Filed 4/26/12 P. v. Martin CA4/1

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE, Plaintiff and Respondent, v. JAN MICHAEL MARTIN, Defendant and Appellant.	D058875 (Super. Ct. No. FRE06002)

APPEAL from a judgment of the Superior Court of San Bernardino, Harold T. Wilson, Jr., Judge. Affirmed.

I.

INTRODUCTION

A jury found Jan Michael Martin guilty of first degree murder (Pen. Code, §§ 187, subd. (a), 189)[1] (count 1), and found true an allegation that he personally used a knife in the commission of the murder (§ 12022, subd. (b)(1)). The trial court sentenced Martin

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

to a total of 26 years to life in prison, consisting of 25 years to life for the murder and one additional year for the weapon enhancement.

On appeal, Martin contends that the trial court erred in modifying a standard jury instruction on imperfect self-defense to state that a defendant's delusion of imminent danger, standing alone, cannot support a claim of imperfect self-defense.[2] Martin contends that he presented evidence from which the jury could have found that he stabbed the victim in imperfect self-defense while under a delusion that the victim was about to sexually assault him, and that the trial court's modification of the jury instruction precluded the jury from considering this theory. Martin also claims that the court erred in excluding evidence that would have supported his imperfect self-defense theory.

We conclude that there is no evidence in the record from which a jury could have found that Martin killed the victim based on a delusional fear of an imminent sexual assault. Thus, Martin was not prejudiced by the trial court's modification of the imperfect self-defense jury instruction, and any error in excluding evidence related to this theory was harmless. We therefore affirm the judgment.

---

2 "Whereas murder is an 'unlawful killing . . . *with malice* aforethought' (§ 187, italics added), manslaughter is an 'unlawful killing . . . *without malice*' (§ 192, italics added). Malice is negated when the defendant kills . . . in 'imperfect self-defense.' [Citation.]" (*People v. Milward* (2011) 52 Cal.4th 580, 587) "Imperfect self-defense is the killing of another human being under the actual but unreasonable belief that the killer was in imminent danger of death or great bodily injury." (*People v. Booker* (2011) 51 Cal.4th 141, 182.)

II.

FACTUAL BACKGROUND

A. *The People's evidence*

1. *The relationship between Martin and the victim*

In April 2002, Martin met Katie Prock. The two began dating in September of that year. In November, Martin moved in with Prock and her mother, victim Renee Pokres.

Pokres often argued with Martin. In addition to frequent verbal disagreements, on one occasion, Martin twisted Pokres's arm during a dispute over some prescription medication that Pokres was attempting to give to a family member. Martin also made statements about killing Pokres in the presence of Pokres and other family members, including Prock.

2. *The murder*

On March 28, 2003, at approximately 5:30 p.m., Pokres told Prock that she wanted Martin to accompany her to the grocery store, and said that Prock should stay at home. Martin and Pokres drove to the grocery store together in a pickup truck. At 5:42 p.m., Pokres purchased some groceries at the store. At approximately 7:00 p.m., Pokres spoke with Prock on Pokres's cellular phone. Pokres told Prock that she was at the grocery store. Shortly thereafter, while Martin and Pokres were in the parked pickup truck in parking lot of the grocery store, Martin stabbed Pokres 26 times, including six times in the neck and 12 times in the back. Pokres died of multiple sharp force injuries.

3. *Events immediately after the murder*

Between 7:20 and 7:30 p.m., Martin drove the pickup truck with Pokres's body in it back to Pokres's house. Prock was home when Martin arrived, and could see that Martin had blood on his pants. Martin told Prock that he had gotten into an argument with Pokres and that he had accidently killed her. Martin then showed Prock Pokres's body in the truck. Martin admitted that he had stabbed Pokres, but told Prock that the stabbing was accidental. Martin explained that Pokres had come into contact with his knife twice, once in the neck and once in the arm, and that this had occurred in the parking lot of the grocery store.

Martin told Prock that he wanted to kill himself. Prock told Martin that he had to call the police. Prock was in shock and went to her bedroom. While Prock was in her room, Martin attempted to commit suicide in the living room. Martin recorded a narrative of his thoughts and actions on a cassette tape. On the tape, Martin said, "I love [Prock] with my whole heart and soul, mom, and I was more than willing to do anything for her, [be]cause I meant it when I said, 'Even murder.' "

Prock woke up at around 4:30 or 5:00 the following morning and found Martin in the living room with his arm cut. Martin was surrounded by pill bottles and cleaning products. Prock thought that Martin had tried to kill himself. Prock called 911.

