

APPENDIX D

California Court of Appeal Decision
Campbell v. Henry,
No. AO95686

COPY

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FEB 25 2003 IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

FILED

Court of Appeal - First App. Dist.

FEB 25 2003

RON D. BARROW, CLERK

By _____ DEPUTY

THE PEOPLE,

Plaintiff and Respondent,

A095686

v.

(Alameda County
Super. Ct. No. C138244)

VALERIE E. CAMPBELL,

Defendant and Appellant.

Valerie E. Campbell appeals from a judgment entered after a jury convicted her on one count of first degree murder, (Pen. Code, §§ 187, 189)¹ and two counts of attempted premeditated murder (§§ 187, 664). She contends (1) the judgment must be reversed under collateral estoppel principles, (2) her murder conviction is not supported by substantial evidence, and (3) the trial court instructed the jury incorrectly. We conclude no prejudicial errors were committed at appellant's trial and affirm the judgment.

I. FACTUAL AND PROCEDURAL BACKGROUND

Appellant was convicted of murdering Andrea Johnson and of attempting to murder Jewell Sutton and Michael Ward. The facts of the crime are as follows.

Johnson and Sutton lived together for about 17 years. Both women knew appellant and her boyfriend, Carl Sampson. All four individuals used drugs regularly.

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

In August 1991, Johnson and Sutton decided to move from Oakland to Union City. As part of the move, Sutton placed all her possessions in a storage facility. Sutton called the storage facility about a month later to ask about a billing matter. The facility told Sutton that her property had already been removed. After receiving a description of the persons who took the property, Sutton believed appellant and Sampson were responsible. She contacted the police.

Appellant and Sampson called Sutton about a week later. They were angry. Sutton had called the police. Sampson threatened to "break both of [Sutton's] legs" while appellant told Sutton, "[i]f you fuck people, you get fucked."

Johnson and Sutton were afraid. They contacted the FBI, telling an agent that if anything happened to them, appellant and Sampson would probably be responsible. Johnson also contacted her brother, Michael Ward, and asked him to obtain a gun.

On December 14, 1991, Johnson and Sutton drove to Claude Lovett's house on Isabella Street in Oakland. Appellant lived across the street from Lovett, and appellant had warned Johnson and Sutton they should never be seen on Isabella Street. Hoping to avoid a confrontation, Johnson and Sutton parked their car around a corner. Johnson and Sutton spent the day with Lovett drinking and taking cocaine.

When Johnson and Sutton decided to leave, they discovered someone had slashed the tires on their car. They reinflated the tires and went back to Lovett's house. Later that day, they were joined by a man named Clinton Dupree.

Meanwhile, Sampson had learned that Johnson and Sutton were at Lovett's house. He called an acquaintance, Chet Hunter, and told him to go to Lovett's house and "shake [the women] up," i.e., harm them physically. Hunter arrived at the door of Lovett's house and tried to get in. Dupree refused to admit him.

Johnson and Sutton decided to leave. When they returned to their car, they discovered their tires were flat again. Concerned they were being "set up," the women went back to Lovett's house. Johnson called her brother, Ward, and asked him to pick them up. Johnson told Ward he should bring his gun.

After Ward arrived at Lovett's house, he waited in the living room as Johnson got ready to leave. Before they were able to leave, they heard a loud knock at the door. Lovett went to answer it. Sampson and appellant angrily demanded to be let in. Lovett told Sampson to calm down and be quiet, admonishing him, "you can't do that in here." Appellant replied, "Why are you trying to protect those bitches." Lovett answered, "Shoot me if you want to, if that's what you want to do?"

Johnson recognized the voices and said, "That's Carl." She obtained the gun from Ward and went to the back of the house.

Appellant walked into the living room followed by Sampson. Appellant was dressed in a full-length fur coat. Sampson was wearing a long leather jacket. Sampson was angry. He told everyone in the room, "Don't nobody move."

Sutton asked Sampson why he was bothering everyone. Sampson replied, "Because you called the police on us, bitch." Sutton saw that appellant was holding a gun by her side and that Sampson had an Uzi.

