

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.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

In re DAVID CAMPOS,  
  
on Habeas Corpus.

B270209

(Los Angeles County  
Super. Ct. No. KA099394)

ORIGINAL PROCEEDING; petition for writ of habeas corpus, Christian R. Gullon, Judge. Petition granted.

Lise M. Breakey, under appointment by the Court of Appeal, for Defendant and Petitioner.

Kamala D. Harris and Xavier Becerra, Attorneys General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Victoria B. Wilson, Chung L. Mar and Theresa A. Patterson, Deputy Attorneys General, for Plaintiff and Respondent.

---

A jury found David Campos guilty of one count of willful, deliberate and premeditated attempted murder, another count of attempted murder (without the special allegation), two counts of assault with a deadly weapon (a knife), and one count of felony battery. The jury also found true great bodily injury allegations as to all counts, and deadly and dangerous weapon allegations as to the attempted murder and battery counts. The trial court sentenced him to life plus 15 years in prison. He appealed from the judgment, raising contentions set forth below, and we affirmed. (*People v. Campos* (Jan. 12, 2017, B262258) [nonpub. opn.].)<sup>1</sup>

Campos filed a petition for writ of habeas corpus, contending his trial counsel rendered ineffective assistance by failing to investigate and present evidence at trial supporting a diminished actuality defense. He asserts there is a reasonable probability the jury would have found him not guilty of the attempted murders if his counsel had presented evidence tending to show he actually did not form the specific mental states for the attempted murders. We issued an order to show cause and now grant the petition.

### **BACKGROUND**

In the afternoon, on September 13, 2012, 21-year-old Campos stabbed his 23-year-old brother, Roque,<sup>2</sup> and Roque's

---

<sup>1</sup> The parties have requested we take judicial notice of the record in Campos's direct appeal (appellate case No. B262258). We grant the request.

<sup>2</sup> Because the brothers share the same surname, and to avoid confusion, we refer to petitioner David Campos as

girlfriend, Lizbeth Gonzalez, at the family home where Campos, Roque, their parents, and another sibling lived.

Initially, the Alternate Public Defender's Office represented Campos. Later, Campos retained an attorney, who did not represent him at trial, because the attorney became ineligible to practice law.

While represented by his first retained attorney, Campos entered dual pleas of not guilty and not guilty by reason of insanity. The trial court appointed two psychiatrists to evaluate him and both concluded in their reports that although Campos suffered from mental illness, he was not legally insane at the time of the offenses. We discuss the psychiatrists' findings and conclusions in more detail below.

Thereafter, Campos retained his trial counsel, Carlos J. Perez, the subject of this ineffective assistance of counsel claim. Prior to trial, Perez declared a doubt as to Campos's mental competence. After considering a competency evaluation prepared by an appointed psychiatrist who found Campos to be "marginally competent," the trial court found Campos competent to stand trial.

## **The Guilt Phase of Trial**

### **Evidence presented**

We quote these facts from our opinion in the direct appeal. (*People v. Campos, supra*, B262258, pp. 3-6.)

"Prior to [Campos's] attack [against Roque and Gonzalez], Roque ordered a pizza. When it was delivered, he placed it on the kitchen table and went to take a shower. After getting dressed, Roque returned to the kitchen and found Campos standing there.

---

"Campos," and we refer to his brother, Roque Campos, Jr., as "Roque."

Gonzalez remained in Roque's bedroom. Roque offered Campos some pizza, but Campos did not respond. Roque noticed Campos was holding a kitchen knife.<sup>[3]</sup>

"According to a police interview Roque gave four days after the stabbing,<sup>[4]</sup> Campos was standing near the open refrigerator door, staring at Roque as if he was 'waiting for something.' Campos's gaze seemed strange and unfamiliar to Roque. Roque described Campos's demeanor as 'mad but like friendly.' Campos was holding the knife in one hand and '[s]pinning it' with the other hand. Roque felt 'scared' because 'every time he [Campos] has a knife he always does something bad.' Roque indicated that Campos had acted aggressively in the past with other family members.

