Filed 9/21/06 P. v. Hollie CA2/7

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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. RODNEY D. HOLLIE, Defendant and Appellant.	B175934 (Los Angeles County Super. Ct. No. NA054828)

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

The Cochran Firm and Jeffrey Kravitz for Defendant and Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Atttorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, Susan D. Martynec, Suzann E. Papagoda and Ryan McCarroll, Deputy Attorneys General, for Plaintiff and Respondent.

Appellant Rodney D. Hollie, a minor, appeals his conviction for one count of murder, one count of attempted murder, and two counts of robbery. Appellant claims the court erred in denying: (1) a motion for severance of the charges; (2) a motion to suppress evidence of a confession obtained in interrogation; (3) a motion for entry of judgment of acquittal for insufficiency of evidence; and (4) a motion for new trial. We affirm the judgment of the court in all regards.

FACTS AND PROCEEDINGS BELOW

An information filed by the District Attorney of Los Angeles County charged appellant in count 1 of murder, in count 3 of attempted murder, and in counts 2 and 4 of robbery.[1] As to the murder charge, a special circumstance of murder in the commission of a robbery was alleged.[2] Appellant pled not guilty and the court denied a motion to sever the counts.

At approximately 1:40 a.m. on July 12, 2002, James Treder and Tyese Givens were approached by two young African American men who had exited a green four-door Saturn in the vicinity of the parked black 2002 Mercedes CL500 the two occupied. The young man who remained behind the principal at the time of the initial confrontation had a 'big afro' of about four or five inches. A July 19, 2002, photograph of appellant demonstrates he wore his hair in a four to five-inch afro as of that date. After a brief struggle taking place through the driver's side window of the Mercedes, one of the young men shot and killed James Treder. Appellant's left palm print was found on the driver's side door of the black Mercedes involved in the incident. A day before the murder,

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[1] Count 1 was made pursuant to Penal Code section 187, subdivision (a), count 3 pursuant to Penal Code sections 664 and 187, counts 2 and 4 pursuant to Penal Code section 211. Appellant was also charged in counts 6 through 9 of kidnapping to commit robbery in violation of Penal Code section 209, subdivision (b)(1) and in counts 10 through 12 of robbery in violation of Penal Code section 211. The trial court declared a mistrial after the jury deadlocked as to counts 6 through 9. The trial court granted the People's motion to dismiss counts 10 through 12.

[2] Within the meaning of Penal Code section 190.2, subdivision (a)(17).

Treder had the same black Mercedes thoroughly detailed, and the car was largely inaccessible to the public after the detailing and before the crime.

On June 30, 2002, Felipe Gonzalez was in his car in Long Beach when four African American males in a four-door gray Honda drove near the right side of his car. Gonzalez heard two or three gunshots and realized he had been shot. Surgeons recovered a .40 caliber bullet from the right side of Gonzalez's stomach.

On the same day at a similar time in the evening, Allan Calulot was sitting in his car in Long Beach when a dark-colored Honda Civic pulled up parallel to his car. A Black male exited the car and pointed a gun in Calulot's face, demanding his wallet. The driver of the car also yelled for Calulot to give up his wallet.

Detectives Conant and Mercado separately interviewed appellant while he was in custody at the Long Beach Police station. Appellant signed forms acknowledging he had read his *Miranda* rights, understood those rights, and wished to continue talking to the detectives. According to Detective Conant, during the course of the interrogation, appellant admitted to being the driver in the attempted murder of Felipe Gonzalez and the robbery of Allan Calulot. Detective Conant testified appellant declared the Gonzalez shooting involved a .40 caliber gun and the shooting occurred after the boys perceived what they believed to be Gonzalez flashing gang signs. Conant further testified appellant identified a photograph of a gray Honda Civic as being the car he had driven during the commission of the crimes. There is contrary testimony as to whether appellant requested to speak to his father during the interrogation. Both detectives testified no such request occurred while appellant contends the officers denied his multiple requests to speak with a parent.

As a matter of credibility, the court was persuaded by the testimony of the two interrogating detectives stating appellant made no requests to see a parent. The court made a further finding based on the totality of the circumstances the appellant freely and voluntarily made his statements even if appellant made a request to speak to a parent. Accordingly, the court denied the motion to suppress. At the close of evidence, the court

denied appellant's 1118.1 motion and motion for a new trial. A jury convicted appellant of counts 1-4 and appellant timely filed a notice of appeal.

