

Not Reported in Cal.Rptr.3d, 2008 WL 803403 (Cal.App. 2 Dist.)

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Court of Appeal, Second District, Division 6, California.

The PEOPLE, Plaintiff and Respondent,

v.

Juan Jesus MARTINEZ, Defendant and Appellant.

2d Crim. No. B196971.

(Los Angeles County Super. Ct. No. KA073951).

March 27, 2008.

[Charles Horan](#), Judge, Superior Court County of Los Angeles.

[Edward H. Schulman](#), under appointment by the Court of Appeal, for Defendant and Appellant.

[Edmund G. Brown](#), Attorney General, [Dane R. Gillette](#), Chief Assistant Attorney General, [Pamela C. Hamanaka](#), Senior Assistant Attorney General, [Michael C. Keller](#), Allison H. Chung, Deputy Attorneys General, for Plaintiff and Respondent.

[GILBERT](#), P.J.

*1 Juan Jesus Martinez appeals a judgment after his conviction of second degree murder (Pen.Code, §§ 189/187, subd. (a), count 1) [FN1](#) and possession of a firearm by a felon (§ 12021, subd. (a), count 3), with findings that he personally used a firearm (§ 12022.53, subd. (b)), that he personally and intentionally discharged a firearm (§ 12022.53, subd. (c)), and that he personally and intentionally discharged a firearm causing death or great bodily injury (§ 12022.53, subd. (d)).

[FN1](#). All statutory references are to the Penal Code unless otherwise stated.

Martinez received an aggregate sentence of 61 years to life. The court imposed 15 years to life on count 1, doubled it under the three strikes law, and added a consecutive 25 years to life based on the firearms enhancement under section 12022.53, subdivision (d). It added a five-year enhancement pursuant to section 667, subdivision (a), and imposed an additional one year for a prior prison term pursuant to section 667.5, subdivision (b). On count 3, it imposed the midterm of two years, doubled it under the

three strikes law, and ordered that term stayed pursuant to section 654. It imposed 20 years for the section 12022.53, subdivision (c), firearms enhancement and 10 years for the one under section 12022.53, subdivision (b), but stayed both those sentences.

We conclude: 1) the court did not err by admitting evidence about a prior uncharged robbery, 2) it properly excluded testimony from a defense expert on false confessions, 3) it correctly imposed a 25-years-to-life consecutive term for the firearms enhancement under section 12022.53, subdivision (d), and 4) it properly imposed and stayed the two remaining firearms enhancements under 12022.53, subdivisions (b) and (c). We affirm.

FACTS

Martinez bought methamphetamine from Gilbert Lara. On January 6, 2006, he and Jesse Rangel went to Lara's house. The next day, Roberta Acosta, Lara's fiancée, entered his residence and found his body on the floor.

Doctor Ajay Panchal, a deputy medical examiner, determined that Lara died of a gunshot wound to the back of his head. Lara's injuries were consistent with someone shooting him “at one foot away” with a .357 revolver.

Martinez was arrested. He told police that he and Rangel went to Lara's home and Rangel shot Lara. Later, he admitted he “smoked” Lara. Martinez said: “I was a foot away from him and I shot him in the back of the head so he wouldn't see it coming... [¶] ... [¶] I took my own fuckin[g] home boy[']s life for nothing. For nothing, dude. [¶] ... [¶] I just flipped man.” He said he used a .357 caliber gun and that Rangel disposed of the weapon.

The police searched Martinez's car and found ammunition. Robert Keil, a senior criminalist, testified that all of the 18 live rounds recovered from that car would fit into a .357 revolver. He said 16 of the 18 live rounds were .38 special plus P cartridges. They were similar in design and construction to the bullet found in Lara's head.

Sheriff's detective Javier Clift testified that when he arrested Martinez, he searched him and found a pipe. Martinez told him he used it to smoke methamphetamine. On cross-examination, Clift said, “[S]omeone who snitches on a member of the Mexican Mafia [can] be assaulted, beat up, murdered. If they can't get to them, they'll try to get to one of the family members.”