"Roque explained to the detective that Campos nodded at him, as if indicating 'I'm sorry but I have to,' and then 'rushed' at him 'so fast' and with '[s]o much rage,' stabbing him twice in the

---

<sup>3</sup> "Based on a photograph of the knife, which was admitted into evidence, the trial court described the knife as 'a butcher block kitchen knife' with a blade 'approximately seven and a half to eight inches.' The prosecutor displayed the knife for the jury."

<sup>4</sup> "After Roque testified at trial that he could not recall certain statements he made to the police about the incident, the trial court granted the prosecutor's request to treat Roque as a hostile witness, and the audio recording of Roque's September 17, 2012 police interview was played for the jury. The transcript of the interview was admitted into evidence at trial and is included in the record on appeal."

ribs.<sup>5]</sup> Roque attempted to protect himself by pushing Campos away while trying to hold onto Campos's hands, but Roque was unsuccessful. According to Roque, Campos was stronger than he was, and he 'lost control' because he 'was bleeding a lot.' Campos continued to stab Roque on his face, chest and back, while the two moved from the kitchen into the living room. Roque fell to the ground and noticed that Gonzalez was watching the struggle.

"Gonzalez called out to Campos and told him to 'stop.'<sup>6]</sup> Campos turned away from Roque and moved toward Gonzalez. He appeared angry, but his face did not look like 'a normal angry face.' Gonzalez had never before seen a look like the one he gave her. Campos stabbed Gonzalez on the right side of her face, below her eye, and she fell to the ground on her back. Seeing Campos coming toward her again with the knife, Gonzalez turned onto her side and curled into a fetal position because she believed Campos was aiming the knife at her stomach. Gonzalez was six-months pregnant, and Roque was the father. Campos stabbed Gonzalez in the lower back above her coccyx bone. Then Roque moved to Gonzalez and 'hovered over' her 'like he was hugging her' to shield her and the fetus from Campos. Gonzalez heard Roque say, "David, no. Please, no. She's having a baby. No."

---

<sup>5</sup> "At trial, Roque testified that when he saw the knife, he moved 'toward [Campos] instead of [Campos] toward [him].'  
Roque added that he 'basically attacked [Campos],' meaning that he 'approached [Campos] to defend [him]self,' placing his hands on Campos before Campos touched him. When the prosecutor asked Roque what happened next, Roque responded: 'After that I just blacked out. I can't remember anything.'"

<sup>6</sup> "Gonzalez testified at trial."

“Campos stabbed Roque in the back. Roque moved off of Gonzalez, allowing her to get up and escape from the house. Roque told Campos he was sorry for whatever he had done to make Campos angry, although he was unsure what had provoked the attack. Campos ordered Roque to leave the house.

“Neighbors dialed 911. Roque and Gonzalez were transported to the hospital by helicopter. Officers arrested Campos and recovered the knife. Roque was hospitalized for six days. His treating physician believed the stab wounds on his abdomen and chest were life-threatening. He had broken ribs and an injured lung. He had surgeries on his face, stomach and arm, and stitches on his head. A portion of his left ear was cut off. At trial, scars from the attack were still visible on his face. Gonzalez was released from the hospital the day after the attack. She received stitches on her face and lower back, and still had scars in both places at the time of trial.

“During the September 17, 2012 police interview, Roque told the detective that he and Gonzalez had planned to go to the movies after they ate the pizza because Roque’s mother told him he should leave the house because Campos was ‘not okay.’ Roque explained that ‘when [Campos] has his moments he just wants to be alone.’ Roque thought that perhaps Campos became angry because Gonzalez was in the house and Campos ‘was always uncomfortable with her’ (and all of the ‘girls’ with whom Roque associated).

“Campos did not call any witnesses in his defense.” (*People v. Campos, supra*, B262258, pp. 3-6.)

