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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE,

Plaintiff and Respondent,

v.

FREDDIE SANCHEZ,

Defendant and Appellant.

B267779

(Los Angeles County
Super. Ct. No. PA080143)

APPEAL from a judgment of the Superior Court of Los Angeles County, David B. Gelfound, Judge. Affirmed.

Jerayln Keller, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Margaret E. Maxwell and Timothy L. O'Hair, Deputy Attorneys General, for Plaintiff and Respondent.

* * * * *

It was undisputed that defendant Freddie Sanchez killed his mother with a knife in the family home. By his own account, he “butchered” his mother, stabbing her multiple times. Defendant was convicted of second degree murder.

He also was convicted of assault with a deadly weapon, to wit, a radio, on his father and violating a previously entered restraining order protecting his father. These convictions arose from defendant’s conduct the day before killing his mother.

After review, we affirm defendant’s convictions.

BACKGROUND

1. Violation of a Restraining Order

On August 29, 2013, the court issued a restraining order requiring defendant stay at least 100 yards away from his father, Antonio Sanchez (Antonio). It also prohibited defendant from assaulting Antonio. The restraining order further ordered defendant stay away from his parent’s residence.

On September 13, 2013, the court issued another restraining order with the same prohibitions, except the September order did not require defendant stay away from the family residence. Defendant argues that “[t]he September 13 order was the only valid order in effect” at the relevant time, and respondent concedes that issue. (Boldface omitted.)

At trial, defendant testified that he knew of the restraining order. He testified that he “tried to be on good behavior because [he] knew that there was a restraining order.” He further acknowledged that he knew that he could be arrested if he violated the restraining order.

2. Assault with a Deadly Weapon

Antonio testified that on March 24, 2014, defendant hit him with a radio. Antonio testified that defendant hit him with

enough force that he started to bleed. According to Antonio, defendant said, “I’m going to hit you where it would hurt you the most.” Antonio testified that defendant “behave[d] badly” when he was under the influence of a controlled substance.

Defendant admitted to hitting his father with his fist, but denied hitting his father with a radio.

3. Killing of Matilde Sanchez, Defendant’s Mother

On March 25, 2014, defendant killed his mother Matilde (also spelled Matilda) Sanchez (Matilde), causing her to suffer multiple fatal stab wounds.

Defendant was interviewed shortly after the killing. He told officers that he “butcher[ed]” his mother because she tried to attack him. When asked if he stabbed her many times, defendant responded, “Yes I did.” Defendant reported that he repeatedly stabbed Matilde because he did not want her to move. Defendant observed her stop breathing but may have continued to stab her even though she had died. Defendant called 911 and told police that he killed his mother.

During his interview with officers shortly after the killing, defendant stated that he had used methamphetamine two days earlier. He reported using methamphetamine for about a year and denied that it caused him any memory loss.

At trial, defendant testified that on March 25, 2014, he entered his mother’s room to request to borrow her phone. Matilde said, “Why don’t you die,” and she previously had threatened to kill him. Matilde tried to strike defendant with a kitchen knife, and defendant took the knife from her and “snapped.” He started “butchering” his mother. Defendant testified that, at the time he was stabbing her, he “didn’t feel anything” and “didn’t have control of the situation.”

Defendant further testified that he did not recall stabbing Matilde. He did not recall slicing her throat. He did not remember how many times he stabbed her or whether she looked injured. He remembered calling 911. When asked how he exited from Matilde's bedroom, defendant testified that "everything just blacked out. I don't know what was going on in the situation. I was in a moment. I was just scared. I was fearing my life, and like."

Consistent with his pretrial interview, defendant testified that he used methamphetamine two days before killing his mother. He also testified that he had not fallen asleep until 5:00 the morning of the killing.

At trial, defendant testified that people could hear his thoughts, which he described as a blessing and a curse. Defendant acknowledge that this "curse" never caused him to commit crimes. Defendant testified that he sometimes heard voices and saw things that were not present. He again acknowledged that no voice told him to kill his mother, reaffirming that it was his "choice."

4. Defendant's Expert's Testimony

Defense expert Haig Kojian, a forensic psychologist, testified that a person using methamphetamine may suffer from methamphetamine induced psychosis. A person may suffer for a year or two years after the use of methamphetamine. Kojian testified that not every methamphetamine user becomes psychotic, and expressed no opinion on whether defendant suffered from methamphetamine induced psychosis at any time. Kojian also testified that the most extreme side effects of methamphetamine use generally are experienced during the

eight to 12 hours after use, which is the half-life of methamphetamine.

5. Conviction and Sentence

Jurors found defendant guilty of the second degree murder of Matilde. They further found he personally used a deadly weapon within the meaning of Penal Code section 12022, subdivision (b)(1). Jurors found defendant guilty of assaulting Antonio with a deadly weapon, to wit, a radio. They further found that defendant violated a court order (a misdemeanor offense). Following a separate trial, jurors found that defendant was sane at the time he committed the crimes.

The court sentenced defendant to prison for a five-year determinate term and a consecutive 16-year-to-life indeterminate term.

DISCUSSION

Defendant challenges several jury instructions and argues that the record lacks substantial evidence to support the conviction for violating a court order. As we shall explain, we conclude that one instruction was erroneous but it was harmless beyond a reasonable doubt. Defendant's remaining arguments lack merit.