*2 In the defense case, Martinez testified that he and Rangel went to Lara's house so he could pay a \$50 debt. He had previously bought \$60 worth of methamphetamine from Lara. He had paid him \$10 and had given Lara stereo speaker equipment as collateral. He wanted to pay Lara the remaining \$50 and obtain his speakers. When they arrived, Martinez had a conversation with Lara about exercise equipment. Rangel then pulled a gun and shot Lara. Martinez had no idea why Rangel murdered him. Martinez said he falsely confessed to the murder because he was afraid that if he implicated Rangel, he would endanger his family. Rangel was a Mexican Mafia gang member.

On cross-examination, Martinez said he lied to the police by telling them that he was not at Lara's house, by claiming ignorance of Lara's death, and by stating that his wife disposed of the murder weapon. Martinez said that shortly before Lara's murder, he tried to make a deal to obtain one pound of methamphetamine from him.

Daniel Evanilla, a California Department of Corrections special agent, testified that Martinez is a former member of the Mexican Mafia. He said any person who would "snitch" on a member of the Mexican Mafia could be murdered because of their cooperation with the police. If the gang could not target the snitch, "they might try to harm one of the family members but that's very rare."

Evidence about a Prior Robbery

The prosecution sought to introduce evidence about a prior robbery committed by Martinez and Rangel. The court ruled the evidence was admissible and overruled Martinez's objections.

Scott Malone testified that on December 14, 2005, two men robbed him of his money and the methamphetamine that he was trying to sell. Immediately prior to the robbery, Malone helped them fix a tire, talked to them about the drugs they wanted, and other topics. They gave him a ride and then one of them "pulled" a gun on him. The two men were Martinez and Rangel.

DISCUSSION

I. Admitting Evidence about the Prior Uncharged Robbery

Martinez claims the trial court erred by admitting evidence that he and Rangel had committed a prior robbery a month earlier. We disagree.

We review rulings on the admissibility of evidence to determine whether there was an abuse of discretion. Evidence of a defendant's conduct on a prior occasion may be admitted to prove a defendant's motive or intent. ([Evid.Code, § 1101](#), subd. (b); [People v. Memro \(1995\) 11 Cal.4th 786, 864.](#)) "The least degree of similarity (between the uncharged act and the charged offense) is required in order to prove intent. [Citation.] '[T]he recurrence of a similar result ... tends (increasingly with each instance) to negative accident or inadvertence or self-defense or good faith or other innocent mental state, and tends to establish ... the presence of the normal, i.e., criminal, intent accompanying such an act....' [Citation.]" ([People v. Ewoldt \(1994\) 7 Cal.4th 380, 402.](#))

*3 Here Martinez claimed he had no motive or intent to hurt Lara. He testified he went to his home to pay a debt, to visit with him and was surprised when Rangel pulled a gun

and shot Lara. But the prosecution had the right to challenge this claim and prove that Rangel accompanied Martinez to commit a robbery.

There were similarities between the charged offense and the Malone robbery. Both involved Martinez and Rangel and the victims, Malone and Lara, had sold drugs. Both incidents were close in time, involved methamphetamine, and shared a common method of diverting the victim's attention before the crime was committed. In each case, there was a casual discussion with the drug dealer about neutral topics to place the victim at ease before the gun was pulled. A reasonable inference was that Martinez relied on Rangel to help him commit drug-related robberies. This evidence explained why Rangel was at Lara's house and it refuted Martinez's claim that he was surprised by what happened to Lara. The trial court did not abuse its discretion by admitting this evidence.

Moreover, any error would be harmless because the evidence of Martinez's guilt was compelling. His confession was supported by the ballistics evidence. He told the police the correct caliber of the weapon used in the murder. The ammunition found in Martinez's car was consistent with that caliber and with the bullet found in Lara's head. His confession was also consistent with the coroner's testimony that Lara was shot in the back of the head.

