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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

ETHAN DREW WEBBER,

Defendant and Appellant.

B293095

(Los Angeles County
Super. Ct. No. BA463657)

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

Stephen Temko, under appointment by the Court of
Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Lance E. Winters,
Assistant Attorney General, Scott A. Taryle and Colleen M.
Tiedemann, Deputy Attorneys General, for Plaintiff and
Respondent.

In an information filed June 13, 2018, the Los Angeles County District Attorney’s Office charged defendant and appellant Ethan Drew Webber with murder (Pen. Code, § 187).¹ The information further alleged that defendant personally used a knife, a deadly and dangerous weapon, during the commission of the crime. (§ 12022, subd. (b)(1).) The jury found defendant guilty as charged. The trial court sentenced defendant to a total term of 16 years in state prison.

Defendant timely filed a notice of appeal. He contends that his conviction must be reversed because (1) it is not supported by sufficient evidence, and (2) the trial court erred in failing to instruct the jury as to the lesser-included offense of involuntary manslaughter.

We affirm.

BACKGROUND

The People’s Evidence

A. The murder investigation

On the morning of December 7, 2017, Christopher Johnson (Johnson) went out onto his apartment’s fire escape to smoke a cigarette and drink coffee. He saw some “debris” around the window below him. He also saw a “smeared bloody hand print.” Johnson assumed that an intoxicated person fell into the window. He told the apartment manager, Faraborz Anaraki (Anaraki), about the broken window sometime that day.

Anaraki went out on the sidewalk and looked at the window in apartment 211, where Wynborne Cunningham (Cunningham), defendant’s cousin, lived. The window was broken and there was blood on the wall outside the apartment

¹ All further statutory references are to the Penal Code unless otherwise indicated.

and on the fence in front of the apartment building. A lot of broken glass was on the floor near the window. Anaraki also noticed that Cunningham's car was parked in an unusual way on the street; it had not been moved for street cleaning and was ticketed. Anaraki called Cunningham on the phone, but he did not answer. Anaraki went to Cunningham's apartment and used a key to open the door. Cunningham was lying on the floor and "there was blood everywhere." Anaraki called the police.

Firefighter Austin Phillips (Phillips) responded to a call regarding the apartment building. As he walked down the hallway and approached apartment 211, he noticed a strong smell of decomposition. When Phillips entered the apartment, he noted blood on the floor and walls. He left his medical equipment at the door so as not to contaminate the scene. Phillips determined that Cunningham was dead.

Los Angeles Police Department Officer Angel Alfaro arrived at the scene after Phillips, who told him that a dead man was inside the apartment. Although the apartment door was closed, Officer Alfaro noted "a foul odor." The odor was stronger inside. After seeing the body, he immediately left the apartment and closed the door to preserve the crime scene. Officer Alfaro called a special homicide team to respond to the scene.

When Los Angeles Police Department Homicide Detective Luis Carranza arrived, Officer Alfaro pointed out some blood on the fence surrounding the building, and Detective Carranza noted a broken window on the second floor. There was blood on the window, windowsill, and the wall around it. There was also a trail of blood on the sidewalk in front of the building. An electrical conduit under the broken window was bent. It looked like someone had stepped on it or pushed it. Detective Carranza concluded that someone broke out through the window and climbed onto the windowsill and down the front of the building.

The person then climbed over the fence around the building and left.

After, Detective Carranza returned to apartment 211. Detective Carranza saw blood on the inside of the door, the walls, and the ground of the entryway. A set of keys was found on the ground. A bloody kitchen knife was next to a desk. The blade on the knife was eight inches long and the tip was bent.

Cunningham's body was near the bed. There were blood smears on the bed, as well as a large amount of blood on the left side of his body. There was a hammer under his head. Cunningham had lacerations on his hands and arm that were consistent with defensive wounds, a stab wound on his back, and a knife wound on his face. An autopsy noted that Cunningham had sustained over three dozen stab wounds, incision wounds, and contusions, including a stab wound to his forehead and another to his left armpit that punctured Cunningham's lung in a way that made it difficult to breathe. Although not immediately fatal, the stab wound to his lung contributed to his death. The cause of death was multiple sharp force injuries; the manner of death was homicide.

