Filed 4/18/18 P. v. Anaya CA2/8

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

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. MICHAEL ANGEL ANAYA, Defendant and Appellant.	B282936 (Los Angeles County Super. Ct. No. KA113079)

APPEAL from a judgment of the Superior Court of Los Angeles County, Robert M. Martinez, Judge. Affirmed.

Matthew Alger, 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, Victoria B. Wilson and Lindsay Boyd, Deputy Attorneys General, for Plaintiff and Respondent.

INTRODUCTION

Defendant Michael Angel Anaya appeals his conviction for two counts of attempted murder and one count of assault with a deadly weapon. Defendant argues that the trial court committed reversible error when it failed to instruct the jury on self-defense for his assault charge. Defendant also asserts that the court erroneously gave him one day less presentence credit against his prison sentence than he was due. We affirm on all grounds. The evidence did not support the self-defense instruction and the court properly computed defendant's actual time served when calculating presentence credits.

FACTS AND PROCEDURAL BACKGROUND

1. Defendant's Drug-Fueled Attacks

Defendant was released from jail on July 18, 2016, and immediately procured and ingested a large amount of illegal drugs. A few days later on July 21, 2016, defendant attacked three people with a knife during two separate incidents while high on methamphetamine, PCP, and marijuana. The first incident is not the subject of this appeal.

The second attack occurred in the home shared by victims David Heermance and Scott Brayan. That night, Heermance and Brayan were drinking and using methamphetamine in their home with three women and defendant. Heermance and Brayan asked defendant to leave the house in relation to a dispute between Brayan and defendant regarding one of the women, Coco.

Defendant subsequently hugged Heermance goodbye. Defendant approached and motioned as though he was about to hug Brayan, but instead pulled a knife from his person and stabbed Brayan in the neck multiple times. Brayan pushed and kicked defendant. Heermance came to Brayan's defense and used a wrestling maneuver to pull defendant off Brayan. Both

Heermance and defendant fell to the floor. Heermance and defendant stood and Heermance grabbed onto defendant. Brayan then charged defendant and punched defendant multiple times in the face while Heermance held defendant. Heermance released defendant. Brayan grabbed defendant by the hair and struck his face several times with uppercuts.

Defendant did not fight back and instead ran up the nearby staircase that led to the home's second floor. At the time, Coco was standing on the stairs; she ran to the top of the staircase as defendant ascended. Heermance pursued the still-armed defendant up the stairs, caught defendant at a midway landing, and slammed defendant's head through a wall. Heermance grabbed at the knife. Although defendant did not attempt to stab Heermance, he resisted relinquishing the knife. During the struggle, the knife sliced Heermance's ear. Heermance immobilized defendant with a wrestling hold and then hit defendant in the face, head, and body several times. Heermance began choking defendant and said he was going to throw defendant off the staircase. Brayan told Heermance to let defendant go. Finally, Heermance released defendant and defendant fled the residence still with knife in hand.

2. Defendant Was Charged with Attempted Murder and Assault

The People charged defendant with two counts of attempted willful, deliberate, premeditated murder, and one count of assault with a deadly weapon. The assault charge (count 3) alleged that defendant assaulted Heermance with a knife and inflicted great bodily injury. The information also alleged that defendant had been convicted of a serious felony within the meaning of the Three Strikes Law and had served three prior prison terms.

3. Trial

At the May 2017 jury trial, Heermance and Brayan testified to the events described above. Defendant testified that he blacked out during his drug binge and could not remember committing the crimes.

Although the trial court provided the jury with written instructions regarding self-defense, the court did not orally instruct the jury on the subject. Defense counsel did not request self-defense instructions or focus on self-defense at trial. In closing arguments, defense counsel asserted that defendant did not commit the assault because he was just trying to escape Heermance and Brayan. More than self-defense, the argument appeared to suggest accident.

The jury convicted defendant of two counts of willful, deliberate, premeditated murder. The jury found defendant personally used a deadly and dangerous weapon, and inflicted great bodily injury. The jury also convicted defendant of assault with a deadly weapon and found true the great bodily injury enhancement. Defendant admitted that he had a prior burglary conviction that was both a strike and a prior serious felony and that he had served three prior prison terms. The trial court denied probation and sentenced defendant to an aggregate prison term of 48 years to life.