DISCUSSION

I. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION WHEN IT DENIED APPELLANT'S MOTION TO SEVER BECAUSE THE OFFENSES WERE OF THE SAME CLASS, HAD SUFFICIENT SIMILARITIES TO JUSTIFY JOINDER, AND THE DEFENDANT DID NOT ESTABLISH SUFFICIENT PREJUDICE TO GRANT SEVERANCE.

Appellant asserts the trial court improperly denied his motion for severance of the charged offenses because the joint trial of the charges prejudiced him.[3] A single accusatory pleading may, in separate counts, charge two or more offenses connected in their commission or of the same class, and if two or more accusatory pleadings are filed in such cases in the same court, the court may order them to be consolidated.[4] In this case, the offenses charged were of the same class of crimes and included substantial elements of similarity, including the use of a handgun and an automobile as a means of approaching the victims. As such, the statutory joinder requirements were met.

When, as here, the statutory requirements for joinder are met, a defendant must make a clear showing of prejudice to establish the trial court abused its discretion in denying the defendant's severance motion.[5] Appellant has not made a sufficiently clear showing of prejudice. None of the crimes was particularly inflammatory compared to the other, and the evidence of appellant's involvement in each crime was substantial enough that such considerations do not outweigh the benefits of joinder.[6]

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[3] See, e.g., *People v. Stitely* (2005) 35 Cal.4th 514, 531 [a motion for severance should be granted where a substantial danger of prejudice compelled severance].

[4] Penal Code section 954.

[5] *People v. Mendoza* (2000) 24 Cal.4th 130, 160.

[6] See, e.g., *People v. Bean* (1988) 46 Cal.3d 919, 935-938 [despite a lack of cross-admissible evidence, the significant benefits to the state of the joinder outweighed any

The testimony of Tyese Givens coupled with the palm print found on the Mercedes was evidence sufficient to demonstrate appellant's involvement in the crimes charged under counts 1 and 2. Similarly, appellant's admissions during interrogation were substantial evidence of his involvement in counts 3 and 4. We are sensitive to the ideal the joinder laws may not be used to deny a defendant's right to due process and a fair trial, but we are convinced appellant's rights have been respected in this case.[7]

II. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION WHEN IT DENIED DEFENDANT'S MOTION TO SUPPRESS BECAUSE IT WAS REASONABLE TO MAKE A CREDIBILITY FINDING IN FAVOR OF THE DETECTIVES AND AN ALLEGED VIOLATION OF WELFARE AND INSTITUTIONS CODE SECTION 627 WAS NOT A SUFFICIENT REASON TO GRANT THE MOTION.

A. The Court Made a Reasonable Credibility Finding Appellant Did Not Request to Speak with His Parents.

Appellant contends the interviewing detectives denied repeated requests to contact his father during the course of interrogation and therefore the court should have granted his motion to suppress his statements after the alleged denials. Each of the interrogating detectives testified appellant made no request to speak to a parent. The trial court denied the motion to suppress based on the judge believing the detectives' testimony appellant never made a request to speak to a parent.

In reviewing a ruling on a motion to suppress evidence, the appellate court defers to the trial court's findings of fact, whether express or implied, if those findings are supported by substantial evidence.[8] When the issue turns on a credibility determination, as it does in this case, the Court of Appeal is particularly apt to defer to the lower court

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claimed prejudice on the part of the defendant]; *People v. Davis* (1995) 10 Cal.4th 463, 508-509 [there is no gross unfairness in joining charges when there is no reasonable likelihood a defendant would have avoided conviction on any of the charges individually].

[7] *Williams v. Superior Court* (1984) 36 Cal.3d 441, 452.

