

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

QUINTIN MADDOX, JR.,

Defendant and Appellant.

B233872

(Los Angeles County
Super. Ct. No. KA088924)

APPEAL from a judgment of the Superior Court of Los Angeles County,
Steven D. Blades, Judge. Affirmed.

Gordon S. Brownell, under appointment by the Court of Appeal, for Defendant
and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney
General, Lance E. Winters, Senior Assistant Attorney General, Susan Sullivan Pithey,
Supervising Deputy Attorney General, and Esther P. Kim, Deputy Attorney General, for
Plaintiff and Respondent.

A jury convicted Quintin Maddox, Jr. of second degree murder with a firearm enhancement. Maddox appeals, claiming instructional error. We affirm.

BACKGROUND

An information filed August 2, 2010 charged Maddox with one count of first degree murder of Ocie Daniel May in violation of Penal Code section 187, subdivision (a)¹, and personal and intentional use of a firearm (a handgun) pursuant to section 12022.53, subdivision (d), which proximately caused great bodily injury and death.² Maddox's first jury found him not guilty of first degree murder, and informed the trial court that it could not reach a verdict on second degree murder. The court declared a mistrial, as the jury was hopelessly deadlocked.

In Maddox's retrial, on May 27, 2011, the jury found him guilty of second degree murder and found the firearm enhancements to be true. The trial court sentenced Maddox to forty years to life in prison.

Maddox filed this timely appeal.

At the retrial, witnesses and police officers testified about events on March 26, 2009, in the City of Covina. Samuel Abernathy testified that he was smoking, drinking, and freestyle rapping in an alleyway near Prospero and Ruddock Street, "where everyone just hangs out." At around 7:00 p.m. to 7:30 p.m., there were about eight to 10 people in the alley, including Abernathy's friend Ocie May. May always carried a backpack containing his personal items, as he often moved from place to place. Josh Beverly was also in the alley with Maddox, who was wearing all black clothing and a black beanie.

Abernathy was riding around on a motor scooter borrowed from Josh Hodge, who was also in the alley. When he returned to the alley, he saw a fight, with May on his back on the ground and Josh Beverly on top of him beating him up. About 10 people were standing around watching. May got up, "yelling passionate words" that were not angry,

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

² The information charged two other firearm enhancements under section 12022.3, subdivisions (b) and (c), which the trial court stayed.

but “sentimental,” and the combatants went back to the crowd, still exchanging words. As the crowd regrouped, Abernathy saw Maddox, whom he had not met before that day, pull out a gun from below his waist. Maddox “swung it in 360 form, pointed it at everybody,” and Abernathy ducked and ran. May also turned to run, and when May’s back was turned, Maddox reached for him with the hand not holding the gun. Abernathy heard one gunshot as he ran away, about ten seconds after he saw Maddox pull out the gun. Abernathy did not look back. Abernathy did not see May reach for anything in his waistband. Although May was wearing his backpack when Abernathy first saw him, when Abernathy returned from riding the scooter, he did not see the backpack.

Joshua Hodge testified that he arrived at the alley around 7:00 p.m. on his motorized scooter, and loaned it to Abernathy to ride. Hodge smoked some marijuana that he purchased from May. A friend introduced him to Maddox. Maddox asked Hodge if he had a “burner” (firearm), and Hodge told him, “I don’t use those types of things.” During the fight between Ocie and Beverly, Maddox told Hodge “to get ghost” (to vanish or leave the area), and “[w]hat [you] see now is nothing, but what [you’re] about to see could be something.” Hodge left on his scooter, and heard a gunshot.

Ann Marie Hernandez testified that between 7:00 p.m. and 7:30 p.m. that night, she was walking to the Rite Aid near the alley with her husband and children. She saw about eight men in the alley. On the way back from the Rite Aid, she saw two men arguing and then within seconds “it became a physical fight.” She stopped and saw one of the men (who she later learned was May) turn around and take a step or two. The other man had a gun in his pants in the waistband to the right of his belt buckle, and he pulled the gun out, pointed it at May, and shot him once. Hernandez did not see May reach for his waistband. May fell to the ground. Hernandez and her husband and children took cover behind cars, and all the men in the alley ran. When she was sure everyone was gone, Hernandez ran up to May to render aid. May had no pulse and was not breathing, and he had a gunshot wound in his neck. Hernandez tried to stop the bleeding with a T-shirt, and her husband called 911.

Maria Quintanilla testified that at around 7:30 p.m., she was leaving her sister's house and saw a group of men in the alleyway. Two of them were arguing, punching, and pushing each other. After one of them turned around, the other pulled a gun out of his waistband area, and shot him. Everyone including the shooter ran away.

Jefani Jefferson could see the alleyway from her apartment kitchen window. Around 7:00 p.m. or 7:30 p.m., she saw May, whom she knew, in the alley with 15 or 20 other people. Jefferson heard yelling and screaming, and then she heard May say, "stop man, stop playing . . . it's not that serious, stop playing" and when Jefferson turned her back to put a chicken in the oven, she heard a gunshot. She ran downstairs, and saw three men running. Two were her neighbors, and ran into their house. The third man ran past her, wearing all black and a black beanie. He had May's backpack with him, which she knew May had had with him at 4:00 p.m. when he helped her with her groceries. The running man dropped the black beanie on the corner of Ruddock and Vecino. When Jefferson reached the alley, she saw Ocie lying on the ground.

