People v. Hollman

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Lavonte Demar Hollman appeals his convictions for robbery, attempted robbery, and shooting at an unoccupied vehicle. He raises a single issue in this appeal. Hollman argues the court erred and violated the work product privilege by compelling a defense investigator to testify about pretrial statements the investigator obtained from a prosecution witness. We disagree and affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

I. The Robberies

Four young men were talking on a street in Antioch and standing near their cars. Three other vehicles drove up, including a black Denali, and blocked the street. The young men became concerned that something was going to happen. So, Kim Sloat and Chad Chambers got into Kim Sloat's Mustang and Sean Hopwood and Michael Duvall got into Hopwood's Chevy Suburban.

A man later identified as Hollman got out of the black Denali, ran to Sloat's window, and pointed a shotgun at him. Sloat quickly drove away and called 911 from his cell phone. Hollman also approached Hopwood's vehicle and pointed the shotgun toward him. When Hopwood was told to open the door, he complied and handed over his wallet and cell phone. Several other people were standing on the passenger side of Hopwood's car, and two of them were holding handguns. The robbers frisked Duvall and took his wallet, cell phone, and keys. They left before the police arrived.

Duvall and Hopwood identified Hollman during a photo lineup and at trial. Duvall testified that he had no trouble identifying Hollman "[b]ecause that was, like, one of the most traumatic things that's happened to me, and I can't forget that face." Duvall also identified a black pea coat Hollman was wearing when he was arrested as the same style of coat worn by the man who robbed him. Sloat said the black Denali belonged to his classmate David Coulter, and he identified Coulter as the driver from a photo lineup.[1]

Coulter testified under a grant of use immunity, and admitted he was driving the Denali the night of the robberies and that Hollman was a passenger. When they arrived at the scene of the robberies, Hollman got out of the car. Coulter saw Hollman point a sawed-off shotgun at the Suburban as the occupants threw things out the window. Coulter identified Hollman in the courtroom, the shotgun Hollman used on the night of the robbery, and the black pea coat worn by Hollman at the time of his arrest (as the style of coat he wore on the night of the robbery). As Coulter drove Hollman home, he heard Hollman ask someone on the phone, "What did we get?" Coulter said he knew nothing about the robbery until it was over.

The defense pointed out differences between Coulter's testimony at trial and his earlier statement to police, and suggested Coulter was lying to protect himself from criminal liability. Over defense objection, the court permitted the prosecution to call a defense investigator as a witness. The investigator interviewed Coulter before any officials discussed possible immunity with Coulter. The prosecution sought to question the investigator about prior statements made to him by Coulter that were consistent with Coulter's testimony at trial.

The defense also suggested it might have been Hollman's twin brother who was there the night of the robberies, but a probation supervisor testified that Hollman's brother was under home electronic monitoring, and was within monitoring range from 2:02 p.m. the afternoon of the robberies until at least 3:03 a.m. the following morning. Coulter testified that he knew both Hollman and his twin and was able to tell them apart. He was sure Hollman was the robber.

II. Shooting at an Unoccupied Vehicle

The shootings at an unoccupied vehicle took place the month following the robberies. A witness saw Hollman shoot a long gun at what he thought was a minivan outside a Denny's restaurant. Police investigated the shooting. The vehicle was a Ford Expedition driven by Anthony Bell that belonged to his father. Approximately a week later, Bell and his father awoke at about 4:45 a.m. to the sound of two gunshots. When they went outside, they saw two additional shotgun holes in their Ford Expedition. Hollman was later tied to the shotgun used in both incidents, and admitted shooting at Bell's vehicle.

Hollman was charged with two counts of second degree robbery, with enhancements for personal use of a firearm; one count of attempted second degree robbery; and two counts of shooting at an unoccupied vehicle. The information alleged Hollman was a minor who was at least 16 years old when he committed the charged offenses. Hollman was convicted as charged and the enhancements were found true. He was sentenced to 14 years and four months in prison, and timely appealed.

DISCUSSION

Hollman argues that the court erred and violated the work product privilege when it admitted his

defense investigator's testimony about what Coulter told the investigator in a pretrial interview. We conclude that Coulter's statements to the investigator were not work product and the privilege did not apply.

Coulter testified that he drove Hollman to the scene of the robberies and saw him use a shotgun to rob the victims. On cross-examination, Coulter could not recall whether he made certain conflicting statements to a detective. The defense played an audio recording of Coulter's interview with the detective for the jury. In the interview, Coulter said that during the incident he did not see anyone with a gun.

During redirect examination, Coulter mentioned that he had talked with a defense investigator after he spoke with the police detective, but before he ever discussed possible immunity for his testimony with the prosecutor. The prosecutor requested that the defense disclose the interview with the investigator and defense counsel objected and claimed the interview to be work product. The prosecutor later said that he intended to call the investigator as a witness. The court ruled that "what a person says to an investigator is not work product and it's simply not-doesn't in any way reflect an attorney's impressions, conclusions, opinions or legal research or theories. [¶] But to the extent that may somehow be characterized as work product, I make a specific finding in this case that it would be-that not to allow the People to ask questions about it would unfairly prejudice the People and would result in an injustice-an injustice and would result in misleading the jury."