Appellant noticed Johnson in the rear of the house. She told Sampson, "Here she is, Carl." Sampson told Johnson, "You don't know who you're fucking with, bitch." A gun battle ensued. Sampson fired his Uzi at Johnson. Johnson fired back. Sampson then turned and sprayed the room with bullets. Ward dove behind a television. He was shot in the arm. Sutton and Dupree also hid behind the television. Sutton was shot in the foot.

Sutton heard Johnson say, "I'm not dead yet, Carl. . . . I'm going to get you." Sutton then heard six more shots. They sounded different from the shots that came from Sampson's Uzi or from Johnson's gun. Appellant and Sampson then fled. The police were notified.

Johnson died from the wounds she sustained. The bullets recovered from her body were not fired from an Uzi.

Sampson was arrested and convicted of second degree murder. Appellant evaded arrest for nine years by living throughout the country under different aliases. She was finally arrested in February 2000 at a trailer park in Arizona.

Based on these facts, an information was filed charging appellant one count of murder, (§ 187) and two counts of attempted premeditated murder (§§ 187, 664). The information also alleged appellant was armed with a firearm when committing the offenses within the meaning of section 12022, subdivision (a)(1), and that appellant personally used a firearm when committing the murder within the meaning of section 12022.5.

The case proceeded to trial where the prosecution presented the evidence set forth above. Appellant testified on her own behalf. She admitted going to Lovett's house on the night in question with Sampson and a man named Bus. However, appellant claimed Sampson had forced her to go. She denied she was armed, and she denied she had shot Johnson.

The jury hearing this evidence convicted appellant on one count of murder and two counts of attempted premeditated murder. The jury also found appellant was armed with a firearm when committing the offenses, but concluded she had not personally used a firearm.

Subsequently, the court sentenced appellant to a term of 25 years to life in prison. This appeal followed.

II. DISCUSSION

A. Collateral Estoppel

Appellant contends her murder and attempted premeditated murder convictions must be reversed under the collateral principles articulated in *People v. Taylor* (1974) 12 Cal.3d 686.

In *Taylor*, the defendant and two companions, Daniels and Smith, planned a robbery. Taylor remained in the getaway car as Daniels and Smith entered the store. During the ensuing robbery, Smith was killed by one of the storekeepers. Taylor was charged with Smith's murder. Before Taylor could be tried, Daniels was separately tried and convicted of robbery, but acquitted on the murder charge. Taylor then sought to have the murder charge against him dismissed on the basis of collateral estoppel. The Supreme Court agreed. The court explained that collateral estoppel bars litigation of an

issue which has been decided at a previous trial if, among other things, "the issue necessarily decided at the previous trial is identical to the one which is sought to be relitigated" (*Id.* at p. 691.) Taylor had remained outside the store at the wheel of the getaway car while the shooting took place, so he could be found guilty of murder only if it were found that Daniels or Smith harbored malice which could be attributed to him as an aider and abettor. (*Id.* at p. 697.) Since the People had failed to establish at the prior trial that either Daniels or Smith had harbored the requisite malice, the People were collaterally estopped from trying that issue again. (*Id.* at p. 698.) The court justified its ruling by noting that one of the primary purposes of collateral estoppel is "to prevent inconsistent judgments which undermine the integrity of the judicial system" (*Id.* at p. 695.) The court observed that few things were more likely to undermine faith in the system than permitting a person to be punished for another's acts when the actor has been previously exonerated from any responsibility for those identical acts. (*Id.* at p. 696.)

Appellant contends her first degree murder and attempted premeditated murder convictions must be reversed under *Taylor* because the jury's finding that she did not personally use a weapon shows the jury must have convicted her as an aider and abettor. Since Sampson was convicted of only second degree murder, appellant contends she could not, under collateral estoppel principles, be convicted of any more serious offense.

