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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Butte)

THE PEOPLE,

Plaintiff and Respondent,

v.

LESLIE ALLEN BOND, JR.,

Defendant and Appellant.

C065733

(Super. Ct. Nos.
CM029386, CM030280)

Defendant Leslie Allen Bond, Jr., punched Adam Sigler to the ground, rendering him unconscious. Defendant then got on top of Sigler and punched him some more, causing Sigler's head to "bounce[] back and forth, kind of like a ping-pong ball." Sigler died. A jury found defendant guilty of second degree murder and assault with means likely to produce great bodily injury.

Defendant appeals from the resulting judgment, contending the People presented insufficient evidence of the implied malice component of second degree murder, and the court abused its discretion in overruling a defense objection to the People's

cross-examination of a defense witness. Disagreeing with these contentions, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

A

The Prosecution's Case

Defendant and his girlfriend (now wife) Tera Wike were attending a family barbeque at a trailer park where defendant's mother lived. The victim, Adam Sigler, lived in the trailer park with his family.

Defendant and Wike were having a good time at the barbeque, just "talking smack back and forth like [they] do." For a reason unknown to Wike, a person attending the barbeque named Michael Reese (Mike), commented to defendant, "if he wanted to do whatever to women, to do it to him." Mike and defendant ended up in a fistfight, which was broken up by defendant's mother and sister.

Wike decided to leave, and as she was doing so, she unintentionally bumped into defendant with her car. Upset, defendant punched Wike's windshield once, causing a hole in the windshield and damage to the car's quarter panel.

After Wike left, defendant went into his mother's trailer and proclaimed "he was pissed" and was "'fucking killing people.'" He then finished a bottle of Southern Comfort and left her trailer to look for Mike, calling him derogatory names. Defendant's mother had never seen her son so angry.

Defendant ran around the trailer park screaming he was going to "kick Mike's ass." Defendant knocked on several

residents' doors, asking for Mike and unsuccessfully challenged some residents to fight.

Defendant then came to Sigler's trailer, yelling, "'I know you got [Mike] hid in your house, I know you do.'" Sigler put his arms up with his palms facing out in a surrender position and said this was not Mike's house. Defendant pushed past Sigler and attempted to punch him. The two began fistfighting in what "seemed like a normal fight." Defendant then hit Sigler on his nose, causing Sigler to fall backwards in a "crumpling . . . way." Sigler was unconscious. Defendant then jumped on top of Sigler, straddled Sigler's chest, and hit Sigler in the head repeatedly. With each hit, Sigler's "head was being bounced back and forth, kind of like a ping-pong ball." When defendant got off, Sigler's body contorted into an arch. Sigler then made a gurgling sound, coughed up a lot of blood, and then his body just lay flat. When defendant finished attacking Sigler, defendant proclaimed he had "just knocked that mother [fucker] out" and asked "'Who else wants some?'"

Sigler, who was in a coma, was taken to two different emergency rooms before he was pronounced dead.

B

The Defense

Dr. John Wick and Dr. Albert Globus testified as defense expert witnesses. According to Dr. Wick, defendant had been diagnosed with attention deficient hyperactivity disorder (ADHD), dysthymia, which is a mild and chronic mood disorder, and polysubstance abuse. People with ADHD tended to be

impulsive. Dr. Wick had not tested defendant for antisocial personality disorder and that disorder also was characterized by a person's poor impulse control. According to Dr. Globus, defendant had attention deficient disorder and organic brain syndrome from early in life.

DISCUSSION

I

There Was Sufficient Evidence Of Second Degree Murder

Second degree murder is "the unlawful killing of a human being with malice" (*People v. Knoller* (2007) 41 Cal.4th 139, 151.) Here, the People proceeded on an implied malice theory, which requires both a physical and mental component -- "the physical component being "the performance of 'an act, the natural consequences of which are dangerous to life,'" and the mental component being "the requirement that the defendant 'knows that his conduct endangers the life of another and . . . acts with a conscious disregard for life.'" (*People v. Cravens* (2012) 53 Cal.4th 500, 508 (*Cravens*)).

Defendant contends both components of implied malice were missing. He argues the physical component was missing because there was no evidence that death or great bodily harm was the natural consequence of his attack on Sigler. He argues the mental component was missing because there was no evidence he knew his conduct endangered Sigler's life or that he acted with a conscious disregard for life. He is wrong on both counts.

We address the physical component first. "This state has long recognized 'that an assault with the fist . . . may be made

in such a manner and under such circumstances as to make the killing murder.' (*People v. Munn* (1884) 65 Cal. 211, 212) However, 'if the blows causing death are inflicted with the fist, and there are no aggravating circumstances, the law will not raise the implication of malice aforethought, which must exist to make the crime murder.' (*Id.* at p. 213.)" (*Cravens, supra*, 53 Cal.4th at p. 508.)

In *Cravens*, the defendant was standing on the curb and lethally sucker-punched the weak victim who was standing at street level with such force the neighbors could hear the victim's skull hitting the ground. (*Cravens, supra*, 53 Cal.4th at pp. 505, 508-509.) Our Supreme Court found sufficient evidence of the physical component of implied malice because "the jury could reasonably find that defendant's act of violence was predictably dangerous to human life." (*Id.*, at p. 510.) "[D]efendant targeted a smaller and shorter victim who was intoxicated, exhausted, and vulnerable," (*id.*, at p. 508) defendant "secured himself every advantage" by "standing on the curb . . . thus guarantee[ing] that [the victim] would fall on a very hard surface, such as the pavement or the concrete curb" (*id.*, at p. 509), and defendant decked the victim very hard with a sucker punch (*ibid.*).

