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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE,

Plaintiff and Respondent,

v.

TEODORO PENALOZA,

Defendant and Appellant.

B278441

(Los Angeles County
Super. Ct. No. VA127765)

APPEAL from a judgment of the Superior Court of Los Angeles County, John A. Torribio, Judge. Affirmed.

Susan S. Bauguess, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Victoria B. Wilson and Kathy S. Pomerantz, Deputy Attorneys General, for Plaintiff and Respondent.

* * * * *

Defendant Teodoro Penaloza appeals from his conviction for assault with a firearm and the subsequent jury finding that he was insane at the time he committed the offense. Defendant claims that his mental illness rendered him incapable of knowingly and intelligently waiving his rights under *Miranda v. Arizona* (1966) 384 U.S. 436 (*Miranda*) and therefore his statements to the police should have been suppressed. He further argues that the evidence was insufficient to show he did not act in self-defense. We affirm the judgment.

FACTUAL BACKGROUND

1. Prosecution Case

Defendant had shown signs of mental health issues starting in 1998. His family sent him to Mexico twice for treatment and he was prescribed medication. The medication helped when it was prescribed, but his brother Elio Penaloza was able to tell whenever defendant stopped taking it. Among other things, defendant would talk to himself. Defendant also accused Elio¹ and their mother Raquel Penaloza of poisoning defendant's food.

In December 2012, defendant and Raquel lived together in one unit of a duplex in Downey. Elio lived in the other unit with his family. Defendant had not taken his medication since at least Thanksgiving of that year.

About 5:00 a.m. on December 5, 2012, Elio returned home after a night at a casino with friends. Elio was "buzzed" but not drunk. While still in his car, Elio saw defendant standing at the window of defendant's unit wearing the security guard uniform defendant used at his job. Elio argued with defendant, telling

¹ To avoid confusion, we refer to members of the Penaloza family by their first names.

him to take his medication and go to bed. Elio then parked his car. Defendant came partway down the stairs from his unit, his gun in his holster. Defendant and Elio continued to argue about defendant not taking his medication. Defendant said Elio was trying to hurt him.

The men then went back to their own units. Elio retrieved a gun from his bedroom and went back outside to sit on the porch. He told his wife they needed to do something about defendant.

Five or 10 minutes later defendant and Raquel came out of their unit and started coming down the steps. Elio stood up, his gun tucked in his back waistband.² Defendant was holding his gun down by his side. Raquel was trying to hold defendant back as he walked down the stairs.

Elio told defendant to put his gun away and go back to bed. Defendant refused, saying that he had had it with Elio and that defendant was going to hurt him. Elio reminded defendant that they were brothers, and defendant said they no longer were.

Defendant raised his gun in Elio's direction. Elio reached for the gun. A shot went off, hitting Elio in the shoulder. Defendant and Elio struggled, Elio's hand on the barrel of the gun and defendant's hand on the handle and trigger. Elio's own gun fell out of his waistband to the ground. Elio threw punches at defendant. Defendant's gun went off several more times, hitting Elio twice in the abdomen and once in the leg. Elio's son arrived and helped his father hold defendant down. The police arrived shortly after.

² It is not clear from the record whether Elio put the gun in his waistband before or after defendant came out of his unit.

Later at the hospital, Elio told a police officer that during the fight defendant had said, “I’m going to kill you and you guys want to screw me over.”

The prosecution presented a video recording of defendant’s police interview the day of the shooting. Defendant told police he thought his brother “was trying to make me gay” by poisoning his food “with gay stuff.” Defendant said he shot Elio because Elio “was trying to make me homosexual.” Defendant said he wanted his brother dead. He also said the television he was watching that morning told him to shoot his brother. Defendant never saw his brother with a gun during the incident.

2. Defense Case

Defendant testified on his own behalf. Defendant had been diagnosed with schizophrenia and bipolar disorder in 1998 or 1999. When not on his medication, he would hear voices and think that people or the government wanted to hurt him and poison his food.

