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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THE PEOPLE,

Plaintiff and Respondent,

v.

ANTHONY CRAIG CHAMBERS,

Defendant and Appellant.

B262600

(Los Angeles County
Super. Ct. No. SA080850)

APPEAL from a judgment of the Superior Court of
Los Angeles County, Elden S. Fox, Judge. Affirmed.

Lynda A. Romero, 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, Senior
Assistant Attorney General, Victoria B. Wilson and Carl N.
Henry, Deputy Attorneys General, for Plaintiff and Respondent.

INTRODUCTION

Anthony Chambers shot and killed Alan Thomas, a bus driver, because a computer in his brain told him to do it. Chambers, who was diagnosed with paranoid schizophrenia before committing the crime, pleaded not guilty by reason of insanity. A jury convicted Chambers of first degree murder during the guilt phase of his trial, but could not reach a verdict on his sanity. At the second sanity trial, two expert witnesses testified Chambers was legally insane when he killed Thomas because he could not distinguish right from wrong at the time of the shooting. Another expert, however, disagreed and concluded Chambers was legally sane. The jury found Chambers sane, and the trial court sentenced him to life in prison without the possibility of parole.

Chambers argues no rational juror could have disregarded the compelling evidence of his insanity, the trial court erred by admitting irrelevant and prejudicial evidence, and his sentence violates federal and state prohibitions on cruel and unusual punishment. We conclude that the record did not compel the jury to find Chambers insane at the time he shot Thomas and that the trial court made no prejudicial evidentiary errors. Finally, in light of California Supreme Court precedent that the execution of certain mentally ill defendants does not violate the constitutional prohibitions on cruel and unusual punishment, we cannot conclude that the lesser punishment of life imprisonment without the possibility of parole does. Therefore, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Chambers does not dispute he killed Thomas, and the People do not dispute a severe mental illness caused Chambers to shoot Thomas. The parties' disagreement, and the "crux of this case," as one expert witness put it, is whether Chambers's mental illness precluded him from distinguishing right from wrong at the time of the crime, so that he was legally insane.

A. *The Computer in Chambers's Head*

Chambers has a long history of mental illness. He began hearing voices in 1993, when he was 23 years old. In 1996 he locked himself in a bathroom with a shotgun and threatened to kill himself after an argument with his wife. In 2000 he attempted suicide by shooting himself during a phone conversation with his sister. By 2008 Chambers was paranoid, hearing voices, and telling his sister that a "computer" ordered him to do things and at times controlled his body.

In 2009 Chambers checked himself into Cedars Sinai Medical Center where he was treated for psychosis. Chambers's treating physician at the hospital said Chambers had auditory hallucinations and paranoid delusions. The doctor prescribed antipsychotic and mood stabilizing drugs before discharging Chambers two weeks later. At some point, "voices" told Chambers to stop taking his medication.

The "computer" began to take over many aspects of Chambers's life. For example, the computer sabotaged dates by making Chambers "blurt out things" and lose his erection during sex. The computer also began to control Chambers's bowel

movements and would “decide whether he was going to be successful in defecating or not.”

The computer also told Chambers not to trust or spend time with members of his family. Eventually it told him to kill his sister or someone else. Chambers stayed away from his sister and told her to stay away from him, apparently to decrease the likelihood he would kill her. When Chambers’s sister asked him whether he was taking his medication and communicating with his doctor, Chambers assured her “everything was fine.”

The computer did not control all aspects of Chambers’s life. For example, it did not affect his exercise routine, which helped him maintain a dramatic weight loss. Chambers also succeeded in not killing any members of his family. Approximately one week before Chambers shot Thomas, he went to his sister’s home to visit her but left before she saw him because he feared he would harm or kill her. Chambers attempted suicide several times “to get away from the computer.”

B. *Chambers Succumbs to the Computer and Kills Thomas*

One morning the computer told Chambers he would have a productive bowel movement, but he did not. In the context of the ongoing battle for control over his body, Chambers viewed this as a devastating loss. He said he felt his life was over at that moment. The computer repeatedly told him to kill someone, suggesting, “Anthony, why don’t you ride your hood?”¹

¹ One of the experts who testified at the sanity trial opined that the reference to “riding the hood” could be gang jargon for killing someone. The People did not dispute this interpretation of the statement.

Although he did not know whom to kill, Chambers loaded two guns he had owned for some time and packed them in a suitcase. He added pillows to the suitcase to keep the guns from moving around or accidentally discharging. Chambers then left his apartment and went to a bus stop about three minutes away. Chambers rode the bus to the end of the line in West Hollywood where he stayed at another bus stop for 10 to 30 minutes.

Chambers continued to hear voices saying, "Ride for your hood." As a bus approached the bus stop, a voice said, "Why don't you kill him?" Chambers did not get on the bus, however, because the bus was full of people who might try to disarm him. The next bus had a female driver, and Chambers let it pass because he thought killing her would be "like killing a child."

The next bus that arrived was Thomas's bus, and there was no one else on board. The computer told Chambers this bus driver was "the best option." Chambers got on the bus.

A video recorder documented Chambers boarding Thomas's bus. The video showed Chambers carrying a suitcase and sitting a few rows behind Thomas. After the bus pulled away from the curb, Chambers removed a pump action, pistol grip shotgun from his suitcase. He approached Thomas and told him to turn off the bus. Chambers later explained he did not want the movement of the bus to knock him off balance. Thomas turned toward Chambers and raised his right hand. The computer told Chambers to shoot Thomas in the head, but instead he shot him, twice, on the right side and arm. The gunshots penetrated Thomas's chest, killing him.

After shooting Thomas, Chambers removed his jacket, left it on his seat along with the shotgun and suitcase, and went to the emergency exit at the back of the bus. Chambers crawled out

the emergency exit window and began running with his hands in the air. Then he lay prone on a sidewalk with his head in the street and told a witness he was “waiting for the police.” Another witness persuaded Chambers to move so that his head was not in the street, and soon law enforcement arrived. Chambers appeared catatonic to the police and did not resist arrest.