In addition, the jury did not find Martinez's testimony about his false confession to be credible. He was impeached on cross-examination. He admitted repeatedly lying to the police. His claim that he wanted to protect his family was undermined by his admission that he falsely implicated his wife by claiming she disposed of the murder weapon. His testimony on direct was that he went to Lara's house solely to pay a debt. But the jury could reasonably infer that was impeached by Martinez's admission that he had tried to obtain a pound of methamphetamine from Lara shortly before the murder.

II. *Expert Testimony on False Confessions*

Martinez contends the court erred by preventing his expert, Mark Castanza, from testifying about why people make false confessions. We disagree.

“ ‘Expert opinion is not admissible if it consists of inferences and conclusions which can be drawn as easily and intelligently by the trier of fact as by the witness.’ [Citations.]” ([People v. Valdez \(1997\) 58 Cal.App.4th 494, 506.](#)) A trial court may exclude the testimony of a false confessions expert where the defendant's testimony about why he falsely confessed is easily understood by jurors. ([People v. Son \(2000\) 79 Cal.App.4th 224, 241.](#))

Here Martinez's trial counsel made an offer of proof that Castanza was a false confessions expert, who would “educate the jury as to why people tend to confess falsely and what are the different circumstances or the factors.” He said, if jurors “hear an expert educate them as to how this happens and it happens quite often or it happens sometimes, then they can understand that this is something that is realistic....” The court ruled the

testimony was inadmissible because the jury would be able to understand why Martinez claimed he falsely confessed without expert assistance.

*4 The trial court was correct. Martinez testified that the police did not “force or trick” him into making the confession. He said Rangel committed the murder, but he falsely confessed because he was afraid that Rangel, a Mexican Mafia gang member, would harm his family if he told police Rangel was the murderer. The jury did not need an expert to interpret this testimony. Martinez's explanation for falsely confessing was straight forward and easily understood. ([People v. Son, supra, 79 Cal.App.4th at p. 241.](#))

Moreover, Martinez has not shown how the result would change if Castanza had testified. The jury heard expert testimony from Clift and Evanilla about the dangerous consequences to those who “snitch” against Mexican Mafia gang members. But the jury could find that Martinez's claim about why he falsely confessed was not credible. He initially told police that Rangel shot Lara. Jurors could reasonably infer that had he truly believed his family was in danger, he would not have made that statement. Nor would he have falsely implicated his wife in the crime.

III. Twenty Five Years to Life Term for the Section 12022.53, Subdivision (d), Firearms Enhancement

Martinez contends the court erred by imposing a 25-years-to-life sentence on the firearms enhancement under section 12022.53, subdivision (d). He claims that because Martinez was convicted of murder, adding this term violates the multiple conviction rule and double jeopardy. He is not correct. The California Supreme Court has repeatedly rejected these claims. ([People v. Izaguirre \(2007\) 42 Cal.4th 126, 128-129](#); [People v. Sloan \(2007\) 42 Cal.4th 110, 113-114.](#))

IV. Firearms Enhancements Under Section 12022.53, Subdivisions (b) and (c)

Martinez claims that after imposing the sentence on the section 12022.53, subdivision (d), firearms enhancement, it had to strike the remaining two firearms enhancements. (§ 12022.53, subs.(b) & (c).) He claims the court erred by only staying the sentences on those two enhancements under section 654. We disagree.

“[S]ection 12022.53 operates to require the trial court to add the applicable enhancement for each firearm discharge and use allegation under that section found true and then to stay the execution of all such enhancements except for the one which provides the longest imprisonment term. [Citation.]” ([People v. Bracamonte \(2003\) 106 Cal.App.4th 704, 713.](#)) There was no error.

The judgment is affirmed.

We concur: [COFFEE](#) and [PERREN](#), JJ.

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