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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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. RAYMUNDO M. COTA, Defendant and Appellant.	2d Crim. No. B237767 (Super. Ct. No. KA093046) (Los Angeles County)

Raymundo Mendez Cota appeals from the judgment entered following his conviction by a jury of attempted murder (Pen. Code, §§ 664, 187, subd. (a))[1] and assault with a deadly weapon. (§ 245, subd. (a)(1).) The jury found true allegations that the attempted murder had been committed willfully, deliberately and with premeditation (§ 664, subd. (a)), that appellant had used a deadly weapon (a knife) (§ 12022, subd. (b)(1)), and that he had inflicted great bodily injury. (§ 12022.7, subd. (a). Appellant admitted one prior serious felony conviction (§ 667, subd. (a)(1)) and two prior serious or violent felony convictions within the meaning of California's "Three Strikes" law. (§§ 1170.12, subds. (a)-(d); 667, subds. (b)-(i).) He was sentenced to prison for 30 years to life.

[1] All statutory references are to the Penal Code.

Appellant contends that the trial court erroneously failed to instruct the jury sua sponte on perfect and imperfect self-defense. In addition, he contends that the court erroneously modified CALJIC No. 1.02. We affirm.

Facts

People's Evidence

Crystal Rodriguez shared an upstairs apartment with appellant and another man. On January 9, 2011, Rodriguez entered the apartment while carrying her phone, her keys, and a drink and meal that she had purchased from a McDonald's restaurant. Her "hands were full." Appellant came out of his bedroom with a knife in his hand. Appellant said to Rodriguez, "I hate you, you fucking bitch."

Appellant "backed [Rodriguez] into the wall." Rodriguez "dropped everything" that she had been carrying. She "watched [appellant] with the knife go over [her] abdomen and choose where he was going to stab [her.]" Appellant stabbed Rodriguez "[m]ultiple times" in the abdomen. When Rodriguez screamed, appellant said, "Scream, bitch, scream."

Rodriguez ran to the front door of the apartment. While she was running, appellant stabbed her in the kidney. The front door was locked. While Rodriguez was trying to unlock it, appellant stabbed her three times in the left arm. The arm wounds were "defensive wounds" inflicted when she "was fighting to open up the door and was trying to defend [herself]." Rodriguez opened the front door and "threw" herself down the stairs.

The police were dispatched to the location and arrested appellant. At the apartment appellant told the police, "I'm gonna do that bitch before she does me." "These people are crazy. I'm going to do 'em first." While the police were transporting appellant to the station, appellant said, "They were trying to kill me, they had guns." He also "indicated something about, [s]he set up the hit, so I stabbed her."

Appellant's Evidence

Appellant testified as follows: "They [the persons with whom he shared the apartment] had guns, what I heard. And they were gonna shoot through the walls [of

appellant's bedroom], but they didn't know where I was at. So I walked around the room, like I was moving around so they couldn't shoot at me." When appellant stabbed Rodriguez, he was "trying to defend [him]self." He needed to defend himself because on a prior occasion Rodriguez "was talking about killing [him]." Appellant thought, "[I]f they were gonna kill me, they're gonna kill me now, but I'm gonna take somebody with me." Before appellant stabbed Rodriguez, she "didn't try to attack [him]." She "had her hands full" with the McDonald's meal.

Rodriguez dropped the meal, and appellant stabbed her three times with "a straight lunge." Rodriguez ran away, screaming for help. Appellant chased her and stabbed her again below the hip. When he stabbed her this last time, he "wasn't really thinking." The "plunge" of the knife into her body pushed Rodriguez down the stairs Rodriguez never fought back against appellant.

Court's Rationale for Not Instructing on Perfect and Imperfect Self-Defense

Appellant, who was representing himself, did not request instructions on perfect and imperfect self-defense. The prosecutor asked the court to explain its rationale for deciding not to instruct on these matters. The court declared: "[O]n the state of the evidence we have before us, I can find no substantial evidence or credible evidence that would lead an individual to conclude perfect or imperfect self-defense would lie under the facts of our case, nothing the jury could seize upon to arrive at that kind of determination."

Instruction on Imperfect Self-Defense

Appellant contends that the trial court erroneously failed to instruct the jury sua sponte on imperfect self-defense. " ' "Under the doctrine of imperfect self-defense, when the trier of fact finds that a defendant killed another person because the defendant *actually*, but unreasonably, believed he was in imminent danger of death or great bodily injury, the defendant is deemed to have acted without malice and thus can be convicted of no crime greater than voluntary manslaughter." [Citation.] . . . [I]mperfect self-defense is not an affirmative defense, but a description of one type of voluntary manslaughter. Thus

the trial court must instruct on this doctrine, whether or not instructions are requested by counsel, whenever there is evidence substantial enough to merit consideration by the jury that under this doctrine the defendant is guilty of voluntary manslaughter. [Citation.]' " (*People v. Manriquez* (2005) 37 Cal.4th 547, 581.)