DNA testing determined that the blood on the fence was consistent with a mixture of at least two male contributors. The major contributor matched defendant's profile, and the minor contributor matched Cunningham's profile. Blood on the interior doorknob of the apartment was consistent with a mixture of two contributors, with at least one being male. Again, the major contributor matched defendant's profile, and the minor contributor was undetermined. Blood on the keys matched defendant's profile. Blood on the knife handle was consistent with a mixture of two male contributors; the major contributor matched defendant's profile, and the minor contributor matched Cunningham's profile. The blood on the knife blade matched

defendant's profile. Blood on the hammerhead was consistent with a mixture of at least two males. Cunningham's contribution to the mixture was subtracted because he was bleeding from the head onto the hammer when he died; the remaining profile matched defendant. The same process was done with the handle of the hammer, and the remaining profile also matched defendant.

B. Defendant's actions on the night of the murder and his subsequent arrest

On the evening of December 6, 2017, Deandre King (King) was working as a cashier at the Food-4-Less on Western Avenue. At approximately 9:30 p.m., she took her lunch break and walked into the parking lot. She saw defendant, who was not wearing a shirt. After getting King's permission, defendant used her phone to call an out-of-state number. When he was done, defendant gave the phone back to King. She noticed that his hands were bleeding, so she got a first aid kit. Defendant told King that he had been robbed. He told security guard Vanessa Richardson that three "Mexican guys" had stabbed him. He said that he did not want anyone to call an ambulance because he did not want the police to come. King or someone else eventually called 911.

Los Angeles Police Department Officer Danielle Lopez interviewed defendant at California Hospital. He was in the emergency department and his hands were bandaged. He first told Officer Lopez that he had been robbed while trying to buy marijuana. He said that the assailant had attacked him with a knife. Defendant then said that he had been the one holding the knife. When Officer Lopez asked him some follow up questions, defendant said that the assailant had a knife and tried to take his money. When he tried to stab defendant, defendant grabbed the knife. He said that the lacerations on his hands occurred when he was holding the knife.

Video footage obtained from security cameras in Cunningham's apartment building showed Cunningham and another individual, later identified as defendant, walking into the building on the evening of December 6, 2017. None of the footage showed defendant ever exiting the building.

Defendant was arrested at the hospital on December 13, 2017.

Defense Evidence

Defendant's brother testified that he had never known defendant and Cunningham to fight or not get along.

Defense pathologist Dr. Frank Patrick Sheridan testified that none of Cunningham's wounds were immediately fatal or probably immediately incapacitating. The cause of death was the multiple wounds, 14 in total, along with the punctured lung. Cunningham likely lived minutes after receiving the injuries. Dr. Sheridan stated that the wounds to defendant's hands could have been consistent with someone grabbing the blade of a knife, with a person's hand sliding down the blade of a knife while in the act of stabbing, and with a struggle over a knife. The wounds could also have been defensive wounds. In Dr. Sheridan's opinion, the wounds were caused by a combination of defensive injuries. They could have been partially caused by defendant's hands slipping on the knife as he stabbed someone. Dr. Sheridan also opined that Cunningham could have been saved if he had received medical help within a few minutes of receiving the injuries.

Kenneth Moses (Moses), the Director of Forensic Identification Services, testified that, based on his review of the crime scene photographs, there was a struggle that caused blood transfers to objects around the room. Moses stated that a person can sustain injuries to the hand when it slides down the handle of a knife onto the blade. Such injuries are typically parallel

lacerations on the hand. Based on Moses's review of photographs of defendant's healed hands and the autopsy report, Moses believed that defendant's hand wounds were not consistent with the parallel wounds typically caused by hand slippage. Defendant's healed wounds were more consistent with a struggle over a knife or a person grabbing the sharp end of a knife. Moses believed that Cunningham was holding the knife and defendant tried to get it by grabbing the blade. With regard to Cunningham's injuries, Moses noted that they were almost entirely on the left side of his body and consistent with two people struggling. Most of the injuries were not stab wounds; they were lacerations.

