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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

MATTHEW STEWART WORDEN,

Defendant and Appellant.

2d Crim. No. B269407
(Super. Ct. No. 2013013403)
(Ventura County)

A jury found Matthew Stewart Worden guilty of assault with a deadly weapon (Pen. Code, § 245, subd. (a)(1)¹) and unlawful possession of metal knuckles (§ 21810). The jury also found true a great bodily injury enhancement. (§ 12022.7, subd. (a).) The trial court sentenced Worden to two years for the assault, plus three years for the great bodily injury enhancement

¹ All statutory references are to the Penal Code.

and a concurrent 16 months for possession of brass knuckles. We affirm.

FACTS

On the evening of April 25, 2013, Garland Weems and Bruce Buchanan were on their way back from the grocery store. Weems was carrying bread in a bag. Buchanan rode his bicycle slowly next to Weems as he walked. Weems saw a car coming directly towards him at a speed of 25 to 30 miles per hour. As Weems jumped out of the way, the side mirror of the car hit his bag of groceries and tore it from his hand.

The driver of the car stopped about 50 feet away. Weems thought the driver may have had a medical problem such as a heart attack. He approached the car to see if anyone needed help. Buchanan remained on the sidewalk with his bicycle.

As Weems came to the back of the car, the driver's side door opened and Worden got out. Worden was "huffing" and had "his fists balled up." Weems asked Worden what his problem was. Weems continued to walk toward Worden.

Weems said that when Worden got out of the car in an aggressive manner, Weems could have backed away, but he did not. Weems said he would fight Worden "if need be."

Worden took something from his back pocket and lunged at Weems. Weems thought Worden was trying to hit him. But Worden stabbed him in the chest with a knife. Weems did

not know he had been stabbed until Worden stabbed him again in the chest a few seconds later.

Weems tried to kick Worden to get him away from him, but Weems tripped over a reflector in the street. When Weems was down Worden tried to stab him again. Weems suffered cuts on his arm trying to fend off Worden. Weems was able to keep Worden at bay by kicking at him until Weems could stand up. Once Weems regained his feet, Worden stabbed him again, puncturing his lung and liver.

Weems called out for Buchanan to help. Buchanan replied that he took pictures of Worden and his license plate with his phone. That diverted Worden's attention from Weems to Buchanan. Worden started to chase Buchanan. Buchanan was able to keep a safe distance.

Worden turned his attention back to Weems. Weems grabbed a wooden stake and began swinging it at Worden. Worden ran to his car and drove off.

Weems called 911. Buchanan asked three men, who were driving by, to follow Worden and get his license plate number. The men complied.

Sheriff's deputies went to Worden's home, which was only two miles away. They arrested Worden. He had a fresh cut on the tip of his right thumb. Deputies found dried blood on the emergency brake lever and the floorboard on the driver's side of

his car. In a search of Worden's home, the police found a pair of blood-stained shorts with brass knuckles in the pocket.

Weems was seriously injured and was hospitalized for a week.

DEFENSE

Worden testified on his own behalf. He said he left home about 10:30 p.m. to get a "Frosty" at a Wendy's restaurant. He was making a wide left turn when he heard a loud thud and someone yelling "hey." Worden stopped his car and backed up close to the curb. He got out of his car to inspect the passenger side for damage. Weems emerged from out of the dark and said, "What the fuck is your problem?" Weems was quickly walking toward Worden. Worden was confused because he did not know what struck his car or why Weems was speaking to him.

Worden saw Buchanan getting off his bicycle. Worden believed he was about to be in an altercation with the two men. Weems was coming at Worden quicker than before. When he got to about three to five feet from Worden, Weems said, "I will fuck you up."

Worden took a step back. He remembered he had a knife in his pocket. He was feeling "pretty scared." Worden pulled out the knife. He did not intend to use it. He only wanted to scare Weems so he would stop coming at him. Worden was

walking backward to his car. Weems said mockingly, “[W]hat are you going to do with that little knife.”

