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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

ENRIQUE MONTOYA MARTIN,

Defendant and Appellant.

E038962

(Super.Ct.No. RIF116345)

OPINION

APPEAL from the Superior Court of Riverside County. Russell F. Schooling,
Judge. Affirmed.

James M. Crawford, under appointment by the Court of Appeal, for Defendant and
Appellant.

Bill Lockyer, Attorney General, Mary Jo Graves, Chief Assistant Attorney
General, Gary W. Schons, Senior Assistant Attorney General, Jeffrey J. Koch, and James
D. Dutton, Supervising Deputy Attorneys General, for Plaintiff and Respondent.

A jury found defendant and appellant, Enrique Montoya Martin (hereafter defendant) guilty of resisting arrest in violation of Penal Code section 69 (count 1), two counts of battery on a peace officer in violation of Penal Code section 243, subdivision (b) (counts 2 and 3), as lesser included offenses to charged crimes of battery on a peace officer causing injury, and one misdemeanor count of providing false identification to a peace officer in violation of Penal Code section 148.9, subdivision (a) (count 4). After defendant waived a jury, the trial court found true the special allegations that defendant had served three prior terms in prison within the meaning of Penal Code section 667.5, subdivision (b). Based on the guilty verdicts and true findings, the trial court sentenced defendant to serve a total term of six years in state prison.

On appeal, defendant asks this court to review the information provided to the trial court in response to defendant's motion for production of the personnel records of the arresting officers and to determine whether the trial court properly found that the records did not contain discoverable evidence. Defendant also contends that the trial court erred by excluding evidence that would explain why defendant returned to the United States after being deported. Finally, defendant contends that the upper term sentence the trial court imposed on count 1, defendant's conviction for resisting arrest, depends on facts that were not found true by the jury and therefore violates defendant's Sixth Amendment right to a jury trial.

We conclude, for reasons we discuss below, that defendant's claims are meritless and therefore we will affirm the judgment.

FACTS

On April 18, 2004, at 10:30 p.m., Riverside Police Officers Jones and Morris were conducting a traffic stop when they heard loud music coming from a white Cadillac. The officers contacted defendant, who was the driver of the Cadillac. Defendant did not have any identification, and when asked his name, defendant told the officers he was Heriberto Martin, which is defendant's brother's name. After defendant gave consent, Officer Jones searched the Cadillac and found family court papers that included the name Enrique Martin. Because he believed that defendant was Enrique, not Heriberto, Officer Jones intended to arrest defendant and to that end grabbed defendant's wrist and asked, "Who's Enrique?" Defendant pulled away very violently. According to Officer Jones, "Right after that, the fight was on."

When he pulled away from Officer Jones, defendant spun around and Officer Morris grabbed him. Officer Morris tried to apply a carotid restraint on defendant. The two then fell to the ground. Defendant quickly got up and fought the officers, aggressively throwing punches. Defendant hit Officer Jones with four or five punches, or more. After fighting with the officers, defendant attempted to run away, but was stopped when another officer pulled up and used his vehicle to block defendant's way.

As a result of the altercation with defendant, Officer Jones suffered injuries to his forehead and pinkie finger. His right wrist also was swollen and possibly fractured, which required that he wear a wrist cast for approximately four weeks. Officer Morris had an abrasion on his right knee and his right thumb was jammed during the fight.

Defendant testified at trial and stated in pertinent part that he panicked and tried to run because Officer Jones did not tell defendant he was under arrest when the officer grabbed defendant's arm. As a result, defendant believed that the officer was assaulting him.

Additional facts pertinent to the claims defendant raises on appeal will be discussed below.

DISCUSSION

1.

REVIEW OF IN CAMERA HEARING

Defendant filed a so-called *Pitchess*¹ motion in the trial court in which he requested discovery of the arresting police officers' personnel records. The trial court granted that motion but limited discovery to pertinent details about persons who made or filed complaints against the officers in question "relating to aggressive or physical threatening behavior, violence, or excessive force within the five years prior to [defendant's arrest]." After reviewing the pertinent personnel records in camera, as it was required to do, the trial court found that they did not contain any discoverable information.