### **Trial counsel’s defense theory**

Campos did not dispute at trial that he stabbed the victims. His trial counsel (Perez) argued a diminished actuality defense,

without presenting any evidence supporting the defense. In support of a diminished actuality defense, a defendant may present evidence of mental illness for the jury to consider in deciding whether the defendant actually formed the requisite mental state for the charged offense. (*People v. Steele* (2002) 27 Cal.4th 1230, 1253.)

In his opening statement, Perez represented to the jury that the defense would present evidence—including the testimony of a psychiatrist who had met with Campos—that Campos had a history of bipolar and depressive disorder, which precluded him from premeditating murder or forming the specific intent to kill or disfigure the victims. The defense did not present such evidence.

During trial, Perez asked the court to appoint as an expert for the defense Dr. Rebecca Crandall, a psychiatrist who had evaluated Campos regarding sanity and competence to stand trial. The court declined the request, explaining that Perez was privately retained and the court had no duty to fund the defense case. On the following court date, Perez informed the court that Campos's parents would pay Dr. Crandall's fees.<sup>7</sup> Because Perez had not produced a report from Dr. Crandall supporting the diminished actuality defense, the court instructed Perez to have Dr. Crandall appear the following day for an Evidence Code

---

<sup>7</sup> In his declaration filed in connection with this habeas petition, Perez now claims Campos's family members told him they could not pay Dr. Crandall's fees. Campos's mother, however, stated in her declaration that she told Perez that she and her husband would pay Dr. Crandall's fees. Mrs. Campos's declaration is consistent with the statement Perez made to the court on the record during trial.

section 402 hearing. Dr. Crandall did not appear. Perez represented that his notice to Dr. Crandall about the hearing was insufficient, and he conceded that she was not under subpoena.

Perez next informed the trial court that he planned to have Campos's mother or Campos testify that he suffered from mental illness. The court explained that such lay opinion testimony was inadmissible because Perez did not have an expert to testify about Perez's mental condition. Perez never called an expert witness.

Despite the fact that he presented no evidence on the issue, Perez continued to represent during trial that Campos had a history of mental illness (for example, in closing argument, which drew objections by the prosecution).

### **Verdicts**

The jury found Campos guilty of assault with a deadly weapon on Roque (Pen. Code, § 245, subd. (a)(1);<sup>8</sup> count 1), assault with a deadly weapon on Gonzalez (count 2), attempted murder of Roque (§§ 187, subd. (a), 664; count 4), and attempted murder of Gonzalez (count 5). In count 3, the jury found Campos not guilty of aggravated mayhem on Roque, but guilty of the lesser included offense of battery. (§ 243, subd. (d).) As to all counts, the jury found true the allegation that Campos inflicted great bodily injury on the victims. (§ 12022.7, subd. (a).) As to counts 3-5, the jury found true the allegation that Campos used a deadly and dangerous weapon (a knife) in the commission of the offense. (§ 12022, subd. (b)(1).) Finally, the jury found true the

---

<sup>8</sup> Further statutory references are to the Penal Code unless otherwise indicated.



allegation that Campos committed the attempted murder of Gonzalez willfully, deliberately and with premeditation.<sup>9</sup>

### **The Sanity Phase of Trial**

We quote these facts from our opinion in the direct appeal. (*People v. Campos, supra*, B262258, pp. 7-9.)

“Campos waived his right to jury trial in the sanity phase of the trial. The only evidence presented were the written reports prepared by the two psychiatrists who both concluded Campos was not legally insane at the time of the stabbings. The trial court found Campos was legally sane at the time he committed the offenses. We discuss below portions of the reports relevant to Campos’s ineffective assistance of counsel claim.

“Dr. Rebecca Crandall stated in her February 28, 2013 report that Campos informed her he had ‘been diagnosed in the past with bipolar disorder, schizophrenia, and depression.’ He also told her he had experienced ‘two suicide attempts and consequent psychiatric hospitalizations’ and had ‘a history of taking anti-depressant and anti-psychotic medications.’ Dr. Crandall did not review any medical records. She concluded Campos currently ‘suffers from mood disorder, not otherwise specified, rule out bipolar with depression,’ and noted that he was ‘taking Prozac, Seroquel and Depakote in jail.’