Further discussion of the issue ensued and the court stated: "I want to make my ruling clear. It's specific to this case. In the course of it, I have determined what we're dealing with here in terms of what Mr. Coulter said to this witness is not work product, but I'm relying more particularly on the fact that even if it falls within some broad definition of work product, it is not the kind of work product that is absolutely privileged and is overridden by the other issues in this case and that is the interest of justice."

The prosecutor asked the defense investigator what Coulter said in the defense interview. After the investigator reviewed his report, which the court did not order disclosed, the investigator testified that Coulter confirmed during the interview that he drove Hollman in the Denali to the scene of the robberies. Once there, Hollman got out of the Denali and pointed a shotgun at the occupants of a Mustang. The Mustang immediately drove away. Hollman then pointed the same weapon at a Suburban and ordered its occupants to hand over property. They did. Hollman returned to the Denali with the shotgun and they left the scene.

Even though "the work-product doctrine applies to criminal cases and protects the work product of defense investigators" (People v. Collie (1981) 30 Cal.3d 43, 59), the court properly concluded that the investigator's testimony about what Coulter said in the interview was not work product under relevant California law. Code of Civil Procedure section 2018.030 provides: "(a) A writing that reflects an attorney's impressions, conclusions, opinions, or legal research or theories is not discoverable

under any circumstances. [¶] (b) The work product of an attorney, other than a writing described in subdivision (a), is not discoverable unless the court determines that denial of discovery will unfairly prejudice the party seeking discovery in preparing that party's claim or defense or will result in an injustice." Penal Code section 1054.6 " 'explicitly protects the work product privilege' by stating that a defendant is not required to disclose any materials or information that constitute attorney work product [as defined by Code of Civil Procedure § 2018.030, subdivision (a)]." (Roland v. Superior Court (2004) 124 Cal.App.4th 154, 169.)

"It is well-settled that there is no attorney's work-product privilege for statements of witnesses since such statements constitute material of a non-derivative or noninterpretative nature." (People v. Williams (1979) 93 Cal.App.3d 40, 63-64 [prosecutor's notes regarding interview with victim did not come within work product privilege]; see also People v. Collie, supra, 30 Cal.3d at p. 60 [assuming that witness's statements paraphrased in investigator's report to defense counsel were not work product].) The investigator's testimony reported only Coulter's statements, and did not include any of the investigator's "impressions, conclusions, [or] opinions." (Code Civ. Proc., § 2018.030, subd. (a).) Thus, the trial court did not violate the work product doctrine when it admitted the investigator's testimony regarding what Coulter said in the interview. (See Roland v. Superior Court, supra, 124 Cal.App.4th at p. 169 ["statements or reports that merely reflect what an intended witness said during an interview are not work product"].)

Hollman's reliance on People v. Coddington (2000) 23 Cal.4th 529 is misplaced. In that case, the defense presented the testimony of three of the seven psychiatrists who examined the defendant in preparation for the sanity phase of his trial. (Id. at p. 603.) The prosecutor was permitted to ask the three psychiatrists over defense objections based on the work product and attorney-client privileges whether they were aware that certain other doctors had also evaluated the defendant. (Id. at pp. 603-604.) The Supreme Court concluded that "[a] party's decision that an expert who has been consulted should not be called to testify is within the [work product] privilege," but found the error in that case to be harmless. (Id. at p. 606.)

In this case, the defense investigator's testimony revealed no similar strategic thinking. The testimony implicated neither "the investigation of defendant's mental state to assess both the favorable and the unfavorable aspects of the case" nor "counsel's impressions and conclusions regarding witnesses who would be favorable and those who would not be so." (Cf. People v. Coddington, supra, 23 Cal.4th at p. 606.) Moreover, as our Supreme Court has recently explained, the trial in Coddington ended before the enactment of Penal Code section 1054.6, which "strictly limits the scope of the work product privilege only to 'writing[s] that reflect[] an attorney's impressions, conclusions, opinions, or legal research or theories . . . .' " (People v. Zamudio (2008) 43 Cal.4th 327, 356 [no violation of work product privilege occurred when the state's criminalist was permitted to testify that physical evidence had been released to a defense lab after testing].) The defense investigator's testimony regarding statements made by Coulter during his interview were not protected as work product under California law. (See Roland v. Superior Court, supra, 124

Cal.App.4th at p. 169; see also People v. Williams, supra, 93 Cal.App.3d at pp. 63-64.)[2]

DISPOSITION

The judgment is affirmed.

We concur: McGuiness, P.J., Jenkins, J.

1. In an earlier statement to police, Sloat did not give the name of the driver of the black Denali, but told the officer where the driver lived and what school he attended. Sloat also told the officer all the robbers had shotguns.

2. We therefore will not address Hollman's additional argument that the court abused its discretion when it concluded the interests of justice required admission of the investigator's testimony. Nor will we address the claim, raised for the first time in Hollman's reply brief, that "[t]he court's ruling was an abuse of discretion because it operated to favor one witness over all others." (See People v. Peevy (1998) 17 Cal.4th 1184, 1206 ["Normally, a contention may not be raised for the first time in a reply brief"].)