[8] *People v. Murphy* (2005) 37 Cal.4th 490, 496.

because ". . . evaluating [such things as] nonverbal factors in determining the credibility of witnesses is a task uniquely for the trial court, as such factors are not apparent from the face of the record."[9]

It was reasonable for the court to rely on the testimony of the detectives. Appellant does not impeach the credibility of Detectives Conant or Mercado in any way other than to imply their testimony was contrary to appellant's as to a request to speak to a parent. As such, we affirm the denial of the motion to suppress.[10]

B. The Motion to Suppress Was Properly Denied Despite an Alleged Violation of Welfare and Institutions Code Section 627.

Appellant argues the court should have suppressed the statements in question based on an alleged violation of Welfare and Institutions Code section 627.[11] Once

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[9] *People v. Weaver* (2001) 26 Cal.4th 876, 924 [the trial court's credibility determination in favor of a police officer's testimony was upheld despite the defendant's conflicting testimony being corroborated by some of the defendant's family members]; see also *People v. Waidla* (2000) 22 Cal.4th 690, 731-732 [when an officer and a defendant give conflicting testimony regarding a *Miranda* waiver, the ultimate question goes to credibility].

[10] Because we appropriately defer to the trial court's credibility judgment and conclude appellant did not request to speak with his parents at any time before or during the interrogation, we need not and do not reach the court's alternative ground for ruling appellant's confession admissible. That second ground was the trial court's conclusion appellant's statement was voluntary and admissible even if he had requested to speak with his parents, based on an assessment of the "totality of the circumstances."

[11] Welfare and Institutions Code section 627 concerns notice to parents or guardians when a juvenile is taken into custody. This section states: "(a) When an officer takes a minor before a probation officer at a juvenile hall or to any other place of confinement pursuant to this article, he shall take immediate steps to notify the minor's parent, guardian, or a responsible relative that such minor is in custody and the place where he is being held. [¶] (b) Immediately after being taken to a place of confinement pursuant to this article and, except where physically impossible, not later than one hour after he has been taken into custody, the minor shall be advised and has the right to make at least two telephone calls from the place where he is being held, one call completed to this parent . . . and another call completed to an attorney. . . ."

again, we conclude the trial court did not abuse its discretion when it denied the motion to suppress.

Welfare and Institutions Code section 627 requires notification of a minor's parents when the minor is taken ". . . before a probation officer at a juvenile hall or to any other *place of confinement* . . . ."[12] The focus of this provision is upon permanent detention at a juvenile hall or elsewhere, and not upon temporary custody at a police station. Even assuming arguendo the officers failed to comply with the statute and appellant's temporary custody at the police station was a place of confinement for the purposes of section 627, appellant has not demonstrated the alleged violation requires exclusion of his statements.

Appellant argues the alleged violation of Welfare and Institutions Code section 627 rendered his confession inadmissible, but makes no showing the denial of the right induced him to make the confessions at issue or his initial arrest was unlawful. The record demonstrates the officers read appellant his *Miranda* rights, appellant understood those rights, and appellant was aware through previous contacts with the police he had the right to contact his attorney before talking with officers. As such, we conclude any alleged violation of section 627 was not prejudicial to appellant and did not induce him to make the confessions at issue.

California continues to reject a rule barring confessions obtained during an illegal detention.[13] In an analogous context, for instance, this principle has been applied to confessions made during detentions violating Welfare and Institutions Code section 626 unless the juvenile's initial arrest was illegal.[14] As a reviewing court, "we are bound by

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[12] Welfare and Institutions Code section 627, subdivision (a), italics added.

[13] 1 Witkin, California Evidence (4th ed. 2000) Hearsay, section 74, pages 767-768, citing *People v. Grace* (1958) 166 Cal.App.2d 68, 79.

[14] See, e.g., *In re Michael E.* (1980) 112 Cal.App.3d 74, 79 [confessions made by a minor who had been held in violation of Welfare and Institutions Code section 626 were nevertheless admissible because there was no contention the minor's initial arrest was illegal]; *In re Darren W.* (1981) 118 Cal.App.3d 969, 971 ["In the absence of any evidence . . . appellant was denied a fair trial or otherwise prejudiced as a result of [a violation of the Welfare and Institutions Code], such fact would not be determinative.

the decision of the Supreme Court holding . . . the mere illegal detention of a person under arrest . . . is not ground for excluding a confession."[15]

California's rejection of the rule excluding any statements made during an illegal detention also applies to detentions violating section 627. Violation of section 627 does not render inadmissible confessions obtained during those detentions. In *People v. Castille*, the court addressed the issue by declaring: "The Legislature did not include [an evidentiary exclusion] provision in connection with section 627. Instead, the statute provides that its violation is punishable as a misdemeanor.[16] We will not, and cannot, do what the Legislature could have, but did not do. Failure to comply with section 627 does not require or authorize the suppression of subsequently acquired statements."[17] The *Castille* court's rationale likewise applies to appellant's statements in this case. While other remedies may exist for an alleged violation of section 627, exclusion of appellant's statements is not among them. Accordingly, we find the court was within its discretion when it denied appellant's motion to suppress evidence.