“Based on her interview with Campos and her review of the police reports and preliminary hearing transcript, Dr. Crandall stated: ‘At the time of the instant offense, Mr. Campos had not been taking his medication for approximately four years. He

---

<sup>9</sup> The jury was not asked to decide whether Campos committed the attempted murder of Roque willfully, deliberately and with premeditation because the trial court granted Campos’s section 995 motion to dismiss as to this allegation only.

described experiencing racing thoughts and difficulty sleeping around the time of the instant offense. Despite his untreated psychiatric condition and some active symptoms, there is not sufficient evidence to suggest that, due to his mental illness, he did not know the nature and quality of his acts, or was unable to distinguish right from wrong, at the time of the instant offense. Thus, he does not qualify for the defense of NGI [not guilty by reason of insanity].’ Dr. Crandall believed Campos ‘probably would not have stabbed the victims but for his mental illness, which was untreated at the time of the incident.’

“Campos told Dr. Crandall he was angry with Roque, and had not spoken to him for a while prior to the attack, due to the manner in which Roque reacted when Campos confided in him that he had been sexually abused by their stepbrother between the ages of 9 and 12. Dr. Crandall stated that Campos ‘holds a lot of rage about his sexual abuse, and occasionally feels out of control with rage reactions against his family. It appears that this is what happened during the instant offense.’

“Campos also told Dr. Crandall that he grabbed the knife to scare Roque into leaving the house with Gonzalez so that he could be alone in the house and would not have to hear them making noise. ‘However, after approaching his brother, his brother began to wrestle with him for the knife and this exacerbated Mr. Campos’ anger. He then stabbed his brother out of anger and frustration. After he stabbed his brother, he also stabbed his brother’s girlfriend out of rage. He was confused and felt out of control of his emotions at that time, and “snapped out of it” when his brother screamed “that’s my baby.”’ According to Dr. Crandall’s report, Campos immediately felt remorse for his actions.

“Dr. Sanjay Sahgal stated in his March 1, 2013 report: ‘Mr. Campos has an authentic mental illness characterized by mood instability and intermittent agitation. At the time of the charged offense, the defendant was not taking any psychotropic medication and was mentally impaired to some extent due to his untreated mental illness. Nevertheless, Mr. Campos was capable of understanding the nature and quality of his actions and their moral wrongfulness at the time of the alleged crimes despite his mental health problems. He does not meet the criteria for an insanity defense.’ Dr. Sahgal based his conclusions on his interviews with Campos and his father and his review of the police reports and preliminary hearing transcript. Campos told Dr. Sahgal that the medications he took in jail ‘help[ed] him to feel calm and to sleep well.’

“According to Dr. Sahgal’s report, Campos’s father ‘stated that the defendant has had problems with his temper and his behavior since his early teens. He stated that, even as a child, the defendant would sometimes attack or bite one of his parents. He tried to get the defendant mental health treatment but initially was told that medication wasn’t necessary. In his late teens, the defendant was prescribed medication after a series of brief hospitalizations for suicidal ideation and agitation. However, the defendant apparently never took his psychotropic medications while in the community and his family was very wary of him.’ At age 13, Campos entered the juvenile justice system after ‘he hit his father with a vase.’” (*People v. Campos*, *supra*, B262258, pp. 7-9.)

### **Sentencing**

The trial court sentenced Campos to life plus 15 years in prison: on count 5, an indeterminate term of life with the

possibility of parole for the willful, deliberate and premeditated attempted murder of Gonzalez, plus a consecutive three-year term for the great bodily injury enhancement and a consecutive one-year term for the weapon enhancement; and on count 4, a consecutive term of seven years for the attempted murder of Roque (the middle term), plus a consecutive three-year term for the great bodily injury enhancement and a consecutive one-year term for the weapon enhancement. On counts 1-3, the court imposed and stayed the middle term of three years for each offense.

