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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

DAVID CAMPOS,

Defendant and Appellant.

B262258

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

APPEAL from a judgment of the Superior Court of Los Angeles County, Christian R. Gullon, Judge. Affirmed.

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

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

David Campos appeals from a judgment entered after a jury found him guilty of one count of willful, deliberate and premeditated attempted murder, another count of attempted murder, two counts of assault with a deadly weapon (a knife), and one count of 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 Campos to life plus 15 years in prison.

Campos contends (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. Finding no reversible error, we affirm.

BACKGROUND

The Guilt Phase¹

In the afternoon, on September 13, 2012, 21-year-old Campos stabbed his 23-year-old brother, Roque,² and Roque's girlfriend, Lizbeth Gonzalez, at the family home where Campos, Roque, their parents, and another sibling lived.

Prior to the attack, 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. Gonzalez remained in Roque's bedroom. Roque offered Campos some pizza, but Campos did not respond. Roque noticed Campos was holding a kitchen knife.³

¹ 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 Campos was not legally insane at the time of the offenses. Prior to trial, defense counsel declared a doubt as to Campos's mental competence. After considering a competency evaluation prepared by an appointed psychiatrist, the trial court found Campos competent to stand trial.

² Because the brothers share the same surname, and to avoid confusion, we refer to appellant David Campos as "Campos," and we refer to his brother, Roque Campos, Jr., as "Roque."

³ 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.

According to a police interview Roque gave four days after the stabbing,⁴ 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 ribs.⁵ 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

⁴ 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.

⁵ 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.”

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.”⁶ 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.”

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

⁶ Gonzalez testified at trial.

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.

The jury found Campos guilty of assault with a deadly weapon on Roque (Pen. Code, § 245, subd. (a)(1);⁷ 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

⁷ Further statutory references are to the Penal Code.

offense. (§ 12022, subd. (b)(1).) Finally, the jury found true the allegation that Campos committed the attempted murder of Gonzalez willfully, deliberately and with premeditation.⁸

The Sanity Phase

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 described experiencing racing thoughts and difficulty sleeping

⁸ 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.

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.”

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

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.

DISCUSSION

Ineffective Assistance of Counsel Claim

In his opening statement, Campos's trial counsel represented to the jury that the defense would present evidence 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, although trial counsel continued to represent during trial that Campos had a history of mental illness (for example, in closing argument, which drew objections by the prosecution).

Campos contends his trial counsel rendered ineffective assistance by neglecting to have him examined for diminished actuality and failing to present a diminished actuality defense,⁹ after indicating to the jury that he would do so. As explained below, Campos cannot prove his ineffective assistance of counsel claim on appeal because he cannot establish prejudice, a

⁹ 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.)

necessary element of the claim. Based on the appellate record, he cannot show his counsel could have obtained evidence supporting a diminished actuality defense or that the outcome of the trial would have been more favorable to him if counsel had not made comments about an alleged mental illness.

“In order to establish a claim of ineffective assistance of counsel, defendant bears the burden of demonstrating, first, that counsel’s performance was deficient because it ‘fell below an objective standard of reasonableness [¶] . . . under prevailing professional norms.’ [Citations.] Unless a defendant establishes the contrary, we shall presume that ‘counsel’s performance fell within the wide range of professional competence and that counsel’s actions and inactions can be explained as a matter of sound trial strategy.’ [Citation.] If the record ‘sheds no light on why counsel acted or failed to act in the manner challenged,’ an appellate claim of ineffective assistance of counsel must be rejected ‘unless counsel was asked for an explanation and failed to provide one, or unless there simply could be no satisfactory explanation.’ [Citations.] If a defendant meets the burden of establishing that counsel’s performance was deficient, he or she also must show that counsel’s deficiencies resulted in prejudice, that is, a ‘reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.’” (*People v. Ledesma* (2006) 39 Cal.4th 641, 745-746.)

Campos cannot prevail on his ineffective assistance of counsel claim based on the appellate record because he cannot establish a reasonable probability of a more favorable outcome, even if counsel had acted in the manner Campos now advocates. There is 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. Drs. Crandall and Sahgal did not opine on this issue.