Cravens distinguished two cases, *People v. Spring* (1984) 153 Cal.App.3d 1199 and *People v. Munn, supra*, 65 Cal. at page 211 (two cases on which defendant here relies) because in those cases the force of the punch to the victim was too weak on its

own ordinarily to have caused death. (*Cravens, supra*, 53 Cal.4th at p. 511.) Such was not the case here.

The nature of the beating defendant inflicted on Sigler was such that the natural consequence was dangerous to life. Sigler's initial stance was a surrender pose. Still, defendant hit Sigler on his nose with such force that Sigler fell backwards in a "crumpling . . . way." This led to Sigler losing consciousness. Thus, the force of defendant's one punch was enough to knock out Sigler. But defendant did not stop there. Defendant then straddled the unconscious Sigler and hit Sigler in the head repeatedly. With each blow, Sigler's "head was being bounced back and forth, kind of like a ping-pong ball." Boiled down to its essence, then, defendant pummeled to death a surrendering Sigler with multiple blows to his head after just one of those blows had caused Sigler to lose consciousness. Predictably, Sigler died from this attack. The physical component of implied malice was satisfied.

We then turn to the mental component. As explained in *Cravens*, a jury is entitled to infer a defendant's subjective awareness that his conduct endangers life from the circumstances of the attack alone, and from a defendant's behavior before and after the attack. (*Cravens, supra*, 53 Cal.4th at p. 511.) Here, defendant's behavior before the attack, during the attack, and after the attack showed he was aware his conduct endangered life. Before the attack, defendant was aware of the destruction that just one blow of his fist could inflict. He had just punched Wike's windshield, causing a hole and damage to the

car's quarter panel. He then proclaimed he was "'fucking killing people'" and targeted Sigler. During his attack on Sigler, defendant quickly learned just one of his punches could knock Sigler to the ground and render him unconscious. Despite that knowledge, he used that same type force to repeatedly pummel an unconscious Sigler to his death. After the attack, defendant proclaimed his awareness of what he had done when he said, "I just knocked that mother [fucker] out." These facts demonstrate defendant was aware that beating Sigler with his fists in the manner he did would endanger Sigler's life and he acted anyway. The mental component of implied malice was satisfied as well.

II

The Court Did Not Abuse Its Discretion In Overruling A Defense Objection Regarding Cross-Examining A Defense Expert Witness, And Counsel Was Not Ineffective

Defendant contends the trial court abused its discretion in overruling a defense objection to what he claims was irrelevant cross-examination of Dr. Wick by the prosecutor that insinuated defendant had an antisocial personality. He claims this insinuation undercut his defense that it was his mental impairments, and not simply an antisocial personality, that caused him to be unable to control his impulses. He further claims defense counsel was ineffective for failing to renew the objection to the prosecutor's cross-examination at the time of the next expert's testimony.

Defense counsel objected to the prosecutor cross-examining Dr. Wick about a diagnosis of antisocial personality because there was "no testimony with regard to that in [his] direct" examination of the witness. The court overruled the objection "based upon the totality of circumstances of the testimony thus far, not just the doctor's testimony."

The court's ruling was not an abuse of discretion. (See *People v. Rowland* (1992) 4 Cal.4th 238, 266 [standard of review].) "An expert witness may be cross-examined about 'the matter upon which his or her opinion is based and the reasons for his or her opinion.' (Evid. Code, § 721, subd. (a).) The scope of this inquiry is broad and includes questions about whether the expert sufficiently considered matters inconsistent with the opinion. [Citation.] Thus, an adverse party may bring to the attention of the jury that an expert did not know or consider information relevant to the issue on which the expert has offered an opinion." (*People v. Doolin* (2009) 45 Cal.4th 390, 434-435.)

Here, the prosecutor's cross-examination did just that. Specifically, Dr. Wick testified on direct examination that defendant had been diagnosed with ADHD, and people with ADHD tended to be impulsive. On cross-examination, the prosecutor attempted to show that Dr. Wick had not taken into account the alternative diagnosis of antisocial personality disorder. The prosecutor elicited that Dr. Wick had not tested defendant for that disorder and that disorder also was characterized by a person's poor impulse control. This line of questioning was not

an abuse of discretion because it was designed to elicit and did in fact elicit relevant testimony, namely, that the defense expert had not considered evidence that might have been relevant to the issues on which he was offering his expert opinion, namely, why defendant acted as he did.

And, to the extent defendant argues defense counsel was ineffective for failing to renew the objection to the prosecutor's cross-examination at the time of the next expert's testimony, that argument lacks merit as well. By the time of Dr. Globus's testimony, defense counsel apparently and correctly realized cross-examination about the alternative diagnosis of antisocial personality disorder was warranted, so defense counsel reasonably attempted to preempt that cross-examination by asking Dr. Globus on direct examination about the diagnosis of antisocial personality and antisocial personality disorder. Defense counsel was not deficient for doing so or failing to further object.

DISPOSITION

The judgment is affirmed.

ROBIE, J.

We concur:

RAYE, P. J.

MAURO, J.