Campos retained a third attorney, who filed a motion for new trial, raising ineffective assistance of counsel. The trial court denied the motion.

### **The Direct Appeal and the Habeas Petition**

Campos filed a notice of appeal from the judgment. On appeal he contended “(1) his trial counsel rendered ineffective assistance in failing to have him evaluated for a diminished actuality defense, (2) the trial court erred in rejecting his ineffective assistance of counsel claim, made in his motion for new trial, without first granting his request for appointment of an expert to evaluate him for a diminished actuality defense, (3) the trial court erred in denying his request for jury instructions on imperfect self-defense, and (4) there was insufficient evidence supporting the jury’s finding that the attempted murder in count 5 was willful, deliberate and premeditated.” (*People v. Campos*, *supra*, B262258, p. 2.)

While the direct appeal was in the briefing stage, Campos filed the present petition for writ of habeas corpus, contending his trial counsel rendered ineffective assistance by failing to investigate and present evidence at trial supporting a diminished

actuality defense. He attached to the petition declarations from several people, including his trial counsel (Perez) and Dr. Crandall, the psychiatrist who conducted pretrial evaluations and issued reports regarding sanity and mental competence. Neither Perez nor Dr. Crandall states in a declaration that Campos was evaluated for a diminished actuality defense. In his declaration, Perez blames the trial court for thwarting Campos's defense by declining to appoint Dr. Crandall as a defense expert. In her declaration, Dr. Crandall states that Perez "did suggest that [she] testify, but never arranged for [her] to be appointed or hired for that purpose, and never discussed with [her] any preparation or specific issues to testify about."

A few months after Campos filed the habeas petition, this court issued an order authorizing a psychiatric evaluation of Campos. Dr. Joseph Simpson conducted the evaluation, and Campos attached Dr. Simpson's report to his reply to the Attorney General's informal opposition to the habeas petition. We discuss the report in more detail below.

Thereafter, we decided the direct appeal, affirming the judgment. (*People v. Campos, supra*, B262258, p. 18.) Regarding Campos's contention on appeal of ineffective assistance of counsel, we concluded he could not establish a reasonable probability of a more favorable outcome because there was "nothing in the record on appeal demonstrating Campos could have presented evidence showing he did not form the requisite mental states for the charged offenses in support of a diminished actuality defense." (*Id.* at pp. 11-12.) Moreover, we found moot his contention that the trial court erred in rejecting the ineffective assistance of counsel claim made in his motion for new trial without first granting his request for appointment of an

expert to evaluate him for a diminished actuality defense. We explained we could not grant Campos any effectual relief on appeal based on that contention, given this court previously had issued an order authorizing a psychiatric evaluation, and the evaluation already had occurred. We informed the parties we would consider Dr. Simpson's report in deciding the habeas petition. (*Id.* at p. 12.)

We issued an order to show cause on the habeas petition, and the parties filed their responsive briefing.

### **Dr. Simpson's Report**

On July 9, 2016, Dr. Simpson conducted an evaluation of Campos at the prison where he was incarcerated. Before issuing his July 23, 2016 report, Dr. Simpson also considered, among other things, records from mental health facilities that treated Campos when he was 12 and 16 years old, the police report regarding the current offenses, transcripts of the sheriff's department's interviews with Campos and Roque, the psychiatric evaluation reports from Drs. Crandall and Sahgal (described above), trial transcripts, and letters Campos wrote from jail while being held on the current offenses.