A deputy sheriff arrived at the residence at approximately 5:30 a.m. The deputy found Martin seated on the couch in the living room with a bloody arm and two kitchen knives in front of him. Martin's speech was slurred and, according to the deputy, Martin "appeared under the influence of something." Another deputy found Pokres's body in the

truck, covered with a blanket. The butterfly knife that Martin had used to kill Pokres was in the truck.

B. *The defense*

As described in greater detail in part III.A.2.a., *post*, Martin testified that he had accidently stabbed Pokres while the two were in the parked truck in the grocery store parking lot after Pokres attempted to kiss him and told him that she wanted him to impregnate her. Martin also presented evidence that, as a child, he had suffered physical and sexual abuse, and had received mental health treatment after engaging in various acts of antisocial behavior.

Psychologist Victor Jordan diagnosed Martin with adult residual attention deficit hyperactivity disorder, cognitive disorder not otherwise specified, borderline personality traits, and borderline intellectual functioning. Dr. Jordan detected some signs of posttraumatic stress disorder and noted that that disorder could be confirmed or ruled out upon further evaluation.

C. *Rebuttal*

Dr. Taylor Cantrell, a psychologist, interviewed Martin three days after the murder to assess Martin's risk of committing suicide. During the interview, Martin did not report any auditory hallucinations, reality distortions or bizarre perceptions. Dr. Cantrell stated that Martin's score on a psychological test indicated that Martin had a "potential for psychopathy." Dr Cantrell disagreed with Dr. Jordan's opinion that Martin possibly suffered from posttraumatic stress disorder.

III.

DISCUSSION

A. *The trial court's modification of a jury instruction concerning imperfect self-defense did not prejudice Martin*

Martin claims that the trial court erred in modifying the standard CALCRIM imperfect self-defense instruction (CALCRIM No. 571) to state that a defendant's delusion of imminent danger, standing alone, cannot support a claim of imperfect self-defense. Martin contends that the case upon which the trial court based its modification, *People v. Mejia-Lenares* (2006) 135 Cal.App.4th 1437 (*Mejia-Lenares*), was wrongly decided.[3] We conclude that the trial court's modification of CALCRIM No. 571 did not prejudice Martin because there is no evidence in the record from which a reasonable jury could have found that Martin killed Pokres as the result of a delusion that he was in imminent danger of being killed or suffering great bodily injury at her hands.

1. *The law governing imperfect self-defense*

a. *General principles*

"[A]lthough one who kills in the unreasonable but actual belief in the need for self-defense is guilty of manslaughter rather than murder [citation], the belief must be in the need to defend against imminent danger 'to life or great bodily injury.' [Citation.]" (*People v. Valencia* (2008) 43 Cal.4th 268, 286, fn. omitted (*Valencia*), citing *In re Christian S.* (1994) 7 Cal.4th 768, 783; see also *People v. Uriarte* (1990) 223 Cal.App.3d

3 The issue of whether the doctrine of imperfect self-defense applies when the defendant's actual, but unreasonable, belief in the need to defend himself is based solely on a psychotic delusion is currently pending in the Supreme Court. (See *People v. Elmore*, review granted Feb. 2, 2011, S188238.)

192, 197 (*Uriarte*) [in order for imperfect self-defense doctrine to apply "the defendant must have reason to believe that the danger is *imminent* and that lethal force is *necessary* to prevent death or great bodily injury"].) "[A] trial court's duty to instruct on this theory arises 'whenever the evidence is such that a jury could reasonably conclude that the defendant killed the victim in the unreasonable but good faith belief in having to act in self-defense.' [Citation.]" (*People v. Rogers* (2006) 39 Cal.4th 826, 883.)

b. *A victim's sexual overtures to a defendant, standing alone, do not constitute an imminent threat of death or great bodily injury sufficient to warrant an imperfect self-defense instruction*

In *Valencia, supra*, 43 Cal.4th at pages 285-286, the California Supreme Court considered whether the trial court had erred in excluding evidence of what may have been sexual advances by the victim directed toward the defendant prior to the defendant's killing the victim. The evidence consisted of proffered testimony from three witnesses that "on the day he died, [the victim] said that he wanted to have sex that night." (*Valencia, supra*, 43 Cal.4th at p. 285.) The defendant "argued that the evidence was relevant to show that [the victim] might have made similar comments to defendant before defendant stabbed him," and that " 'if [defendant] was on methamphetamine or was on a methamphetamine psychosis, he could easily misinterpret the information given to him and react accordingly.' " (*Ibid*.) After concluding that the trial court had not abused its discretion in excluding the evidence, the Supreme Court stated, "mere sexual overtures would not alone suffice to support a perfect or imperfect self-defense claim." (*Id*. at p. 286; see also *People v. Quintero* (2006) 135 Cal.App.4th 1152, 1159-1160 (*Quintero*)

[evidence of victim's sexual advances toward defendant did not warrant imperfect self-defense instruction].)