The arresting officer, Los Angeles County Sheriff’s Deputy Christopher Bromiley, put Chambers in his patrol car and recorded the next several hours of conversation with Chambers in the car and at the station. Not long after arriving at the station, Chambers asked to speak with an attorney, but continued to answer Deputy Bromiley’s questions without an attorney present.

At first Chambers would only say his name, but eventually he asked about Thomas’s condition and whether Thomas was dead. Chambers cried intermittently throughout the conversation and told Deputy Bromiley he had attempted suicide numerous times but “couldn’t do that.” He told Deputy Bromiley he had a computer “hooked up to himself” that he had been fighting for years. He said he thought the CIA or his family put the computer there and it confused his thoughts and made him do things he did not want to do. The computer “would work on him for years and years” if it wanted Chambers to do something he did not want to do, including eating his feces. Chambers described daily abuse from the computer and his many efforts to get rid of it, including by going to different doctors and taking medicine.

With regard to the computer’s instructions to kill someone, Chambers told Deputy Bromiley that the computer wanted him to kill his family, but he stayed away from them because he did not want to do that. He said he killed Thomas for no particular

reason except that he could no longer fight the computer. He said he had no choice because the computer “hooked him up to do all of this.”

Later that evening Detective Adan Torres interviewed Chambers. Chambers shared his family history and his experiences with mental illness and treatment. He said he was not taking medication or seeing a psychiatrist at the time but he had in the past. He told Detective Torres he used to drink alcohol frequently, but he stopped after a doctor told him drinking could cause liver disease. He smoked marijuana occasionally. He also told Detective Torres he had once weighed 425 pounds but had lost a lot of weight.

Chambers repeated to Detective Torres that a computer told him to kill people, including his family members and “agents,” and that he had attempted suicide numerous times. Chambers also told Detective Torres that the computer wanted him to hurt a girl he had a “crush” on named Abbey. When asked why he killed a bus driver, Chambers responded, “I felt like I didn’t want to hurt [Abbey],” and “I tried to protect [my family].” He said, “I didn’t want to hurt anyone I knew.”

Chambers told Detective Torres that the morning of the shooting the computer promised him he would be able to go to the bathroom, and when he could not, the computer told him to kill someone. “I felt my life was over,” he said. In response to specific questions about what happened on the bus, Chambers said, “I think at this particular time now, I think . . . I’d rather talk to an attorney before I answer those questions. But I—I’ve already said that—I’m aware that—you know, that I was the person on the bus. . . . But at the same time I’m trying to explain to you that . . . it’s hard for somebody to then say, well, [I] could be a

good person because I'm trying to be honest with you." Chambers later agreed to continue answering certain questions without an attorney present.

At the end of a long and sometimes rambling statement, Chambers told Detective Torres, "All I know is that it wasn't me, but then it is me. You understand what I'm saying? So when people say, listen, it's the computer that made me do this, I know it sounds crazy but I swear to God that's all I have. That's—I mean, that's the truth even though I know I have to pay the price because I'm the person that did it, but they made me do it." Chambers said that when he got off the bus he did not intend to leave the scene and wanted to "give up." He asked Detective Torres to tell Thomas's family he was sorry.

C. *The Charges, the Verdict, and the Sentence*

The People charged Chambers with first degree murder and alleged he committed murder by lying in wait. (Pen. Code, §§ 187, subd. (a), 190.2, subd. (a)(15).)² The People also alleged Chambers knew or should have known Thomas was a bus driver performing his duties at the time of the shooting, and Chambers personally and intentionally discharged a firearm that proximately caused great bodily injury or death. (§§ 12022.53, subd. (d), 190.25, 190.4.) Chambers pleaded not guilty and not guilty by reason of insanity and denied all the allegations.

A jury found Chambers guilty of first degree murder and found the allegations true. The jury could not reach a verdict on the lying-in-wait special circumstance. Following the sanity phase of the trial, the jury deadlocked and informed the court it

² Undesignated statutory references are to the Penal Code.

could not reach a verdict. Following a second sanity phase trial, however, the jury found Chambers legally sane at the time he shot Thomas.

Chambers filed a motion for a new trial, arguing that the jury's sanity verdict was contrary to the evidence and a sentence of life without the possibility of parole would be cruel and unusual punishment because of his mental illness. The court denied the motion. The trial court sentenced Chambers to life without the possibility of parole plus 25 years to life for the firearm enhancement under section 12022.53, subdivision (d). Chambers timely appealed.

D. *The Testimony of the Experts*

At the second sanity phase trial, three court-appointed doctors testified about whether Chambers was legally sane at the time he killed Thomas. In giving their opinions, the doctors applied the test used in California to determine whether a defendant was legally sane at the time of the offense. Under this test, a defendant is sane if he or she knew or understood the nature and quality of his or her acts and could distinguish right from wrong, both legally and morally, at the time of the offense. (*People v. Skinner* (1985) 39 Cal.3d 765, 775-777, 783; *People v. McCarrick* (2016) 6 Cal.App.5th 227, 246.)

All three doctors agreed Chambers suffered from severe mental illness, the illness caused him to shoot Thomas, and Chambers could appreciate the nature and quality of his acts at the time of the shooting. The doctors' opinions diverged on whether Chambers could distinguish right from wrong at the time of the offense. Dr. Richard Romanoff opined that Chambers could not distinguish moral or legal right from wrong at the time

he shot Thomas; Dr. Kaushal Sharma opined that Chambers knew shooting Thomas was legally wrong, but he could not distinguish moral wrong from right. Dr. David Stone, the doctor called by the People, opined that Chambers could distinguish both legal and moral right from wrong at the time of the crime.