After reviewing the diagnostic criteria for posttraumatic stress disorder (PTSD), Dr. Simpson concluded Campos suffered from that disorder. Dr. Simpson stated in his report, in pertinent part: "[Campos]'s mental disorder directly contributed to his actions in the instant offenses. His longstanding, untreated PTSD created the conditions for an outburst of rage, in the context of his brother's lack of emotional support after being told of [Campos]'s experience of continuous sexual abuse beginning at age nine. Mr. Campos was further humiliated when his brother told him that he should not have revealed the abuse, but instead

should have ‘taken it to the grave.’<sup>10]</sup> This statement, which the evidence suggests had a significant emotional impact on [Campos], occurred not long after he had, for the first time in many years, found a sympathetic person, his new boyfriend, who did not react negatively to the revelation of sexual abuse victimization, and who encouraged him to tell others in his family. When confronted by the victims’ loud behavior while he was attempting to sleep, his anger towards his brother, which had been present in a heightened form for days since the statement by Roque, finally erupted in an unplanned burst of physical violence.

“The available evidence supports the conclusion that [Campos] acted without premeditation, and did not form the intent to cause the death of either [his brother] Roque Campos, Jr. or Lizbeth Gonzalez. His PTSD symptoms were exacerbated by the lack of validation and the criticism by his brother, the person he had once been closest to. As a result, he experienced an intense angry outburst in which his actions were driven by his negative emotions. These actions, despite the fact that they resulted in significant physical injuries, were impulsive, and did not involve a significant element of planning or deliberation.”

### **DISCUSSION**

In his habeas petition, Campos contends his trial counsel rendered ineffective assistance by failing to investigate and present evidence at trial supporting a diminished actuality defense. He asserts there is a reasonable probability the jury would have found him not guilty of the attempted murders if his

---

<sup>10</sup> According to Campos, Roque made this statement about a week before the stabbing incident.

counsel had presented evidence tending to show he actually did not form the specific mental states for the attempted murders.

### **Principles Applicable to Ineffective Assistance of Counsel Claims**

A “defendant’s right to assistance of counsel, guaranteed by both the Sixth Amendment to the United States Constitution and article I, section 15, of the California Constitution, ‘entitles the defendant not to some bare assistance but rather to *effective* assistance. Specifically, it entitles him to “the reasonably competent assistance of an attorney acting as his diligent conscientious advocate.” [Citations.] This right requires that ‘before counsel undertakes to act at all he will make a rational and informed decision on strategy and tactics founded on adequate investigation and preparation.’ [Citation.]

“To establish that counsel’s assistance was sufficiently ineffective to justify the issuance of a writ of habeas corpus, petitioner must first demonstrate that counsel’s performance “fell below an objective standard of reasonableness . . . under prevailing professional norms.” [Citations.] This determination generally must be made with deference to avoid the dual pitfalls of second-guessing counsel’s tactics and chilling vigorous advocacy by tempting counsel ‘to defend himself against a claim of ineffective assistance after trial rather than to defend his client against criminal charges at trial . . . ’ [Citation.] However, ‘deferential scrutiny of counsel’s performance is limited in extent and indeed in certain cases may be altogether unjustified. “[D]eference is not abdication” [citation]; it must never be used to insulate counsel’s performance from meaningful scrutiny and thereby automatically validate challenged acts or omissions.’ [Citation.]



“Petitioner must also demonstrate that counsel’s deficient performance prejudiced his defense. Prejudice generally requires an affirmative showing that, absent counsel’s errors, there is a reasonable probability of a more favorable outcome. [Citation.] A ‘reasonable probability’ is not a showing that ‘counsel’s conduct more likely than not altered the outcome in the case,’ but simply ‘a probability sufficient to undermine confidence in the outcome.’” (*In re Cordero* (1988) 46 Cal.3d 161, 180.)

### **The Law Regarding the Diminished Actuality Defense**

“Sections 28<sup>[11]</sup> and 29<sup>[12]</sup> *permit* introduction of evidence of mental illness when relevant to whether a defendant *actually* formed a mental state that is an element of a charged offense, but *do not permit* an expert to offer an opinion on whether a

---

<sup>11</sup> Section 28, subdivision (a) provides: “Evidence of mental disease, mental defect, or mental disorder shall not be admitted to show or negate the capacity to form any mental state, including, but not limited to, purpose, intent, knowledge, premeditation, deliberation, or malice aforethought, with which the accused committed the act. Evidence of mental disease, mental defect, or mental disorder is admissible solely on the issue of whether or not the accused actually formed a required specific intent, premeditated, deliberated, or harbored malice aforethought, when a specific intent crime is charged.”

