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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE, Plaintiff and Respondent, v. HUGO ANGEL CHAVEZ, Defendant and Appellant.	2d Crim. No.B271106 (Super. Ct. No. 2012000052) (Ventura County)

Appellant Hugo Angel Chavez shot a friend and watched him slowly die. He enlisted a girlfriend to help put the decomposing body into garbage bags for transport to an improvised backyard crematorium. The girlfriend lacked enthusiasm for the task, informed on appellant, and was the star witness at his criminal trial. The jury convicted appellant of second degree murder. (Pen. Code, § 187, subd. (a).)

Central to his claim of self-defense, appellant testified about the victim's propensity for violence. The trial court advised the jury that the victim's wife had a restraining order against him, but did not admit the order into evidence; this

is precisely what defense counsel asked the court to do. Excluding the restraining order was not an abuse of the court's discretion because appellant was able to testify about its effect on his state of mind. Appellant did not preserve an objection to the justifiable homicide and voluntary manslaughter instructions; nonetheless, the jury was properly instructed. The evidence of appellant's guilt is overwhelming. We affirm the judgment.

FACTS

Appellant was a friend of the victim, Isaac Mejia. They spent time together every day and smoked methamphetamine (meth). Appellant was addicted to meth and sold it to support himself and his children. By his own admission, appellant never had problems with Mejia and they respected each other.

Angel Virgen lived with appellant in 2011. She attributed his controlling and abusive behavior to daily drug abuse. He became paranoid and sleepless when high on meth, hit her, called her vulgar names, and would not allow her to leave the house or speak to anyone. While living with appellant, Virgen saw him with guns, including the one used to kill Mejia.

A week before the shooting, Mejia romanced Virgen by holding her hand. She rebuffed him, telling him that they were just friends. Appellant was angry when he learned from Virgen about Mejia's advances. The day of the hand-holding incident was the last time Virgen saw Mejia alive.

Virgen moved out of appellant's house just before Christmas 2011. On December 28, 2011, appellant knocked insistently on Virgen's door, looking anxious. He told her that he had killed Mejia. Appellant "felt weird and . . . threatened" by Mejia, who "kept showing up places." He thought that Mejia might hurt him or Virgen, though Mejia did not threaten or

attack appellant, or display a weapon. The night before the shooting, appellant decided to "take [Mejia] out."

Appellant described to Virgen the circumstances leading to the killing. On a ruse, appellant invited Mejia to his home on December 27, 2011, to stucco a wall. After Mejia helped stucco, they entered the garage to smoke meth. Appellant sat in a rocking chair while they chatted. Appellant produced a handgun concealed in his waistband. Mejia playfully simulated a gun with his fingers, as if to make fun of appellant for having a gun.

Appellant confronted Mejia about sending text messages to Virgen. Mejia protested that he texted Virgen to ask about her friend Ernestina. Appellant accused Mejia of trying to have sex with Virgen, which Mejia denied. Appellant was angry because he felt Mejia was lying. From his seat in the rocking chair, appellant shot Mejia once in the neck.

Mejia fell to the ground and said to appellant, "why?" Appellant "just sat there [ ] and watched him die." He later told Virgen that Mejia took "a couple hours to die" and observed that Mejia kept moving and was "jerking" during his prolonged death. Once Mejia died, appellant removed keys, a telephone and a bottle of pills from Mejia's pockets. Appellant planned to sell the pills, and tried to burn Mejia's phone with a blowtorch. He moved Mejia's car to a nearby alley, wiping down the car to remove his fingerprints.

Appellant told Virgen that she "needed to help him clean up" the shooting scene. She was scared because she remembered "the things he had done to me before," including holding a gun to her head, threatening to kill her, and binding her with duct tape a month earlier when she tried to end their relationship, then stalking her and dousing her head with pepper

spray. They went to appellant's home. He showed her Mejia's iPhone and warned her that there was a lot of blood. Virgen cleaned the inside of appellant's house and went with him to make meth deliveries, but did not enter his garage.

The next day, Virgen still did not want to be involved, but appellant warned her that she must help him, and she was scared. They drove to a church, where Virgen threw Mejia's iPhone into a dumpster. They went to appellant's house, but Virgen refused to enter the garage.

