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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA¹

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

OSCAR HERNANDEZ
VALLES,

Defendant and Appellant.

2d Crim. No. B284705
(Super. Ct. No. 2013039508)
(Ventura County)

Oscar Hernandez Valles appeals from the judgment after a jury convicted him of second degree murder (Pen. Code,¹ §§ 187, subd. (a), 189), and found true an allegation that he used a deadly weapon—a knife—to commit his crime (§ 12022, subd. (b)(1)). The trial court sentenced him to 16 years to life in prison. Valles contends: (1) the court erred when it excluded evidence related to his defense, (2) the court erroneously admitted

¹ All further unlabeled statutory references are to the Penal Code.

evidence of his prior possession of a knife, and (3) insufficient evidence supports his conviction. We affirm.

FACTUAL AND PROCEDURAL HISTORY

Valles went to an Oxnard bar with his girlfriend to have a drink. After they left, Valles returned and made advances toward another woman, E.S. She rebuffed him and walked away.

When E.S. began to talk with another man in the bar, L.T., Valles approached them and asked E.S. to leave with him. She refused. Valles pleaded with her, but she repeated that she was not going with him and pulled away.

Valles and L.T. began to argue. E.S. attempted to stand between them so they would not fight. Several other people in the bar tried to separate the two men. Another man, B.R., joined the argument and pushed Valles onto an outdoor patio. L.T. followed and began to fight with Valles. Valles pulled a knife out of his pocket and stabbed L.T. B.R. separated the two men, and L.T. went back into the bar, holding his stomach. Blood was everywhere.

Valles followed L.T. and stabbed him several more times. Valles then ran outside after bar patrons separated the two men. L.T. later died from a stab wound to his heart. A knife blade was embedded in his shoulder.

Valles turned himself in to police the following afternoon. He had abrasions on his neck, shoulder, and hands. The injuries to his hands were consistent with the use of a knife.

Valles told police that he acted in self-defense. He said he fought L.T. because L.T. embarrassed him in front of E.S. He said L.T. pushed him out of the bar, onto a patio, spilled beer on him, and punched him. B.R. hit Valles. Valles escaped when he hopped over the patio wall. His shirt was bloody.

Valles told police that he did not have a knife when he fought L.T. He said he cut his hand on the mug he held during the fight.

Police searched Valles's residence that evening. They recovered the shirt, jeans, and shoes Valles had worn the night before. The shirt and jeans had been freshly washed and were still damp. The shoes had been cleaned recently. They had dark red stains on them. Shoeprints taken from the bar matched the shoes recovered from Valles's residence.

Police found a baggie of cocaine near the patio wall at the bar. They did not determine to whom the cocaine belonged or if it was left there on the night of L.T.'s murder. B.R. later told prosecutors that he had previously purchased cocaine from L.T.

Valles moved to admit the drug evidence prior to trial. The trial court tentatively ruled the evidence was irrelevant and inadmissible. The court said that if there was evidence that Valles knew L.T. was a drug dealer and did not want E.S. to interact with him because of that, the drug evidence may be admissible. When Valles did not present any evidence that he knew or believed L.T. was a drug dealer on the night of the incident, the court excluded the drug evidence.

At trial, E.S. testified that she saw Valles at the bar one month before L.T.'s murder. Valles showed her a pocketknife that evening. He said that "nobody was going to mess with him" because he had the knife.

B.R. also testified that he saw Valles at the bar one month before L.T.'s murder. He and Valles had an argument that evening.

Valles testified in his own defense. He said he did not remember how much he drank on the night of L.T.'s murder,

but that he was “wasted.” He said he approached E.S. and L.T. at the bar. L.T. grew upset. B.R. pushed Valles out to the patio. Valles was scared because B.R. is a “big guy.” L.T. ran out to the patio and started swinging at him. B.R. grabbed him and threw him off the patio. Valles hit his head and blacked out. When he came to, he left the bar. He did not recall having a knife.

DISCUSSION

Exclusion of drug evidence

Valles contends the trial court should have admitted evidence of the drugs found at the bar and of L.T.’s alleged drug dealing because it was relevant and was not unduly prejudicial.² We disagree.

