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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
THIRD APPELLATE DISTRICT  
(Sacramento)

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THE PEOPLE,

Plaintiff and Respondent,

v.

ROBERT RODRIGUEZ,

Defendant and Appellant.

C070026

(Super. Ct. No. 07F02608)

A jury found defendant Robert Rodriguez guilty of second degree murder for killing his prison cellmate, who 11 years earlier had killed defendant's brother.

On appeal, defendant claims: (1) his counsel was ineffective for not requesting optional language on antecedent threats in two jury instructions; and (2) the court abused its discretion in ordering defendant shackled during trial. Disagreeing, we affirm.

**FACTUAL AND PROCEDURAL BACKGROUND**

On September 20, 2004, Julian Barajas was found dead in his cell, hogtied, with his hands and feet behind his back. Defendant was in the cell. About two weeks before Barajas was killed, he and defendant and two other inmates had agreed to a cell switch so Barajas and defendant could be housed together in the same cell. At the time, defendant

was going by the name Robert Rodriguez, although his birth certificate showed his actual name was Roberto Grajeda Canchola, Jr.

Defendant's younger brother was Antonio Canchola. In May 1993, Antonio was murdered by Barajas following a fight involving rival party crews. (Party crews are groups that promote house parties for a door charge.) Barajas was convicted of first degree murder and was serving a life sentence.

Defendant testified at his own murder trial and admitted he killed Barajas, but claimed self-defense. Barajas moved into defendant's cell eight days prior to his murder. At that time, Barajas threatened defendant with a knife. From then on, their relationship was tense. The day of Barajas's death, he told defendant he was in prison for murdering Antonio, which came as a surprise to defendant. Defendant "stood up and then [Barajas] came at him" with something that resembled a pen or mechanical pencil. Defendant grabbed the object and repeatedly stabbed Barajas with it. Defendant then choked Barajas with a cord, hogtied him, and put him atop a bunk with a blanket on his head.

## DISCUSSION

### I

#### *Counsel Was Not Ineffective For Failing To Request*

#### *Optional Language On Antecedent Threats In Two Jury Instructions*

Defendant contends his trial counsel was ineffective for failing to request optional language on antecedent threats in two jury instructions. As we explain, counsel was not ineffective because his performance was not deficient: the given instructions told the jury to consider all the circumstances, which included Barajas's antecedent threats, as part of defendant's claim of self-defense; and defense counsel urged the jury in closing argument to consider the antecedent threats in evaluating the claim of self-defense. (See *Strickland v. Washington* (1984) 466 U.S. 668, 687 [80 L. Ed. 2d 674, 693] [deficient performance is the first prong of an ineffective assistance claim].)

The optional language defendant claims his counsel should have requested was in CALCRIM No. 505 regarding justifiable homicide, self-defense, and CALCRIM No. 571 regarding voluntary manslaughter, imperfect self-defense.

The optional language in CALCRIM No. 505 was as follows:

“[If you find that \_\_\_\_\_ <*insert name of decedent/victim*> threatened or harmed the defendant [or others] in the past, you may consider that information in deciding whether the defendant’s conduct and beliefs were reasonable.]

“[¶] . . . [¶]

“[Someone who has been threatened or harmed by a person in the past, is justified in acting more quickly or taking greater self-defense measures against that person.]”

The optional language in CALCRIM No. 571 was as follows:

“[If you find that \_\_\_\_\_ <*insert name of decedent/victim*> threatened or harmed the defendant [or others] in the past, you may consider that information in evaluating the defendant’s beliefs.]

“[If you find that the defendant knew that \_\_\_\_\_ <*insert name of decedent/victim*> had threatened or harmed others in the past, you may consider that information in evaluating the defendant’s beliefs.]”

Even without this optional language, the instructions still allowed the jury to consider the antecedent threats in evaluating defendant’s claim of self-defense because they directed the jury to consider all the circumstances known and appearing to defendant in assessing his claim of self-defense. CALCRIM No. 505 as given instructed as follows: “When deciding whether the defendant’s beliefs were reasonable, *consider all the circumstances as they were known to and appeared to the defendant* and consider what a reasonable person in a similar situation with similar knowledge would have believed. [¶] If the defendant’s beliefs were reasonable, the danger does not need to have actually existed.” (Italics added.) CALCRIM No. 571 as given instructed as follows: “In

evaluating the defendant's beliefs, *consider all the circumstances as they were known and appeared to the defendant.*" (Italics added.)

In addition to the court instructing the jury that it could consider all the circumstances, defense counsel highlighted the antecedent threats as part of what the jury should consider when assessing defendant's claim of self-defense.

Given the instructions and defense counsel's argument that adequately conveyed the requisite concepts, counsel was not deficient for failing to request the optional jury instruction language on antecedent threats. (See *People v. Castillo* (1997) 16 Cal.4th 1009, 1014-1016 [counsel was not ineffective for failing to request an instruction that was adequately covered by other instructions and counsel's closing argument].)

## II

### *The Court Did Not Abuse Its Discretion In Ordering Defendant Shackled During Trial*

Defendant contends the court abused its discretion in ordering him shackled during trial because there was no showing of a manifest need for restraints. As we will explain, the court did not abuse its discretion.

A criminal defendant may be shackled at trial in the presence of the jury only upon a showing of manifest need. (*People v. Duran* (1976) 16 Cal.3d 282, 290-292.) Manifest need may be demonstrated by "a showing of unruliness, an announced intention to escape, or '[e]vidence of any nonconforming conduct or planned nonconforming conduct which disrupts or would disrupt the judicial process if unrestrained . . . .'" (*People v. Cox* (1991) 53 Cal.3d 618, 651, disapproved of on other grounds in *People v. Doolin* (2009) 45 Cal.4th 390, 421, fn. 22.) Here, the court held a hearing to decide whether to shackle defendant. The testimony at that hearing by the sergeant responsible for transporting inmates to the courthouse amply justified the use of shackles. While in prison, defendant had engaged in the following violent conduct: attempted murder in 2001; murder in 2000; possession of a deadly weapon in 1999; mutual combat in 1998; battery on a nonprisoner, battery on a prisoner, mutual combat, assault with serious

bodily injuries all in 1997; and fighting in 1993. This extensive and prolonged history of violence that occurred while defendant was confined in prison qualified as nonconforming conduct that would disrupt the judicial process if left unrestrained. The court therefore did not abuse its discretion in ordering defendant shackled.

DISPOSITION

The judgment is affirmed.

ROBIE, Acting P. J.

We concur:

BUTZ, J.

DUARTE, J.