Deputy Medical Examiner Vadims Poukens testified that he performed an autopsy on May. May had lacerations and abrasions on his face, and a single gunshot wound through the neck, entering on the right side of the back neck, and exiting on the left side of the neck. The trajectory was right to left, and back to front. There was no soot or stippling around the wound, which indicated that most likely the gun was more than two feet away from May. The bullet had severed May's spinal cord completely, which would have incapacitated May immediately and would have made him unable to breathe. May had died of suffocation. Blood tests showed alcohol, marijuana, methamphetamine, and hydrocodone (a painkiller) in May's system.

Covina police officers responding to the scene and investigating the shooting testified that May was lying face down, with a female Hispanic applying pressure to his head with a white T-shirt. A baseball cap next to May's body contained a wallet and keys, and two cell phones. The cap belonged to May, and the cell phones belonged to May and Abernathy. Another baseball cap was found a number of feet away, and a black beanie was found on the corner of Ruddock and Vecino. A surveillance video from a

nearby liquor store, time stamped 6:52 p.m., showed Maddox inside with three other men from the alley; Maddox was wearing all black with a black beanie.

The defense presented the testimony of Markeece Davis, who had arrived in the alley between 12:00 p.m. and 2:00 p.m. Davis introduced himself to Maddox, who was there with Josh Beverly. Everyone was smoking marijuana, and Davis and Maddox each purchased some from Davis's good friend May, who got it out of his backpack. Davis went to the liquor store with Maddox and two others, and then they returned to the alley. Beverly and May began to fight, with Beverly on top of May, who was bleeding from one of his eyes. May yelled for help and Davis and his stepfather pulled Beverly off of May. May got mad because nobody had helped him quicker, and he "bounc[ed] around" shouting at people. May yelled at Maddox, who was in a parking stall, and then ran back to the group saying Maddox had tried to take his backpack. Maddox was chasing May and grabbing at his shirt. Maddox had what Davis thought was a black gun in his hand. A couple seconds later, Davis heard a gunshot.

Maddox testified in his own behalf. On March 26, 2009, he asked Beverly if he knew where Maddox could buy some marijuana. Around 3:00 p.m. or 4:00 p.m., Beverly drove him to the alley, where 10-15 people were gathered. Maddox went to the liquor store, and when he got back he talked to May about buying marijuana and made two purchases, the first for \$30 or \$40, the second for \$90, from a baggie May had in his pocket. Maddox smoked the marijuana in the alley. Maddox went to the liquor store again, and sometime after he came back to the alley, a fight happened. Maddox saw two people on the ground trading blows. Maddox noticed a gun on the ground, and he picked it up and put it in his waist and walked away to a car stall. May got up and was telling everyone they should have helped him, while Beverly walked away. May cussed and yelled at everyone and then came over to the carport, yelling, "mother fucker, you all came here to jump me, you came here to rob me." Maddox answered: "I don't even know you, man." May backed off and walked away to another group.

May and the other group walked back toward Maddox, "mad-dogging" (staring at) him, while May said, "yeah mother fucker, you came over to jump me and rob me." May

reached for his waistband and Maddox “just reacted. . . . [¶] . . . [¶] I just pulled out the gun and shot” in May’s direction. Maddox thought May was reaching for a gun, and shot at May because he feared for his life. Maddox ran to the car, which was parked on the street, and threw the gun on the floorboard. There was a backpack in the car, which he had seen there before.

Maddox admitted that he initially lied to one of the Covina police officers, Detective Antonio Zavala. He first told Detective Zavala he left the alley after buying marijuana, but later told him he had shot May because he was in fear for his life.³ He also told Detective Zavala that May pulled the marijuana out of his backpack, denied he was there with Beverly, denied seeing any fight, and that the gun was Beverly’s. Maddox told Detective Zavala: “I point [the gun] and he turned around and I just shot.” About the backpack, Maddox told the detective: “We got the backpack, like, he threw it in the car, like, here, take it, woo woo, take it, take this, woo woo. And J. B. looked like smile and shit. And when J. B. opened the bag, there wasn’t shit in there. Oh, that nigger got us. He’s like, what the fuck? Like, we supposed to get the weed. And I was just crying. You ask him. I was in the car.” Maddox testified, however, that he never saw May with a backpack and did not know the backpack in the car was May’s.

DISCUSSION

The trial court instructed the jury on second degree murder, the lesser included offense of voluntary manslaughter, self-defense, heat of passion, and imperfect self-defense. Maddox contends that the trial court erred when it did not also instruct the jury on involuntary manslaughter, although he did not request such an instruction. We disagree.