DISCUSSION

Defendant argues the trial court committed reversible error when it failed to orally instruct the jury on self-defense and that the court miscalculated his presentence credits. We address each issue in turn.

1. The Trial Court Had No Duty to Sua Sponte Instruct on Self-Defense

Defendant argues that the trial court's failure to sua sponte read the self-defense instruction to the jury was prejudicial error.

Although the jury was provided a written copy of this instruction, we assume the jurors did not actually read it for purposes of this analysis. (*People v. Murillo* (1996) 47 Cal.App.4th 1104, 1107 [where requested instruction is given only in writing, it is not possible to determine if jurors actually read it and court assumes it was not given at all].)

"Even in the absence of a request, a trial court must instruct on the general principles of law relevant to the issues raised by the evidence; that is, those principles that are closely and openly connected with the facts before the court, and which are necessary for the jury's understanding of the case." (*People v. Dieguez* (2001) 89 Cal.App.4th 266, 277.) This "sua sponte duty to instruct on all material issues presented by the evidence extends to defenses as well as to lesser included offenses [citation], but [there is] a sharp distinction between the two situations. In the case of defenses, . . . a sua sponte instructional duty arises 'only if it appears that the defendant is relying on such a defense, or if there is substantial evidence supportive of such a defense and the defense is not inconsistent with the defendant's theory of the case.' " (*People v. Breverman* (1998) 19 Cal.4th 142, 157.) Substantial evidence of a defense is evidence, which, if believed, would be sufficient for a reasonable jury to find reasonable doubt of the defendant's guilt. (*People v. Salas* (2006) 37 Cal.4th 967, 982.) The self-defense instruction defendant argues should have been read to the jury requires evidence that (1) defendant reasonably believed he was in imminent danger of suffering bodily injury, (2) defendant reasonably believed immediate use of force was necessary to defend against that danger, and (3) defendant used no more force than reasonably necessary to defend against that danger.

Here, defendant neither requested the self-defense instruction nor did counsel argue self-defense to the jury.

Defendant's theory was that the injury to Heermance's ear was accidental, not that defendant hurt Heermance in self-defense. Specifically, defense counsel argued that defendant was trying to get away from Heermance when Heermance's ear was injured. A self-defense instruction would have been inconsistent with defendant's theory that the injury was unintentional.

Substantial evidence also did not support the self-defense instruction. There was no testimony that defendant used the knife to fend off Heermance or that defendant fought back in self-defense. Defendant testified that he had blacked out and did not remember the incident. Heermance testified that defendant was not trying to stab him, but rather that defendant struggled with Heermance for control of the knife. This testimony supports defendant's theory that Heermance's injury was accidental and unintentional, but not that defendant injured Heermance in self-defense (an intentional act). As the self-defense instruction was not supported by substantial evidence and was inconsistent with defendant's theory of the case, the court did not have a sua sponte duty to issue the instruction.

2. Presentence Credits Were Correctly Calculated

Defendant asserts that he should have been given 362 days of presentence credit toward his prison sentences but was only credited 361 days. The trial court calculated the presentence credit by adding 314 days of actual time served and 47 days of conduct credit. Defendant asserts he was in custody for 315 days. We disagree.

"A defendant is entitled to actual custody credit for 'all days of custody' in county jail and residential treatment facilities, including partial days. [Citation.] Calculation of custody credit begins on the day of arrest and continues through the day of sentencing." (*People v. Rajanayagam* (2012) 211 Cal.App.4th 42, 48.) Defendant was taken into custody on July 22, 2016, and was

sentenced on May 31, 2017. When the day of arrest and the day of sentencing are included, the sum of days in custody is 314. The trial court awarded the correct amount of presentence credit.

DISPOSITION

The judgment is affirmed.

RUBIN, J.

WE CONCUR:

BIGELOW, P. J.

GRIMES, J.