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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE, Plaintiff and Respondent, v. GASPAR MEDINA, Defendant and Appellant.	B276553 (Los Angeles County Super. Ct. No. BA416479)

APPEAL from a judgment of the Superior Court of Los Angeles County, Dennis J. Landin, Judge. Affirmed.

William L. Heyman, 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, Senior Assistant Attorney General, Paul M. Roadarmel, Jr., Supervising Deputy Attorney General, Stephanie A. Miyoshi, Deputy Attorney General, for Plaintiff and Respondent.

A jury found defendant and appellant Gaspar Medina (defendant), who was charged with murder, guilty only of the lesser included offense of voluntary manslaughter. In light of the instructions given during trial, the jury apparently believed defendant actually but unreasonably believed he needed to use deadly force when fatally stabbing 59-year-old victim Gregory Aggers (Aggers). Defendant asks us to decide whether the evidence he acted unreasonably is sufficient to sustain his conviction for the lesser offense.

I

The stabbing that led to defendant's prosecution was an outgrowth of an argument outside an apartment building one night in September 2013. Defendant lived in the building, as did victim Aggers and his fiancé Viola Bowser (Bowser); in fact, defendant was their next door neighbor. All three were drinking alcohol outside on a porch that evening, as were two other people who were with them at the time, Alvin Bell (Bell) and Michelle Parker (Parker).[1] The prosecution introduced evidence during its case-in-chief to prove defendant stabbed Aggers for taunting him (defendant) about a girlfriend who had left him—and while being egged on by Parker. The defense sought to establish the stabbing occurred only because Aggers and Bowser physically attacked defendant, and defendant, fearing for his life, reasonably responded with deadly force.

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[1] Bowser and Aggers had also smoked marijuana. Additionally, a toxicology test conducted after Agger's death indicated he had cocaine in his system when he died.

A

The prosecution called Bowser; defendant's "direct support professional";[2] another bystander witness, Jalon Washington (Washington); and several others, including law enforcement officers and a deputy medical examiner at the coroner's office, to testify at trial.

Bowser testified that at some point during the evening defendant said he missed his ex-girlfriend and Aggers responded, "What['s] that got to do with me?" Washington recalled hearing defendant say "You['re] the reason why my girlfriend left me. You['re] the reason why." According to Bowser, defendant appeared depressed and angry at the time, and he pulled a knife out of his pocket.[3]

Bowser testified Aggers (who was described as "petite" in comparison to defendant who was some 320 pounds and "much heavier") did not have a weapon on him and she initially testified Aggers did not hit or kick defendant before defendant produced the knife. Later during her testimony, however, Bowser conceded Aggers pushed and punched defendant before defendant pulled the knife because he (defendant) had "attacked" Bowser. But Bowser remained adamant that Aggers neither had nor used a box cutter or any other weapon. Bowser similarly testified she did not fight with defendant before the stabbing.

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[2] A "direct support professional" was assigned to work with defendant through a Regional Center and assisted defendant with daily activities like going to the doctor, paying rent, and making appointments.

[3] Later during her testimony, Bowser at times referred to what she initially described as a "knife" as a "box cutter."

According to Bowser, after defendant produced the knife, Parker urged defendant to use it, stating, "Stab that mother fucker. He a dead mother fucker now." Defendant stabbed Aggers twice, which caused him to fall back and bleed heavily. Paramedics responded to the apartment complex and transported Aggers to the hospital where he was pronounced dead. An autopsy revealed two stab wounds to the left side of Aggers' chest were fatal—one three and a half inches deep just underneath the left collarbone, and the other three and a quarter inches deep that struck Aggers' aorta.

After defendant stabbed Aggers and he lay on the ground bleeding, Washington (another resident of the apartment complex) ran outside to where the stabbing occurred. Bowser was nearby exclaiming, "He stabbed my husband. He stabbed my husband." Washington called 911 while standing over Aggers, and defendant then approached and told Washington, "You snitching on me. So I'm gonna get you too, mother fucker." Defendant, still in possession of a knife, then chased Washington around a parked car and out into the street until giving up the pursuit. (Bowser maintained defendant chased her with the knife too.) Defendant then fled the scene before the police and paramedics arrived.

