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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE OF THE STATE
OF CALIFORNIA,

Plaintiff and Respondent,

v.

PETER N. RAMIREZ,

Defendant and Appellant.

B285279

(Los Angeles County
Super. Ct. No. VA143140)

APPEAL from a judgment of the Superior Court of Los Angeles County, Roger T. Ito, Judge. Affirmed.

Lillian Hamrick, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Steven D. Matthews and J. Michael Lehmann, Deputy Attorneys General, for Plaintiff and Respondent.

INTRODUCTION

Defendant Peter N. Ramirez appeals his conviction for assault with a deadly weapon following a jury trial. He argues instructional error and the court's exclusion of evidence warrant reversal. We affirm because substantial evidence did not support the instruction and the excluded evidence was not relevant to the case.

FACTS AND PROCEDURAL BACKGROUND

1. Defendant Assaulted a Tow Truck Driver with a Sword

Defendant's sister had rented and failed to return a rental car. One day in October 2016, the rental car company manager attempted to contact the sister by phone and text message to retrieve the car. When he went to the sister's home address that evening, he discovered the rental car parked in front of the house. He called a tow truck driver to take the car away. Before the tow truck arrived, the manager knocked on the sister's front door and rang the doorbell. He yelled into a window identifying himself as an employee from the rental car company and inquired whether anyone was home.

Defendant and a young man emerged from the front door. The manager told them he was from the rental car company and that he was there to retrieve the rental car from defendant's sister. Swinging a glass bottle, defendant responded: "Oh, no. This is not going to happen. Get the F out of here. Get out of here. Get out of here." As defendant went back into the house to get something, the young man told the manager "He's serious. He's going to kill you. Get out of here." The manager ran to his car, drove down the street, and made a U-turn so he could watch the house.

Ten to 20 minutes later, tow truck driver Martin Lopez arrived. Lopez's 20-year-old daughter was in the truck with him.

The rental car manager drove closer to the house and parked his car three or four houses away. The manager then exited his car and showed Lopez which car to tow. There was a car parked in front and behind the rental car. Lopez stopped his tow truck adjacent to the rental car.

As Lopez walked toward the back of his truck to hook up the car, defendant “jumped out of nowhere.” Standing about 10 feet away from Lopez, defendant yelled “You ain’t taking shit from here. Get the fuck out of here now.” Defendant was erratic and wielding a sword, with the four-to-five-foot blade pointed toward Lopez. Lopez backed away and told defendant he was just doing his job and to calm down. Defendant made a chopping motion with the sword and hit the bed of the truck, producing a loud sound and a small spark. Lopez’s daughter got out of the truck and told defendant to leave her father alone. Lopez and the daughter got back in the truck. Defendant then approached the rental car manager, who also then jumped into the tow truck for refuge. Lopez drove away and called 911.

2. Charges, Trial, and Conviction

Police arrested defendant. Defendant was charged by information with one count of assault with a deadly weapon. The information alleged the offense was a serious or violent felony and enhancements based on prior convictions.

Prior to trial, the People moved to exclude as irrelevant evidence that the tow truck driver, Lopez, may have had an expired business license at the time of the crime. Defense counsel acknowledged that he intended to impeach Lopez with the evidence. The court inquired whether defendant knew of Lopez’s license status, and defense counsel responded defendant did not. The court excluded the evidence, finding that it was irrelevant because defendant did not know about Lopez’s lapsed license.

At the jury trial, the rental car manger, defendant's niece (who witnessed the incident), and the tow truck driver testified for the People. Defendant did not testify and presented no evidence on his own behalf. After both sides rested, defense counsel requested the court instruct the jury with CALCRIM No. 3476. The court agreed and orally gave the instruction but did not provide the written instruction to the jury.

The jury found defendant guilty of assault with a deadly weapon. The court sentenced defendant to five years imprisonment. He was awarded 285 days credit for presentence custody.

DISCUSSION

Defendant raises instructional error related to CALCRIM No. 3476 and prejudicial exclusion of evidence. We address each argument in turn.

1. No Substantial Evidence Supported Instructing the Jury with CALCRIM No. 3476

Defense counsel requested the jury be instructed with CALCRIM No. 3476, which states: "The owner or possessor of . . . personal property may use reasonable force to protect that property from imminent harm. [¶] Reasonable force means the amount of force that a reasonable person in the same situation would believe is necessary to protect the property from imminent harm." Although the court orally instructed the jury with the above quoted language of CALCRIM No. 3476, the court inadvertently did not provide the jury a written copy.

