that none of the photos taken in 2021 before his chain was stolen showed a medallion on the chain. He also confirmed that the photos of him wearing the medallion were taken in 2024, a little more than a week before trial.

On cross-examination, the prosecution pointed out inconsistencies between Castro’s testimony and his prior statements to the police. Castro said he could not recall or denied a number of statements he had previously made to a detective, including the following: he told the man with the chain to give it back while he was still inside the nightclub; his girlfriend told the security guard that Castro was drunk when he started sending her more drinks; two security guards talked to Castro about being drunk; Castro did not drive his car the day of the robbery because it did not have oil; Castro was waiting downstairs for his girlfriend and her friend to walk them to their car; Castro’s chain and medallion were stolen when his truck was broken into in Los Angeles; Castro lent his chain to a friend, who went to Mexico; the man in the yellow jacket was homeless.

Castro agreed he knew his chain was in Mexico before speaking with any of the detectives and that he told a detective he would give the chain to him once his friend returned from Mexico. After the police found J.A.’s chain in Castro’s home, Castro said he did not want “any trouble with police” and, “ ‘[i]f the guy says it’s his necklace, you can give it to him but if he says it’s not his, I want it.’ ” The prosecution confirmed, however, that at the time of the search, Castro believed his chain was in Mexico.

When the prosecution asked Castro about the man in the yellow jacket, Castro denied knowing him. After reviewing the video of the encounter with J.A., Castro agreed that he saw himself making a hand gesture to the man in the yellow jacket after J.A. handed over the chain, but denied that he told the man to go with him or that the man left with him.

In rebuttal, the prosecution called a detective to the stand. The detective testified that, during his interview with Castro, Castro said his chain was stolen from his truck in Los Angeles. The prosecution also played two videos of Castro's interview with the detective.³ In the videos, Castro told the detective: he was at the nightclub with a friend; his "wife"⁴ (with whom he was fighting) and her friend arrived and he bought them drinks; he told the men that he was "with [his] lady" and did not want problems; he "had lost a chain" and "saw that [he] didn't have it" and told the man with glasses to give it back to him, which he did; Castro decided to leave because he "didn't want to have problems"; he went down in the elevator and saw a homeless man with a yellow jacket and an orange jacket; he waited to walk his girlfriend and her friend to their car because he believed they were drunk; Castro said "that's my chain," and asked the man with glasses to give it to him; Castro's chain had previously been stolen in Los Angeles out of his truck, and he ran into "those guys" in a club there; he asked the man wearing glasses to give the chain back to him, which the man did;⁵ Castro walked away; Castro did not

³ The interview was conducted in a combination of English and Spanish. The jury was provided with transcripts of the videos that contained Spanish statements on the left side of the page and the English translation on the right side of the page. The detective testified that the transcripts contained the correct translation from Spanish to English.

⁴ It appears Castro was referring to his girlfriend.

⁵ Castro did not explain why his statement regarding the location of the taking changed from his earlier statement that he took the chain inside the nightclub.

move his car that day because it did not have oil in it; he did not have his chain because he lent it to a friend, who went to Mexico;⁶ and he would show the chain to the detective when his friend returned from Mexico.

C. *An Investigating Police Officer's Testimony*

Sacramento County Police Officer Jimmy Khang investigated the robbery. J.A. told Officer Khang that Castro got kicked out of the nightclub but came back approximately one hour later, standing downstairs outside the nightclub. J.A. was on the balcony when he heard Castro yelling from downstairs and saw him lift his shirt. J.A. saw something in Castro's waistband but he was not sure exactly what it was. J.A. went downstairs "to confront" Castro. Officer Khang confirmed that in the video of the interaction between Castro and J.A., he did not see a firearm. Officer Khang believed J.A.'s statement was inconsistent with the video but he did not confront J.A. regarding the discrepancy because "the video only captured a small snippet of what happened."

D. *A Nightclub Security Officer's Testimony*

A security officer at the nightclub testified that he recalled checking Castro for weapons and contraband at the front door on the day of the robbery and found only a bulky black cell phone case on his hip. Castro was in line with a man wearing glasses and "a flashy chain"—the man (i.e., J.A.) later came back and claimed to have been robbed. J.A. became overly intoxicated and began bumping into other patrons; J.A. was asked to leave. Castro chose to go with J.A.

After learning of the robbery, the security officer performed his own investigation. He reviewed security footage and did not see Castro leaving the general plaza area outside the nightclub, going into any bushes, or going to a car. He did not observe Castro

⁶ Castro did not explain how he retrieved his chain after it was allegedly stolen and before he purportedly lent it to his friend.

going anywhere to get a firearm or pulling out a firearm. He also did not see J.A. taking off the chain and giving it to Castro.

III

The Trial Court's Denial of Castro's Mistake of Fact Instruction Request

Castro requested that the trial court give the jury a mistake of fact instruction pertaining to his defense that he thought he was taking back his own property from J.A. The trial court denied the request, explaining that it was instructing the jury on the claim of right defense based on Castro's assertion of mistake of fact and further instruction as to the mistake of fact defense would be duplicative of that instruction.

