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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT

THE PEOPLE,
Plaintiff and Respondent,

v.

DENNIS TAYLOR,
Defendant and Appellant.

H029253
(Santa Clara County
Super.Ct.No. CC578381)

Defendant Dennis Taylor was convicted after a jury trial of possession of a dirk or dagger (Pen. Code, § 12020, subd. (a)(4)),¹ and misdemeanor possession of controlled substance paraphernalia (Health & Saf. Code, § 11364). Thereafter, the court conducted a bench trial and found true the allegation that defendant had suffered six prior “strike” convictions (§§ 667, subds. (b)-(i), 1170.12); it later granted defendant’s motion to strike five of the prior “strikes.” Defendant was sentenced to six years in prison, based upon the court imposing an upper term sentence on the weapon conviction.

Defendant presents two challenges on appeal. First, he claims that the court below abused its discretion by denying his posttrial motion for access to juror contact information to determine whether one or more of the jurors had been improperly influenced. Second, he contends that the court erred in imposing an upper term sentence in violation of his Sixth Amendment right to a jury trial and his Fourteenth Amendment

¹ All further statutory references are to the Penal Code unless otherwise stated.

right to due process. He claims that under *Blakely v. Washington* (2004) 542 U.S. 296 (*Blakely*), he was entitled to have a jury determine any aggravating facts that were used as prerequisites to the imposition of an upper term sentence.

We conclude that the trial court did not abuse its discretion in denying the motion for release of juror information and that such denial did not deprive defendant of his constitutional rights. We hold further, under the California Supreme Court's controlling decision in *People v. Black* (2005) 35 Cal.4th 1238 (*Black*), that there was no *Blakely* error. We therefore affirm the judgment.

FACTS

We present a summary of the evidence from the trial utilizing the applicable standard. We resolve factual conflicts in support of the verdict. (*People v. Holt* (1997) 15 Cal.4th 619, 667-668.)

At approximately 6:30 a.m. on January 14, 2005,² Deputy Sheriff Julio Delleon responded to the location of Prospect and Miller in San Jose where a Valley Transit Authority (VTA) bus was stopped. (Two other peace officers, Deputy Rick Sung and Deputy Suzie Helsey, arrived at the scene shortly after Deputy Delleon.) Deputy Delleon initially spoke with the driver, James Jordan. While they were talking, defendant stepped out of the bus. As he made contact with defendant, Deputy Delleon asked whether "he had any weapon[s] on his person that would either poke or cut [him]." Defendant then completely unzipped his jacket (which had been zipped to his chin), revealing a knife hanging from a chain. The knife was unsheathed. Its blade was double-edged and about three and one-half to four inches in length. The instrument was one commonly referred to as a dagger.

² All dates are 2005 unless otherwise specified.

Deputy Sung took possession of the knife. Deputy Delleon arrested defendant and placed him in handcuffs. Just before he was arrested, defendant made the unsolicited remark that he was carrying the knife for his protection. After defendant was handcuffed, Deputy Delleon searched him and discovered a crack pipe on defendant's person.³

PROCEDURAL BACKGROUND

Defendant was charged by information with possession of a dirk or dagger (§ 12020, subd. (a)(4)), misdemeanor possession of controlled substance paraphernalia (Health & Saf. Code, § 11364), and misdemeanor battery (§§ 242/243, subd. (a)). All three offenses were allegedly committed on January 14, 2005. The information alleged further that defendant had suffered six prior "strike" convictions (§§ 667, subds. (b) - (i), 1170.12).

A jury trial commenced in April as to counts 1 and 2.⁴ After the jury heard evidence over the course of one-half day, and after deliberating for approximately one and one-quarter hours, the jury returned verdicts of guilty as to both counts. After a bench trial the next day (April 27), the court found true each of the allegations in the information concerning defendant's prior "strike" convictions.

On May 3, defendant filed a motion for access to juror records. The court heard and denied that motion.⁵ On July 22, the court heard defendant's motion to strike the prior "strike" allegations pursuant to *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497. The court granted the *Romero* motion as to all but one of the "strike" convictions. Immediately thereafter, defendant was sentenced to the upper term of six

³ The parties stipulated that defendant was lawfully detained when he stepped out of the VTA bus that morning.

⁴ At the commencement of the trial, the court granted the prosecution's motion to dismiss the misdemeanor battery charge (count 3).

⁵ Further particulars regarding the motion appear in part II, section A, of the Discussion, *post*.

years in prison in connection with the conviction of possession of a dirk or dagger; the court imposed no jail sentence on the misdemeanor conviction. Defendant filed a timely notice of appeal from the judgment.

