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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

LEONARD WAYNE HUFF,

Defendant and Appellant.

D057577

(Super. Ct. No. RIF130140)

APPEAL from a judgment of the Superior Court of Riverside County, Mark Johnson, Judge. Affirmed.

I.

INTRODUCTION

During the guilt phase of a bifurcated trial, a jury found Leonard Wayne Huff guilty of first degree murder (Pen. Code, §§ 187, subd. (a), 189).¹ The jury also found that, during the commission of the murder, Huff personally and intentionally discharged a firearm causing death (§ 12022.53, subd. (d)). During the sanity phase of the trial, the

¹ Unless otherwise specified, all subsequent statutory references are to the Penal Code.

jury found that Huff was legally sane at the time of the murder. The trial court sentenced Huff to an aggregate term of 50 years to life in prison.

Huff contends that the trial court erred in the manner by which it instructed the jury on the legal definition of insanity. Huff also contends that the trial court erred in excluding statements that he made during interviews with two mental health experts, which were conducted approximately three months after the murder. We affirm the judgment.

II.

FACTUAL AND PROCEDURAL BACKGROUND

A. *Guilt phase*

On May 11, 2006, at approximately 1:30 a.m., Veronica Lugo and her boyfriend, 37-year-old Martin Lara, walked into a convenience store in Rubidoux to buy something to eat. After placing some items on the checkout counter, Lugo continued shopping while Lara looked at magazines. Huff walked into the store and asked the clerk whether his eyes were red. Huff then got a soda and asked Lugo if he could cut in front of her in line. Lugo responded, "Sure." Huff paid for the soda and left the store.

Moments later, Lugo heard a loud noise that sounded like a firecracker. She turned toward the noise, and saw Lara fall to the floor in front of the magazine rack. Within seconds, Lugo went over to where Lara was lying and saw Huff standing next to Lara, at Lara's feet. Huff grabbed Lara by his shirt sleeve, dragged him out of the store, picked him up and threw him over a nearby fence. Lugo tried to follow Huff, but she was

stopped by the clerk, who told Lugo that Huff had a gun. The clerk locked the door behind Lugo.

A police officer who was responding to 911 calls concerning the incident saw Huff walking down a nearby street. After determining that Huff matched the description of the shooting suspect, the officer ordered Huff to the ground at gunpoint and placed him in handcuffs. The officer searched Huff and found a gun in the pocket of his pants. Another police officer asked Huff how he got blood on his shirt. Huff responded, "It was from the guy I shot at Circle K."

After his arrest, police investigators conducted two interviews with Huff. During both interviews, Huff admitted that he had shot Lara.

B. *Sanity phase*²

Harvey Oshrin, a psychiatrist, interviewed Huff in August 2006, approximately three months after the murder. Dr. Oshrin diagnosed Huff as suffering from paranoid schizophrenia, with a sub diagnosis of polysubstance dependence. Dr. Oshrin stated that in his opinion, Huff did not know that his act in shooting Lara was morally wrong. Dr. Oshrin explained that Huff was responding to an auditory hallucination that told Huff that there was a need to cleanse the earth.

² Huff does not contend on appeal that there is insufficient evidence to support the jury's verdict finding him legally sane. Accordingly, we restrict our discussion of the lengthy factual record concerning Huff's sanity to the facts that are relevant to an understanding of Huff's claims on appeal.

Michael Kania, a psychologist, also interviewed Huff in August 2006.

Dr. Kania diagnosed Huff with schizoaffective disorder. Dr. Kania stated that in his opinion, Huff was legally insane because he did not know that shooting Lara was morally wrong. Dr. Kania stated that he thought Huff's action in killing Lara was based on a number of irrational beliefs and delusions concerning a range of issues, including immigration, health care, and cleansing society.

Craig Rath, a psychologist, interviewed Huff on the night of the murder.³ The jury viewed a videotape of Dr. Rath's interview. Dr. Rath concluded in a 2007 report that Huff was legally insane at the time of the murder. However, at trial, Dr. Rath indicated that Huff's "drug usage dating back to age six ha[d] contributed to his mental problems significantly . . ." and stated, "I believe that drugs have . . . caused [Huff] to have graver mental problems. In the broadest sense of the interpretation of the rule that the jury is going to hear or has heard,⁴ he would not be insane."

³ Dr. Rath testified that he was "called out" by the district attorney on the night of the murder for the purpose of interviewing Huff, to attempt to determine Huff's mental state at the time of the murder.

⁴ Dr. Rath was apparently referring to a portion of CALCRIM No. 3450, which describes the "[s]pecial rules [that] apply to an insanity defense involving drugs or alcohol."