Defendant worked as a security guard. In 2011 he had been shot in the hand, stomach, and leg after preventing some extortionists from entering the bar where he worked. He returned to work in November 2012.

On December 5, 2012, defendant was hearing voices. He thought people wanted to harm him and was afraid of getting shot again. Driving home from work, he thought someone was following him who wanted to kill him, and he drove evasively to escape. He spontaneously pulled over to buy some food so his pursuer would not have time to find him.

When defendant got home, he left his uniform, body armor, and gun belt on for safety. The television was telling him that “they” were trying to kill him.

Elio arrived home and started screaming at defendant from the street, saying defendant was stupid and needed to take his medication. Defendant screamed back that he did not want to go to sleep. Elio looked angry, and defendant could tell he had been drinking.

Elio came partway up the stairs to defendant's unit and continued to argue with defendant about taking his medication and going to sleep. Defendant went back inside and heard voices saying "[t]hey were trying to kill me or going to kill me." He went to the window and saw Elio putting a gun in his back waistband. Defendant decided to go downstairs "because [he] felt scared" about Elio's gun.

Defendant started walking downstairs. The argument "was escalated because [Elio] had a gun," so defendant had his gun out at his side pointing downward. Defendant and Elio argued; Elio told defendant "that they want to kill [defendant] like they killed [defendant's] dad." Elio reached for defendant's gun and they struggled. Defendant "was scared" so he fired his gun. He and Elio fell to the ground and Elio punched him in the face. "Then everything was done."

Contrary to what he said during his police interview, defendant said the television never told him to shoot his brother. He acknowledged that during the incident his brother never pulled out a gun or pointed it at him. But he said he saw the gun and was afraid Elio was going to kill him.

PROCEDURAL BACKGROUND

Defendant was charged with attempted murder (Pen. Code, §§ 187, subd. (a), 664)³ with enhancements based on use of a

³ Further unspecified statutory references are to the Penal Code.

firearm. (§ 12022.53, subds. (b), (d).) Defendant pleaded not guilty and not guilty by reason of insanity. The court denied defendant's motion to suppress his statements to the police.

A jury found defendant guilty of the lesser included offense of assault with a firearm and found that in committing the offense defendant personally used a firearm and caused great bodily injury. After a sanity trial, the jury found that defendant was insane at the time he committed the offense. The court confined defendant to a state hospital for a period not to exceed 17 years, with credit for 1,582 days.

Defendant timely appealed.

DISCUSSION

1. Admission of Police Interview

Defendant claims that his statements to the police should have been suppressed because his mental illness prevented him from knowingly and intelligently waiving his rights under *Miranda*. We disagree.

a. Background and Proceedings Below

i. Defendant's arrest and police interview

After he was arrested defendant was taken to the police station in a patrol car. A video recording from inside the car showed that defendant was alone and talking to himself.

At the police station two detectives interviewed defendant. The detectives asked for defendant's name, birth date, and address, which he provided. He could only remember a portion of his home phone number and did not know his cell phone number. A detective confirmed that defendant spoke English and then advised him of his *Miranda* rights. After each advisement the detective asked if defendant understood and defendant said,

“Yea.” The detective asked, “Do you want to talk to me about what happened?” Defendant again said, “Yea.”

In response to questions, defendant provided an account of the incident and, as discussed above, stated that he wanted to kill Elio because Elio was poisoning his food in order to make him homosexual. He also discussed the medication he was taking and his job as a security guard.

At one point the detectives left the room and defendant could be seen on the video talking to himself.

ii. Hearing on defendant’s motion to suppress

At the hearing on defendant’s motion to suppress his statements to the police, the prosecution called Steven Aubuchon, one of the detectives who interviewed defendant. Aubuchon testified that he made no threats or promises in order to convince defendant to speak with him, that defendant was responsive to his questions, and that defendant provided sufficient detail in his answers for Aubuchon to write a report. On cross-examination, Aubuchon said defendant “might have been” talking to himself at some point. Aubuchon learned from defendant and defendant’s family that defendant had been diagnosed with schizophrenia and that defendant had not taken his medication the evening before.

