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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 EIGHT

THE PEOPLE, Plaintiff and Respondent, v. AKOP VARDAZARYAN, Defendant and Appellant.	B235801 (Los Angeles County Super. Ct. No. BA 363231)

APPEAL from a judgment of the Superior Court of Los Angeles County, Kathleen Kennedy, Judge. Affirmed.

Carlo A. Spiga for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Victoria B. Wilson and Yun K. Lee, Deputy Attorneys General, for Plaintiff and Respondent.

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A jury found appellant Akop Vardazaryan guilty of first degree murder and of an assault with a deadly weapon. Appellant was sentenced to 25 years to life; the sentence on the assault charge was stayed under Penal Code section 654. The appeal is from the judgment.

FACTS

Vagen Vardazaryan,[1] appellant's brother, was working at about 8:30 a.m. on October 8, 2009, in a Nextel cell phone store on South Broadway in Los Angeles with Delores Gutierrez when Reginald Hendrix, the victim, entered the store to buy a charger. An altercation erupted between Vagen and Hendrix over the fact that Vagen asked Hendrix to wait while Vagen served other customers. When Hendrix called Vagen names and refused to leave, Vagen started pushing Hendrix out the door. It came to blows that were continued outside on the sidewalk. Vagen called out to Gutierrez to bring him a metal stick, which she did not do. A woman stopped the fight. Words continued to be exchanged as Gutierrez handed Vagen the metal stick. Hendrix got on his bike but not before he called Vagen names, said he would bring his "homeboys" and threatened to burn the store down. Vagen unsuccessfully tried to pursue Hendrix.

Vagen called for appellant who arrived at the store in about 10 to 15 minutes. Even though both Gutierrez and appellant told Vagen not to go after Hendrix, the brothers left in Vagen's red Neon.

There were two witnesses to the ensuing shooting. The brothers evidently caught up with Hendrix within a few minutes. Ultimately, they cut off the running Hendrix by pulling into a driveway. The brothers got out of the car. Vagen was armed with a gun and appellant was carrying an 18-inch metal socket wrench. Hendrix ran into the middle of the street, pursued by the brothers. (There was a surveillance video that showed Vagen and appellant getting out of the car and chasing Hendrix.) Vagen fired three or four shots at Hendrix at a close range, and he fell to the ground. Hendrix died of a single gunshot wound that perforated his left lung, heart and aorta.

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[1] We will refer to the Vardazaryans by their first names for the sake of clarity.

Vagen was apprehended within minutes by the police, still carrying his gun. Shell casings matching the weapon were recovered on the scene, together with the socket wrench from a nearby dumpster.

Appellant presented no evidence in his defense.

DISCUSSION

1. There Was No Evidence to Support the Giving of Self-defense Instructions

Appellant contends his lawyer was ineffective because he did not request self-defense instructions. The flaw in this argument is that the record is barren of any evidence that would have warranted such instructions.

Appellant relies on Hendrix's threat that he would return with his homeboys; that in fact Hendrix and Vagen had fought; that Vagen told appellant about the fight and the threat about the homeboys; and that Hendrix was riding the bike to the store, meaning that Hendrix was returning to carry out his threat.

"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." (*In re Christian S.* (1994) 7 Cal.4th 768, 783.) When Hendrix was shot and killed, he was running for his life, being chased by Vagen with his gun and appellant with the metal bar. Being in full flight, Hendrix posed no threat of harm, certainly not imminent harm. It is true that the two men had fought and that Hendrix had uttered a threat half an hour before the shooting; but these events were distant from the shooting both in time and place, at least as far as self-defense was concerned. The person who was, tragically enough, in imminent life-threatening danger was Hendrix; the brothers were in no danger of any kind when they were pursuing Hendrix. And it isn't true that Hendrix was on his way to the store on his bike; he was on foot, fleeing from the pursuing brothers.

Contrary to appellant's claim, the facts did not warrant an instruction on imperfect self-defense. The brothers were clearly the aggressors and, equivalently clearly, Hendrix was in flight. Thus, there was absolutely no indication that appellant and his brother

subjectively believed that they were acting in self-defense. (*People v. Hill* (2005) 131 Cal.App.4th 1089, 1101 [subjective belief establishes imperfect self-defense].)

Because there was no evidence that would have supported self-defense instructions, it follows that defense counsel cannot be faulted for not requesting them.

2. The Concession That Appellant Had Assaulted Hendrix Was Sound Strategy

Appellant complains of the fact that defense counsel conceded that appellant had assaulted Hendrix.

The defense, simply put, was that appellant intended to beat up Hendrix but never intended to kill him.

Considering that it was undisputed that appellant had been chasing Hendrix with a metal socket wrench that was a foot and a half long, defense counsel adopted the only strategy that had the slightest chance of success. There was no way that counsel could undo a set of facts that put his client in a bad light. A realistic approach that concentrated all efforts on warding off a murder conviction was the best strategy.

3. The "Evidence" That Was Not Presented Would Have Harmed Appellant

Appellant contends that counsel was ineffective because he did not present evidence that showed that Vagen held irrational beliefs and had "mental issues." Appellant also faults counsel for not presenting evidence that appellant disapproved of Vagen's actions right after the crime and that appellant did not know that Vagen had a gun.

If it was in fact true that Vagen was unstable, appellant certainly did the very opposite of what he should have done. Evidence of Vagen's "mental issues" could only reflect badly on appellant in that appellant should have taken those issues into account, instead of participating in the hunt for Hendrix.

That appellant disapproved of what Vagen did is in stark contrast to appellant's actions. If he disapproved of the murder after it happened, he should have tried to prevent it. Again, the alleged evidence is harmful to appellant. And that he didn't know that Vagen had a gun is flatly contradicted by the record in that he was in Vagen's company while chasing Hendrix.

4. The Trial Court Did Not Err in Denying the Motion for a New Trial

Appellant contends that his motion for a new trial should have been granted because his counsel was ineffective. As we have shown, that was not the case; there was no evidence to support self-defense instructions.

Appellant also claims the motion should have been granted because there "is simply no evidence of deliberation in this case." Getting into a car armed with a metal bar, driving until locating the victim and then getting out of the car with a dangerous weapon and chasing the victim until he was shot dead is about as sound a case for premeditation and deliberation as can be made.

Finally, we see nothing in this record that would have warranted a reduction, by the trial court, of the first degree murder conviction to a lesser offense. The murder of this unfortunate man was vicious, brutal and violent; the jury's verdict was completely appropriate.

DISPOSITION

The judgment is affirmed.

FLIER, J.

WE CONCUR:

BIGELOW, P. J.

GRIMES, J.