We reject this argument for two reasons. First, the fact the jury found appellant had not personally used a firearm when committing the murder *does not* mean that it concluded appellant was *not* a perpetrator who shot Johnson, or that the jurors could only have convicted her as an aider and abettor. It has long been settled that the "disposition of one count [has] no bearing upon the verdict with respect to other counts, regardless of what the evidence may have been. Each count must stand upon its own merit." (*People v. Ranney* (1932) 123 Cal.App. 403, 407; see also *People v. Amick* (1942) 20 Cal.2d 247, 252.) This principle is articulated in section 954 which states, "An acquittal of one or more counts shall not be deemed an acquittal of any other count." This same principle applies when there is a conflict between a verdict on an offense and an enhancement. (See *People v. Lopez* (1982) 131 Cal.App.3d 565, 570-571.)

Second, and more importantly, the *Taylor* court expressly limited its holding “to the particular circumstances of the instant case where an accused’s guilt *must be* predicated on his vicarious liability for the acts of a previously acquitted confederate.” (*Taylor, supra*, 12 Cal.3d at p. 698, italics added.) In *People v. Howard* (1988) 44 Cal.3d 375, 412, the court applied that limitation, ruling the collateral estoppel analysis articulated in *Taylor* did not preclude the conviction of a defendant who had been “tried as the actual killer” That is precisely the situation presented here. The prosecution did not contend appellant aided and abetted Sampson. Rather, the prosecution argued Sampson had aided and abetted appellant. As the prosecutor explained during final argument, “Carl, in turn, aided and abetted Valerie. It’s not alleged that he shot the gun . . . that ultimately killed Andrea Johnson. Valerie did that.” Since appellant’s guilt was not necessarily predicated on vicarious liability, *Taylor* does not apply. There is no basis for reversal.

B. Sufficiency of the Evidence

Appellant contends her conviction of first degree murder must be reversed because it was not supported by substantial evidence.

The standard of review we apply is settled. We must review the whole record in the light most favorable to the judgment below to determine whether it discloses substantial evidence—that is, evidence which is reasonable, credible, and of solid value—such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. (*People v. Williams* (1997) 16 Cal.4th 635, 678.)

Here, appellant contends the evidence was insufficient to support the conclusion that she was guilty of murder as an aider and abettor. We need not answer this argument directly because the evidence supported the conclusion that appellant was guilty as a direct perpetrator.

The evidence presented at trial showed appellant was angry at Sutton and Johnson because they had called the police. Appellant had threatened Sutton telling her, “If you fuck people, you get fucked.” Appellant went to Lovett’s house on the night in question armed with a gun. She actively participated in the incident, alerting Sampson to

Johnson's presence toward the rear of the house. The shots that killed Johnson were not fired by Sampson's Uzi. According to Sutton, those shots sounded different from the shots that had been fired up to that point. The jury considering this evidence could reasonably conclude appellant fired the fatal shots using the gun she carried. We conclude the evidence was sufficient to support the conclusion that appellant was guilty of murder as a direct perpetrator.

Appellant contends that since the jury found she had not personally used a weapon, it could only find her guilty as an aider and abettor. However, the jury's finding on the use allegation does not mean we must evaluate the sufficiency of the evidence under an aider and abettor theory. The court addressed this precise issue in *People v. Lopez, supra*, 131 Cal.App.3d 565. There, the defendant was charged with several counts of assault with a deadly weapon and several enhancements for personal use of a weapon. The jury convicted the defendant on the assault charges but found the use allegations to be not true. On appeal, the defendant challenged the sufficiency of the evidence and argued, based on the use findings, that the court had to analyze the evidence under an aiding and abetting theory. The court framed the defendant's argument as follows: "Essential to this argument . . . is [Lopez's] theory that our examination of the verdicts may not be made on the basis that he was convicted as a principal, but only as an aider and abettor. He explains that our judicial perspective must be limited by the jury's inconsistency in finding him guilty of the offense of assault with a deadly weapon, but finding he was not personally armed with a weapon. In effect, he claims, the negative finding on the enhancement allegation is equivalent to a special verdict on the factual question of whether he personally used a firearm. Thus . . . we must revolve the threshold question which he presents. What is the legal effect of the inconsistency between the verdict on each of the offenses and the findings on the enhancements?" (*Id.* at p. 569.) The *Lopez* court analyzed numerous cases holding that inconsistent verdicts are permissible. (*Id.* at p. 570.) The court also discussed cases which recognize that juries frequently render verdicts that are at odds with the evidence. (*Id.* at p. 571.) Based on those decisions, the *Lopez* court ruled: "The fact that the word 'enhancement' is used