III. THE TRIAL COURT DID NOT ERR IN DENYING THE 1118.1 MOTION OR THE MOTION FOR NEW TRIAL BECAUSE THERE WAS SUFFICIENT EVIDENCE FOR A REASONABLE JURY TO FIND APPELLANT GUILTY.

Appellant argues the trial court should have granted the motion for new trial and the 1118.1 motion for entry of judgment of acquittal for insufficient evidence because

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. . . California has never adopted the . . . rule that any confession obtained during an illegal detention is ipso facto inadmissible"].

[15] 1 Witkin California Evidence, *supra*, Hearsay, section 74, page 768, citing *People v. Grace* (1958) 166 Cal.App.2d 68, 79.

[16] Welfare & Institutions Code section 627, subdivision (b) provides in pertinent part: "Any public officer or employee who willfully deprives a minor taken into custody of his right to make such telephone calls is guilty of a misdemeanor.

[17] *People v. Castille* (2003) 108 Cal.App.4th 469, 490.

there was insufficient evidence to prove each element of the charged offenses.[18] We affirm the court's denials of the motions.

The standard applied by a trial court in ruling upon a motion for judgment of acquittal pursuant to Penal Code section 1118.1 is the same as the standard applied by an appellate court in reviewing the sufficiency of the evidence to support a conviction, that is, whether from the evidence including all reasonable inferences to be drawn therefrom, there is substantial evidence supporting each element of the offense charged.[19] A review of the record leads us to the conclusion there was substantial evidence sufficient to establish each element of the offenses charged.

Regarding counts 1 and 2, appellant argues even if he were the other person standing somewhere near the shooter, this would not provide substantial evidence of being an aider and abettor. To be liable as an aider or abettor there must be proof appellant acted with knowledge of the criminal purpose of the perpetrator and with an intent or purpose of committing, encouraging, or facilitating the commission of the target offense.[20] The extent of a defendant's knowledge is a question of fact for the jury's consideration.[21] The facts of this case show James Treder paid to have the black Mercedes involved in the crimes detailed the day before his murder and the car was largely inaccessible between the detailing and the time of the crimes. The presence of

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[18] Penal Code section 1118.1 states: "In a case tried before a jury, the court on motion of the defendant . . . at the close of the evidence on either side and before the case is submitted to the jury for decision, shall order the entry of a judgment of acquittal of one or more of the offenses charged in the accusatory pleading if the evidence then before the court is insufficient to sustain a conviction of such offense or offenses on appeal."

[19] *People v. Huggins* (1997) 51 Cal.App.4th 1654, 1656.

[20] *People v. Beeman* (1984) 35 Cal.3d 547, 559; *People v. Etie* (1953) 119 Cal.App.2d 23, 28

[21] See, e.g., *People v. Durham* (1969) 70 Cal.2d 171, 181.

appellant's palm print on the car window along with the testimony of Ms. Givens was substantial evidence sufficient for a reasonable jury to convict appellant.[22]

As to counts 3 and 4, appellant argues he could not possibly have been an aider and abettor to the spontaneous action of a passenger in the car. Again, the extent of a defendant's knowledge is a question of fact for the jury.[23] Appellant's testimony admitting to being the driver in the commission of both offenses, his accurate description of the type of bullet used as a .40 caliber, the statement of motive for the attempted murder being what was perceived to be the showing of gang signs, and the identification of the grey Honda Civic as being the vehicle used in both crimes provided substantial evidence sufficient for a reasonable jury to conclude appellant was an aider and abettor. We affirm the denial of the motions.

DISPOSITION

The judgment is affirmed.

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JOHNSON, J.

We concur:

PERLUSS, P. J. WOODS, J.

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[22] Appellant's reliance on the holding in *Mikes v. Borg*, 947 F.2d 353, 357 (9th Cir. 1991) is misplaced because unlike the facts in *Mikes*, appellant's palm print was not the sole evidence relied upon for conviction.

[23] *People v. Durham, supra*, 70 Cal.2d 171, 181.