DISCUSSION

I. *Contentions On Appeal*

Defendant asserts two challenges to the judgment. These claims of error are as follows:

1. The judgment must be reversed because the court abused its discretion in denying defendant's motion for release of personal juror information. Furthermore, the denial of the motion resulted in defendant being deprived of his constitutional right to receive a trial by an impartial jury under the Sixth and Fourteenth Amendments. In the event this latter argument is deemed to have been forfeited because it was not raised below, defendant contends that he was deprived of effective assistance of counsel and the issue should be considered on that basis.

2. The court imposed an upper term sentence for the felony conviction that was based upon aggravating circumstances that were not part of the jury's factual findings. Under *Blakely, supra*, 542 U.S. 296, this sentence violated defendant's right to a jury trial guaranteed under the United States and California Constitutions.

We discuss both of these claims of error, *post*.

II. *Motion For Release Of Personal Juror Information*

A. *The Motion*

On May 3, defendant filed a motion to obtain access to juror information. He cited Code of Civil Procedure section 206, subdivision (g) and section 237 (discussed in pt. II, sec. B, *post*) in support of the request. The motion was accompanied by a declaration of defense counsel, Ross McMahon. In that declaration, McMahon stated that on April 28 (i.e., two days after the jury returned its verdict), he received a message on his voice mail from an unnamed person who said that he had been a juror in

defendant's trial. The caller stated: " 'I know you have the ability to contact jurors after the case . . . I want to ask you to call [J]uror [N]umber [T]wo . . . [H]e might have been pressured.' " McMahon then declared that "[t]he caller then hung up the phone without leaving any identifying information." Defense counsel argued in the motion that the message gave rise to a "situation [that] could amount to juror misconduct and hence provide the basis for a motion for a new trial," thereby necessitating the release of personal contact information pertaining to the 12 jurors.

The motion was orally opposed by the People, who argued that (1) McMahon's declaration contained "pure speculation," (2) the verdict was rendered in less than an hour and a half, and (3) defendant had failed to show good cause for release of the juror information.

The court agreed that defendant had failed to meet its burden of showing good cause for release of the information. It noted that it was "somewhat curious" that the anonymous caller stated " 'I know you have the ability to contact jurors after the case,' " since the court had "informed all the jurors that the [records containing their personal information] would be sealed and that there was a specific process that was required before that information [could] be made known" The court also "[found] it unusual to conclude that the [f]oreperson [Juror Number Two] was pressured in the matter of one hour and 15 minutes." And it noted that the statement that " '[J]uror [N]umber [T]wo . . . might have been pressured' " was "highly speculative."

B. *Discussion of Denial of Motion*

Code of Civil Procedure section 206, subdivision (g), provides that after the jury in a criminal case is discharged, a defendant may petition the court for an order releasing information concerning the jurors' names, addresses, and telephone numbers for the

purpose of preparing a motion for new trial.⁶ That statute references Code of Civil Procedure section 237, which provides in part that after records containing criminal jurors' personal identification information are ordered sealed at the conclusion of trial, any person may make a motion to obtain access to the sealed records, accompanied by a showing of good cause. (Code Civ. Proc., § 237, subd. (b).)⁷

These statutes were enacted "to protect the safety and privacy of jurors." (*Townsel v. Superior Court* (1999) 20 Cal.4th 1084, 1091 (*Townsel*); see also *People v. Jefflo* (1998) 63 Cal.App.4th 1314, 1322, fn. 8 (*Jefflo*): "[T]he Legislature's concern for juror protection [is] clearly manifested in the current versions of [Code of Civil Procedure] sections 206 and 237.") But as our Supreme Court has also observed, prior to the enactment of Code of Civil Procedure sections 206 and 237, courts were not powerless to protect jurors following their discharge: "Despite the absence of any affirmative

⁶ "Pursuant to [Code of Civil Procedure] Section 237, a defendant or defendant's counsel may, following the recording of a jury's verdict in a criminal proceeding, petition the court for access to personal juror identifying information within the court's records necessary for the defendant to communicate with jurors for the purpose of developing a motion for new trial or any other lawful purpose. This information consists of jurors' names, addresses, and telephone numbers. The court shall consider all requests for personal juror identifying information pursuant to [Code of Civil Procedure] Section 237." (Code Civ. Proc., § 206, subd. (g).)