1. Dr. Richard Romanoff

Dr. Richard Romanoff characterized Chambers's illness as a long term struggle for control of Chambers's body and mind. Dr. Romanoff testified that "the illness was gaining power over him" and "it was inevitable without treatment that on one day or another someone or other was going to get shot by [Chambers]." Dr. Romanoff said Chambers had suffered "a deterioration in his overall capacity for control . . . leading up to the actual shooting, which is the day where, for whatever reason, that day the dam breaks and he perceives that he's lost, that there's nothing left. He has lost the energy and ability to fight the illness or the computer." Dr. Romanoff stated that, although before the shooting Chambers had some success in controlling his illness, the morning of the shooting Chambers felt "he had lost the ability to control his body and would inevitably have to comply with the order of the computer to kill someone."

Dr. Romanoff testified that in the moments leading up to the shooting Chambers "was under the control of the illness, which for him meant the computer The computer was ordering him to kill. The computer was completely unconcerned with the rights or issues of Mr. Thomas and was only concerned with destroying Mr. Chambers. And that under its control, he operated in a way that was devoid of a capacity for thinking

about right or wrong. He simply had succumbed to an illness that was irrational that was ordering him to kill.”

In support of his opinion, Dr. Romanoff cited Chambers’s statements to Detective Torres, “All I know is that it wasn’t me, but then it is me,” and “the computer . . . made me do this.” Dr. Romanoff said Chambers’s behavior before and after the shooting was consistent with his opinion. He explained: “There is the normal part of his personality that is fighting with the illness, and that somewhere as he enters the bus, both of those parts are still there. At some point on the bus that I can’t exactly specify, the illness takes complete control and there is no more normal part of his personality in control of his body. At some point very soon after the firing, my guess is even before he jumps out the window but certainly by the time he’s on the street, the part of him that isn’t controlled by the illness reemerges at a dazed, disorganized, weak level but still enough to recognize that he has now just killed someone, which is to say ‘they won, I lost.’” He said Chambers’s statements after the shooting acknowledging that he had killed someone and that killing is wrong were “irrelevant” to determining “whether or not at the moment of the shooting [Chambers] knew right from wrong.” The “part of his brain that has become controlled by the illness that he experiences as an external computer . . . is fine with killing and does not know right from wrong.”

Dr. Romanoff criticized Dr. Stone’s conclusion that Chambers could distinguish legal and moral right from wrong, saying that Dr. Stone’s report did not refer to the “actual moments of the shooting” and instead focused on behavior before and after the shooting. Dr. Romanoff stated that statements Chambers made about not wanting to kill the female driver were

“relevant to understand the sweep of the illness and its degree of control or absence of control, but it’s not relevant to assess legal insanity in my opinion because legal insanity is really a function of his mental functioning in the immediate period of time where he’s pulling the trigger.” He further testified: “In the period of time leading up to this shooting and in the period of time subsequent to the shooting, there was a different balance between the normal personality that does understand right from wrong and the part of him that was the illness, that doesn’t.” Dr. Romanoff explained Chambers’s apparent lucidity after the shooting by opining that “a dramatic change had occurred in reality”: Chambers’s “life was now ruined,” and “his whole view of the situation changed literally in that moment.”

Dr. Romanoff conceded that a person can be mentally ill, even schizophrenic, and still legally sane. He also conceded that whether Chambers shot Thomas as a result of an “irresistible impulse” was not relevant for determining sanity under California law, but said he did not base his opinion that Chambers was insane on Chambers’s inability to resist “the computer.” Instead, Dr. Romanoff said Chambers had “no access to that part of his mind” that could distinguish right from wrong at the time he pulled the trigger. “[T]hat part of his mind continue[d] to be there but [was] lost to him.”

2. Dr. Kaushal Sharma

Dr. Kaushal Sharma opined that Chambers’s actions immediately after the shooting showed he knew it was legally wrong, but he agreed with Dr. Romanoff that Chambers could not distinguish moral right from wrong at the time he shot Thomas. Dr. Sharma characterized Chambers’s attack on Thomas as an

attempt to stop the “ongoing long term torture” of mental illness. Thus, according to Dr. Sharma, “at the time of the shooting he believed that he was morally justified,” and he “could not distinguish between moral right and wrong as it relates to the shooting of the victim.”

Dr. Sharma testified that the fact Chambers chose not to shoot the female bus driver illustrates Chambers’s twisted logic: “[O]n the face of it, [it] looks like, gee, this guy is thinking well. But look at the logic. That logic implies killing a white female driver is wrong but killing a black male driver is not wrong. . . . [O]n the first blush it looks like this guy’s logical . . . [but] this is not logical . . . unless you can somehow show that he’s a racist and on and on and on. We have no such information. So . . . this was part of irrational thinking because, if he was really rational, the second half of the rational statement would be, ‘Hey, killing any bus driver is wrong. Killing a taxi driver is wrong. Killing a teacher is wrong. Killing a judge is wrong.’ But yet he killed a bus driver.”

Dr. Sharma also stated he did not believe Chambers’s ability to avoid killing himself or his family members demonstrated his ability to distinguish moral right from wrong at the time he shot Thomas. He said “the computer” did not let Chambers kill himself because “if he was dead [the computer] can’t torture him.” With regard to his family, Dr. Sharma said Chambers’s “rational part won” that battle: “[O]ne has to understand that the sickest, sickest, sickest mentally ill person is not 100 percent sick. . . . They might be able to function in some areas of their life. So family—he had an inner struggle in spite of his irrational thinking, and his rational part won.” On the day of the shooting, “the craziness just won.”