<sup>12</sup> Section 29 provides: “In the guilt phase of a criminal action, any expert testifying about a defendant’s mental illness, mental disorder, or mental defect shall not testify as to whether the defendant had or did not have the required mental states, which include, but are not limited to, purpose, intent, knowledge, or malice aforethought, for the crimes charged. The question as to whether the defendant had or did not have the required mental states shall be decided by the trier of fact.”

defendant had the *mental capacity* to form a specific mental state or whether the defendant *actually harbored* such a mental state. An expert's opinion that a form of mental illness *can lead to impulsive behavior* is relevant to the existence *vel non* [or not] of the mental states of premeditation and deliberation regardless of whether the expert believed [the defendant] actually harbored those mental states at the time of the killing.” (*People v. Cortes* (2011) 192 Cal.App.4th 873, 902, original italics.)

For example, it is permissible for a psychiatrist “to opine that [the defendant], because of his history of psychological trauma, tended to overreact to stress and apprehension,” and that “such condition could result in [the defendant] acting impulsively under certain particular circumstances.” (*People v. Nunn* (1996) 50 Cal.App.4th 1357, 1365.) Moreover, a psychiatrist may offer an opinion regarding whether a particular “encounter was the type that could result in an impulsive reaction from one with [the defendant]’s mental condition.” (*Ibid.*) Further, a psychiatrist may express doubt that the defendant “planned his conduct, because such bizarre behavior tends to be impulsive.” (*People v. Young* (1987) 189 Cal.App.3d 891, 906.)

Thus, “sections 28 and 29 do not prevent the defendant from presenting expert testimony about any psychiatric or psychological diagnosis or mental condition he may have, or how that diagnosis or condition affected him at the time of the offense, as long as the expert does not cross the line and state an opinion that the defendant did or did not have the intent, or malice aforethought, or any other legal mental state required for conviction of the specific intent crime with which he is charged.” (*People v. Cortes, supra*, 192 Cal.App.4th at pp. 908, 910 [in

holding that the trial court erred in excluding expert testimony, the appellate court explained that “at a minimum, [the psychiatrist] should have been permitted to testify to defendant’s diagnoses of adjustment disorder with emotional and conduct problems, attachment problems related to personality development, and psychiatric problems that could be characterized variously as PTSD, anxiety disorder or psychophysiological instability. He should have been permitted to testify about defendant’s upbringing and traumatic experiences as a child and/or adolescent, inasmuch as defendant’s prior traumatic experiences informed [the psychiatrist]’s opinion, and explained the connection between defendant’s diagnoses, his mental state and his behavior. He should have been permitted to explain both the psychological condition and the phenomenon of dissociation, and dissociation’s relationship to PTSD and defendant’s upbringing and traumatic experiences. He should have been permitted to explain the bases for his opinions, including defendant’s statements describing his perception of the stabbing”].) From such testimony, a jury may infer the defendant actually lacked the specific intent required for the charged offense. (*Id.* at p. 912.)

### **Campos Received Ineffective Assistance of Counsel**

In his return to the order to show cause, the Attorney General focuses on the prejudice analysis, urging us to deny the petition based on a finding of lack of prejudice. He devotes only a footnote to his argument that Perez’s performance was adequate.

Perez based Campos’s defense on the theory of diminished actuality. He told the jury on multiple occasions that Campos had a mental illness which precluded him from premeditating murder or forming the specific intent to kill or disfigure the

victims. He even told the jury that a psychiatrist who had evaluated Campos would testify that Campos had a mental illness. The jury heard no evidence about Campos's mental illness.