On cross-examination, Moses testified that his opinion that defendant grabbed the knife from Cunningham was based on the presence of postoperative stellate patterns on defendant's hands.

DISCUSSION

I. Sufficient evidence supports defendant's conviction for second degree murder

Defendant contends that his conviction should be reversed because there was insufficient evidence that he acted with either express or implied malice.

A. Relevant law

The prosecution has the burden of proving element of the charged count. (*People v. Cuevas* (1995) 12 Cal.4th 252, 260.) "To determine whether the prosecution has introduced sufficient evidence to meet this burden, courts apply the 'substantial evidence' test. Under this standard, the court '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.' [Citations.]" (*Id.* at pp. 260–261.)

The uncorroborated testimony of a single witness is sufficient to sustain a conviction unless the testimony is physically impossible or inherently improbable. (*People v. Panah* (2005) 35 Cal.4th 395, 489.) “Reversal . . . is unwarranted unless it appears ‘that upon no hypothesis whatever is there sufficient substantial evidence to support [the conviction].’” (*People v. Bolin* (1998) 18 Cal.4th 297, 331.)

Second degree murder is the unlawful killing of a human being with express or implied malice aforethought. (§ 187, subd. (a); *People v. Swain* (1996) 12 Cal.4th 593, 600.) Express malice requires an intent to kill. Implied malice requires an intentional act, the natural consequences of which are dangerous to human life and which is performed with conscious disregard for life. (*Id.* at p. 601.)

B. Analysis

Applying these legal principles, we conclude that defendant’s conviction is amply supported by sufficient evidence of malice. The appellate record shows that defendant inflicted over three dozen knife wounds, including six stab wounds, on Cunningham with an eight-inch kitchen knife. One of the stab wounds was to Cunningham’s forehead, and other penetrated his armpit so deeply that it punctured his lung. This evidence demonstrates that defendant intended to kill Cunningham. (*People v. Avila* (2009) 46 Cal.4th 680, 701 [act of repeatedly stabbing victim was substantial evidence of intent to kill]; *People v. Bolden* (2002) 29 Cal.4th 515, 561 [single stab wound that penetrated victim’s lungs and spleen was evidence of intent to kill].) At a minimum, the evidence demonstrated that defendant committed an act, the natural consequences of which were dangerous to human life. (*People v. Pacheco* (1981) 116 Cal.App.3d 617, 627 [assault with a deadly weapon causing 45 stab wounds was sufficient evidence of implied malice].)

II. *The trial court had no sua sponte duty to instruct the jury on the lesser-included offense of involuntary manslaughter*

Defendant contends that the trial court erred by not instructing the jury on the lesser-included offense of involuntary manslaughter. According to defendant, such an instruction was warranted because “there was ample evidence which supported an absence of malice.”

A. Relevant law

In criminal cases, ““even in the absence of a request, the trial court must instruct on the general principles of law relevant to the issues raised by the evidence. [Citations.] The general principles of law governing the case are those principles closely and openly connected with the facts before the court, and which are necessary for the jury’s understanding of the case.” [Citation.]” (*People v. Breverman* (1998) 19 Cal.4th 142, 154–155.) “The existence of ‘any evidence, no matter how weak’ will not justify instructions . . . , but such instructions are required whenever evidence . . . is ‘substantial enough to merit consideration’ by the jury.” (*Id.* at p. 162.) “Substantial evidence’ . . . is “evidence from which a jury composed of reasonable [persons] could . . . conclude[]” that the [defense] was [applicable].” (*Ibid.*)

“Generally, involuntary manslaughter is a lesser offense included within the crime of murder. [Citations.]” (*People v. Prettyman* (1996) 14 Cal.4th 248, 274 (*Prettyman*), superseded by statute on other grounds as stated in *People v. Lopez* (2019) 38 Cal.App.5th 1087, 1103.) Manslaughter is “the unlawful killing of a human being without malice.” (§ 192.) Involuntary manslaughter is a killing committed “in the commission of an unlawful act, not amounting to a felony; or in the commission of a lawful act which might produce death, in an unlawful manner, or without due caution and circumspection.” (§ 192, subd. (b).)