The prosecutor asked Dr. Sharma on cross-examination if Chambers weighed his personal torture against the life of another before shooting Thomas. Dr. Sharma agreed that Chambers thought killing Thomas was “justified” because it would relieve his torture. The court asked Dr. Sharma to clarify his opinion: “So . . . [Chambers’s] choice[], at least from what your expert opinion is, [is] that he could continue to suffer and/or he could abide by the mental illness and kill an innocent human being?” Dr. Sharma agreed and explained that this irrational logic prevented Chambers’s brain from distinguishing between moral right and wrong. “He’s morally justified in his personal life to do what mental illness had taken him to the point. And, therefore, in my opinion he believed this is the end of the road for him. . . . All of us have a limit to how much torture we can take. And his limit was, unfortunately for Mr. Thomas, reached that day.”

3. Dr. David Stone

Dr. David Stone disagreed with Drs. Romanoff and Sharma and opined that Chambers could distinguish both legal and moral right from wrong at the time of the shooting. He testified: “I absolutely admit that Mr. Chambers has been very, very severely mentally ill and that he was doubtlessly severely mentally ill at the time he committed [the offense]. But that is a separate question from whether he was legally insane at the time.”

Dr. Stone opined that Chambers could distinguish between legal right and wrong because Chambers effectively turned himself into the police after the shooting, requested an attorney at the Sheriff’s station, and expressed remorse for killing Thomas. Several facts led Dr. Stone to believe Chambers could

also distinguish between moral right and wrong. For example, Chambers's statement to police that he did not attempt to kill the female bus driver because killing her would have been like killing a child "suggests someone who was reasoning morally," because "women and children get off the boat first, right?" Dr. Stone explained: "That strongly suggests to me that [Chambers] was able to morally reason at the time he committed this offense." In addition, the facts that Chambers did not kill his family members or Abbey, expressed concern for Thomas's condition after the shooting, acknowledged he would have to "pay the price" for what he had done, and asked Detective Torres to apologize for him to Thomas's family led Dr. Stone to conclude Chambers was "making moral reasons just prior to the offense" and afterward "knew that what he had done was morally wrong."

When asked about Dr. Sharma's opinion that Chambers could not distinguish between moral right and wrong because he thought the killing was "justified," Dr. Stone testified, "I don't believe there's any reference to moral justification in my reading of [the insanity test], and I can't imagine agreeing that if someone's morally justified to kill someone to relieve their own discomfort that that would be something that would be generally acceptable to the community to be morally justifiable." Dr. Stone continued: "[T]he crux of this case for me . . . is can you both be sympathetic and have compassion for someone, not only the victim and the victim's family but for the defendant and what they were suffering from, and also apply the correct legal test to determine if he was legally insane at the time? I believe I could, and I hope that you guys can as well. I think it's the crux of this case. Dr. Romanoff exudes compassion, and it bleeds through in

his report. I just don't think [Drs. Romanoff and Sharma] remain focused on the correct legal test."

Dr. Stone admitted on cross-examination that he interviewed Chambers only once, approximately 16 months after the shooting and after Chambers had been receiving antipsychotic medication. In contrast, Drs. Romanoff and Sharma testified they interviewed Chambers multiple times and as early as five days after the offense. Dr. Stone also admitted he had performed only one other sanity evaluation, whereas Dr. Romanoff testified he had conducted sanity evaluations for the court for 28 years and Dr. Sharma testified he had conducted "thousands and thousands and thousands" of sanity evaluations. Dr. Stone also admitted his report included three references to a doctor who had nothing to do with Chambers or his evaluation.

Dr. Stone conceded that mental illness can fluctuate in intensity so that a person may be legally insane when committing an offense but legally sane immediately before or after or even both. "[T]hat's the trickiness of this case," he said. But "the trier of fact is going to have to look at [Chambers's] behaviors before, during, and after that I've laid out for you guys to decide whether you think that's possible. It is conceivable. In my opinion in this particular case there was not a sudden decompensation and insanity. I think there's a lot of behaviors before, during, and after that indicate he was sick but able to retain the ability to reason morally, and that's why I don't believe [Chambers] met [the test for insanity]."

DISCUSSION

A. *The Evidence Did Not Compel a Finding That Chambers Was Insane*

Chambers argues the jury's verdict finding him sane at the time he shot Thomas violates due process because no rational juror could have disregarded the compelling evidence of his insanity. In particular, Chambers argues that overwhelming evidence shows he did not understand the moral wrongfulness of his conduct and that the jury should have discounted Dr. Stone's opinion.

1. *Applicable Law and Standard of Review*

"If a defendant pleads both not guilty and not guilty by reason of insanity, the trial is bifurcated. In the guilt phase of the trial, which occurs first, the defendant is conclusively presumed to have been legally sane at the time of the offense. [Citations.] If the defendant is found guilty, the trial proceeds to the sanity phase, in which the defendant has the burden to prove 'by a preponderance of the evidence that he or she was incapable of knowing or understanding the nature and quality of his or her act and of distinguishing right from wrong at the time of the commission of the offense.'" (*McCarrick, supra*, 6 Cal.App.5th at p. 246, citing § 1026, subd. (a), and *People v. Elmore* (2014) 59 Cal.4th 121, 140-141; see § 25, subd. (b).)

Although section 25, subdivision (b), uses the conjunctive "and" rather than the disjunctive "or," the Supreme Court has interpreted the statute to mean that "insanity can be shown under either the 'nature and quality' prong or the 'right from wrong' prong of the test." (*McCarrick, supra*, 6 Cal.App.5th at

p. 246; see *People v. Lawley* (2002) 27 Cal.4th 102, 170; *Skinner*, *supra*, 39 Cal.3d at pp. 775-777; *People v. Blakely* (2014) 230 Cal.App.4th 771, 774.) “The court has also held that ‘a defendant who is incapable of understanding that his act is morally wrong is not criminally liable merely because he knows the act is unlawful.’” (*McCarrick*, at p. 246, quoting *Skinner*, at p. 783.) Moreover, a defendant’s “incapacity must be based on a mental disease or defect even though that requirement is not specifically mentioned in [section 25, subdivision (b)].” (*Blakely*, at p. 774; see *People v. Severance* (2006) 138 Cal.App.4th 305, 321-322.)