Virgen wanted to go home, but appellant told her that they had to shop for products to burn Mejia's body. They purchased ammonia, bleach, acid, matches, gloves, a torch, garbage bags, and logs. Appellant, who smoked meth and carried a gun during the outing, asked Virgen to get into an outdoor fireplace while they were at the store, to see if Mejia's body would fit into it. Surveillance video from the store and a cash register receipt showed that appellant and Virgen shopped there on December 29, 2011. After shopping, they went to dinner, then to Virgen's house and fell asleep.

The next morning, December 30, 2011, appellant demanded that Virgen immediately accompany him to his house. She entered the garage, but tried to flee when she saw Mejia lying in a puddle of blood. Appellant pushed her back into the garage, closed the door, and handed her rubber gloves. He gave her earplugs "[i]n case the body made noises." Appellant was stern and aggressive.

Virgen helped appellant put black trash bags over the body, because appellant told her that "I needed to help him or he'll make me disappear." He had a gun in his waistband, and Virgen feared that he might kill her or her young son. Appellant

stated that the body "would start smelling soon." The jury was shown photos of Mejia's body in black trash bags.

Virgen was not strong enough to carry Mejia, so appellant brought a shopping cart to move the body to the backyard. After appellant smoked meth with Virgen, he drew a sketch showing how he was going to use bricks to build a crematorium. Before constructing the project, appellant left to deliver meth. He and Virgen spent the night at his house.

On December 31, 2011, appellant returned the revolver used in the shooting to a customer, who had given it to appellant as collateral for a drug purchase. Appellant first removed the remaining bullets, wrapped them in a napkin and handed them to Virgen, who placed them under the car seat. The jury was shown photos of the napkin with the bullets. The customer asked what happened to the bullets, because the gun was loaded when he pawned it with appellant. Also, there was soot on the gun, though it had not been fired before appellant took it. Appellant told the customer that he fired the gun in a celebratory manner for New Year's Eve.

By the time appellant and Virgen returned to his house, appellant's grandparents and aunt were there. Appellant voiced concern that they might start snooping around. As it was New Year's Eve, even more relatives showed up at appellant's house and he "started freaking out" because they were walking around in his back yard.

Virgen told appellant that she had to leave to get her son, though she was actually trying to escape. She drove to the home of a relative and divulged what happened. The police were called. Despite her concern that he might kill her, Virgen telephoned appellant to say that she was sorry, but she had

informed on him. By then, the police were arriving at appellant's house.

The police found Mejia's body in appellant's garage. They located the revolver used in the shooting at the home of appellant's customer, who pawned the weapon with him. They recovered blood-stained clothing from appellant's bedroom, the victim's car from the alleyway where appellant parked it, and the victim's cell phone from the dumpster where Virgen tossed it.

The Ventura County chief medical examiner found a gunshot wound just below Mejia's chin and a corresponding exit wound in the back of his neck; the body was slightly mummified. The injury caused extensive internal bleeding. Before dying, Mejia inhaled and swallowed a quart of blood.

In an initial police interview, appellant stated that he and Mejia were long-time friends who had no disagreements or problems. After Mejia helped stucco, appellant claimed that he left to buy beer, and returned to find Mejia in a pool of blood in his garage. Appellant said, "I did not shoot him." He told detectives that Virgen must have taken one of his guns and shot Mejia, while appellant was on his beer run. With Virgen's help, appellant put Mejia's body in bags because it was starting to smell. Appellant claimed that after the shooting, Virgen told appellant that she was scared because Mejia was stalking her. Appellant told detectives that he did not believe Virgen was afraid of Mejia.

On New Year's Day, appellant called Virgen from jail and told her that he lied to the police. He asked her to arrange a conference call with a detective so that he could tell the truth.

During his second interview, appellant was emotional and crying. The jury heard a recording of the interview. Appellant said "I was lying" and "I shot him," explaining that the

victim "went psycho" on Virgen and "was stalking us." He added, "I felt like he was gonna do something to me or [Virgen]. I, I don't know." He did not tell Mejia to stop stalking them, or threaten to call the police if it continued. Appellant knew that Mejia held Virgen's hand and she rebuffed him. Appellant admitted that he uses meth daily, since a year or more.

In his interview, appellant noted that Mrs. Mejia had a restraining order, and Mejia was violating it. Virgen told appellant that she was scared of Mejia. On the night of the shooting, appellant believed that Mejia was texting Virgen.[1] Appellant feared that Mejia was going to go to Virgen's house later to look for her, so "I stopped him" by shooting Mejia. When appellant pulled out his gun, Mejia put his leg up in a position suggesting that he had a gun. Appellant stated that he shot Mejia because Mejia had betrayed their friendship.