The jury was instructed pursuant to CALCRIM No. 1863 on the claim of right defense. Under that instruction, “ ‘a defendant's good faith belief, even if mistakenly held, that he has a right or claim to property he takes from another negates the felonious intent necessary for conviction of theft or robbery.’ ” (*People v. Anderson* (2015) 235 Cal.App.4th 93, 99.) The instruction further states, in pertinent part, that the defense “does not apply if the defendant attempted to conceal the taking at the time it occurred or after the taking was discovered.” (CALCRIM No. 1863.)

The CALCRIM No. 3406 mistake of fact instruction requested by Castro “provides that the defendant is not guilty of the charged crime if he or she lacked the mental state required to commit the crime because of a mistaken belief or lack of knowledge.” (*People v. Hendrix* (2022) 13 Cal.5th 933, 938.) The instruction states the defendant did not have the intent or mental state required to commit the charged crime “when the defendant holds a mistaken belief in a fact or set of circumstances which, if existent or true, would render the defendant's otherwise criminal conduct lawful.”⁷ (*People v. Lawson* (2013) 215 Cal.App.4th 108, 111.)

⁷ CALCRIM No. 3406 advises the jury in pertinent part that, “[i]f the defendant's conduct would have been lawful under the **facts** as (he/she) [reasonably] believed them to

IV

The Verdict, Sentence, and Appeal

The jury found Castro guilty of second degree robbery. The trial court sentenced Castro to the midterm of three years in prison. Castro appeals.

DISCUSSION

“Robbery is the felonious taking of personal property in the possession of another, from his person or immediate presence, and against his will, accomplished by means of force or fear.” (Pen. Code, § 211.) This case turned on whether Castro took J.A.’s chain and medallion against his will by means of force or fear because there was no dispute that Castro took J.A.’s personal property from his person. In essence, the jury had to decide whether it believed J.A.’s and D.R.’s version of the events or Castro’s version and his testimony as to his belief that he was taking back the chain and medallion he purportedly owned prior to the robbery.

Castro advances two claims of prejudicial error: (1) the trial court negated his defense by refusing to give the mistake of fact instruction in addition to the claim of right instruction as to his belief that he was taking back his own property; and (2) the trial court abused its discretion by admitting J.A.’s testimony regarding the man in the yellow jacket’s statement. We do not address either asserted error because, assuming but not deciding whether error occurred, any error was harmless.

be, (he/she) did not commit _____ *<insert crime[s]>*” and, “[i]f you find that the defendant actually believed that _____ *<insert alleged **mistaken facts**>* [and if you find that belief was reasonable], (he/she) did not have the specific intent or mental state required for _____ *<insert crime[s]>*.” (Boldface added.)

I

Mistake of Fact Instruction

“Error in failing to give a mistake of fact instruction[, assuming but not deciding one occurred,] is reviewed under *People v. Watson* (1956) 46 Cal.2d 818, 836 . . . ; that is, asking the question of whether upon review of the entire record it appears reasonably probable defendant would have obtained a more favorable result absent the error.” (*People v. Speck* (2022) 74 Cal.App.5th 784, 792-793.) “In evaluating what a jury is likely to have done in the absence of the error we ‘ “may consider, among other things, whether the evidence supporting the existing judgment is so *relatively* strong, and the evidence supporting a different outcome is so *comparatively* weak, that there is no reasonable probability the error of which the defendant complains affected the result.” [Citation.] “There is a reasonable probability of a more favorable result within the meaning of *Watson* when there exists ‘at least such an equal balance of reasonable probabilities as to leave the court in serious doubt as to whether the error affected the result.’ ” ’ ” (*Id.* at p. 793.) Based on the evidence before the jury and the jury’s verdict, it is not reasonably probable that Castro would have obtained a more favorable result absent the alleged instructional error.

First, the verdict shows that the jury rejected Castro’s testimony and found him not credible both as to the robbery element of force or fear and in the context of his claim of right defense, which required he prove that he had a good faith belief in his right to the jewelry and openly took the jewelry, without concealment. (CALCRIM No. 1863.) As to the element of force or fear, under Castro’s version of the events, J.A. willingly handed over his property after Castro and J.A. debated ownership in the jewelry. By convicting Castro of robbery, the jury rejected Castro’s testimony and found the taking was indeed “accomplished by means of force or fear.” (Pen. Code, § 211.) The jury also rejected Castro’s testimony pertaining to the claim of right defense, meaning that it either rejected the notion that Castro took the jewelry with a good faith belief that the jewelry was his or

that he did not conceal the taking. The evidence strongly supports the jury's rejection of Castro's testimony.

Plainly put, Castro's story did not add up. He testified that J.A. was drunk and aggressive that evening and came downstairs "to confront" Castro when J.A. was kicked out of the nightclub. After Castro told J.A. that he was wearing Castro's stolen jewelry, J.A. disagreed and argued that the jewelry was his. As Castro acknowledged, the jewelry at issue was "pretty rare" and "unique." J.A. testified the jewelry was worth approximately \$15,000.