rather than 'offense' does not nullify the underlying rationale of refusing to invalidate an inconsistent jury verdict if it is otherwise supported by substantial evidence. In so holding, we are in line with most authorities who even absent statutory authorization have upheld convictions on some counts irrespective of their rational incompatibility with acquittal on other counts. [Citations.] Accordingly, we are not limited to [Lopez's] proffered theory in our examination of the sufficiency of the evidence." (*Id.* at p. 571.)

Here, as in *Lopez*, we are not limited to analyzing the sufficiency of the evidence under an aiding and abetting theory, even though the jury found the use allegation to be not true. Appellant's argument, based on that assumption, must fail.

C. Instructional Issues

1. *Aiding and Abetting*

The trial court instructed the jury on aiding and abetting using CALJIC No. 3.01. The instruction told the jurors that a defendant can be found guilty as an aider and abettor if she "(1) [w]ith knowledge of the unlawful purpose of the perpetrator, and (2) [w]ith the intent or purpose of committing or encouraging or facilitating the commission of the crime, and (3) [b]y act or advice[,] aids, promotes, encourages, or instigates the commission of the crime."

Appellant now contends the trial court instructed the jury incorrectly. Relying on *People v. McCoy* (2001) 25 Cal.4th 1111, appellant maintains the court should have told the jurors that to convict her of murder under an aiding and abetting theory, they were obligated to find that she "independently premeditated and deliberated an intentional killing."

We find nothing in *McCoy* which supports such a requirement. Indeed, the *McCoy* court clearly articulated the mental state that was required. The court explained, "outside of the natural and probable consequences doctrine, an aider and abettor's mental state must be at least that required of the direct perpetrator. To prove that a defendant is an accomplice . . . the prosecution must show that the defendant acted with knowledge of the criminal purpose of the perpetrator and with an intent or purpose either of committing, or of encouraging or facilitating commission of, the offense. [Citation.]

When the offense charged is a specific intent crime, the accomplice must share the specific intent of the perpetrator; this occurs when the accomplice knows the full extent of the perpetrator's criminal purpose and gives aid or encouragement with the intent or purpose of facilitating the perpetrator's commission of the crime. [Citations.] What this means here, when the charged offense and the intended offense--murder or attempted murder--are the same, i.e., when guilt does not depend on the natural and probable consequences doctrine, is that the aider and abettor must know and share the murderous intent of the actual perpetrator." (*People v. McCoy*, *supra*, 25 Cal.4th at p. 1118, italics in original, internal quotation marks & fn. omitted.)

Here, the trial court instructed the jury on aiding and abetting using CALJIC No. 3.01 as we have quoted above. That instruction tracked the principles articulated in *McCoy* precisely. No more was required.

2. Instruction on Attempted Premeditated Murder

The jury convicted appellant on two counts of attempted murder and found true two allegations that the attempted murders were premeditated within the meaning of section 664, subdivision (a).² The latter findings allowed the court to impose enhanced punishment on the attempted murder convictions.

Appellant now contends the attempted murder convictions must be reversed because the court never told the jurors that to convict her of attempted premeditated murder under an aiding and abetting theory, they must find she *personally* premeditated and deliberated the attempted murders of Ward and Sutton.