Afterward, appellant panicked and sat there "for hours." He felt bad for Mejia, but did not call for help. The next morning he went to Virgen's house and told her about the shooting. Appellant's interview paralleled Virgen's testimony—moving Mejia's car to the alley, shopping with Virgen for items to get rid of Mejia's body, building a fireplace to cremate him, returning the gun to his customer, disposing of Mejia's telephone in a dumpster, placing bags over the body days later.

In a post-shooting interview with the police, Virgen recalled appellant saying that "he had to take [Mejia] out because he knew too much about [appellant]." Appellant also told Virgen that he confronted Mejia about trying to romance Virgen, which

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[1] Mejia was actually texting his wife and son that night. His single text message to Virgen in December 2011 contained one word: "Hey."

Mejia denied. After the homicide, appellant threatened Virgen's life multiple times.

At trial, appellant testified that he and Mejia smoked meth together daily. He knew that Mejia was going through a divorce, stalked his estranged wife, and had violated a restraining order. In 2009, Mejia threatened some people in a car with a bat until appellant stopped him. Appellant heard that Mejia shot at a car fleeing a burglary in 2009, and pulled a gun on his wife. Mejia usually carried a gun. Appellant heard that Mejia pushed his wife to the ground during a fight in 2011.

Appellant testified that he pepper sprayed Virgen in the face, shortly before Christmas 2011. After being sprayed, Virgen received a ride from Mejia, who scared her with his driving and by giving her evil looks while cutting up boxes with a knife when she rejected his romantic overtures.

Mejia came to stucco on December 27, at appellant's request. He often helped appellant with home improvement projects, and appellant was never scared that Mejia wielded potentially dangerous tools such as a saw, trowel or hammer. Appellant left to deliver drugs to a customer and, as always, was carrying a gun. When appellant returned, he and Mejia went into the garage to get high. Mejia talked about his wife, and his plan to kill anyone she might date in the future.

While displaying a gun, appellant confronted Mejia about trying to hurt or call Virgen. Mejia seemed offended and acted like he was reaching for a gun, so appellant shot Mejia. Appellant admitted that Mejia never made threats to harm him or Virgen. Appellant did not find a gun on Mejia. He stayed in the garage for several hours and did not call the police because he was scared and hallucinating. He sat in a rocking chair and watched Mejia die.

Appellant testified that he did not intend to kill Mejia, and only wanted "to stop him," yet he did not shoot at Mejia's foot, or knee, or arm, or hand. He denied having a plan to kill Mejia when he invited him over that night. The two men did not argue before the shooting.

Appellant tried to destroy the phone containing a text message announcing Mejia's arrival to help with the stucco work. The next morning, appellant told Virgen about the shooting and asked for help. He entertained different ideas for disposing of Mejia, including burning the body in a homemade backyard crematorium or dissolving it in acid, and purchased supplies to carry out both of those ideas. He put the body in garbage bags because he was concerned about the smell of decomposition.

From jail, appellant called an ex-girlfriend, who suggested that he tell the jury he was not in his right mind, or was acting in self-defense. Appellant admitted that he wrongly accused Virgen of killing Mejia, claiming that she encouraged him to do so. He stated that he sometimes became paranoid when using meth. A defense toxicologist testified that meth can cause paranoia and hallucinations.

Appellant was charged in count 1 with premeditated murder while lying in wait, and the additional allegation that he intentionally discharged a firearm and caused great bodily injury or death. (Pen. Code, §§ 187, subd. (a), 190.2, subd. (a)(15), 12022.53, subd. (d).) The jury convicted appellant of second degree murder and found true the firearm allegation. Appellant pled guilty to count 2, being a felon in possession of a firearm. (Former Pen. Code, § 12021, subd. (a)(1).) On count 1, appellant was sentenced to 15 years to life plus a consecutive term of 25 years to life for the firearm allegation. On count 2, the court

imposed the upper term of three years, to be served consecutively. The aggregate prison term is 43 years to life.

DISCUSSION

1. The Contents of the Restraining Order Were Properly Excluded

Appellant contends that the trial court prevented him from introducing into evidence a restraining order obtained by Mejia's wife. In a motion in limine, appellant asserted that the restraining order is relevant to his right to use self-defense, because he was aware of Mejia's propensity for violence.