“[W]hen the evidence presents a material issue as to whether a killing was committed with malice, the court has a sua sponte duty to instruct on involuntary manslaughter as a lesser included offense, even when the killing occurs during the commission of an aggravated assault.” (*People v. Brothers* (2015) 236 Cal.App.4th 24, 35.) “However, when . . . the defendant indisputably has deliberately engaged in a type of aggravated assault the natural consequences of which are dangerous to human life, thus satisfying the objective component of implied malice as a matter of law, and no material issue is presented as to whether the defendant subjectively appreciated the danger to human life his or her conduct posed, there is no sua sponte duty to instruct on involuntary manslaughter.” (*Ibid.*)

B. Analysis

Applying these legal principles, we conclude that the trial court had no sua sponte duty to instruct on involuntary manslaughter because there was no substantial evidence to support such an instruction. There was no evidence that defendant killed Cunningham during the commission of an unlawful act not a felony, or a lawful act which might cause death, committed in an unlawful manner without due circumspection. Stabbing a person over three dozen times is not a lawful act and is not a misdemeanor.

In urging us to reverse, defendant reiterates the same argument in support of his contention that his conviction is not supported by sufficient evidence—he asserts that there is no evidence of malice. But, as set forth above, there was ample evidence of malice. The fact that the trial court granted defendant’s motion to dismiss the first degree murder charge is not evidence of the absence of malice; all we can infer from the trial court’s order is that there was no evidence of premeditation or deliberation. (CALCRIM Nos. 520 & 521.)

Defendant further contends that the trial court was required to instruct on involuntary manslaughter because his conduct amounted only to a simple assault, and death is not a natural consequence of simple assault. He asserts: “Even assuming for the sake of argument that [defendant] may have intended to confront Cunningham, or even engage in a physical fight with him, he may not have known Cunningham might quickly escalate the situation by grabbing a knife from the kitchen counter.” This argument lacks merit. There is no evidence that Cunningham initiated a fight or grabbed the knife first. And, even if he did, it is undisputed that defendant gained control of the knife and slashed and stabbed Cunningham numerous times. This was not a simple assault.

The cases cited by defendant are readily distinguishable. Both *Prettyman*, *supra*, 14 Cal.4th at page 267 and *People v. Hickles* (1997) 56 Cal.App.4th 1183, 1197 address the natural and probable consequences doctrine in the context of aiding and abetting. Here, defendant was not aiding and abetting another person. He alone attacked Cunningham.

C. Harmless error

Even if the trial court had erred in failing to instruct the jury on involuntary manslaughter, which it did not, any alleged error was harmless. (*People v. Thomas* (2012) 53 Cal.4th 771, 814; *People v. Watson* (1956) 46 Cal.2d 818, 836.) “No judgment shall be set aside, or new trial granted, in any case, on the ground of misdirection of the jury, or of the improper admission or rejection of evidence, or for any error as to any matter of pleading, or for any error as to any matter of procedure, *unless, after an examination of the entire cause, including the evidence, the court shall be of the opinion that the error complained of has resulted in a miscarriage of justice.*” (*Id.* at p. 835.)

As set forth above, the evidence demonstrated that defendant acted with malice. In fact, the jury rejected the defense theory that he acted without malice when it convicted him of second degree rather than the lesser-included offense of voluntary manslaughter. Therefore, it is not reasonably probable that defendant would have received a more favorable outcome absent the alleged error.

DISPOSITION

The judgment is affirmed.

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_____, J.
ASHMANN-GERST

We concur:

_____, P. J.
LUI

_____, J.
HOFFSTADT