Christopher Chavez, defendant's direct support professional, testified defendant called him in the evening on the same day the stabbing occurred. According to Chavez, defendant said he "got into it with" someone and asked Chavez if he knew "how the guy . . . was." Chavez told defendant the man had died, and defendant said, "Oh, man, I got a murder case now." Defendant explained he was talking about his ex-girlfriend and how he missed her and Aggers said, "Don't worry about that ho.

She sleeps around anyway[ ]. So get over it." Defendant told Chavez that Aggers' remarks made defendant mad and the two men began fighting. Defendant further claimed Bowser struck him in the head with a beer bottle, which is what prompted him to pull the knife and [swing] it."

During the call with Chavez, defendant did not say he had been afraid for his life during the altercation he described with Aggers and Bowser. Chavez asked defendant why he ran after the stabbing given that his account of what happened made it sound like self-defense. Defendant replied he ran because he was scared.[4]

When police officers later arrested defendant, they recovered a folding knife from his pocket. Officers did not find a box cutter when canvassing the scene of the crime.

B

Defendant put on a substantial defense case at trial, seeking to establish he stabbed Aggers only in self-defense. Defendant did not testify himself, but he called Bell and Parker (the other two bystander witnesses) to testify about their recollection of the events before and after the stabbing—they were the key witnesses for the defense. Defendant also presented testimony from an expert on the effects of drug and alcohol intoxication and four other witnesses.

Bell testified defendant was reading the bible aloud among the group assembled on the porch when an argument developed

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[4] After defendant related this story to Chavez, Chavez asked defendant where he was and if he needed anything. Defendant responded, "You know I can't tell you that."

between Aggers and defendant after Aggers "cussed the bible" and told defendant it would not help him. According to Bell, Bowser attempted "out of the blue" to hit defendant with a wooden chair, Parker took the chair away from Bowser, and Aggers and Bowser then began fighting with defendant. Bell testified that during the fight, Aggers had a box cutter in his hand and was trying to cut defendant while Bowser hit defendant in the head with a 40-ounce beer bottle.[5] Bell claimed he did not recall seeing defendant with a knife and he maintained defendant was not fighting back for the entire, by his estimate, 20-minute-long fight.[6] The fight ended, according to Bell, when Aggers fell on the ground.[7]

Parker, like Bell (her significant other), claimed defendant was reading a bible in the group hanging out on the porch before the stabbing occurred; she also confirmed, though, that defendant was upset because of what Aggers was saying to defendant about his ex-girlfriend. Parker testified Bowser and defendant began to have words—she could not recall about what—and Bowser picked up a chair and was going to hit defendant with it. Parker said

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[5] Bell later backtracked and stated he did not remember what kind of bottle it was. He explained he testified it was a beer bottle to avoid having to say he did not remember.

[6] Bell later admitted during cross-examination that he did see defendant with a folding knife after Aggers fell to the ground and that he lied during his testimony on direct-examination when stating he did not see a knife.

[7] Bell admitted he lied to the police when interviewed shortly after the stabbing took place; at that time, he told the police he did not see anything.

Bell took the chair away from Bowser; the argument between defendant, Aggers, and Bowser escalated; Bowser hit defendant in the head with a beer bottle; and Aggers and defendant then "engaged," meaning the argument turned physical.

Parker claimed Aggers took out a "razor," which she described as like a "carpet cutter" or "box cutter." Parker maintained there was "a lot of shoving each other's faces and pushing back and forth" and she testified Bowser was "still trying to attack" defendant "[s]o they were both on him." Parker initially testified she never saw defendant with a knife, but on cross-examination, she admitted she did see defendant "come out with a knife" and decided to lie during her initial testimony. Parker claimed she did not see defendant use the knife,[8] but she did concede she heard defendant tell Washington, "If you don't get out of my way, I'll do the same to you too."

II

"For [a] killing to be in self-defense, the defendant must actually and reasonably believe in the need to defend. [Citation.] If the belief subjectively exists but is objectively unreasonable, there is 'imperfect self-defense,' i.e., 'the defendant is deemed to have acted without malice and cannot be convicted of murder,' but can be convicted of manslaughter. [Citation.] To constitute 'perfect self-defense,' i.e., to exonerate the person completely, the belief must also be objectively reasonable." (*People v. Humphrey* (1996) 13 Cal.4th 1073, 1082; accord, *People v. Simon* (2016)

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[8] Later during her testimony, however, Parker admitted she did see defendant stab Aggers once in his chest.