Our review of a jury’s sanity verdict is “necessarily limited.” (*People v. Drew* (1978) 22 Cal.3d 333, 350; see *McCarrick*, *supra*, 6 Cal.App.5th at pp. 247-248; *People v. Duckett* (1984) 162 Cal.App.3d 1115, 1119.) “Because the defendant has the burden of proof on the issue of insanity, ‘the question on appeal is not so much the substantiality of the evidence favoring the jury’s finding as whether the evidence contrary to that finding is of such weight and character that the jury could not reasonably reject it.’” (*McCarrick*, *supra*, 6 Cal.App.5th at pp. 247-248, quoting *Drew*, at p. 350; see *Duckett*, at p. 1119; see also *In re R.V.* (2015) 61 Cal.4th 181, 201.) Even where the experts unanimously conclude a defendant is insane, “[i]t is only in the rare case when ‘the evidence is uncontradicted and entirely to the effect that the accused is insane’” that such opinions could justify “upsetting a jury finding to the contrary.” (*Drew*, at p. 350; see *McCarrick*, at p. 247.) “Indeed we have frequently upheld on appeal verdicts which find a defendant to be sane in the face of contrary unanimous expert opinion.” (*McCarrick*, at p. 247, quoting *Drew*, at p. 350.)

“[E]xpert testimony, even if uncontradicted, is not binding on the trier of fact, and may be rejected, *especially where experts are asked to speculate about a defendant’s state of mind at the moment the crime was committed*. . . . The trier of fact may consider the reasons given for expert opinions, and may weigh testimony with all of the evidence including the circumstances before, during, and after the offenses.” (*McCarrick, supra*, 6 Cal.App.5th at p. 247.) “The chief value of an expert’s testimony “rests upon the *material* from which his opinion is fashioned and the *reasoning* by which he progresses from his material to his conclusion.”” (*Ibid.*, quoting *Drew, supra*, 22 Cal.3d at p. 350.) For example, with regard to the material on which an expert’s opinion is based, jurors might note the expert was unfamiliar with the defendant’s conduct during a relevant time or his or her examination was relatively brief. (*Drew*, at p. 350.) With regard to an expert’s reasoning, jurors might note that an expert failed to explain why a defendant’s diagnosis would lead to the conclusion he or she was unable to appreciate the wrongfulness of his or her acts. (*Id.* at pp. 350-351.)

2. *The Record Does Not Compel a Finding of Insanity*

Chambers argues the opinions provided by Drs. Romanoff and Sharma rest on more reliable material than the material on which Dr. Stone based his opinion and, while Drs. Romanoff and Sharma gave “detailed testimony to explain why they concluded [Chambers] was insane,” Dr. Stone’s contrary opinion “was not adequately supported by the evidence and reasoning on which it was based.” Even if Chambers’s description of the testimony is accurate, the evidence in the record of the sanity phase trial does

not compel a finding that Chambers could not distinguish moral right from wrong.³

Even though both Drs. Romanoff and Sharma believed Chambers met the statutory test for legal insanity, the jurors rationally could have rejected their opinions in favor of Dr. Stone's opinion that Chambers could distinguish moral right from wrong at the time he shot Thomas. Dr. Stone testified that he evaluated Chambers in person for 90 minutes, reviewed all of the medical, psychiatric, and jail records the other experts reviewed, read the transcripts of Chambers's interviews with Sheriff's deputies, and watched the video recording of Chambers shooting Thomas. Based on this information, Dr. Stone concluded Chambers could understand that shooting Thomas was morally wrong. Dr. Stone based his opinion on the facts that Chambers made a moral decision not to hurt the female bus driver, he avoided hurting his friends and family, and he expressed remorse for killing Thomas not long after the shooting. Dr. Stone also distinguished his opinion from those of Drs. Romanoff and Sharma by explaining that a defendant's subjective belief he is "justified" in killing someone does not necessarily mean he is unable to distinguish moral right from wrong.

³ Even one of Chambers's experts concluded Chambers could distinguish legal right from wrong. Therefore, the only issue is whether the jury was compelled to find Chambers insane because he could not distinguish moral right from wrong. Chambers limits his argument on appeal to moral wrongfulness.

Based on this testimony and other evidence presented during the sanity phase trial,⁴ the jury reasonably could conclude Chambers was capable of understanding that shooting Thomas was morally wrong. (See *McCarrick*, *supra*, 6 Cal.App.5th at p. 248 [jury could conclude the defendant knew her acts were morally wrong because she acknowledged on the day she killed her children that her cousin was “going to hate” her for what she would do].) This case does not present the more difficult situation presented in *McCarrick*, where a jury finds the defendant sane despite unanimous expert opinions to the contrary. (See *ibid.*) Here, the jury rationally could review the experts’ qualifications and experience, consider the experts’ reasons for their different conclusions, weigh their testimony against the evidence of Chambers’s conduct before, during, and after the crime, and accept or reject one or more of the experts’ opinions. (See *id.* at p. 247; *Drew*, *supra*, 22 Cal.3d at p. 351 [jurors can accept or reject expert opinions of sanity based on the material and reasoning used to justify those opinions].)

Chambers attacks both the material on which Dr. Stone based his opinion and Dr. Stone’s credentials. Chambers argues Dr. Stone interviewed him only once and long after the shooting, whereas Drs. Romanoff and Sharma interviewed him multiple times and soon after the shooting. Thus, Chambers argues, Dr. Stone “only saw [Chambers] when his mental illness had improved and he was medicated,” implying Dr. Stone’s opinion would have been different had Dr. Stone evaluated Chambers

⁴ For example, a nurse who interviewed Chambers in jail 18 hours after the shooting said Chambers told him he knew it was “wrong” to shoot Thomas. Chambers also told the nurse the computer made him do things he knew were “wrong.”

earlier and for longer. Counsel for Chambers, however, elicited testimony by Dr. Stone on cross-examination about these qualitative and quantitative differences in the doctors' interviews of Chambers. The jury nevertheless concluded that Dr. Stone's more limited personal time with Chambers did not undermine his opinion. Moreover, Chambers concedes that Dr. Stone reviewed the same medical, psychiatric, prison, and police records Drs. Romanoff and Sharma reviewed. That those records "equally support the defense experts' testimony [that Chambers] was insane" does not invalidate Dr. Stone's opinion, nor does it mean no reasonable jury could accept it.