“Relevant evidence” is evidence that has “any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of [an] action.” (Evid. Code, § 210.) Such evidence must “logically, naturally, and by reasonable inference” tend to prove a material fact. (*People v. Daniels* (1991) 52 Cal.3d 815, 856.) If it does, the evidence is admissible unless its potential for prejudice or confusion of the issues substantially outweighs its probative value. (Evid. Code, §§ 351, 352.) We review the trial court’s decision to exclude evidence as irrelevant and unduly prejudicial for abuse of discretion. (*People v. Ledesma* (2006) 39 Cal.4th 641, 701.)

² We reject the Attorney General’s claim that Valles forfeited his contention because he did not cite the relevant proceedings in his opening brief. (See *City of Lincoln v. Barringer* (2002) 102 Cal.App.4th 1211, 1240.) Valles discusses both the pretrial proceedings and his attempt to testify about L.T.’s alleged drug dealing in the facts section of his brief.

There was no abuse of discretion here. Valles claims that, because it is reasonable to believe that people involved in drug trafficking may be armed (see *People v. Limon* (1993) 17 Cal.App.4th 524, 535), the drug evidence was relevant to show that he acted in self-defense rather than out of malice (cf. *People v. Humphrey* (1996) 13 Cal.4th 1073, 1082 [defendant who kills without malice can only be convicted of manslaughter]). But Valles presented no evidence that he knew or believed that L.T. dealt cocaine. And there was no evidence of who owned the cocaine found at the bar.

Where, as here, the relevance of evidence depends on the existence of a preliminary fact, the proponent of the evidence must show the existence of that fact. (Evid. Code, § 403, subd. (a)(1).) Because Valles made no showing that he knew or believed L.T. dealt cocaine, the drug evidence was not relevant to Valles's state of mind when he stabbed L.T. (*People v. Pearson* (2013) 56 Cal.4th 393, 457 [where defendant was unaware of evidence he sought to have admitted, it was not relevant to his state of mind when he killed].) It was properly excluded. (*Ibid.*; see Evid. Code, § 403, subd. (a).)

Evidence of Valles's prior possession of a knife

Valles contends the trial court should not have admitted evidence that he possessed a knife one month prior to L.T.'s murder because its admission was unduly prejudicial. But Valles did not object to E.S.'s testimony that he previously showed her a knife. His contention is forfeited. (*People v. Ervine* (2009) 47 Cal.4th 745, 777.)

Even if it were not, E.S.'s testimony was not unduly prejudicial. "Prejudice" in the context of Evidence Code section 352 is "evidence that uniquely tends to evoke an emotional bias

against a party as an individual, while having only slight probative value with regard to the issues.” (*People v. Crittenden* (1994) 9 Cal.4th 83, 134.) Valles’s possession of a knife that may have been the murder weapon was highly probative. (*People v. Warren* (1953) 120 Cal.App.2d 257, 259; see also *People v. Alcala* (1992) 4 Cal.4th 742, 796-797 [evidence of knives seized from defendant’s residence properly admitted to show that defendant had access to same brand of knife found near murder victim]; *People v. Clark* (1992) 3 Cal.4th 41, 129 [evidence of knives belonging to the defendant properly admitted even though neither knife was directly connected to the offenses].) And it was far less inflammatory than the charged crime of murder. (See *People v. Ewoldt* (1994) 7 Cal.4th 380, 405.) E.S.’s testimony was therefore unlikely to evoke an emotional bias against Valles. (*Ibid.*) It was properly admitted. (*People v. Barnett* (1998) 17 Cal.4th 1044, 1136.)

Sufficiency of the evidence

Valles contends there was insufficient evidence of malice aforethought to sustain his murder conviction. We disagree.

Murder is the unlawful killing of a person with malice aforethought. (§ 187, subd. (a).) Malice may be express or implied. (§ 188.) Malice is express when there is “a deliberate intention unlawfully to take away the life of a fellow creature.” (*Ibid.*) It is implied when “no considerable provocation appears, or when the circumstances attending the killing show an abandoned and malignant heart” (*ibid.*)—i.e., “when the killing results from an intentional act, the natural consequences of which are dangerous to life, which act was deliberately performed by a person who knows that [their] conduct endangers the life of

another and who acts with conscious disregard for life” (*People v. Dellinger* (1989) 49 Cal.3d 1212, 1215).