1 Cal.5th 98, 132; *People v. Sotelo-Urena* (2016) 4 Cal.App.5th 732, 744.)

Defendant's argument on appeal reduces to the contention that Bowser's testimony was the only evidence that defendant did not act in perfect self-defense (i.e., that defendant stabbed Aggers in an *unreasonable* belief in the need to use deadly force) and her testimony is insufficient to sustain the verdict because she was not a reliable witness. As we will explain, that is doubly incorrect. First, when viewed in the light most favorable to the jury verdicts (and probably even when not so viewed), Bowser's testimony was not the only evidence that defendant's stabbing of Aggers was an unreasonable act of self-defense; Chavez and Washington's testimony also helped establish the unreasonableness of the killing. Second, even if defendant were right that Bowser's testimony is the only evidence supporting the unreasonableness element of voluntary manslaughter, that testimony is enough to support the verdict under the controlling standard of review.

A

When considering a challenge to the sufficiency of the evidence to support a conviction, "'"we review the entire record in the light most favorable to the judgment to determine whether it contains substantial evidence—that is, evidence that is reasonable, credible, and of solid value—from which a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt." [Citation.] We determine "whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." [Citation.] In so doing, a

reviewing court "presumes in support of the judgment the existence of every fact the trier could reasonably deduce from the evidence." [Citation.]'" (*People v. Williams* (2015) 61 Cal.4th 1244, 1281.) "[T]he testimony of a single witness that satisfies the standard is sufficient to uphold the finding" even if there is a significant amount of countervailing evidence. (*People v. Barnwell* (2007) 41 Cal.4th 1038, 1052 (*Barnwell*); see also Evid. Code, § 411 ["Except where additional evidence is required by statute, the direct evidence of one witness who is entitled to full credit is sufficient for proof of any fact"]; *People v. Robertson* (1989) 48 Cal.3d 18, 44.) "It is well settled that, under the prevailing standard of review for a sufficiency claim, we defer to the trier of fact's evaluation of credibility." (*People v. Richardson* (2008) 43 Cal.4th 959, 1030 (*Richardson*).)

B

"[A]ny right of self-defense is limited to the use of such force as is reasonable under the circumstances. [Citation.] The right of self-defense [does] not provide [a] defendant with any justification or excuse for using deadly force to repel a nonlethal attack." (*People v. Pinholster* (1992) 1 Cal.4th 865, 966, disapproved on another ground in *People v. Williams* (2010) 49 Cal.4th 405; see also CALCRIM No. 505 ["The defendant is only entitled to use that amount of force that a reasonable person would believe is necessary in the same situation. If the defendant used more force than was reasonable, the . . . killing was not justified"].[9])

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[9] The jury in this case was instructed with CALCRIM No. 505.

In this case, there was sufficient evidence at trial to justify a voluntary manslaughter verdict based on findings that a confrontation between Aggers and/or Bowser and defendant occurred, that defendant actually believed he needed to use lethal force to defend against a threat to his life or great bodily injury, but that such a belief was unreasonable under the circumstances. Specifically, a reasonable jury could credit Bowser's admission that Aggers and defendant were fighting before the stabbing occurred, which might have given rise to a subjective belief in the need for self-defense, but likewise credit Bowser's testimony that Aggers did not use a weapon during the altercation and therefore conclude defendant's use of his knife to stab Aggers was unreasonable—particularly considering the weight differential between the two men (Aggers was 161 pounds while defendant was estimated to be 320 pounds). (Cf. CALJIC No. 5.31 ["An assault with the fists does not justify the person being assaulted in using a deadly weapon in self-defense unless that person believes and a reasonable person in the same or similar circumstances would believe that the assault is likely to inflict great bodily injury . . ."].)

1

Bowser's testimony is not the only evidence that would support the jury's unreasonable force finding. Defendant's post-stabbing statements recounted at trial by Chavez tend to establish defendant was aware that his use of force was unreasonable under the circumstances. When informed Aggers died as the result of the stabbing, defendant lamented he would face a murder case; he did not protest the killing was done only in self-defense. Also, as recounted by Chavez, defendant never

expressed having been afraid for his life during the fight that led to the stabbing, nor did he state Aggers had or used a weapon during the fight.[10] Further, defendant fled the scene of the crime after the killing (rather than waiting to give his side of the story to the police when they arrived) and defendant refused to tell Chavez where he was when Chavez asked. A reasonable jury could use these facts to infer defendant knew his killing was not fully justified.