Castro's story that a drunk, aggressive, confrontational stranger voluntarily handed over a \$15,000 rare and unique chain and medallion after Castro purportedly rightfully asserted his ownership in the property defies logic. Coupling Castro's absurd story with his evasive testimony and his vacillating⁸ and contradictory statements in the interview with a detective, there is no reasonable probability that the jury would have believed Castro's mistake of fact defense, which required that he have an actual, if unreasonable, belief that the jewelry was his (CALCRIM No. 3406), had the mistake of fact instruction been given in addition to the claim of right instruction.

Second, the jury's finding that the taking occurred by force or fear shows that the jury believed J.A.'s version of the events because, in contrast to Castro's testimony, J.A. testified that Castro took the jewelry after threatening J.A. with a firearm. This is important because J.A. testified that Castro said, "somebody had to pay for the mistakes of [J.A.'s] brother-in-law," before pushing the firearm into J.A.'s side and demanding that he hand over the chain and medallion. Castro's statement was punitive in nature,

⁸ The vacillating statements include the location of the robbery (i.e., Castro told the detective he took the jewelry inside the nightclub but later changed his story to him taking the jewelry outside the nightclub) and whether his chain and medallion were stolen, lost, or lent to his friend.

indicating that he took the property in retaliation for D.R. dancing with his girlfriend. The statement was inconsistent with someone who mistakenly believed that he was taking back his own property.

Third, the defense introduced no photos of Castro wearing his medallion *prior* to the robbery. There was thus no physical evidence corroborating Castro's assertion that he owned a medallion like J.A.'s medallion before the robbery. Based on the foregoing, the evidence supporting the judgment is so relatively strong and the evidence supporting application of the mistake of fact defense so comparatively weak, that there is no reasonable probability the alleged instructional error affected the result.

II

Admission of Hearsay

Castro argues there is a reasonable probability he would have received a more favorable result absent admission of J.A.'s testimony regarding the man in the yellow jacket's statement because the statement served to impeach his testimony that he did not know the man, implied the man was "an enforcer," and "made it look as if [Castro] had a premeditated plan to steal the items." Castro asserts the question of prejudice must be analyzed under the framework of *Chapman v. California* (1967) 386 U.S. 18, 24 because the error violated his state and federal constitutional rights to due process and confrontation and cross-examination of witnesses against him. The People disagree, asserting the question of prejudice should be analyzed under the framework of *People v. Watson, supra*, 46 Cal.2d at page 836 because no federal constitutional error occurred. We do not resolve the disagreement regarding the standard of review because we find that, even if the stricter *Chapman* standard applies, Castro has failed to show prejudice.

Under *Chapman*, we must determine whether it is clear beyond a reasonable doubt that the asserted evidentiary error did not contribute to the verdict. (*People v. Albarran* (2007) 149 Cal.App.4th 214, 229.) We conclude the People have met that standard.

First, the challenged statement did not strike at the heart of Castro's defense, as he asserts. Castro's defense was that he was acting under a claim of right based on a mistake of fact. Even if the jury believed the man in the yellow jacket was a coconspirator and purported "enforcer," that would not have negated Castro's claim of right defense based on mistake of fact, which was presented to the jury. (See *People v. Williams* (2009) 176 Cal.App.4th 1521, 1528-1529 [claim of right defense extends to accomplice who assists the principal in repossessing his own property].)

Second, even though the statement indicated that Castro knew the man in the yellow jacket, as he asserts, the statement did not contribute to the verdict because, absent the statement, there was other strong evidence that Castro knew the man. J.A. testified that Castro ran away with the man following the robbery and D.R. testified that Castro ran away with a friend. Castro also told a detective that he was at the nightclub with a friend. Only one other person besides J.A. and Castro was shown in the video of the robbery—the man in the yellow jacket. That man appeared comfortable stepping into the conversation between J.A. and Castro and saying something directly to J.A.'s face, but J.A. did not know the man. The jury was further able to observe for itself Castro's hand gesture in the video, which looked like a "let's go" signal to the man in the yellow jacket. It was Castro's inconsistent statements to the police and his story presented at trial that impeached his testimony and showed he was not credible.

Third, J.A.'s testimony regarding the man's statement was limited to that J.A. needed to hand over the property or Castro would shoot him. J.A., however, also testified that Castro said the same thing to him. Fourth, we find no merit in Castro's argument that the statement indicated that Castro had a premeditated plan to steal the items. The statement at most indicates that the man was known to Castro and assisted with or supported his actions. Further, Castro points to no statement by the prosecution that the man's statement indicated that Castro premeditated the robbery, nor have we found any such statement in the record.

Based on the foregoing and the prejudice analysis *ante*, and after examining the entire cause, including the evidence and considering all relevant circumstances, we determine the evidentiary error, assuming error occurred, was harmless beyond a reasonable doubt. (*People v. Birdsall* (2022) 77 Cal.App.5th 859, 868-869.)

DISPOSITION

The judgment is affirmed.

/s/
BOULWARE EURIE, J.

We concur:

/s/
DUARTE, Acting P. J.

/s/
KRAUSE, J.