⁷ "Any person may petition the court for access to these [juror information] records. The petition shall be supported by a declaration that includes facts sufficient to establish good cause for the release of the juror's personal identifying information. The court shall set the matter for hearing if the petition and supporting declaration establish a prima facie showing of good cause for the release of the personal juror identifying information, but shall not set the matter for hearing if there is a showing on the record of facts that establish a compelling interest against disclosure. A compelling interest includes, but is not limited to, protecting jurors from threats or danger of physical harm. If the court does not set the matter for hearing, the court shall by minute order set forth the reasons and make express findings either of a lack of a prima facie showing of good cause or the presence of a compelling interest against disclosure." (Code Civ. Proc., § 237, subd. (b).)

statutory power, trial courts exercised their inherent powers to ensure jurors were protected, following their discharge from a trial, from threats to their physical safety and invasions of their personal privacy. Such inherent judicial power did not disappear as a result of the Legislature's action in this area. Rather, trial courts retain inherent power to protect both juror safety and juror privacy.” (*Townsel, supra*, at p. 1091.)⁸

To establish good cause under Code of Civil Procedure section 237, a defendant must set forth a sufficient showing to support a reasonable belief that jury misconduct occurred. (See *People v. Jones* (1998) 17 Cal.4th 279, 317; see also *Jefflo, supra*, 63 Cal.App.4th at pp. 1321-1322, fn. 8.) Good cause is not established where the allegations of jury misconduct are speculative, vague, or conclusory. (*People v. Wilson* (1996) 43 Cal.App.4th 839, 852; *People v. Rhodes* (1989) 212 Cal.App.3d 541, 553-554.) And we review the denial of a motion to compel disclosure of juror information under an abuse of discretion standard. (*People v. Jones, supra*, at p. 317.)

In *Jefflo*, the defendant's motion for disclosure of juror information was based on a declaration that a juror had told the defendant's girlfriend the day before the verdict that the jury was hung. (*Jefflo, supra*, 63 Cal.App.4th at pp. 1318-1319.) Defense counsel declared further that after the trial was concluded, he overheard a juror ask the prosecutor if “ ‘that [was] all the evidence [he] had.’ ” (*Id.* at p. 1319.) The appellate court upheld the trial court's denial of the defendant's motion for disclosure. It found that, even

⁸ The Supreme Court in *Townsel* noted that “[i]n amending [Code of Civil Procedure] section 237 in 1995, the Legislature declared: ‘The Legislature finds and declares that jurors who have served on a criminal case to its conclusion have dutifully completed their civic duty. It is the intent of the Legislature in enacting this act to balance the interests of providing access to records of juror identifying information for a particular, identifiable purpose against the interests in protecting the jurors’ privacy, safety, and well-being, as well as the interest in maintaining public confidence and willingness to participate in the jury system.’ (Stats. 1995, ch. 964, § 1, quoted in Historical and Statutory Notes, 13 West's Ann. Code Civ. Proc. (1999 pocket supp.) foll. § 206, p. 150.)” (*Townsel, supra*, 20 Cal.4th at p. 1096.)

assuming the truth of the girlfriend's assertions, the juror's statement simply meant the jury (at the time of the statement) had not yet agreed on a verdict, and did not constitute misconduct. (*Id.* at p. 1322.) And the court held that the juror's statement to the prosecutor conveyed "nothing more than that the juror might have been curious about whether evidence existed that was not presented at trial. This did not mean the evidence that was presented failed to persuade the juror, beyond a reasonable doubt, of [the defendant's] guilt." (*Ibid.*) Finally, the appellate court concluded that the court did not abuse its discretion by declining to conduct a hearing on the alleged jury misconduct. (*Id.* at pp. 1322-1323.)

Here, as in *Jefflo*, the trial court properly viewed with some skepticism the meager showing in support of defendant's motion for disclosure of juror information. The supposed witness to any alleged jury misconduct was anonymous. While that unidentified witness claimed to have been a juror in the case, he made a statement that called that assertion into serious question, i.e., that " 'I know you have the ability to contact jurors after the case.' " After the verdict was announced, the court specifically ordered "that the records of personal juror identifying information [are] sealed." It told the jurors: "So the information about you is sealed. The only way that anyone would have access to it, they would have to file a motion with[] the court. If that happened, if a motion was filed, you would then be contacted individually, because you have the right to input concerning whether that information should be revealed, . . . It rarely happens that such a motion is filed. I can't think of a case that I've presided over where there has been such a motion." Thus, the unidentified witness's statement concerning defense counsel's ability to contact jurors rendered questionable his claim that he, indeed, had been a member of the jury in this case.

Moreover, even assuming that the anonymous caller was a juror, his conclusory statement that " '[J]uror [N]umber [T]wo . . . might have been pressured' " was hardly significant evidence of potential juror misconduct. The caller provided no detail about

any possible pressure that had occurred. And, as the trial court noted, the caller's vague allegation of possible pressure was belied by the objective facts: that the trial was short (i.e., the evidence was presented in less than one-half day), Juror Number Two was the foreperson, deliberations were concluded in slightly over one hour, and there were no inquiries by the jury to the court that indicated it was having any difficulties.