The defense did not call any witnesses. The court watched the video of defendant in the patrol car and the video of the interview. Following this review of the evidence, the court “note[d] that [defendant] was responsive to all questions [during the interview]. He was coherent in all answers though he clearly was delusional” regarding his brother attempting to poison him. The court “ha[d] no doubt that . . . belief was honestly held,” but that did not “affect the admissibility of the statement.” The court

saw nothing in the video “to demonstrate or show that [defendant] didn’t understand his rights,” of which the court found defendant “was clearly advised,” and to which “[h]e clearly responded.” The court stated that the officers “were not in any way coercive or overbearing or in any way unprofessional.” The court invited defense counsel to respond to its findings, and defense counsel submitted. The court denied the motion to suppress.

b. Applicable Law

“Pursuant to *Miranda*, a suspect ‘must be warned prior to any questioning that he has the right to remain silent, that anything he says can be used against him in a court of law, that he has the right to the presence of an attorney, and that if he cannot afford an attorney one will be appointed for him prior to any questioning if he so desires.’” (*People v. Linton* (2013) 56 Cal.4th 1146, 1171.) “It is well settled, however, that after the familiar *Miranda* advisements are given, a suspect can waive his or her constitutional rights. [Citation.] To establish a valid *Miranda* waiver, the prosecution bears the burden of establishing by a preponderance of the evidence that the waiver was knowing, intelligent, and voluntary under the totality of the circumstances of the interrogation.” (*Ibid.*) A waiver is voluntary if “‘it was the product of a free and deliberate choice rather than intimidation, coercion, or deception’”; it is knowing and intelligent if it was “‘made with a full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it.’” (*People v. Clark* (1993) 5 Cal.4th 950, 986, disapproved of on other grounds by *People v. Doolin* (2009) 45 Cal.4th 390, 421, fn. 22.)

“On review of a trial court’s decision on a *Miranda* issue, we accept the trial court’s determination of disputed facts if supported by substantial evidence, but we independently decide whether the challenged statements were obtained in violation of *Miranda*.” (*People v. Davis* (2009) 46 Cal.4th 539, 586.)

c. Analysis

Having independently reviewed the evidence, we concur with the trial court that the totality of circumstances shows defendant made a knowing and intelligent waiver of his *Miranda* rights. Although defendant was at times talking to himself and was suffering from a delusion that his brother was trying to poison him, there is no indication that his illness interfered with his ability to understand the detectives. He responded clearly to the *Miranda* admonitions and interview questions. He was able to accurately describe the incident for which he was arrested, as well as discuss his job and his medical history, all of which suggests that his mind was relatively clear.

Defendant argues that although he “quickly responded in the affirmative to each of the rights when given by Aubuchon, those quick affirmations did not necessarily establish his comprehension of each right as it was given. In light of Aubuchon’s knowledge of appellant’s mental condition and his lack of medication, more care should have been given at the time of those advisements to be certain his responses were not the result of his delusional state at the time.”

We are not persuaded. As defendant acknowledges, cases have held that suffering from schizophrenia does not presumptively preclude a defendant from validly waiving his rights. (See *People v. Lewis* (2001) 26 Cal.4th 334, 384 (*Lewis*).) In *Lewis*, our Supreme Court rejected the argument that a

defendant's youth, low intelligence, and, diagnosis of paranoid schizophrenia "precluded him from making a voluntary, knowing, and intelligent waiver." (*Ibid.*) The court noted, among other things, that the defendant "participated in his conversations with detectives," and the detectives "testified that defendant expressed no confusion either before or during the interview." (*Ibid.*) The court held that "the record does not demonstrate that defendant failed to understand or waive his rights." (*Ibid.*)

Here, similarly, defendant actively participated in his conversation with the detectives and did not appear confused when waiving his rights or answering questions. We cannot assume, based on only the fact of defendant's mental illness, that his waiver was invalid, particularly in light of the evidence to the contrary.