Weems lunged for the knife. Worden stabbed Weems in the chest area. It seemed that the knife bounced off Weems. Weems did not act like he had been stabbed. He kept coming at Worden, hitting him on the side of the head. Worden stabbed Weems again in the lower abdomen. Weems grabbed the knife, but Worden was able to retain possession.

It looked as though Weems was preparing to engage Worden again, but Weems stepped back and sat down on the curb. Worden was standing in the street about 10 feet from his car and saw Buchanan coming after him. Buchanan was between Worden and his car. Worden showed Buchanan the knife to scare him away. Buchanan backed away. But then Buchanan came after Worden a second time. Buchanan had something in his hand. Worden thought it may be a knife. Worden chased Buchanan away with his knife.

Weems approached Worden again. This time Weems was swinging something toward Worden’s face. Worden got in his car and drove away.

Dr. Wayne Schulthesis is medical director of the laboratory at the hospital where Weems was admitted. A preliminary test of Weems’s urine showed positive for

amphetamine and marijuana. Schulthesis testified a preliminary test could have a false positive.

DISCUSSION

Worden contends it was error to instruct the jury on mutual combat and initial aggressor principles. These instructions were given without objection.

The trial court gave the jury CALCRIM No. 875 on the elements of assault with a deadly weapon, and CALCRIM No. 3470 on the elements of self-defense. The court also gave CALCRIM No. 3471 on the right to self-defense of a person who engages in mutual combat or who starts a fight.

CALCRIM No. 3471 provides: “A person who engages in mutual combat or who starts a fight has a right to self-defense only if: 1. He actually and in good faith tried to stop fighting; AND 2. He indicated, by word or by conduct, to his opponent, in a way that a reasonable person would understand, that he wanted to stop fighting and that he had stopped fighting; AND 3. He gave his opponent a chance to stop fighting. If the defendant meets these requirements, he then had a right to self-defense if the opponent continued to fight. However, if the defendant used only non-deadly force, and the opponent responded with such sudden and deadly force that the defendant could not withdraw from the fight, then the defendant had the right to defend himself with deadly force and was not required to

try to stop fighting or communicate the desire to stop to the opponent, or give the opponent a chance to stop fighting. A fight is mutual combat when it began or continued by mutual consent or agreement. That agreement may be expressly stated or implied and must occur before the claim to self-defense arose.”

The trial court has an obligation to instruct on every theory of the case, but only to the extent the theory is supported by substantial evidence. (*People v. Flannel* (1979) 25 Cal.3d 668, 685.) Worden claims there was no substantial evidence of mutual combat or that he started the fight.

Weems testified that Worden got out of his car in an aggressive manner, “huffing” with “his fists balled up.” When Weems asked Worden what his problem was, Worden lunged at Weems with a knife. The jury could reasonably conclude Worden started the fight.

As an alternative, the jury could conclude the fight started as a matter of mutual combat. Mutual combat consists of fighting by mutual intention or consent as reflected in an express or implied agreement to fight. (*People v. Ross* (2007) 155 Cal.App.4th 1033, 1046-1047.) The jury could conclude that when Worden got out of his car, he took a fighting stance. Weems testified he kept walking toward Worden and he was willing to fight “if need be.” The jury could conclude that there was an implied agreement to fight.

In any event, even if the instruction was not supported by substantial evidence, any error was harmless. The jury was also instructed with CALCRIM No. 200 that “[s]ome of these instructions may not apply, depending on your findings about the facts of the case” If the jury found that there was no evidence of mutual combat or that Worden did not start the fight, it would not apply CALCRIM No. 3471. We presume the jury is able to correlate, follow and understand instructions. (*People v. Sanchez* (2001) 26 Cal.4th 834, 852.)

The judgment is affirmed.

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GILBERT, P. J.

We concur:

YEGAN, J.

TANGEMAN, J.

F. Dino Innumerable, Judge
Superior Court County of Ventura

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