Defendant's post-stabbing actions, as recounted by Washington, lend additional support to the jury's unreasonable self-defense finding. After defendant stabbed Aggers and Aggers fell to the ground, it was apparent Washington was calling the police (i.e., 911) to report what had happened. Defendant not only made it known he did not want the police involved, he went well beyond that—threatening to kill Washington too for "snitching" (a threat Parker corroborated during her testimony) and chasing Washington while still holding the knife. Again, a reasonable jury could conclude these facts indicate even defendant understood that killing Aggers was not fully justified in self-defense.

The testimony of Bowser, Chavez, and Washington, elements of which were corroborated even by defense witnesses, constitutes ample evidence to sustain the jury's voluntary manslaughter verdict.

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[10] Defendant did tell Chavez that Bowser hit him in the head with a beer bottle, but the jury was of course entitled to disbelieve that self-serving assertion, particularly when the police found no beer bottles near where Aggers was stabbed.

Furthermore, even if it were true that Bowser's testimony is the only evidence that supports the unreasonable self-defense finding, that testimony was still sufficient to support the jury's verdict under the applicable standard of review. As we have already explained, "the testimony of a single witness that satisfies the [substantial evidence] standard is sufficient to uphold the finding" even if there is a significant amount of countervailing evidence. (*Barnwell*, *supra*, 41 Cal.4th at p. 1052; see also *People v. Young* (2005) 34 Cal.4th 1149, 1181 ["[U]nless the testimony is physically impossible or inherently improbable, testimony of a single witness is sufficient to support a conviction"].)

We reject defendant's argument that our Supreme Court has recently departed from these well-established sufficiency of the evidence principles. Defendant argues that "more recently, in citing that *Young* case, the California Supreme Court stated: 'There may certainly be cases in which a few particularly strong pieces of information (such as scientific evidence or the testimony of a single reliable witness) are sufficiently compelling to prove the defendant guilty beyond a reasonable doubt. [Citations.]' (*People v. Centeno* (2014) 60 Cal.4th 659, 670[(*Centeno*)].)" Insofar as defendant argues *Centeno* is a sub rosa disapproval or qualification of *Young* and other substantial evidence cases, defendant is mistaken. A case post-dating *Centeno* makes clear our Supreme Court continues to adhere to sufficiency standards as articulated in *Young* and *Barnwell*. (*People v. Prunty* (2015) 62 Cal.4th 59, 89 [""[U]nless the testimony is physically impossible or inherently improbable, testimony of a single witness is sufficient to support a conviction""].)

Moreover, even conceding Bowser may not have been an ideal witness, she was certainly no worse from a credibility standpoint than the witnesses on whom the perfect self-defense theory depended, Bell and Parker. Both admitted, on cross-examination, that they lied during their trial testimony. Bell admitted he lied to the police. And other aspects of both Bell and Parker's testimony were marred by inconsistencies. Indeed, even defendant acknowledges Bell's and Parker's credibility "was somewhat reduced" because of their inconsistent testimony on direct and cross-examination (initially denying they saw defendant with a knife only to later admit they did see defendant with the knife). While defendant believes testimony by Bell and Parker was otherwise "very credible and powerful," the jury was well within its rights to disagree. Its task was to choose between the competing accounts, and we see no persuasive reason to depart from the general rule that requires deference to the credibility determinations upon which the jury's verdict rests. (*Richardson*, *supra*, 43 Cal.4th at p. 1030.)

C

The abstract of judgment incorrectly states defendant was convicted of murder rather than voluntary manslaughter (although it identifies the correct statute of conviction, section 192, subdivision (a) (voluntary manslaughter)). Defendant asks us to order the judgment corrected, the Attorney General agrees we should, and we will do so.

DISPOSITION

The clerk of the superior court is directed to prepare an amended abstract of judgment that describes the crime of conviction as "voluntary manslaughter" and to deliver the amended abstract to the Department of Corrections and Rehabilitation. The judgment is affirmed in all other respects.

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BAKER, J.

We concur:

KRIEGLER, Acting P.J.

DUNNING, J.*

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* Judge of the Orange Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.