III.

DISCUSSION

A. *The trial court did not err in the manner by which it instructed the jury on the legal definition of insanity*

Huff contends that the trial court erred in the manner by which it instructed the jury on the legal definition of insanity.

1. *Factual and procedural background*

Prior to trial, the People filed a brief in which they requested that the court provide a special instruction to the jury concerning the legal definition of insanity. The People argued that CALCRIM No. 3450, the standard jury instruction that sets forth the legal definition of insanity, was "particularly ambiguous on a critical legal issue arising from the facts of this case." Specifically, the People claimed that because the defense would argue that the defendant was insane because "he did not know at the time of his acts that they were morally wrong," the trial court should clarify the legal meaning of "morally wrong" in this context. Accordingly, the People requested that the court provide the following special instruction to the jury:

"[T]he phrase 'incapable of . . . distinguishing right from wrong,' refers to the ability to understand both legal and moral wrongfulness as measured by statutory law and society's generally accepted standards of moral obligation. A defendant knows his act is wrong if he understands that it is both illegal and a violation of generally accepted standards of moral obligation, even though he may have a different moral evaluation of his conduct. Knowledge that an act is forbidden by law may permit the inference of understanding that the act was wrong according to the generally accepted moral standards of the community.

"The adoption of moral standards different than those generally accepted by society will not, by itself, compel a finding of legal insanity. The issue to be determined in this context is whether a mental disease or mental defect rendered the defendant incapable of knowing and understanding the moral standards of the community."

Prior to the start of the trial, during a conference outside the presence of the jury, the trial court stated that it was inclined to grant the People's request to give the proposed special instruction. The court stated, "It seems to correctly state the law. In fact, when I read it, I was doing research on insanity. These are things that are quoted in the [Continuing Education of the Bar] book" Defense counsel stated that he would conduct further research on the issue.

During the sanity phase of the trial, while discussing jury instructions, the court stated that it was "inclined to give the special instruction on sanity proposed by the prosecution." The court added, "This is the law." Defense counsel objected to the court giving the special instruction.⁵

The trial court instructed the jury pursuant to a modified version of CALCRIM No. 3450 (Fall 2008 ed.) in relevant part as follows:

"The defendant must prove that it is more likely than not that he was legally insane when he committed the crimes. [¶] The defendant was legally insane if (1) when he committed the crime, he had a mental disease or defect; and (2) because of that disease or defect, he did not know or understand the nature and quality of his act or did not know or understand that his act was morally or legally wrong."

The court also instructed the jury pursuant to the special instruction concerning the definition of legal insanity, as quoted above.

⁵ Defense counsel did not state a reason for his objection on the record.

2. *Governing law*

a. *The law governing claims of error in instructing the jury*

Appellate courts determine de novo whether a jury instruction correctly states the law. (*People v. Posey* (2004) 32 Cal.4th 193, 218.) "Review of the adequacy of instructions is based on whether the trial court 'fully and fairly instructed on the applicable law.' [Citation.]" (*People v. Ramos* (2008) 163 Cal.App.4th 1082, 1088.) " ' "In determining whether error has been committed in giving or not giving jury instructions, we must consider the instructions as a whole . . . [and] assume that the jurors are intelligent persons and capable of understanding and correlating all jury instructions which are given." [Citation.] [Citation.]" (*Ibid.*) " 'Instructions should be interpreted, if possible, so as to support the judgment rather than defeat it if they are reasonably susceptible to such interpretation.' [Citation.]" (*Ibid.*)

b. *The legal definition of insanity*

"Insanity, under California law, means that at the time the offense was committed, the defendant was incapable of knowing or understanding the nature of his act or of distinguishing right from wrong." (*People v. Hernandez* (2000) 22 Cal.4th 512, 520—521; see also § 25, subd. (b) [providing statutory definition of legal insanity].) With respect to a defendant's ability to distinguish right from wrong, "[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." (*People v. Skinner* (1985) 39 Cal.3d 765, 783 (*Skinner*).

In *People v. Coddington* (2000) 23 Cal.4th 529, 608 (*Coddington*), overruled on another ground in *Price v. Superior Court* (2001) 25 Cal.4th 1046, 1069, footnote 13, the Supreme Court described the meaning of morality in this context:

"The morality contemplated by section 25, subdivision (b) is . . . not simply the individual's belief in what conduct is or is not good. While it need not reflect the principles of a recognized religion and does not demand belief in a God or other supreme being, it does require a sincerely held belief grounded in generally accepted ethical or moral principles derived from an external source. '[M]oral obligation in the context of the insanity defense means generally accepted moral standards and not those standards peculiar to the accused.' [Citation.]