At defendant's request, we have reviewed the sealed transcripts of that in camera hearing and conclude that the trial court's determination was correct. The personnel records do not contain any discoverable information.

¹ *Pitchess v. Superior Court* (1974) 11 Cal.3d 531.

2.

EXCLUSION OF EVIDENCE

Over defendant's objection, the trial court permitted the prosecution to present evidence, in the form of testimony by a Homeland Security agent, to show that defendant had been deported from the United States four times between 1994 and 2002. The prosecutor argued that the evidence was relevant to show that defendant had a motive to resist arrest.² After the Homeland Security agent testified, the prosecution moved to exclude any evidence defendant might offer to explain why he had returned to the United States after each deportation.³ In the prosecutor's view, such evidence was not relevant to any issue at trial. The trial court agreed and ruled the evidence was inadmissible. Defendant contends in this appeal that the trial court abused its discretion, and in doing so precluded defendant from presenting a defense at trial. We disagree.

Defendant's lengthy argument to the contrary notwithstanding, defendant's reason for returning to the United States after being deported was not a defense to any charge or relevant to any issue at trial. In contending otherwise, defendant does not demonstrate the relevance of the evidence in question; rather, defendant explains why he wanted to

² Although defendant offered to stipulate that he had been deported four times, the prosecutor declined to enter into such a stipulation, preferring instead to present testimony not only on that issue but also to show that deportees are warned that if they return to the United States "they could be faced with a felony prosecution."

³ Defendant apparently has a child who lives in the United States.

present the evidence at trial.⁴ Nor was such evidence admissible, as defendant contends, as a matter of fairness in light of the prosecution's evidence regarding defendant's deportations. Stated bluntly, the prosecution's evidence was relevant and therefore admissible at trial; defendant's evidence was not. Accordingly, we must reject defendant's claim of error.

3.

SENTENCING ERROR

Defendant contends, by imposing the upper term sentence of three years on count 1, defendant's conviction for resisting arrest in violation of Penal Code section 69, that the trial court violated defendant's Sixth Amendment right to have a jury determine all issues of fact. As the Attorney General points out, the California Supreme Court held in *People v. Black* (2005) 35 Cal.4th 1238, that California's determinate sentencing scheme does not run afoul of the Sixth Amendment and therefore is not impugned by the Supreme Court's decision in *Blakely v. Washington* (2004) 542 U.S. 296.

In his reply brief, defendant concedes that this court is bound by *People v. Black*, *supra*, 35 Cal.4th 1238. Defendant acknowledges that he raises the sentencing issue in order to preserve the claim for further federal review in the event the Supreme Court

⁴ Defendant argues that evidence explaining why he returned to the United States "was relevant to mitigate the effects of the testimony of the Homeland Security agent. Based on this testimony, a jury easily could have inferred that [defendant] continued to come back to the United States for employment or to engage in illicit or unlawful activity. But that was not the case. The defense was denied the ability to present to the jury [defendant's] motive for reentering the country after having been deported. The

[footnote continued on next page]

overrules *People v. Black*. Review of the issue, as defendant correctly notes, is pending before the United States Supreme Court in *People v. Cunningham* (Apr. 18, 2005, A103501) (nonpub. opn.), certiorari granted *sub nom. Cunningham v. California* (2006) ___ U.S. ___ [126 S.Ct. 1329, 164 L.Ed.2d 47]. Accordingly, for the reasons stated in *People v. Black, supra*, we reject defendant’s claim that imposition of the upper term sentence deprived him of his right under the Sixth Amendment to have a jury resolve all factual issues.

DISPOSITION

The judgment is affirmed.

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/s/ McKinster
Acting P.J.

We concur:

/s/ King
J.

/s/ Miller
J.

[footnote continued from previous page]
evidence was relevant and its exclusion denied [defendant] his constitutional right to present a defense.”