Under these circumstances, the trial court did not abuse its discretion when it found an absence of good cause and denied defendant's motions for a hearing and disclosure of the jurors' personal information.⁹

III. *Claimed Blakely Violation*

A. *Contentions of the Parties*

The trial court imposed the upper term of three years for the count 1 conviction. That prison term was doubled as a result of defendant's prior felony conviction, pursuant to section 667, subdivision (b)-(i) and section 1170.12.¹⁰ The court noted that it concurred with the District Attorney that there were aggravating factors, specifically, that "defendant's prior convictions as an adult are numerous, not to mention serious," defendant had "served a prior prison term," and there were "other aggravating factors as well."

Defendant claims that, under *Blakely, supra*, 542 U.S. 296, he was deprived of his constitutional right to a jury trial when the trial court imposed an upper term sentence for

⁹ Since we conclude that the trial court did not abuse its discretion in denying defendant's motion, we necessarily reject defendant's related challenge that the court's denial of the motion implicated defendant's constitutional right to a trial by an impartial jury under the Sixth and Fourteenth Amendments, and his alternative assertion of ineffective assistance of counsel if the former argument was forfeited.

¹⁰ "If a defendant has one prior felony conviction that has been pled and proved, the determinate term or minimum term for an indeterminate term shall be twice the term otherwise provided as punishment for the current felony conviction." (§ 667, subd. (e)(1).) Section 1170.12, subdivision (c)(1), has language identical to that found in section 667, subdivision (e)(1).

the felony conviction. In making this contention, defendant acknowledges that the California Supreme Court has examined the question of whether *Blakely* applies to the imposition of upper term sentences under California's determinate sentencing statute. (See *Black, supra*, 35 Cal.4th 1238.) He acknowledges that were we to follow the holding in *Black*, we would find defendant's *Blakely* challenge to be without merit. But defendant notes that since *Black* was decided, the United States Supreme Court has granted certiorari in a case which it may ultimately determine the constitutionality, under *Blakely*, of the imposition of an upper term sentence under California's determinate sentencing law based upon a sentencing judge's determination of facts not found by the jury. (See *Cunningham v. California*, No. 05-6551, cert. granted, Feb. 21, 2006, --- U.S. ---, 126 S.Ct. 1329.)

It suffices for us to say that in *Black, supra*, 35 Cal.4th 1238, our high court concluded, inter alia, that *Blakely* does not apply to upper term sentencing under California's determinate sentencing statute. There (as here) the defendant argued that *Blakely* rendered California's determinate sentencing procedure unconstitutional, inter alia, because the procedure failed to "provide the defendant with a jury trial on the aggravating factors relied upon by the judge in imposing an upper term sentence." (*Black, supra*, 35 Cal.4th at p. 1248.) Our high court rejected that challenge, concluding "that the judicial factfinding that occurs when a judge exercises discretion to impose an upper term sentence . . . under California law does not implicate a defendant's Sixth Amendment right to a jury trial." (*Id.* at p. 1244; see also *id.* at pp. 1257-1258.)

Our high court's holding in *Black* disposes of defendant's challenge. We are bound by that holding here. (*Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 455.) Under *Black*, the upper term of three years was the "statutory maximum" for Sixth Amendment purposes under *Blakely*. (*Black, supra*, 35 Cal.4th at pp. 1257-1258.) Accordingly, we conclude under the Supreme Court's holding in *Black* that no *Blakely*

error occurred here with respect to the court’s imposition of an (upper term) three-year sentence for the count 1 conviction.¹¹

DISPOSITION

The judgment is affirmed.

Duffy, J.

WE CONCUR:

Mihara, Acting P.J.

McAdams, J.

¹¹ Apart from *Black, supra*, 35 Cal.4th 1238, being controlling, it is doubtful that defendant’s *Blakely* challenge would have any merit. As the argument went in *Black*—albeit that it was an argument the California Supreme Court rejected—*Blakely* applies to preclude the imposition of an upper term sentence under California’s determinate sentencing law where it is based upon aggravating factors which have not been previously adjudicated beyond a reasonable doubt. (*Black, supra*, at p. 1248.) Here, one of the aggravating factors upon which the court relied was defendant’s prior felony convictions. This aggravating factor *was* previously adjudicated beyond a reasonable doubt, since the court found the prior “strike” allegations true. Since a single aggravating factor may be sufficient to justify the imposition of an upper term sentence (*People v. Kellett* (1982) 134 Cal.App.3d 949, 963), defendant’s constitutional right to a jury trial was not implicated, even were we to disregard the holding in *Black*.