“‘The trial court is obligated to instruct the jury on all general principles of law relevant to the issues raised by the evidence, whether or not the defendant makes a formal request.’ [Citations.] ‘That obligation encompasses instructions on lesser included offenses if there is evidence that, if accepted by the trier of fact, would absolve the

³ Detective Zavala testified that when he told May that there was physical evidence linking him to the crime, May changed his story.

defendant of guilt of the greater offense but not of the lesser.’ [Citations.] ‘To justify a lesser included offense instruction, the evidence supporting the instruction must be substantial—that is, it must be evidence from which a jury composed of reasonable persons could conclude that the facts underlying the particular instruction exist.’ [Citations.] [¶] . . . ‘On appeal, we review independently the question whether the trial court failed to instruct on a lesser included offense.’ [Citation.]’ [Citation.]” (*People v. Souza* (2012) 54 Cal.4th 90, 115–116.)

Involuntary manslaughter is a lesser included offense of murder, and is an *unintentional* killing committed in the commission of an unlawful act not amounting to a felony; in the commission of a lawful act which might produce death, in an unlawful manner; in an unlawful manner or without due caution and circumspection (§192, subd. (b)), as well as an unintentional homicide committed in the course of a noninherently dangerous felony, committed without due caution. (*People v. Gutierrez* (2002) 28 Cal.4th 1083, 1145; *People v. Burroughs* (1984) 35 Cal.3d 824, 835, disapproved of on other grounds in *People v. Blakeley* (2000) 23 Cal.4th 82, 89.) Maddox argues that an involuntary manslaughter instruction was required because the jury could have found he shot May unintentionally.

Maddox himself testified that he picked up the gun and put it in his waistband. May walked over, walked away, and then when May walked back toward Maddox and reached for *his* waistband, Maddox “just reacted,” pulling out the gun and shooting in May’s direction, because Maddox feared for his life. While that testimony supports the self-defense theory Maddox advanced at trial, it does not support any of the unintentional killings encompassed within voluntary manslaughter. “[W]hen a defendant, acting with a conscious disregard for life, unintentionally kills in unreasonable self-defense, the killing is voluntary rather than involuntary manslaughter.” (*People v. Blakeley, supra*, 23 Cal.4th at p. 91.) Further, the physical evidence showed that Maddox shot May through the neck from behind from more than two feet away, and ample evidence from witnesses established that Maddox shot May as he was running away from Maddox. Shooting May through the neck as he ran away is inconsistent with an unintentional killing. “The court

is not even required to give an involuntary manslaughter instruction where the defendant's self-serving statements denying intent to kill are deemed insubstantial in character. [Citation.] [¶] On this record, which establishes [defendant] intentionally used violent force against [the victim], knowing the probable consequences of his action, [defendant] cannot be said to have acted without realizing the risk of death or serious bodily injury. Accordingly, the court was not required to give an instruction on involuntary manslaughter." (*People v. Evers* (1992) 10 Cal.App.4th 588, 597–598.)

Maddox argues in the alternative that the court should have instructed on the "variety of voluntary manslaughter" in *People v. Garcia* (2008) 162 Cal.App.4th 18. In that case, the victim was involved in a confrontation with Garcia, who was holding a shotgun. The victim lunged at Garcia, who, fearing the victim would take the shotgun, swung the butt of the gun at the victim to make him back off, striking him in the face and causing him to fall and strike his head on the pavement, which caused the victim's death. (*Id.* at pp. 23, 25.) Garcia was charged with second degree murder. His jury was instructed on voluntary manslaughter (heat of passion) and unreasonable self-defense, and convicted him of voluntary manslaughter. On appeal, Garcia argued (as does Maddox) that the trial court erred in not instructing the jury on *involuntary* manslaughter, "committed without malice and without either an intent to kill or conscious disregard for human life." (*Id.* at p. 26.) In rejecting Garcia's argument, the appellate court stated "an unlawful killing during the commission of an inherently dangerous felony, even if unintentional, is at least voluntary manslaughter." (*Id.* at p. 31.)

This statement, made in the course of rejecting Garcia's claim that he was entitled to an instruction on involuntary manslaughter, is dictum, and does not describe a new theory of voluntary manslaughter. The only case to conclude that a trial court had a duty to instruct on this "theory" was decided in August 2011, three months after the jury convicted Maddox. That case is now before the California Supreme Court on review. (*People v. Bryant* (2011) 198 Cal.App.4th 134, review granted Nov. 16, 2011, S196365.) Even if the court's statement in *People v. Garcia, supra*, 162 Cal.App.4th 18, described a valid theory of voluntary manslaughter, at the time of Maddox's trial it was not a general

principle of law requiring an instruction sua sponte. The trial court was not charged with “so formidable a duty as to conceive and concoct an instruction embodying that rule. ‘The duty of the trial court involves percipience—not omniscience.’ [Citations.]” (*People v. Flannel* (1979) 25 Cal.3d 668, 683, superseded by statute on another ground as stated in *In re Christian S.* (1994) 7 Cal.4th 768, 777.)

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED.

JOHNSON, J.

We concur:

ROTHSCHILD, Acting P. J.

CHANEY, J.