As for Dr. Stone's credentials, Chambers argues Dr. Stone's relative inexperience with sanity evaluations undermines his conclusion that Chambers was sane at the time he shot Thomas. Again, the jury learned during Dr. Stone's testimony on cross-examination that he had far less experience with sanity evaluations than the two experts called by Chambers. The jury also heard, however, that Dr. Stone had relevant experience. He is a forensic psychiatrist with experience working in the Twin Towers Correctional Facility that houses mentally ill inmates, is a member of the psychiatry faculty at University of California Los Angeles, and serves on the Superior Court's board of psychiatrists doing multiple forensic evaluations every week. While a rational juror might have had more confidence in the opinions of even more experienced experts like Drs. Romanoff and Sharma, a rational juror did not have to reject Dr. Stone's opinion because of his comparative lack of experience.

We acknowledge that all three experts agreed Chambers suffered from severe mental illness at the time of the shooting. A person, however, may be mentally ill and yet not legally insane

under California law. (See *People v. Coddington* (2000) 23 Cal.4th 529, 608, overruled on another ground in *Price v. Superior Court* (2001) 25 Cal.4th 1046, 1069, fn. 13; *People v. Kelly* (1992) 1 Cal.4th 495, 535.) This was a difficult case; that's why we have juries. Chambers has not met his burden on appeal of showing the evidence at the second sanity phase trial compelled the finding that he was not sane at the time he committed the crime.

B. *The Trial Court Did Not Commit Prejudicial Error in Admitting Certain Evidence at the Sanity Phase Trial*

Chambers argues the trial court violated his right to due process by admitting certain purportedly irrelevant and prejudicial statements during the sanity phase trial. Specifically, Chambers contends the trial court should have excluded testimony regarding (1) his statements to a doctor at Cedars Sinai hospital, Deputy Bromiley, Detective Torres, and Dr. Sharma that the computer was "making him homosexual" and that other people mistakenly believed he was homosexual or called him a homosexual and a pedophile; (2) his statements to Deputy Bromiley, a jail nurse, and Dr. Stone concerning his disability, inability to work, and general poverty; (3) a statement to Deputy Bromiley about the Black Panthers; and (4) requests to the deputies to speak with an attorney. We find no prejudicial error.

1. *Relevant Proceedings*

At the outset of the sanity phase trial and outside the presence of the jury, counsel for Chambers moved to exclude testimony regarding rumors of Chambers's sexual orientation

and pedophilia as irrelevant and unduly prejudicial under Evidence Code section 352.⁵ The People argued the evidence was relevant because Chambers's repeated expressions of concern about the rumors to doctors and others tended to show the rumors fueled his paranoia. The People also argued Chambers's extreme weight loss resulted from his desire to be attractive to women and to quell rumors of his homosexuality, which showed Chambers could think logically even while mentally ill.

Chambers also moved to exclude as irrelevant statements concerning his disability, unemployment, and poverty. The People argued these statements were relevant to the impact of Chambers's mental illness and the reasons for his hospitalizations. In particular, the prosecutor argued Chambers's disability was unrelated to his mental illness; instead, the disability resulted from a 20-year-old back injury. The prosecutor also argued Chambers's concerns about his status under the federal government's Section 8 housing program were relevant to show Chambers wanted to be or remain hospitalized so that he had a place to sleep even if he could not get Section 8 assistance. The People argued these statements also showed Chambers could think logically about his housing. Finally, the People sought to tie Chambers's concern about his Section 8 status to his problems with anger management by introducing testimony describing an angry outburst at Cedars Sinai for which

⁵ Evidence Code section 352 states: "The court in its discretion may exclude evidence if its probative value is substantially outweighed by the probability that its admission will (a) necessitate undue consumption of time or (b) create substantial danger of undue prejudice, of confusing the issues, or of misleading the jury."

he had to be restrained. The People argued Chambers's anger management issues motivated him to shoot Thomas.

The trial court denied Chambers's motion under Evidence Code section 352 to exclude statements regarding Chambers's sexual orientation, rumored pedophilia, and disability, but the court stated it would reconsider specific objections on a case-by-case basis. The court noted that, because the anticipated testimony could be relevant to Chambers's state of mind and sanity, the court would not exclude the testimony without hearing a specific question in context.

During the sanity phase trial, counsel for Chambers objected only to certain questions eliciting testimony about Chambers's sexual orientation, disability, poverty, requests for counsel, and comments about the Black Panthers, but not others. For example, counsel for Chambers did not object when the prosecutor asked Deputy Bromiley if Chambers told him the computer "had been trying to make him gay" or when the prosecutor asked Detective Torres whether Chambers "was very concerned about people calling him or associating him with homosexuality." Counsel for Chambers also did not object when the prosecutor asked a Cedars Sinai doctor whether Chambers said "he heard somebody whispering to him, family members and friends calling him either a homosexual or a pedophile," and on cross-examination counsel for Chambers asked the same doctor to confirm that Chambers did not say he was a pedophile but instead said only he had heard voices of people telling him he was or calling him names. On one occasion, counsel for Chambers also failed to object to testimony regarding Chambers's request for an attorney during questioning by the deputies, but counsel did object to the questions on other occasions.