During the hearing on appellant's motion, defense counsel stated, "I am in agreement that *the entire restraining order cannot come in*. The contents therein should not come in." (Italics added.) She argued that "the existence of the restraining order and [appellant] knowing that there is one [is] relevant in itself, again, not because of what is true or not true in the order but just the existence of one." It was offered to evaluate appellant's state of mind. The trial court "tentatively" disallowed the restraining order, choosing to "see how this unfolds" if appellant took the stand.

Appellant took the stand and testified about his awareness of the restraining order and Mejia's violation of it. Defense counsel did not seek to introduce the restraining order into evidence, but asked the trial court to "tak[e] judicial notice of the fact that there was one." The prosecutor did not object to taking notice of the issuance of the restraining order "but none of the contents;" defense counsel agreed, saying, "I don't believe that was something [ ] that we had discussed."

The trial court took judicial notice of the restraining order, and the jury was so instructed.[2] In closing argument, defense counsel noted that appellant told police that there was a restraining order against Mejia, and he knew Mejia was violating it. Appellant was aware that Mejia stalked his wife and brandished a weapon at her; appellant knew that Mejia shot at a car, threatened others with a bat, and scared Virgen by driving erratically and acting mad while cutting up boxes after Virgen rebuffed his romantic overtures. Counsel used this as a springboard to argue imperfect self-defense. Appellant thought that Mejia might shoot him so he fired first.

A verdict cannot be set aside nor a judgment reversed for evidentiary error if the record contains no timely objection. (Evid. Code, § 353.) Appellate courts generally will not review evidentiary challenges absent an objection on the ground urged on appeal. (*People v. Fuiava* (2012) 53 Cal.4th 622, 670.) Defense counsel agreed with the prosecutor that only the *existence* of the restraining order was germane, not the *contents* of it, and did not ask the court to admit the order into evidence. Appellant forfeited his claim of error. (*Ibid.*)

Appellant's claim provides no basis for reversal. The trial court's exclusion of evidence is reviewed for an abuse of discretion. (*People v. Gutierrez* (2009) 45 Cal.4th 789, 827.) The

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[2] The trial court said, "The Court, a judge, has the authority to judicially notice events or things that happened. I want to inform you that I judicially notice that a temporary restraining order was issued on August 3 of 2011, and that restrained Mr. Mejia with respect to contact with Mrs. Mejia. That restraining order was enforced from August 3, 2011 through September 2nd of 2011. Since the Court issues restraining orders, I can judicially notice for you that a restraining order had issued."

court did not abuse its discretion by excluding the contents of the restraining order from admission into evidence.

Appellant seeks to introduce Mrs. Mejia's statements regarding her husband's domestic violence, which underlay the restraining order. The restraining order does not prove the truth of Mrs. Mejia's out-of-court statements. (Evid. Code, § 1200; *Bach v. McNelis* (1989) 207 Cal.App.3d 852, 864-865 [courts cannot judicially notice the truth of declarations filed in prior court proceedings because it is hearsay].) At trial, the defense questioned Mrs. Mejia briefly about the restraining order and her need for protection from the victim.

Evidence of a person's character or trait generally cannot be used to prove conduct on a specified occasion. (Evid. Code, § 1101, subd. (a).) The general rule is subject to an exception in criminal cases. Evidence of a crime victim's character or trait of character (in the form of an opinion, evidence of reputation, or evidence of specific instances) is admissible if "[o]ffered by the defendant to prove conduct of the victim in conformity with the character or trait of character." (Evid. Code, § 1103, subd. (a)(1).) The victim's acts of violence against third persons may be used when the defendant claims self-defense, to show the victim's "'aggressive and violent character.'" (*People v. Wright* (1985) 39 Cal.3d 576, 587.) The evidence may be used "to prove [the victim's] conduct at the time of the charged crime." (*People v. Shoemaker* (1982) 135 Cal.App.3d 442, 446.)

The trial court did not curtail evidence made admissible by Evidence Code section 1103. Appellant testified at length about every incident of violence he saw, or heard about, involving Mejia. The only excluded evidence was the content of the restraining order. As urged by defense counsel, only

appellant's knowledge of the existence of the restraining order was relevant, not "what is true or not true in the order."