"Religious beliefs are often the source of generally accepted moral standards, but a defendant need not show that he or she believed that Judeo-Christian standards of morality justified the criminal conduct. An insane delusion that the conduct was morally correct under some other set of moral precepts would satisfy this prong of the M'Naghten test of legal insanity. However, '[t]he fact that a defendant claims and believes that his acts are justifiable according to his own distorted standards does not compel a finding of legal insanity.' (*People v. Rittger* (1960) 54 Cal.2d 720, 734.) As we explained in *Rittger*, this aspect of the M'Naghten test, adapted from the rule of *M'Naghten's Case* (1843) 8 Eng.Rep. 718, 722, is necessary 'if organized society is to formulate standards of conduct and responsibility deemed essential to its preservation or welfare, and to require compliance, within tolerances, with those standards.' (*People v. Rittger, supra*, 54 Cal.2d at p. 734.)" (*Coddington, supra*, at pp. 608-609.)

In *Skinner, supra*, 39 Cal.3d at pages 783-784, the Supreme Court explained the reasoning underlying its conclusion that a defendant may demonstrate that he is legally insane by proving that he is incapable of understanding that his act is morally wrong, by quoting at length a passage written by Justice Cardozo:

"Justice Cardozo, in an opinion for the New York Court of Appeal, eloquently expressed the underlying philosophy: 'In the light of all these precedents, it is impossible, we think, to say that there is any decisive adjudication which limits the word 'wrong' in the statutory definition to legal as opposed to moral wrong. . . . The interpretation placed upon the statute by the trial judge may be tested by its consequences. A mother kills her infant child to whom she has been devotedly attached. She knows the nature and quality of the act; she knows that the law condemns it; but she is inspired by an insane delusion that God has appeared to her and ordained the sacrifice. It seems a mockery to say that, within the meaning of the statute, she knows that the act is wrong. If the definition propounded by the trial judge is right, it would be the duty of a jury to hold her responsible for the crime. We find nothing either in the history of the rule, or in its reason or purpose, or in judicial exposition of its meaning, to justify a conclusion so abhorrent. . . . [¶] *Knowledge that an act is forbidden by law will in most cases permit the inference of knowledge that, according to the accepted standards of mankind, it is also condemned as an offense against good morals.* Obedience to the law is itself a moral duty. If, however, there is an insane delusion that God has appeared to the defendant and ordained the commission of a crime, we think it cannot be said of the offender that he knows the act to be wrong.' (*People v. Schmidt* (1915) 216 N.Y. 324, 338–340.)" (*Skinner, supra*, at pp. 783-784, italics altered.)

3. *Application*

Huff contends that the trial court's insanity instructions were improper because the instructions "*required* the jury to find that appellant was aware of both the moral and legal wrong [*sic*]." On the contrary, the trial court's modified CALCRIM No. 3450 instruction informed the jury that Huff was legally insane if "because of [a mental] disease or defect, he did . . . not know or understand that his act was morally *or* legally wrong." (Italics added). The court's special instruction formulated this same concept through the use of conjunctive affirmative phrasing by stating, "A defendant *knows* his act is wrong if he understands that it is both illegal *and* a violation of generally accepted

standards of moral obligation." We therefore reject Huff's contention that a reasonable juror could have interpreted the instructions as requiring that he prove that he did not know that his act was both morally *and* legally wrong in order to prove that he was legally insane. (Compare with *People v. Torres* (2005) 127 Cal.App.4th 1391, 1402 [concluding trial court erroneously instruct the jury concerning the legal definition of insanity in case in which "the effect of the trial court's instruction required defendant to prove that he could not distinguish legal right from legal wrong, *in addition to* moral right from moral wrong"].)

Huff also contends that the trial court's instructions concerning legal insanity were improper because they "encouraged the jury to make an improper inference between appellant's awareness of the illegality of his act, and his awareness of the moral wrong." The court's special instruction stated in relevant part, "Knowledge that an act is forbidden by law *may permit* the inference of understanding that the act was wrong according to the generally accepted moral standards of the community." (Italics added.)