In his supplemental opening brief, Campos contends 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. This contention is moot. On June 7, 2016, in the separate habeas corpus proceeding (B270209), this court issued an order authorizing a psychiatric evaluation of Campos. The evaluation occurred on July 9, 2016, and Campos attached the psychiatrist's July 23, 2016 report to his reply to the Attorney General's informal opposition to the habeas petition. We will consider the report in deciding Campos's habeas petition. Because the psychiatric evaluation already has occurred, we cannot grant Campos any effectual relief on appeal based on this contention, even if we were to agree with him that the trial court erred in declining to appoint an expert to evaluate him for a diminished actuality defense.

Based on the appellate record, Campos's ineffective assistance of counsel claim fails.

Denial of Request for Jury Instructions on Imperfect Self-Defense

Campos contends the trial court committed prejudicial error in denying his request for jury instructions on imperfect self-defense.

If a person kills with an actual, but unreasonable belief that it is necessary to defend himself "from imminent peril to life or great bodily injury," he is not guilty of murder. (*In re*

Christian S. (1994) 7 Cal.4th 768, 773.) His belief “negates malice aforethought, the mental element necessary for murder, so that the chargeable offense is reduced to manslaughter.” (*Ibid.*)

“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* (2005) 37 Cal.4th 547, 581.)

“[W]hen a defendant, acting with conscious disregard for life, unintentionally kills in unreasonable self-defense, the killing is voluntary, not involuntary, manslaughter.” (*People v. Blakeley* (2000) 23 Cal.4th 82, 88-89.) Voluntary manslaughter is a lesser included offense of murder. (*People v. Breverman* (1998) 19 Cal.4th 142, 153.) A trial court errs if it fails to instruct “on all theories of a lesser included offense which find substantial support in the evidence. On the other hand, the court is not obliged to instruct on theories that have no such evidentiary support.” (*Id.* at p. 162.)¹⁰ “[T]he existence of ‘any evidence, no matter how weak’ will not justify instructions on a lesser

¹⁰ In *People v. Breverman*, *supra*, the California Supreme Court addressed the trial court’s sua sponte duty to instruct on a lesser included offense. (*People v. Breverman*, *supra*, 19 Cal.4th at p. 162.) The principles set forth in *Breverman* also are applicable here where Campos requested an instruction on a lesser included offense and the trial court refused to give it. (See *People v. Elize* (1999) 71 Cal.App.4th 605, 611.)

included offense, but such instructions are required whenever evidence that the defendant is guilty only of the lesser offense is ‘substantial enough to merit consideration’ by the jury.

[Citations.] ‘Substantial evidence’ in this context is “‘evidence from which a jury composed of reasonable [persons] could . . . conclude[]” that the lesser offense, but not the greater, was committed.” (*Ibid.*)

“In deciding whether there is substantial evidence of a lesser offense, courts should not evaluate the credibility of witnesses, a task for the jury.” (*People v. Breverman, supra*, 19 Cal.4th at p. 162.) “On appeal, we apply a de novo standard of review.” (*People v. Manriquez, supra*, 37 Cal.4th at p. 581.)

The record does not include substantial evidence presented at trial demonstrating Campos stabbed the victims because he actually believed he was in imminent danger of being killed or suffering great bodily injury. Campos armed himself with a knife before Roque even entered the kitchen. Crediting Roque’s inconsistent trial testimony that he approached Campos to defend himself, placing his hands on Campos and “attack[ing] Campos before Campos touched him, there is insufficient evidence indicating Campos actually believed he was in imminent danger of being killed or suffering great bodily injury. Campos immediately stabbed Roque in the face, knocking Roque to the ground, and continued to stab Roque as he lay defenseless on the ground. The evidence shows that Gonzalez posed no threat to Campos, but he stabbed her repeatedly anyway. The record does not include substantial evidence from which a reasonable jury could conclude Campos stabbed the victims in imperfect self-defense.

Sufficiency of Evidence Supporting Jury's Finding of a Willful, Deliberate and Premeditated Attempted Murder

Campos contends there is insufficient evidence supporting the jury's true finding on the allegation that he committed the attempted murder of Gonzalez willfully, deliberately and with premeditation.