On appeal, defendant contends that although the court orally instructed the jury with CALCRIM No. 3476, the court erred by failing to also provide the instruction in writing. Yet, "[n]either the United States Supreme Court nor [the California Supreme Court] have ever held that oral jury instructions are ineffectual unless augmented by written copies of the same

instructions; to the contrary, [the California Supreme court has] established that neither the state nor the federal Constitution guarantees a criminal defendant the delivery of written instructions in addition to oral ones.” (*People v. Trinh* (2014) 59 Cal.4th 216, 234.) We see no prejudice to defendant and find no error in failing to provide a written copy of CALCRIM No. 3476 to the jury.

Defendant also asserts the trial court should have sua sponte modified the instruction to say the owner or possessor of property may use reasonable force to protect the property from “wrongful injury” (rather than from “imminent harm”). “Wrongful injury” is the language found in Civil Code section 50, on which this jury instruction is based. “Imminent harm” is the terminology used in CALCRIM No. 3476. We conclude there was no substantial evidence to support this defense and defendant did not have a right to have the jury instructed on CALCRIM No. 3476.

“ ‘[A] trial court need give a requested instruction concerning a defense only if there is substantial evidence to support the defense.’ ” (*In re Christian S.* (1994) 7 Cal.4th 768, 783.) “Although a trial court should not measure the substantiality of the evidence by undertaking to weigh the credibility of the witnesses, . . . the court need not give the requested instruction where the supporting evidence is minimal and insubstantial.” (*People v. Barnett* (1998) 17 Cal.4th 1044, 1145, fn. omitted (*Barnett*).) “Instructions only need be given where the ‘evidence [is] substantial enough to merit consideration.’ ” (*People v. Hill* (2005) 131 Cal.App.4th 1089, 1101, overruled on another point in *People v. French* (2008) 43 Cal.4th 36, 47.)

To claim defense of property, defendant must own or possess the property and use reasonable force to defend that

property from harm. Here, there is no substantial evidence that defendant owned or possessed the car. To the contrary, all the evidence indicated that the vehicle was owned by the rental car company and wrongfully possessed by defendant's sister. We observe CALCRIM No. 3476 allows a defendant to use reasonable force to defend a family member's personal property. Although defendant's sister rented the car, there is no evidence that the car was the sister's property or that she had rightful possession of it. The rental company sought to repossess the car because the sister did not return it, i.e. she no longer had permission to use it. Defendant failed to present any evidence that he was acting under a right to retain the property. He never testified to his intent or state of mind, and there's no evidence in the record to support such an inference.

There is also no substantial evidence that defendant used reasonable force to defend the property. Ten to 20 minutes after the rental car company manager explained to defendant that he was from the rental car company and was reclaiming the rental car, defendant ambushed and attacked the tow truck driver with a sword. The facts proven at trial do not support even an inference that defendant's exercise of force was reasonable.

We conclude any evidence supporting the theory that defendant used justifiable force against Lopez to protect the car was "minimal and insubstantial." (*Barnett, supra*, 17 Cal.4th at p. 1145.) As defendant had no right to the instruction, there was no instructional error.

2. Evidence of the Tow Truck Driver's License Status Was Irrelevant

Defendant contends the trial court abused its discretion by excluding evidence of Lopez's business license status. Only relevant evidence is admissible. (Evid. Code, § 350.) "The test of relevance is whether the evidence "tends 'logically, naturally,

and by reasonable inference’ to establish material facts such as identity, intent, or motive.” [Citation.] The trial court has broad discretion in determining the relevance of evidence, but lacks discretion to admit irrelevant evidence. [Citation.] We review for abuse of discretion a trial court’s rulings on the admissibility of evidence.’” (*People v. Cowan* (2010) 50 Cal.4th 401, 482; see Evid. Code, § 210 [relevant evidence is evidence “having any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the action.”].)

Here, defense counsel argued that Lopez’s lapsed business license was relevant because the lack of a valid license would mean Lopez was “committing a trespass which—on other people’s property without really a valid reason to be there when it’s 10 o’clock at night,” and defendant “thought he was stealing his sister’s car.” The trial court excluded the evidence as not relevant because defendant admittedly did not know Lopez’s business license status.

We agree the evidence was not relevant and therefore the court lacked discretion to admit it. Defense counsel’s argument was that the evidence went to defendant’s intent to defend his sister’s property from theft. Even if lack of a license was germane to Lopez’s conduct, defendant did not know about the lapsed license. The evidence was therefore irrelevant to defendant’s intent, and was properly excluded.

DISPOSITION

We affirm defendant’s conviction.

RUBIN, J.

WE CONCUR:

BIGELOW, P.J.

GRIMES, J.