2. *Applicable Law*

Subject to certain limitations, all relevant evidence is admissible. (Evid. Code, § 351; *People v. Bryant* (2014) 60 Cal.4th 335, 405.) “[R]elevant evidence is defined as evidence ‘having any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the action.’ (Evid. Code, § 210.) Evidence is relevant if it tends “logically, naturally, and by reasonable inference” to establish material facts.” (*People v. Williams* (2008) 43 Cal.4th 584, 633; accord, *People v. Clark* (2011) 52 Cal.4th 856, 892.) A trial court’s discretionary ruling under Evidence Code section 352 ““must not be disturbed on appeal except on a showing that the court exercised its discretion in an arbitrary, capricious or patently absurd manner that resulted in a manifest miscarriage of justice.”” (*Williams*, at pp. 634-635; see *People v. Montes* (2014) 58 Cal.4th 809, 868.)

“A party cannot seek to exclude evidence merely because it is helpful to the other side. Only if there is substantial risk of prejudice, confusion, or time consumption sufficient to outweigh relevance is an Evidence Code section 352 objection well founded.” (*People v. Brown* (2014) 59 Cal.4th 86, 102; see *People v. Booker* (2011) 51 Cal.4th 141, 188 [“‘[p]rejudice’ in the context of Evidence Code section 352 is not synonymous with ‘damaging’: it refers to evidence that poses an intolerable risk to the fairness of the proceedings or reliability of the outcome”]; *People v. Leon* (2010) 181 Cal.App.4th 452, 460 [“[p]ursuant to [Evidence Code] section 352, evidence can be excluded only if it is *unduly* prejudicial so as to outweigh its probative value”].) “For purposes of that section, ‘prejudice’ does not mean damage to a party’s case that flows from relevant, probative evidence. Rather, it means the tendency of evidence to evoke an emotional bias against a

party because of extraneous factors unrelated to the issues. [Citation.] Thus, evidence is subject to exclusion under Evidence Code section 352 on the basis of prejudice only “when it is of such nature as to inflame the emotions of the jury, motivating them to use the information, not to logically evaluate the point upon which it is relevant, but to reward or punish one side because of the jurors’ emotional reaction. In such a circumstance, the evidence is unduly prejudicial because of the substantial likelihood the jury will use it for an illegitimate purpose.”” (*People v. Cortez* (2016) 63 Cal.4th 101, 128-129; accord, *People v. Doolin* (2009) 45 Cal.4th 390, 439.)

3. *Chambers’s Argument That the Trial Court Abused Its Discretion in Admitting Certain Evidence Is Forfeited and Meritless*

As a preliminary matter, Chambers forfeited the argument the trial court erred in admitting testimony concerning rumors of his sexual orientation and pedophilia because he failed to object to questions that elicited this testimony at trial. (See Evid. Code, § 353, subd. (a); *People v. Jones* (2012) 54 Cal.4th 1, 61 [failure to make specific objection at trial under Evidence Code section 352 forfeits the argument that the evidence should have been excluded as more prejudicial than probative]; *People v. Doolin*, *supra*, 45 Cal.4th at p. 434 [failure to object at trial under Evidence Code section 352 forfeits the argument that the trial court abused its discretion under that statute].) Even if Chambers had not forfeited these issues, the trial court did not abuse its discretion in ruling that the evidence concerning rumors of Chambers’s sexual orientation and pedophilia, as well as the evidence concerning the Blank Panthers, Chambers’s disability,

and his inability to work, was relevant and that the risk of undue prejudice from this evidence did not substantially outweigh its probative value.

Testimony about rumors and voices Chambers heard calling him a homosexual and a pedophile was relevant to the issue of Chambers's mental illness and the extent to which it affected his life. The jury could have concluded the voices contributed to Chambers's paranoia and explained why he wanted to lose weight, a subject both sides used to illuminate the extent of Chambers's mental illness. Similarly, Deputy Bromiley's statement that Chambers "started talking about some militant Black Panther type thing" was relevant to Chambers's state of mind immediately following the shooting and the extent of his mental illness. Detective Bromiley explained he had been asking Chambers about his statements regarding wanting to harm his family, but Chambers abruptly changed the conversation. The trial court asked, "I'm trying to understand. What was the context of 'militant black panther'?" Detective Bromiley said, "I have no idea, Your Honor." The testimony thus reflected Chambers's confusion during questioning from Detective Bromiley.

Even if, as Chambers argues, the challenged statements "caused innuendo that [Chambers] had questionable associations or interests," the trial court did not abuse its discretion by impliedly finding that such innuendo did not substantially outweigh the probative value of the testimony. Moreover, counsel for Chambers elicited testimony clarifying that Chambers never said he was a pedophile or had such tendencies, thus reducing the impact of what may have been the most potentially prejudicial testimony. Finally, the trial court instructed the jury

that it should not be “influenced by sentiment, conjecture, sympathy, passion, prejudice, public opinion or public feeling.” The combination of this instruction and testimony that Chambers pursued a heterosexual life and had no tendencies toward pedophilia significantly reduced any potential prejudice arising from the admission of this evidence. (See *People v. Edwards* (2013) 57 Cal.4th 658, 746 [we presume jurors understand and follow a court’s instructions].) Moreover, the testimony on these topics was not used to “evoke an emotional bias against” Chambers. (See *People v. Jablonski* (2006) 37 Cal.4th 774, 825 [evidence of defendant’s prurient interest in his mother-in-law not unduly prejudicial where it was relevant to issues in dispute at trial].)

