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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

A126894

v.

**(Mendocino County
Super. Ct. No. SCUKCRC
0887648)**

SHAYNE TYLER WREDE,

Defendant and Appellant.

_____ /

Shayne Tyler Wrede (appellant) appeals from a judgment entered after he pleaded no contest to first degree robbery. (Pen. Code, §§ 211, § 212.5, subd. (a).¹) He contends his conviction must be reversed because the trial court erred when it denied his request for a continuance. We conclude the trial court did not abuse its discretion and will affirm.

I. FACTUAL AND PROCEDURAL BACKGROUND

Because appellant pleaded guilty, it is not possible to set forth the facts of his offense precisely. Drawing primarily from appellant's preliminary hearing and his probation report, the relevant facts are as follows.

¹ Unless otherwise indicated, all further section references will be to the Penal Code.

On November 12, 2008, around midnight, appellant visited Anthony McNeill (McNeill) at his home in Fort Bragg. Appellant said he needed money and that he knew McNeill knew someone who had a large amount of marijuana. McNeill replied that he did know where a large amount of marijuana was kept: at the home of the Deeters who operated a medical marijuana dispensary in Fort Bragg. When appellant suggested they go steal it, McNeill declined. Instead, McNeill gave appellant a ride home.

Appellant reappeared at McNeill's residence early the next morning again saying he wanted to steal the marijuana. This time, McNeill agreed.

Appellant and McNeill got into a car and McNeill's girlfriend, Tonya Clark (Clark), drove them to the Deeter's residence. Appellant was armed with a shotgun and McNeill had a baton. When they arrived, they saw a "young guy" in the house. He was Leonard Rosander, the boyfriend of the Deeter's daughter. Appellant tapped his shotgun on a window and told Rosander to open it. Rosander complied. Appellant pushed Rosander into a bedroom and demanded marijuana, money, and the keys to the BMW that was parked outside. Appellant and McNeill filled a couple of "totes and duffels" with marijuana and then fled. Rosander called the police.

McNeill called Clark and told her to pick them up. When Clark arrived about 10 minutes later, appellant and McNeill loaded the marijuana into the car and they drove away. As they approached the highway, they saw a patrol car. Apparently realizing the police had been called, appellant told Clark to drive them to Sunray Nicholson's (Nicholson) house. When they arrived at Nicholson's house, they quickly unloaded the marijuana. At that point, they looked down the driveway and saw a sheriff's car coming toward them. Appellant and McNeill jumped into the bushes and hid.

McNeill was apprehended two days later. Appellant was arrested about two weeks later when police found him hiding in the closet of a house where they were serving a warrant.

Based on these facts an information was filed charging appellant with four counts: (1) first degree robbery while acting in concert (§§ 211, 212.5, 213, subd. (a)(1)(A)), (2) first degree burglary of a house (§§ 459, 460, subd. (a)), (3) first degree burglary of a

trailer (§§ 459, 460, subd. (a)), and (4) false imprisonment. (§ 236.) The information also alleged as to count one that appellant had personally used a firearm within the meaning of section 12022.53, subdivision (b), and as to counts two, three, and four, that appellant had personally used a firearm within the meaning of section 12022.5, subdivision (a).

The case was resolved through a plea bargain. On August 25, 2009, appellant pleaded no contest to residential robbery and admitted personally using a firearm within the meaning of section 12022.5, subdivision (a). In exchange, appellant was to receive 10 years in prison.

On October 16, 2009, appellant filed a motion to withdraw his plea.

The court considered appellant's motion at a hearing on November 6, 2009, and denied it. The court then sentenced appellant to the agreed-upon 10-year term.

II. DISCUSSION

Appellant contends his conviction must be reversed because the trial court denied his request for a continuance. To put this argument in context, further background is necessary.

Although appellant pleaded guilty, he denied participating in the crime. Then on October 16, 2009, appellant filed a motion to withdraw his plea. The motion was supported by what appellant described as the newly discovered evidence that Tonya Clark was now prepared to testify that appellant was *not* the person who was with McNeill when the robbery was committed. Attached to the motion was a letter,² purportedly written by Clark, that said appellant had “no involvement” in the robbery.

The prosecutor filed a written response to appellant's motion on October 29, 2009. It noted that Clark, who had agreed to plead guilty to a misdemeanor based on her involvement in the robbery, had already been sentenced and that she had “nothing more

² Although Clark's statement was in the form of a declaration, the court and counsel referred to it as a letter. We will follow their lead on this point and refer to Clark's declaration as a letter.

to lose” by changing her story. The prosecutor also presented evidence that cast doubt on Clark’s supposed recantation.

An investigator assigned to the case had listened to recordings of telephone calls that Clark and appellant had made while incarcerated. During one telephone call, Clark admitted that she drove appellant and McNeill to the Deeter residence and that they were “stealing pot.” During a different telephone call, appellant and his wife, Allison Coverston (Coverston) discuss the recantation letter Clark was writing and Coverston admits that Coverston and Clark drafted it at Coverston and appellant’s home. The investigator also noted that Clark’s new statement was inconsistent with what she told the probation department prior to her own sentencing where she admitted appellant was involved in the robbery. The investigator then summed up his investigation as follows: “The totality of the circumstances in this case [seem] to indicate that Coverston and Clark have conspired to provide false testimony to the court in an attempt to cover up [appellant’s] involvement in this case. The fact that the letter was not presented until after Clark was sentenced for her involvement, and the additional fact that the letter was prepared at Coverston’s residence, with her assistance further support[s] a conspiracy to elude justice.”