By using the phrase "may permit," the special instruction merely described, in neutral terms, an inference that the jury was permitted to draw. The trial court's special instruction did not "encourage" the jury to make such an inference, nor did it suggest that it would be proper for the jury to draw this inference in this case. Further, the permissive inference referred to in the special instruction is not "improper," but rather, is grounded in

both California law and common sense.⁶ (See *Skinner*, *supra*, 39 Cal.3d at pp. 783-784 ["Knowledge that an act is forbidden by law will in most cases permit the inference of knowledge that, according to the accepted standards of mankind, it is also condemned as an offense against good morals"]; *People v. Stress* (1988) 205 Cal.App.3d 1259, 1275 (*Stress*) ["we agree with the commentators that in most instances legal wrongfulness and moral wrongfulness are equivalent"].) Accordingly, we reject Huff's contention that the special instruction encouraged the jury to improperly infer that Huff knew his act was morally wrong in light of evidence that he knew his act was legally wrong.

Finally, Huff contends that the special instruction incorrectly stated the law by "making the test for knowledge of moral wrong an objective test based upon appellant's knowledge of societal norms, rather than a subjective test based on appellant's own mental condition." On the contrary, the special instruction informed the jury that it was to consider Huff's mental condition by stating that it was to consider "whether a mental disease or mental defect rendered the defendant incapable of knowing and understanding the moral standards of the community." This instruction is consistent with California law. (See *People v. Severance* (2006) 138 Cal.App.4th 305, 323 [citing *Stress* and stating "if a person is incapable, because of a mental disease or defect, of understanding that his actions are morally wrong—that is, in violation of generally accepted standards of moral

⁶ Indeed, in the prejudice portion of his jury instruction claim, Huff argues, "It is a fair assumption that knowledge of illegality itself is indistinguishable from awareness that society [does] not accept such conduct."

obligation—then that person is legally insane, regardless of whether he knows his actions are illegal"].)

Notwithstanding our rejection of Huff's claim that the trial court erred in the manner by which it instructed the jury concerning the legal definition of insanity, we reiterate that trial courts should carefully scrutinize requests for special instructions that are derived from appellate case law. In *People v. Colantuono* (1994) 7 Cal.4th 206, 222, the Supreme Court explained the dangers of such an approach:

"[T]his case illustrates the danger of assuming that a correct statement of substantive law will provide a sound basis for charging the jury. [Citations.] The discussion in an appellate decision is directed to the issue presented. The reviewing court generally does not contemplate a subsequent transmutation of its words into jury instructions and hence does not choose them with that end in mind. We therefore strongly caution that when evaluating special instructions, trial courts carefully consider whether such derivative application is consistent with their original usage."

However, in this case, for the reasons stated above, we conclude the trial court's instructions did not improperly state the legal definition of insanity.

B. *Huff has not demonstrated that the trial court erred in excluding statements that he made during his interviews with Drs. Oshrin and Kania*

Huff contends that the trial court erred in excluding from evidence statements that he made during his interviews with Drs. Oshrin and Kania.

1. *Factual and procedural background*

Prior to the start of trial, the prosecutor filed a trial brief in which she stated, "In the context of a sanity trial where a defendant does not testify, the defense may try to

admit defendant's statements or statements of family and friends under a guise of reasons [sic]. However, experts may not bring incompetent hearsay evidence before the jury."

During a pretrial hearing, the prosecutor argued that none of the statements that Huff made to mental health experts could be offered during the defense's direct examination of the experts. However, the prosecutor argued that the People could offer the defendants' statements as admissions. Defense counsel responded that he would like to see "some authority" for the prosecutor's contention. The court and the parties agreed that they would research the issue further.

After the jury returned its verdicts in the guilt phase, the court held a conference outside the presence of the jury in which the court discussed the admissibility of Huff's statements to the "doctors." The court stated, "I just felt [the prosecutor's] position was correct, that it would not be admissible on direct examination. However, if she crossed, under 356^[7] the statements would be admissible."

⁷ Evidence Code section 356 specifies the "rule of completeness" (*People v. Ervine* (2009) 47 Cal.4th 745, 783), and provides:

"Where part of an act, declaration, conversation, or writing is given in evidence by one party, the whole on the same subject may be inquired into by an adverse party; when a letter is read, the answer may be given; and when a detached act, declaration, conversation, or writing is given in evidence, any other act, declaration, conversation, or writing which is necessary to make it understood may also be given in evidence." (Evid. Code, § 356.)

Just prior to the beginning of the sanity phase, defense counsel stated, "Am I not able to ask what Mr. Huff said to him^[8] during the examination?" The court responded, "Tell me how that's not hearsay." Defense counsel argued, "Well, it goes to the defendant's state of mind." The court stated that it agreed with defense counsel as to Dr. Rath's testimony. However, the court then stated, "I don't know when Kania and Oshrin spoke with him sometime, whenever, it would not show his state of mind, but it's straight hearsay."