1. Alleged Instructional Error—Unconsciousness

It is undisputed that a trial court is required to instruct on defenses supported by substantial evidence that are not inconsistent with a defendant's theory of the case. (*People v. Gutierrez* (2009) 45 Cal.4th 789, 824.) Here, the parties dispute whether substantial evidence supported an instruction that defendant was unconscious at the time he killed his mother because of his voluntary methamphetamine use.

“‘An unconscious act within the contemplation of the Penal Code is one committed by a person who because of somnambulism, a blow on the head, or similar cause is not conscious of acting and whose act therefore cannot be deemed volitional.’” (*People v. Ray* (1975) 14 Cal.3d 20, 25, overruled on another ground in *People v. Lasko* (2000) 23 Cal.4th 101, 110.) As we shall explain, we conclude no substantial evidence warranted an instruction on voluntary unconsciousness.

Defendant emphasizes his testimony that he did not remember stabbing his mother. Based on his inability to recall the stabbing at the time of trial, defendant contends that his conduct when he stabbed his mother was automatic and uncontrollable. Defendant’s conclusion (uncontrollable conduct), however does not follow from his premise (lack of recall). Although defendant testified that he did not “recall” stabbing his mother, his lack of recollection does not support the conclusion that he was unconscious when these events occurred. (*People v. Carlson* (2011) 200 Cal.App.4th 695, 704 [“A ‘[d]efendant’s professed inability to recall the event, without more, [i]s insufficient to warrant an unconsciousness instruction.’ ”].) Defendant did not testify that he was unconscious and no other witness testified that defendant appeared unconscious. Given these circumstances, no reasonable juror could have concluded defendant was unconscious at the time he killed his mother. (*People v. Halvorsen* (2007) 42 Cal.4th 379, 418 [inconsistent lack of recall does not support the inference that defendant was unconscious].)

Moreover, all of the evidence supported the conclusion that defendant was conscious at the time of the killing. During his tape-recorded interview with police, defendant stated that he

“butcher[ed]” his mother. He reported stabbing her multiple times. He reported that he “kept wounding her.” Defendant observed his mother stop breathing. He knew that he actually killed her. After the killing, defendant was lucid and able to answer questions by authorities.

At trial, defendant recalled his mother saying, “Why don’t you die?” He recalled taking the knife away from his mother and “butchering” her. He testified that it was his “choice” to kill his mother, and he did not hear voices requiring that conduct. Thus, no evidence warranted the conclusion that defendant acted in an unconscious state. (See *People v. Ochoa* (1998) 19 Cal.4th 353, 424.)

Finally, although defendant emphasizes his methamphetamine use, defendant did not use methamphetamine immediately before the killing. Interpreting the evidence in the light most favorable to him, the record indicates that he used methamphetamine two days prior to the killing. Defendant’s expert testified that the most extreme side effects of the drug occur during an 8- to 12-hour time period after ingestion. Although defendant’s expert testified generally, no evidence suggested that this time period (which was prior to the killing) did not apply to defendant. Thus, neither defendant’s testimony nor his expert’s testimony supported an instruction on unconsciousness as a result of voluntary drug use. The trial court properly denied defendant’s requested instruction.

2. Alleged Instructional Error—Unanimity Instruction

With respect to his conviction for violating a restraining order, defendant argues that the trial court erred in neglecting to sua sponte instruct jurors that they must unanimously agree which act violated the restraining order. Defendant argues

jurors could have disagreed on which act was offending. A court is required to give a unanimity instruction “when the evidence suggests more than one discrete crime.” (*People v. Russo* (2001) 25 Cal.4th 1124, 1132.) The instruction is intended to prevent a conviction when “‘there is no single offense which all the jurors agree the defendant committed.’” (*Ibid.*)

Assuming the trial court should have provided a unanimity instruction, the error was harmless under any standard. Defendant admitted that he “had a court order to stay away from [his] dad.” He also testified, “I knew . . . I had a restraining order.” He was convicted of assault with a deadly weapon on his father, and his assault conviction is unchallenged on appeal. Thus, it cannot reasonably be disputed that defendant failed to comply with the court order that he stay away from Antonio. Stated otherwise, jurors unanimously agreed that defendant assaulted Antonio.

3. Instructional Error—Violation of Court Order

The trial court erred in instructing jurors that defendant violated a court order if he came within 100 yards of his parents’ residence. The provision is included in an August 2013 restraining order, but as the parties agree only the September 2013 restraining order was valid. The provision is not included in the September restraining order.

The error, however, was not prejudicial because as previously explained defendant acknowledged the existence of the restraining order, and it was undisputed that an assault with a deadly weapon constituted a violation of the valid restraining order. Therefore, the instructional error was harmless beyond a reasonable doubt.

4. Sufficiency of the Evidence of Violation of a Court Order

The evidence overwhelmingly supported the conclusion that defendant violated a court order. In his reply brief, defendant admitted that the “September 13 order was the order in effect at the time of the charged offense and his conviction can be supported by findings he violated the terms of that order.” In the September 13 order, defendant was ordered to stay away from his father. Instead he approached his father and assaulted him with a radio. To the extent defendant is arguing that the August 29 order was invalid, that does not undermine the conclusion that defendant violated a valid stay away order (the September 13 order), and no other conclusion could be reached in light of defendant’s admission that he assaulted his father.

DISPOSITION

The judgment is affirmed.

FLIER, Acting P. J.

WE CONCUR:

GRIMES, J.

SORTINO, J.*

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