In *Quintero*, the defendant (Quintero) testified that he had been drinking beer with a group of people, including the victim (Barajas). (*Quintero, supra*, 135 Cal.App.4th at pp. 1159-1160.) When the group ran out of beer, Barajas drove Quintero in his truck to purchase more beer.[4] According to Quintero, during the trip, Barajas, who was intoxicated, asked Quintero whether he had ever had sex with a man. (*Id.* at p. 1160.) Quintero stated that he told Barajas that Barajas was crazy. After stopping at a store, Barajas again asked Quintero about having sex with a man. (*Ibid.*) Quintero stated that he tried to leave the parked truck, but Barajas grabbed his arm and pushed Quintero under the steering wheel toward Barajas's genital area. Quintero claimed that after Barajas "held his head down and would not let him go," Quintero began to slash Barajas's face with a knife. (*Ibid.*)

This court concluded that the trial court had not erred in refusing to instruct on imperfect self-defense, notwithstanding Barajas's alleged sexual overtures. (*Quintero, supra*, 135 Cal.App.4th at pp. 1165-1166.) The *Quintero* court reasoned:

> "Here, as the trial court found, there was no substantial evidence to show Quintero had an unreasonable belief that any harm was imminent. Although he testified he was scared, angry and offended by Barajas's alleged sexual advances and fought to have Barajas release his hands from holding his head down toward his lap, Quintero did not say Barajas ever struck or threatened him, or that he believed he was imminently in harm's way. There was simply no

---

4 According to Quintero, "at some point, Barajas grabbed a gun, wrapped it up in a jacket and tossed it into the sliding back window of the truck's camper." (*Quintero, supra*, 135 Cal.App.4th at p. 1160.)

> evidence presented from which a reasonable jury could be persuaded that Quintero attacked Barajas in 'the actual but unreasonable belief in the necessity to defend against imminent peril to life or great bodily injury.' [Citation.]" (*Ibid.*)[5]

2. *Factual and procedural background*

a. *Evidence presented at trial pertaining to Martin's claim of imperfect self-defense*

i. Martin's account of the stabbing

On direct examination, Martin testified that just prior to the stabbing, Pokres drove him to the far corner of the grocery store parking lot and parked the truck. Pokres told Martin that she "really need[ed] to talk" to him. According to Martin, Pokres then stated that "the reason she was so mad at [him] and didn't like [him] so much is because she wanted [him]."[6] Pokres then "scooted towards [him]," "leaned forward," and "tried to kiss [him]."

In response, Martin brought up his left hand "to shove [Pokres] back," and reached into his pocket to pull out his knife. After successfully pushing Pokres back, Martin began to wave the knife back and forth in front of Pokres face "so that she would see that [he] pulled it out," and so that she "would be quiet so that [he] could speak to her."

---

5 In the alternative, the *Quintero* court stated that the doctrine of imperfect self-defense did not apply to the charged crime of aggravated mayhem and that any error in failing to provide an instruction on imperfect self-defense was harmless. (*Quintero, supra*, 135 Cal.App.4th at p. 1166.)

6 Martin stated that a couple of months prior to the stabbing, Pokres had told Prock in Martin's presence that Martin "could give her a child."

Martin said that Pokres "scooted towards [him] again," and that he "held [his] hand out with the knife." According to Martin, after Pokres continued to lean toward him, he "looked down and . . . noticed that [the knife] had already went into her neck." When Pokres "sat back,. . . the knife came out of her neck."[7]

Martin claimed that after the initial stabbing, Pokres fell onto his leg. Martin said that he crawled over Pokres, moved Pokres to the passenger's seat, and sat in the driver's seat. Martin stated that he began to hit the door with his left hand because he "knew what [he] had done." According to Martin, while he was pounding the door with his left hand, he realized that he also had been inadvertently stabbing Pokres in the back with his right hand. Martin testified that he did not know how Pokres had obtained the other five stab wounds to her neck.

On cross-examination, the prosecutor stated, "So let's be very clear now what you are saying, Mr. Martin. You said you held it out. You didn't move your arm and she, on her own, just moved her neck to your blade." Martin responded, "Yes." The prosecutor asked Martin, "[A]re you saying that your knife went into Renee Pokres's neck accidentally?" Martin responded in the affirmative, and repeated his claim that the stabbing was accidental several times during cross-examination.