The doctrine of imperfect self-defense " 'is narrow. It requires without exception that the defendant must have had an *actual* belief in the need for self-defense. . . . Fear of future harm—no matter how great the fear and no matter how great the likelihood of the harm—will not suffice. The defendant's fear must be of *imminent* danger to life or great bodily injury. " '[T]he peril must appear to the defendant as immediate and present and not prospective or even in the near future. *An imminent peril is one that, from appearances, must be instantly dealt with.*' " ' " (*People v. Manriquez*, *supra*, 37 Cal.4th at p. 581.)

The record contains no evidence substantial enough to support a finding that appellant actually believed that Rodriguez's presence in the apartment posed an immediate peril that " ' " '*must be instantly dealt with*.' " ' " (*People v. Manriquez, supra*, 37 Cal.4th at p. 581.) Appellant testified that he had "heard" that the persons with whom he shared the apartment "had guns." But he "made no claim of ever having seen [Rodriguez] armed with any weapon, said nothing about believing [she] was armed [when she entered the apartment], and never indicated he felt he was under any imminent threat of death or great bodily injury when he [stabbed her]." (*People v. Manriquez, supra*, 37 Cal.4th at p. 582.) At most, appellant's testimony revealed a fear of harm in the near future, not when Rodriguez had her hands full carrying the McDonald's meal. Moreover, by his own admission, appellant was not motivated by self-defense when he stabbed Rodriguez while she was trying to flee through the front door of the apartment. Appellant testified that, when he stabbed her this last time, he "wasn't really thinking." Thus, the trial court did not have a duty to instruct sua sponte on imperfect self-defense.

In any event, "[t]he jury's verdict finding [appellant] guilty of the [attempted] first degree murder of [Rodriguez] implicitly rejected [his] version of the events, leaving no doubt the jury would have returned the same verdict had it been instructed regarding

imperfect self-defense. [Citation.] Accordingly, even if we were to assume the failure to instruct on imperfect self-defense violated [appellant's] constitutional rights, we would find the error harmless. (See *People v. Sakarias* (2000) 22 Cal.4th 596, 621 . . . [no state or federal constitutional error occurs requiring reversal for failure to instruct the jury regarding a lesser included offense, when the evidence in support of that offense 'was, at best, extremely weak'].)" (*People v. Manriquez*, *supra*, 37 Cal.4th at p. 582-583.)

Instruction on Perfect Self-Defense

Appellant contends that the trial court erroneously failed to instruct the jury sua sponte on perfect self-defense. "For [an attempted] killing to be in [perfect] self-defense, the defendant must actually and reasonably believe in the need to defend. [Citation.]" (*People v. Humphrey* (1996) 13 Cal.4th 1073, 1082.) A trial court is required to instruct sua sponte on any defense, including [perfect] self-defense, only when there is substantial evidence supporting the defense . . . . [Citation.]" (*People v. Villanueva* (2008) 169 Cal.App.4th 41, 49.)

For the same reasons that the evidence was insufficient to require the court to instruct sua sponte on imperfect self-defense, it was also insufficient to require the court to instruct sua sponte on perfect self-defense. Like imperfect self-defense, for perfect self-defense " '[t]he defendant's fear must be of *imminent* danger to life or great bodily injury.' [Citation.]" (*People v. Humphrey*, *supra*, 13 Cal.4th at p. 1082.)

CALJIC No. 1.02

CALJIC No. 1.02 provides in relevant part: "Statements made by the attorneys during the trial are not evidence." Because appellant was representing himself, the court substituted "parties" for "attorneys." Appellant claims that the modification of this instruction deprived him "of the right to testify in his own behalf at trial and to present evidence" because the instruction in effect told the jury "to disregard appellant's testimony because appellant was one of the parties." (AOB 11)

Appellant's claim lacks merit. " ' "Jurors are presumed to be intelligent, capable of understanding instructions and applying them to the facts of the case." ' [Citations.]" (*People v. Carey* (2007) 41 Cal.4th 109, 130.) We presume that the jurors did not

construe the modification of CALJIC No. 1.02 as requiring them to disregard appellant's testimony. During deliberations, the jurors requested that the court provide them with a transcript of appellant's testimony. They would not have made this request if they had believed that his testimony must be disregarded. In response to their request, the trial court ordered the court reporter to read back appellant's testimony to the jury. The court's order made it clear that his testimony was properly before the jury. Thus, any error in the court's modification of CALJIC No. 1.02 was harmless beyond a reasonable doubt.

Disposition

The judgment is affirmed.

NOT TO BE PUBLISHED.

YEGAN, J.

We concur:

GILBERT, P.J.

PERREN, J.

Bruce F. Marrs, Judge

Superior Court County of Los Angeles

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