On November 5, 2009, the prosecutor filed a supplemental report that had been prepared by his investigator. It was even more troubling. The report stated that the investigator had listened to more recorded telephone conversations between appellant and Coverston and that during one of those calls, Coverston admitted that she, not Clark, signed the letter that had been filed with the court. According to the investigator, “[t]he content of these conversations makes it apparent that there was more than one letter presented to the Public Defender’s Office, and to date this office has only received one letter. It is also apparent that both letters were given to the Public Defender’s Office by Allison Coverston. One of the letters contains a forged signature by Coverston, in which she signed Tonya Clark’s name without her authorization.” The investigator’s report went on to state, “[a]ll of this conduct greatly undermines ANY credibility these letters have, whether or not they were even prepared by Clark.”

On November 5, 2009, Clark's attorney, Patricia Littlefield, submitted a letter to the court. She stated that her understanding was appellant had filed a motion to withdraw his plea based in part on "a letter purportedly written by [her] client[.]" Littlefield stated that she had instructed her client "to take the 5th [A]mendment because of potential perjury accusations" and that she would "so instruct her at any hearing where she may be subpoenaed."

A hearing to consider appellant's motion to withdraw was conducted on November 6, 2009. Appellant's attorney told the court that she had received two letters, an "original letter" and a "second letter" that "seemed to clarify certain information" and that she had only attached the second letter to the motion to withdraw. Counsel acknowledged that the clarification might not have been signed by Clark, but she thought the original letter was authentic. She asked the court for a continuance so that she could speak with Clark's attorney about the issue. Counsel said she did not intend to call Clark as a witness. She just needed to confirm whether the first letter was written by Clark in order to determine "whether or not it's still appropriate to pursue this[.]"

The court stated that "the letter itself at this stage would not be persuasive I'd have to hear from her on the stand, under oath, that her original statement to law enforcement was a lie." The court then denied the motion for a continuance, and also denied appellant's motion to withdraw his plea.

Appellant now contends the trial court erred when it denied his request for a continuance.

A continuance "shall be granted only upon a showing of good cause." (§ 1050, subd. (e).) The trial court is granted the discretion to determine whether good cause for a continuance exists. (*People v. Beeler* (1995) 9 Cal.4th 953, 1003.) On appeal, we will reverse the trial court's ruling only where the court abused its discretion. (*People v. Samayoa* (1997) 15 Cal.4th 795, 840.) We find no abuse here.

Appellant's motion to withdraw his plea was based primarily, if not exclusively on the letter Clark supposedly had written that stated appellant was not involved in the crime. The evidence the prosecutor submitted to the court completely undermined the

basis for appellant's motion. It showed, clearly and convincingly, that Clark did not write the letter and that it had in fact been written by Coverston, who forged Clark's signature apparently without her authorization. At the hearing on the motion, defense counsel did not deny that the critical letter was forged. Indeed, she asked the court to strike it from the record, a request the court denied. However, the prosecutor's evidence also showed Clark may have written another, prior letter. Therefore, defense counsel asked the court for a continuance so she could speak with Clark's attorney and determine if Clark had written that first letter. The trial court, in the exercise of its discretion, could have granted defense counsel's request. But the court did not abuse its discretion when it declined to do so. The prosecutor had successfully challenged the credibility of the evidence appellant had submitted in support of his motion to withdraw. The court was not required to grant appellant a continuance so that he could take a "second bite at the apple" simply because his first bite had missed. (*People v. Rogers* (2009) 46 Cal.4th 1136, 1172, quoting *People v. Halvorsen* (2007) 42 Cal.4th 379, 429.)

None of the arguments appellant advances convinces us the trial court erred. Appellant argues the court should have granted him a continuance because Clark "was clearly the key witness" and her testimony played a large part in his decision to plead guilty. The premise for this argument is flawed. McNeill and Nicholson both provided evidence against appellant and the testimony of either would have been more than adequate to support appellant's guilt. While it may be true that the testimony of McNeill and Nicholson could be impeached, the same is true for Clark. She told officials repeatedly that appellant had participated in the crime. Given Clark's prior inconsistent statements, she cannot reasonably be characterized as the "key witness" against appellant.

Next, appellant argues the court should have granted a continuance because Clark might in fact have been willing to testify in support of appellant's motion to withdraw. This is doubtful in light of the letter from Clark's attorney who stated that Clark would not testify. In any event, defense counsel told the court repeatedly that she *did not* intend to call Clark as a witness. The court was not required to grant a continuance to accommodate testimony the defense could not present or did not intend to present.

The primary case upon which appellant relies, *In re Julian L.* (1998) 67 Cal.App.4th 204, is distinguishable. The *Julian L.* court reversed an order terminating a mother's parental rights where (1) the mother's counsel was relieved improperly, (2) the mother did not receive notice of the termination hearing, (3) appointment of new counsel was inexplicably delayed, and (4) when new counsel was appointed, he did not have enough time to contact the mother and determine her wishes. (*Id.* at pp. 207-208.) The *Julian L.* court ruled those circumstances, "warranted a brief continuance." (*Id.* at p. 208.) Here, by contrast, we are not dealing with a dependency, counsel was not relieved, and there was no problem with notice. *Julian L.* is not controlling under these very different facts.

We conclude the trial court did not abuse its discretion when it denied appellant's request for a continuance.

III. DISPOSITION

The judgment is affirmed.

Jones, P.J.

We concur:

Simons, J.

Bruiniers, J.