Chambers’s several statements about his disability and Section 8 status were probative of the extent of Chambers’s mental illness and his ability to think logically during periods of psychosis. The People used this testimony to show that Chambers’s disability and subsequent inability to work was based on a physical injury, not a mental deficiency. Testimony about Chambers’s fear of losing Section 8 benefits tended to show that his mental condition did not prevent him from caring for himself and that he reacted violently when denied benefits he thought he was entitled to receive. Chambers argues evidence of a defendant’s poverty or indebtedness is inadmissible, but that rule generally applies to establishing motive to commit robbery or theft, not sanity. (See *People v. McDermott* (2002) 28 Cal.4th 946, 999 [evidence of the defendant’s poverty is inadmissible to establish a motive to commit robbery or theft, because reliance on poverty alone as evidence of motive is unfair to the defendant and the probative value of such evidence is substantially outweighed

by the risk of prejudice].) While, as Chambers argues, references to Chambers's disability and government assistance may have portrayed him "in a negative light," Evidence Code section 352 protects a defendant from unduly prejudicial evidence, not merely damaging evidence. (See *People v. Booker*, *supra*, 51 Cal.4th at p. 188.)

4. *Any Error in the Admission of
Chambers's Requests for an Attorney
Was Harmless*

Counsel for Chambers objected on various grounds to testimony regarding statements by Chambers to the deputies about wanting to speak to an attorney, including on Fifth Amendment and relevance grounds, but more often than not counsel stated no basis for his objection, and, as noted, on one occasion he failed to object at all. Chambers argues that a prosecutor's use of a defendant's post-*Miranda* silence violates federal due process and that, "[b]y extension, the prosecution also cannot use a person's . . . invocation of the right to remain silent or the right to counsel." Even assuming Chambers preserved this argument, any error was harmless beyond a reasonable doubt.

A defendant who pleads not guilty by reason of insanity is protected by the privilege against self-incrimination in the Fifth Amendment. (See *Wainwright v. Greenfield* (1986) 474 U.S. 284, 295 [use of post-*Miranda* silence as evidence of sanity violates due process]; *People v. Flores* (1976) 55 Cal.App.3d 118, 121-123 [defendant who pleaded not guilty by reason of insanity is protected by the Fifth Amendment].) The Fifth Amendment also prohibits the prosecution from commenting on a defendant's refusal to testify during the sanity trial (*Flores*, at p. 122) or

using a defendant's request for an attorney against him or her (see *People v. Lopez* (2005) 129 Cal.App.4th 1508, 1525 [prosecution cannot use the invocation of the right to remain silent or the right to counsel]; *People v. Schindler* (1980) 114 Cal.App.3d 178, 187 [prosecution cannot use a request for an attorney to rebut defendant's diminished capacity defense]). When a trial court improperly admits testimony or statements concerning a defendant's silence or request for an attorney, we consider the remainder of the evidence against the defendant to determine whether the erroneous admission was harmless beyond a reasonable doubt. (See *Chapman v. California* (1967) 386 U.S. 18, 25-26 [improper admission of defendants' silence is constitutional error subject to harmless error analysis]; *People v. Denard* (2015) 242 Cal.App.4th 1012, 1021-1022 [effect of a comment on a defendant's right to remain silent "is assessed under the standard of prejudice set forth in *Chapman*"]; *Flores*, at p. 122 & fn. 3 [erroneous admission of "comment on the defendant's failure to take the stand during the sanity phase" was subject to *Chapman* harmless error standard].)

The trial court appears to have erred by admitting evidence that Chambers requested an attorney during his questioning by Sheriff's deputies. (See *People v. Coffman and Marlow* (2004) 34 Cal.4th 1, 64-65; *People v. Crandell* (1988) 46 Cal.3d 833, 878, overruled on another ground in *People v. Crayton* (2002) 28 Cal.4th 346.) Nevertheless, the jury heard overwhelming evidence that Chambers knew shooting Thomas was illegal. For example, after the shooting Chambers exited the bus and immediately lay prone on the ground, telling witnesses he was waiting for the police. Chambers also made numerous statements to Sheriff's deputies acknowledging he would be

punished for what he had done. Finally, even Dr. Sharma, one of the two defense experts called by Chambers, testified that he thought Chambers knew his acts were “criminally wrong.” In light of the overwhelming evidence that Chambers could distinguish legal right from wrong, any trial court error in admitting his statements requesting an attorney was harmless beyond a reasonable doubt. (See *People v. Coffman and Marlow*, at pp. 63, 65-66 [“any error flowing from questioning him about his invocation of his right to counsel was harmless” under *Chapman*].)

C. *Chambers’s Sentence Does Not Violate the
Constitutional Prohibitions Against Cruel and
Unusual Punishment*

Chambers argues his sentence of life without the possibility of parole violates the federal and state constitutional prohibitions against cruel and unusual punishment. He bases this argument on *Miller v. Alabama* (2012) 567 U.S. 460, where the United States Supreme Court held that a similar sentence violated the Eighth Amendment when applied to a juvenile (*id.* at p. 2464), and *Atkins v. Virginia* (2002) 536 U.S. 304, where the United States Supreme Court held that the Eighth Amendment prohibits the execution of “mentally retarded criminals” (*id.* at p. 321). Chambers argues that, like juveniles and mentally impaired criminals, severely mentally ill persons like himself lack the requisite culpability for a sentence of life imprisonment without the possibility of parole.

The California Supreme Court, however, has held that executing certain mentally ill defendants does not violate the federal or state prohibition on cruel and unusual punishment.

(See *People v. Hajek* (2014) 58 Cal.4th 1144, 1252, disapproved on another ground in *People v. Rangel* (2016) 62 Cal.4th 1192; *People v. Castaneda* (2011) 51 Cal.4th 1292, 1345; see also *People v. Boyce* (2014) 59 Cal.4th 672, 722 [“there is no objective evidence that a national consensus has developed against executing persons with intellectual impairments *short of* intellectual disability or insanity”].) In light of controlling authority holding that the execution of the mentally ill is not cruel and unusual punishment, we cannot conclude on this record that the lesser sentence of life without the possibility of parole is unconstitutional.

DISPOSITION

The judgment is affirmed.

SEGAL, J.

We concur:

PERLUSS, P. J.

ZELON, J.