The trial court may exclude evidence that would confuse the issues at trial, consume undue time, or be more prejudicial than probative. (Evid. Code, § 352; *People v. Gutierrez*, *supra*, 45 Cal.4th at pp. 827-828.) The court reasonably concluded that it would be confusing and consume undue time to conduct a "trial within the trial," relitigating the merits of a restraining order based on Mrs. Mejia's out-of-court statements. The jury might give the contents of the restraining order undue credit because it was approved by a judge. The restraining order was cumulative of appellant's testimony detailing incidents in which he saw the victim threaten someone with a bat, heard secondhand that the victim brandished a gun and engaged in violence, knew that Mejia violated the restraining order, and acted in a scary way in Virgen's presence. It is incorrect that the trial court "concluded that Mejia's prior acts of violence and aggression would not be admitted at trial," as appellant argues on appeal. Appellant was not prevented from recounting his belief that the victim acted violently toward others.

Evidence Code section 1103 does not require the trial court to admit every instance of the victim's wrongdoing. For example, the court may exclude evidence of the victim's battery conviction, "an event entirely unrelated to defendant." (*People v. Gutierrez* , *supra*, 45 Cal.4th at p. 827.) Details of Mejia's conduct toward his wife that led to the restraining order are entirely unrelated to appellant and irrelevant to this unprovoked killing.

"[E]ven if the murder victim were the most violent person in the world, that fact would not be relevant if the

evidence made it clear that the victim was taken by surprise and shot in the back of the head." (*People v. Hoyos* (2007) 41 Cal.4th 872, 913, overruled on other grounds in *People v. Black* (2014) 58 Cal.4th 912, 919-920.) Here, the unarmed victim was taken by surprise and shot in the neck while visiting appellant to help with home repairs, because appellant was angry and jealous that Mejia tried to woo Virgen by holding her hand. Appellant testified that they did not argue before the shooting. When appellant displayed a gun, Mejia took it as a joke. Assuming that Mejia had a propensity for violence, there is no evidence that he was acting in conformity with that character on the night he was shot.

2. The Jury Was Properly Instructed

With counsels' assent, the trial court instructed the jury on justifiable homicide in self-defense (CALCRIM No. 505) and voluntary manslaughter in imperfect self-defense (CALCRIM No. 571). Appellant now argues that the instructions were incomplete, omitting crucial paragraphs. He forfeited his claim by failing to ask the trial court to give the omitted paragraphs. (*People v. Cole* (2004) 33 Cal.4th 1158, 1211; *People v. Riggs* (2008) 44 Cal.4th 248, 309 ["Defendant forfeited a challenge to the completeness of the instruction by failing to request clarifying or amplifying language"].)

We review independently the legal adequacy of a jury instruction. (*People v. Cole*, *supra*, 33 Cal.4th at p. 1210.) The jury was instructed that a homicide is justifiable if appellant acted in lawful self-defense because he reasonably believed that he or Virgen was in imminent danger of being killed or suffering great bodily harm; immediate use of deadly force was necessary to defend against that danger; and he used no more force than was reasonably necessary. Further, belief in *future* harm is not

sufficient, and in deciding whether his belief was reasonable, the jury should "consider what a reasonable person in a similar situation with similar knowledge would have believed," based on all the circumstances known to him. The jury was instructed, "If you find that the defendant knew that Isaac Mejia had threatened or harmed others in the past, you may consider that information in deciding whether the defendant's conduct and beliefs were reasonable."

As to voluntary manslaughter based on the theory of imperfect self-defense, the jury was instructed that the killing should be reduced from murder to manslaughter if appellant actually believed that he or Virgen was in imminent danger of being killed or suffering great bodily injury and use of deadly force was necessary to defend against the danger, but at least one of those beliefs was unreasonable. Belief in future harm is not sufficient, and the jury was to consider all the circumstances as they were known and appeared to appellant. Further, "If you find that the defendant knew that Isaac Mejia had threatened or harmed others in the past, you may consider that information in evaluating the defendant's beliefs."