Manslaughter is the unlawful killing of a person without malice aforethought. (§ 192.) A defendant lacks malice if they are provoked and kill in a “sudden quarrel or heat of passion.” (§ 192, subd. (a).) A defendant also lacks malice if they have an unreasonable but good faith belief that they must kill in self-defense. (*People v. Barton* (1995) 12 Cal.4th 186, 199.)

We will uphold the jury’s determination that Valles acted with malice aforethought if supported by substantial evidence. (*People v. Salazar* (2016) 63 Cal.4th 214, 242-244.) Our task is to “review[] the entire record in the light most favorable to the prosecution to determine whether it contains evidence that is reasonable, credible, and of solid value, from which a rational trier of fact could find the defendant guilty beyond a reasonable doubt.” (*People v. Kipp* (2001) 26 Cal.4th 1100, 1128.) We draw all reasonable inferences in favor of the prosecution (*People v. Brooks* (2017) 3 Cal.5th 1, 57), and resolve neither credibility issues nor evidentiary conflicts (*People v. Maury* (2003) 30 Cal.4th 342, 403). We will uphold Valles’s conviction if there is substantial evidence that he harbored either express or implied malice. (*People v. Williams* (2018) 23 Cal.App.5th 396, 412.)

Here, there was substantial evidence that Valles acted with both express and implied malice. Express malice may be “‘inferred from the defendant’s acts and the circumstances of the crime.’ [Citation.]” (*People v. Avila* (2009) 46 Cal.4th 680, 701.) Stabbing a person multiple times gives rise to the inference that a defendant deliberately intended to kill a victim. (*Id.* at pp. 701-702; see also *People v. San Nicolas* (2004) 34 Cal.4th 614,

658-659.) So, too, does stabbing a person in a vital area of the body. (*People v. Bolden* (2002) 29 Cal.4th 515, 561.) Likewise, implied malice may be inferred from the victim's multiple stab wounds to a vital area of the body. (*People v. Pacheco* (1981) 116 Cal.App.3d 617, 627; *People v. Gaulden* (1974) 36 Cal.App.3d 942, 951-952.)

Valles counters that he was provoked or acted in unreasonable self-defense based on his belief that L.T. was the initial aggressor and his past history with B.R. But the validity of a claim of provocation or self-defense is a question of fact for the jury. (*People v. Davis* (1965) 63 Cal.2d 648, 654 [self-defense]; *People v. Wright* (2015) 242 Cal.App.4th 1461, 1494 [provocation].) The trial court here instructed the jury on self-defense and provocation (see CALCRIM Nos. 505, 570, 571), and the jury rejected those defenses. We cannot substitute our judgment for those factual determinations on appeal. (*People v. Roehler* (1985) 167 Cal.App.3d 353, 361.)

Valles also claims that his intoxication on the night of the murder negates any finding of malice. But voluntary intoxication cannot negate a finding that the defendant acted with implied malice. (*People v. Soto* (2018) 4 Cal.5th 968, 975.) Nor can it negate a finding of express malice if the intoxication is the basis for the defendant's unreasonable belief in the need to act in self-defense. (*Id.* at p. 978.)

Voluntary intoxication is relevant to whether Valles was provoked and killed in the heat of passion, which would negate a finding of express malice. (*People v. Cameron* (1994) 30 Cal.App.4th 591, 601, abrogated on another point by § 29.4.) But the provocation sufficient to reduce murder to voluntary manslaughter requires not only that the defendant subjectively

experience a heat of passion resulting from the provocation but also that the defendant have an objectively reasonable response. (*People v. Lasko* (2000) 23 Cal.4th 101, 108.) Here, while Valles's intoxication may have provoked him to lash out against L.T., he does not demonstrate that the provocation would have led an ordinary person to react with deadly force. Without that showing, any provocation Valles may have felt cannot negate a finding of express malice. (*People v. Rangel* (2016) 62 Cal.4th 1192, 1225-1226.)

DISPOSITION

The judgment is affirmed.

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TANGEMAN, J.

We concur:

YEGAN, Acting P. J.

PERREN, J.

Jeffrey G. Bennett, Judge
Superior Court County of Ventura

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