In reviewing a challenge to the sufficiency of the evidence, "the reviewing court's task is to determine whether, in light of the whole record viewed in the light most favorable to the prosecution, a rational trier of fact could have found the elements of the crime beyond a reasonable doubt." (*People v. Felix* (2009) 172 Cal.App.4th 1618, 1624.) We ""must presume in support of the judgment the existence of every fact the trier could reasonably deduce from the evidence."" (*People v. Smith* (2005) 37 Cal.4th 733, 739.) "The credibility of witnesses and the weight accorded the evidence are matters within the province of the trier of fact." (*People v. Ramos* (2004) 121 Cal.App.4th 1194, 1207.) "An appellate court must accept logical inferences that the jury might have drawn from the evidence even if the court would have concluded otherwise." (*People v. Halvorsen* (2007) 42 Cal.4th 379, 419.) "Reversal on this ground is unwarranted unless it appears 'that upon no hypothesis whatever is there sufficient substantial evidence to support [the conviction].'" (*People v. Bolin* (1998) 18 Cal.4th 297, 331.)

""Deliberation" refers to careful weighing of considerations in forming a course of action; "premeditation" means thought over in advance. [Citations.] "The process of premeditation and deliberation does not require any extended period of time. 'The true test is not the duration of time as much as it is the extent of the reflection. Thoughts may follow each other with great

rapidity and cold, calculated judgment may be arrived at quickly.”” (*People v. Young* (2005) 34 Cal.4th 1149, 1182.)

In *People v. Anderson* (1968) 70 Cal.2d 15, “the Supreme Court described the categories of evidence relevant to premeditation and deliberation that have been found sufficient to sustain convictions of first degree murder: ‘(1) facts about how and what defendant did *prior* to the actual killing which show that the defendant was engaged in activity directed toward, and explicable as intended to result in, the killing—what may be characterized as “planning” activity; (2) facts about the defendant’s *prior* relationship and/or conduct with the victim from which the jury could reasonably infer a “motive” to kill the victim, which inference of motive, together with facts of type (1) or (3), would in turn support an inference that the killing was the result of “a pre-existing reflection” and “careful thought and weighing of considerations” rather than “mere unconsidered or rash impulse hastily executed” [citation]; (3) facts about the nature of the killing from which the jury could infer that the *manner* of killing was so particular and exacting that the defendant must have intentionally killed according to a “preconceived design” to take his victim’s life in a particular way for a “reason” which the jury can reasonably infer from facts of type (1) or (2).’” (*People v. Concha* (2010) 182 Cal.App.4th 1072, 1084.)

“This framework does not establish an exhaustive list of required evidence which excludes all other types and combinations of evidence that may support a jury’s finding of [deliberation and] premeditation [citation], nor does it require that all three elements must be present to affirm a jury’s conclusion that [a deliberate and] premeditated murder was

intended.” (*People v. Felix, supra*, 172 Cal.App.4th at p. 1626; see *People v. Halvorsen, supra*, 42 Cal.4th at p. 420 [the guidelines of *People v. Anderson*, “are descriptive and neither normative nor exhaustive, and . . . reviewing courts need not accord them any particular weight”].)

Substantial evidence presented at trial supports the jury’s finding that Campos committed the attempted murder of Gonzalez willfully, deliberately and with premeditation. Campos armed himself with a knife and stood in the kitchen where Gonzalez would soon appear to take some pizza. According to Roque, it made Campos uncomfortable and unhappy when Roque brought women, including Gonzalez, to the family home. Roque told the detective his family members did not like Gonzalez because she had “a bad reputation.” When Gonzalez called out to Campos to stop the attack on Roque, Campos turned to her and approached with the knife. The evidence does not indicate that Gonzalez posed any threat to Campos. She was unarmed and had not approached Campos before he attacked her. Yet Campos stabbed her in the face and then continued to stab her after she fell to the ground. Campos had sufficient time to decide deliberately and with premeditation that he would attempt to inflict life-threatening stab wounds to Gonzalez.

DISPOSITION

The judgment is affirmed.
NOT TO BE PUBLISHED.

CHANEY, J.

We concur:

ROTHSCHILD, P. J.

LUI, J.