Given Perez's theory of the case, there was no excuse for his failure to have a psychiatrist evaluate Campos for a diminished actuality defense. Dr. Crandall, who concluded that Campos was sane at the time of the offenses, also stated her belief that Campos "probably would not have stabbed the victims but for his mental illness, which was untreated at the time of the incident." The fact Campos was sane does not mean he formed the specific intent to commit attempted murder. Perez's performance was objectively unreasonable under prevailing professional norms.

We rejected Campos's ineffective assistance of counsel claim on direct appeal because he could not demonstrate prejudice. Based on the appellate record, he could not show Perez could have obtained evidence supporting a diminished actuality defense. In this habeas proceeding, however, he has presented a psychiatric evaluation from Dr. Simpson, concluding he has had PTSD and because of the disorder, he did not form the specific intent for the attempted murders. While Dr. Simpson (or another psychiatrist) would have been precluded from giving an opinion on whether Campos actually formed the specific intent, he could have testified about Campos's traumatic childhood experiences and given his opinion that Campos had PTSD, a disorder which could have resulted in impulsive behavior and other symptoms relevant to Campos's strange behavior at the time of the incident. Moreover, once the defense presented expert testimony regarding a diagnosis of mental illness, Campos's family members and/or Campos could have testified about his

behavior around the time of the incident as it related to symptoms of that mental illness.

The Attorney General points to evidence in the record that he believes demonstrates Campos's intent to kill Roque and his premeditation and deliberation with regard to the stabbing of Gonzalez. He also references Campos's written statement to detectives, which was not presented at trial but might have been if Campos had presented evidence of diminished actuality based on mental illness.<sup>13</sup> Dr. Simpson makes clear in his report that he considered all of that evidence, as well as Campos's statement to detectives, and still reached the conclusion that Campos did not form the intent to kill or premeditate an attempted killing due to PTSD.

We find it is reasonably probable Campos would have obtained a more favorable result on the attempted murder

---

<sup>13</sup> Apparently, Campos gave the following statement to detectives the day after the incident: "I woke up and realized my brother was there with his girlfriend, so I got mad instantly because it was my day off, and I wanted to be alone. [They] were hanging out in his room, and they order pizza. My mom had gone to go pick up my sister. That's when I went to the kitchen and got the knife. And my brother came out to get pizza, and he offered me some, and I just lost it, and I attacked him with the knife, and we both began to wrestle. And then he stopped, and his girlfriend came out at that point, and I attacked her near her shoulder once and stopped, and then she ran with my brother, and I stabbed her in the lower back, and I told them to get out of the house and my brother said okay, and they went out. I then dropped the knife and called my dad telling him to please come home and that I'm sorry that I just stabbed my brother. And then I got the knife, and I went to the bathroom, and I kept it there, and I washed my hands."

charges if Perez had had him evaluated for a diminished actuality defense. Based on the opinion testimony Dr. Simpson could have given, a jury properly could have inferred that Campos lacked the specific intent to kill and premeditate/deliberate because of mental illness. Accordingly, the attempted murder convictions must be reversed.<sup>14</sup>

### **DISPOSITION**

The petition for writ of habeas corpus is granted. The attempted murder convictions (counts 4 and 5) are reversed and Campos's sentence vacated. The matter is remanded for retrial on counts 4 and 5 only and/or resentencing. The clerk of this court is to forward a copy of this opinion to the State Bar of California. (Bus. & Prof. Code, § 6086.7, subd. (a)(2).)

NOT TO BE PUBLISHED.

CHANNEY, J.

We concur:

ROTHSCHILD, P. J.

LUI, J.

---

<sup>14</sup> The appellate record demonstrates that, even absent evidence of Campos's mental illness, the jury had a difficult time reaching verdicts on the attempted murders. At one point, the jury informed the trial court it could not "come to an agreement" on counts 4 and 5 and later asked for further explanation regarding the meaning of "intent" as it related to those charges. The court allowed additional argument on the issue. It took the jury a few additional days to reach verdicts. During that time, two jurors engaged in a confrontation while arguing their opposing views of the case and were dismissed for misconduct.