The prosecutor then argued that all of the statements were "straight hearsay," including Huff's statements to Dr. Rath. The prosecutor continued, "I understand that there is a duration difference, but there's no state of mind difference in the opinion."

The court replied, "Well, I felt with Rath[,], it is given the fact that it was shortly afterwards.^[9] They can kind of have a window into his mind at that point in time, I assume." The court concluded the discussion by stating: "Give me your authority on allowing just his hearsay statements to come in through Oshrin and Kania. . . . I think—now, if [the prosecutor] starts cross-examining on those issues and gets into what [Huff] said, then under [Evidence Code] section 356 that would come in. But I thought [the prosecutor's] authority, frankly, was on point."

⁸ It appears that defense counsel was referring to Dr. Oshrin, the first witness to testify during the sanity phase.

⁹ As noted in part II.B., *ante*, Dr. Rath interviewed Huff on the night of the murder. Drs. Oshrin and Kania interviewed Huff several months after the murder.

2. *Application*

Although the scope of trial court's ruling is not entirely clear from the court's statements in the transcript, it appears that the court concluded that *all* of the statements that Huff made to Drs. Kania and Oshrin constituted inadmissible hearsay. Huff does not claim on appeal that the trial court erred in concluding that the statements he made to Drs. Oshrin and Kania constituted hearsay.¹⁰ Rather, Huff assumes that the statements constituted hearsay, but claims that the court nevertheless erred in excluding the statements. Huff argues, "Hearsay is routinely relied on by experts and admitted for the purpose of explaining the basis for the expert's opinion."

Huff acknowledges that a trial court has discretion, under Evidence Code section 352, to "exclude from an expert's testimony any hearsay matter whose irrelevance, unreliability, or potential for prejudice outweighs its proper probative value." (*People v. Bell* (2007) 40 Cal.4th 582, 608.) However, Huff has failed to describe either in his

¹⁰ " 'Hearsay evidence' is evidence of a statement that was made other than by a witness while testifying at the hearing and that is offered to prove the truth of the matter stated." (Evid. Code, § 1200.) Because Huff does not dispute the trial court's ruling that all of the statements that Huff made to Drs. Oshrin and Kania were hearsay, the question whether any of the statements that Huff made to the doctors were admissible as *nonhearsay*, offered to prove Huff's state of mind at the time of the murder rather than the truth of the matters asserted, is not before us in this appeal. (See, e.g., *People v. Ortiz* (1995) 38 Cal.App.4th 377, 389 ["[A] statement which does not directly declare a mental state, but is merely circumstantial evidence of that state of mind, is not hearsay. It is not received for the truth of the matter stated, but rather whether the statement is true or not, the fact such statement was made is relevant to a determination of the declarant's state of mind."].) As noted in the text, Huff has failed to describe the nature of the excluded statements in his brief on appeal. As a result, we have no basis for determining whether the excluded statements in fact constituted inadmissible hearsay.

opening brief or his reply brief the nature of the statements that he claims were improperly excluded. Thus, we have no basis upon which to determine whether the trial court erred in excluding the statements from evidence, and if so, whether any such error was prejudicial.¹¹ Accordingly, we conclude that Huff has failed to demonstrate that the trial court erred in excluding statements he made during interviews with Drs. Oshrin and Kania.¹²

C. *There is no cumulative error*

Huff claims that to the extent this court concludes that no individual error merits reversal, the cumulative error doctrine requires reversal of the judgment. Because we have rejected all of Huff's claims of error, there is no cumulative error. (See *People v. Cole* (2004) 33 Cal.4th 1158, 1235-1236 [cumulative error doctrine does not apply where the court has rejected all claims of error].)

¹¹ With respect to prejudice, our own review of the record indicates that many of the statements that Huff made to Drs. Oshrin and Kania were admitted during cross-examination and redirect examination. The jury also viewed a videotape of Dr. Rath's interview with Huff. In addition, the jury viewed videotapes of both police interviews of Huff that were conducted on the night of the murder. Thus, the jury saw and heard numerous statements made by Huff concerning the murder. Huff has presented no argument on appeal as to how the excluded statements differed from his statements that were offered in evidence at trial.

¹² Huff also contends that the trial court's exclusion of his statements violated his constitutional right to present a defense. This contention also fails in light of Huff's failure to discuss the nature of such statements in his brief on appeal.

IV.
DISPOSITION

The judgment is affirmed.

AARON, J.

WE CONCUR:

HALLER, Acting P. J.

IRION, J.