Appellant concedes this precise argument was rejected in *People v. Laster* (1997) 52 Cal.App.4th 1450. In *Laster*, the defendants were tried and convicted of deliberate and premeditated attempted murder arising out of a drive-by shooting. The defendants

² Section 664, subdivision (a), states in part: "If the crime attempted is punishable by imprisonment in the state prison, the person guilty of the attempt shall be punished by imprisonment in the state prison for one-half the term of imprisonment prescribed upon a conviction of the offense attempted. However, if the crime attempted is willful, deliberate, and premeditated murder, as defined in Section 189, the person guilty of that attempt shall be punished by imprisonment in the state prison for life with the possibility of parole." (Italics added.)

admitted being in the car, but contended that an unidentified passenger in the back seat had actually committed the shooting. The prosecutor argued that even if the back-seat passenger was the shooter, the defendants were liable for the attempted murder as aiders and abettors. (*Id.* at p. 1455.) On appeal, the defendants argued the trial court had erred by failing to instruct that they could only be subject to increased punishment under section 664, subdivision (a), if they personally premeditated. (*Id.* at p. 1469.) The *Laster* court began its inquiry by noting that *People v. Bright* (1996) 12 Cal.4th 652, had held that section 664, subdivision (a), does not create a greater degree of attempted murder but instead constitutes a penalty provision. (*Id.* at p. 1470.) After examining cases that held an aider and abettor could not be vicariously subject to certain penalty provisions, the court concluded there was no absolute rule against vicarious or derivative application of an enhancement or other penalty provision. Instead, an enhancement could be construed to apply vicariously to an aider and abettor if that was what the Legislature intended. (*Id.* at p. 1471.) The *Laster* court then examined the language of section 664 and concluded the provision was intended to apply to aiders and abettors and that any other construction would lead to absurd results. (*Id.* at p. 1473.) Therefore, the court ruled that an aider and abettor could be subject to life imprisonment for willful, deliberate, and premeditated murder even if he or she did not personally deliberate or premeditate. (*Id.* at p. 1473.)

We agree with *Laster* and will apply that analysis here. The trial court did not err by failing to instruct the jurors that they could only convict appellant of attempted premeditated murder under an aiding and abetting theory if they found she personally premeditated and deliberated.³

3. Imperfect Self-Defense

Appellant contends the trial court erred because it failed to instruct the jury, *sua sponte*, on imperfect self-defense. According to appellant, the court should have told the

³ We note that our Supreme Court is currently reviewing a case that disagreed with *Laster* on this point. (See *People v. Lee* (2000) 85 Cal.App.4th 706, review granted Mar. 28, 2001, S094597.)

jurors that Sampson's murder of Johnson had to be reduced to manslaughter if Sampson had an unreasonable belief in the need to defend himself from Johnson's attack.⁴

A person who kills in the actual but unreasonable belief that deadly force is necessary to defend against imminent peril to life or great bodily injury is guilty only of manslaughter. (*In re Christian S.* (1994) 7 Cal.4th 768, 783.) However, the imperfect self-defense doctrine cannot be invoked by a defendant whose wrongful conduct has created circumstances which justified his adversary's attack. As our Supreme Court explained, "It is well established that the ordinary self-defense doctrine--applicable when a defendant *reasonably* believes that his safety is endangered--may not be invoked by a defendant who, through his own wrongful conduct (e.g., the initiation of a physical assault or the commission of a felony), has created circumstances under which his adversary's attack . . . is legally justified. [Citations.] It follows, a fortiori, that the imperfect self-defense doctrine cannot be invoked in such circumstances. For example, the imperfect self-defense doctrine would not permit a fleeing felon who shoots a pursuing police officer to escape a murder conviction even if the felon killed his pursuer with an actual belief in the need for self-defense." (*In re Christian S., supra*, 7 Cal.4th at p. 773, fn. 1, italics in original.)

Here, evidence showed that Sampson threatened Sutton because she and Johnson had called the police. When Sampson learned Johnson and Sutton were at Lovett's house, he sent a man, Hunter, to the house to "shake [the women] up." Hunter failed to carry out his orders, so Sampson and appellant went to the Lovett's house themselves. Armed with an Uzi, Sampson forced his way in and took the women hostage. Sampson then threatened the women.

We conclude Sampson (and appellant) created the circumstances that justified any act Johnson may have taken. The court was not obligated to instruct on imperfect self-defense.

⁴ We presume appellant has framed her argument in light of what Sampson perceived because of her belief that she could only be convicted as an aider and abettor. As we have noted, this is incorrect.

III. DISPOSITION

The judgment is affirmed.



Jones, P.J.

We concur:

Stevens, J.



Gemello, J.



A095686