Defendant argues that *Lewis* is distinguishable because in that case the defendant was not diagnosed with paranoid schizophrenia until after his interviews with the police (*Lewis, supra*, 26 Cal.4th at p. 384), while in this case the police were aware of defendant's illness at the time of the interview. Defendant does not explain how that distinction makes *Lewis* inapplicable, other than to argue that the police should have taken greater care to ensure defendant understood his rights. But the detectives apprised defendant of his rights in a direct and noncoercive manner and gave him an opportunity to assert them; defendant cites no authority requiring them to do more.⁴

⁴ Given our holding, we do not decide whether admission of defendant's statements was prejudicial.

2. Evidence of Self-defense

Defendant argues that the evidence was insufficient to show he did not act in self-defense when he shot Elio. We disagree.

An assault may be justified as self-defense if the defendant has “ ‘an honest and reasonable belief that bodily injury is about to be inflicted on him.’ ” (*People v. Minifie* (1996) 13 Cal.4th 1055, 1064, italics omitted.) “The threat of bodily injury must be imminent.” (*Ibid.*) Moreover, “ ‘any right of self-defense is limited to the use of such force as is reasonable under the circumstances.’ ” (*Id.* at p. 1065.) The parties agree that it was the prosecution’s burden to prove beyond a reasonable doubt that defendant did not act in self-defense. (See *People v. Adrian* (1982) 135 Cal.App.3d 335, 340-341.)

In reviewing a claim of insufficient evidence, “ ‘we review the whole record in the light most favorable to the judgment to determine whether it discloses substantial evidence—that is, evidence that is reasonable, credible, and of solid value—from which a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt.’ ” (*People v. Wilson* (2008) 44 Cal.4th 758, 806.)

There is sufficient evidence to uphold the jury’s conclusion that defendant did not reasonably believe he was under threat of imminent harm when he shot Elio. It was uncontested that Elio never drew his gun, much less pointed it at defendant. Instead, it was defendant who had his gun drawn and was moving towards Elio. Elio did not move aggressively towards defendant until defendant raised his gun and pointed it at Elio, at which point it was Elio who was in imminent danger, not defendant. To the extent defendant feared for his life because of his belief that

Elio had been trying to poison him, this was the delusional product of his illness rather than a reasonable belief (one reason, no doubt, the jury found defendant not guilty by reason of insanity); regardless, the jury could conclude the purported poisoning did not constitute an imminent threat justifying deadly force, nor did any of Elio's actual actions. Further evidence supporting the jury's conclusion was defendant's statement to the police that he attacked Elio not out of fear for his life, but to kill Elio for trying to make him homosexual; this was corroborated by Elio's testimony and statement to the police that defendant threatened to hurt or kill him as he advanced on him.

Defendant argues that the evidence showed Elio was the aggressor, having initiated a heated argument with a person he knew to be mentally fragile and thereafter retrieving a gun. Defendant claims the testimony establishes that he did not shoot Elio until they had fallen to the ground, Elio had punched him, and Elio had said that "they wanted to kill him like they killed their father."⁵ And defendant testified repeatedly at trial that he shot Elio because he was afraid for his life. But it is for the jury to weigh the evidence and decide issues of credibility, and the jury did not have to believe this evidence over Elio's testimony and defendant's statements to the police; " "[i]f the circumstances reasonably justify the jury's findings, the judgment may not be reversed simply because the circumstances

⁵ The timeline of these events is not as clear as defendant implies, even according to his own testimony. For example, defendant testified that by the time he and Elio had fallen to the ground "there were no bullets in the gun," suggesting that, consistent with Elio's testimony, defendant shot Elio before they fell and before Elio punched him.

might also reasonably be reconciled with a contrary finding.” ’ ”
(*People v. Nelson* (2011) 51 Cal.4th 198, 210.)

DISPOSITION

The judgment is affirmed.

HALL, J.*

WE CONCUR:

RUBIN, Acting P. J.

GRIMES, J.

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.