The omitted material in the instructions is not relevant to this case.[3] The first omitted paragraph in the

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[3] The omitted paragraphs in CALCRIM No. 505 were: "The defendant's belief that [he or someone else] was threatened may be reasonable even if [he] relied on information that was not true. However, the defendant must actually and reasonably have believed that the information was true. [¶] If you find that [Mejia] threatened or harmed the defendant [or others] in the past, you may consider that information in deciding whether the defendant's conduct and beliefs were reasonable." The omitted second paragraph in CALCRIM No. 505 parallels CALCRIM No. 571.

justifiable homicide instruction suggests that appellant "relied on information that was not true." There was no hint at trial that appellant's knowledge about Mejia's violent acts was untrue. It is true that Mrs. Mejia took out a domestic violence restraining order, and no one contradicted appellant's testimony that Mejia threatened others with a bat and a gun. Appellant's theory of the case was not that he relied on untrue information about Mejia's violent character. Rather, his theory was that he was in imminent danger of being killed because Mejia was reaching for a gun. The jury was fully instructed on imminent danger and the reasonableness of appellant's beliefs, given his knowledge that Mejia threatened others in the past.

Appellant told police in a recorded interview that Mejia was a stalker and "I felt like [Mejia] was gonna do something" in the future; at trial, he testified that (1) Mejia never threatened or harmed him or Virgen in the past, and (2) appellant knew that Mejia had a reputation for violent conduct with his wife and others. The trial court gave instructions that fit the evidence, i.e., appellant knew that Mejia threatened others in the past. Read as a whole, the instructions satisfied the court's obligation to instruct on the general principles of law governing the case. (*People v. Rubalcava* (2000) 23 Cal.4th 322, 333-334.)

3. *The Evidence of Appellant's Guilt Is Overwhelming*

Neither admitting the restraining order nor instructing the jury differently would have resulted in a more favorable determination. (*People v. Fuiava*, *supra*, 53 Cal.4th at p. 671; *People v. Doolin* (2009) 45 Cal.4th 390, 439.) Appellant and the victim spent time with each other daily, for years. When Virgen ended her relationship with appellant, the victim tried to start a romance with her. Appellant was angry when Virgen told him about Mejia's advances.

Virgen recounted at trial appellant's description of the murder and her participation in the aftermath. Her testimony was substantiated by the police investigation. The police found the victim's car in the alley where appellant put it; they found Mejia's iPhone in the dumpster where Virgen threw it; they found pills appellant took from Mejia; they found the murder weapon at the home of appellant's drug customer; they found surveillance tapes of Virgen and appellant purchasing supplies to dispose of Mejia's body, along with receipts; they found the guns that Virgen described at appellant's home; they found bullets wrapped in a napkin in appellant's car; and they found the victim's body in garbage bags in appellant's garage. Virgen stated that Mejia was shot in the neck, which was borne out by the autopsy.

Given that Virgen's testimony was corroborated by physical evidence uncovered in the police investigation, the jury could reasonably believe the remainder of her statements. Appellant told her that he made a plan to kill Mejia. He believed that Mejia was sending text messages to Virgen and wanted to have sex with her. Appellant was jealous, not threatened by Mejia. The jury could believe Virgen's statement that when appellant produced a gun, Mejia jokingly simulated a gun with his fingers; Mejia did not move to pull a real gun because he was not armed.

Appellant told Virgen that he decided to "take [Mejia] out" *before* the shooting because Mejia "kept showing up places" or because "he knew too much about [appellant]," not because he thought Mejia was going to shoot him in the garage. Appellant did not call police to report that Mejia was stalking him, or to report a shooting in self-defense, and tried to flee when the police arrived at his home. Appellant initially denied culpability and

blamed Virgen, rather than claiming self-defense. In his second police interview, in which he promised to tell the truth, appellant told detectives that he shot Mejia because he betrayed their friendship. At trial, appellant disavowed any intent to kill, claiming that he only wanted "to stop" Mejia, but admittedly did not fire his weapon at a less fatal part of Mejia's body, such as a leg or arm, nor did he summon help afterward.

Appellant stated that he shot Mejia because "I felt like he was gonna do something" in the future to appellant or Virgen. Appellant admitted that Mejia never made threats against him or Virgen. Appellant's claim that he shot the unarmed victim in self-defense "would have strained the credulity of the most gullible jury." (*People v. Joiner* (1976) 54 Cal.App.3d 910, 916; *People v. Blanco* (1992) 10 Cal.App.4th 1167, 1176.) There was no miscarriage of justice in this case. (Cal. Const., art. VI, § 13.)

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED.

PERREN, J.

We concur:

GILBERT, P. J.

TANGEMAN, J.

Kent M. Kellegrew, Judge
Superior Court County of Ventura

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