On cross-examination, Martin clarified that Pokres had not stated that she wanted to have sex "right there," and said that he did not remember whether Pokres had

---

7 At some point prior to the stabbing, Pokres told Martin that "if [he] did not give her a child," she would tell Prock that Pokres and Martin had "done something already." Martin did not recall whether Pokres had "threatened [him] with anything else." Martin also stated that he felt "trapped," when Pokres scooted close to him in the truck.

attempted to touch any of his sex organs. Martin also acknowledged that he had not seen any weapons in Pokres's possession, and agreed with the prosecutor that Pokres was unarmed.

On redirect examination, Martin testified as follows concerning whether he feared an imminent sexual assault in the truck:

> "[Defense counsel]: [The prosecutor] asked you about your statement regarding [Pokres] having made some type of statement to you about impregnating her. [¶] My question to you is this: Was she clear that she wanted this done right now?
>
> "[Martin]: No.
>
> "[Defense counsel]: So what was your impression of that statement? Was it made—was there a like a time and place to it? Or was it a general statement of her intentions?
>
> "[Martin]: I think a general statement of her intentions.
>
> "[Defense counsel]: Okay. So she wasn't trying to, you know—she wasn't making the move to, let's do it right now? She wasn't unbuttoning her blouse or anything?
>
> "[Martin]: I don't believe so."

Martin also testified on redirect examination that he did not think that Pokres was going to kill him and that he "[did not] know" whether Pokres was going to sexually assault him. However, when defense counsel asked, "Were you scared of [Pokres] touching you?" Martin responded, "Yes."

On recross, Martin stated that while he and Pokres were in the truck in the grocery store parking lot, he was not fearful that Pokres would physically harm him in any way.

On further redirect, Martin explained that he had been fearful of Pokres in a way that he was unable to articulate.

ii. Evidence of Martin's mental health

Martin presented evidence that he had been physically and sexually abused as a child. Martin's mother testified that when Martin was a child, he did not like to be touched and that he "couldn't be in an entrapped environment." As a child, Martin received mental health treatment after having engaged in numerous acts of antisocial behavior, including masturbating in public, fighting with other children, and setting fire to his mother's bed. As an adult, Martin joked about killing and torturing people, threatened family members with violence, and once held a running chain saw near a family member's face while laughing.

Dr. Victor Jordan diagnosed Martin as suffering from borderline personality disorder. Dr. Jordan explained that it was common for this disorder to "wax and wane." He explained that there could be periods during which the disorder "possibly approach[es] a psychotic type of disorder," and other periods during which "you may not find any type of mental disorder." Dr. Jordan also testified that a person suffering from borderline personality disorder might suffer stress-related paranoid ideation in which the individual would perceive "harmful intentions by others when they actually do not exist." Dr. Jordan reviewed Martin's mental health records and stated that the records indicated that Martin often had "very excessive reactions to different types of stressful situations."

Dr. Jordan stated that in his opinion, at the time of the commission of the stabbing, "Martin reacted in an excessive [and] unreasonable manner toward the victim based on a

number of factors." Dr. Jordan continued, "Martin felt . . . helpless, hopeless, pained, and reassumed his control over the situation by unreasonably assaulting and injuring the victim." Defense counsel asked Dr. Jordan, "[W]ould a person with [a] similar background to Mr. Martin, placed in a small confined area, . . . would it be possible that a person like that, when confronted with a sexual scenario, would you expect that person to act out in a physical or aggressive manner?" Dr. Jordan responded, "Yes, that's . . . very possible."

b. *The People's motion to preclude the trial court from instructing the jury on imperfect self-defense*

During the trial, on the day the defense rested, the People filed a written motion requesting that the trial court not instruct the jury on imperfect self-defense.[8] In their motion, the People argued that there was no evidence that Martin had stabbed Pokres in imperfect self-defense, and that defense evidence that Martin had stabbed Pokres because of her sexual overtures in the truck was insufficient to warrant an imperfect self-defense instruction under *Valencia, supra,* 43 Cal.4th 268. In addition, citing *Mejia-Lenares, supra*, 135 Cal.App.4th 1437, the People argued that an imperfect self-defense instruction cannot be based on a defendant's delusion that he was in danger of imminent harm when he committed the killing.

After the People filed their motion, the trial court held an unreported conference during which the court and counsel discussed jury instructions. After this conference, the

---

8 Although Martin states in his brief that the People's motion is not contained in the original appellate record, the motion is in fact contained at pages 257 though 263 of the clerk's transcript.

court and counsel discussed on the record whether the trial court should instruct the jury on imperfect self-defense. The prosecutor argued that it was "the People's position . . . that [CALCRIM No. 571] has absolutely no applicability to the current case." In the alternative, the prosecutor argued that the court should modify CALCRIM No. 571 in accordance with *Valencia* to state that a claim of imperfect self-defense cannot be based on a victim's mere sexual overtures. The prosecutor also argued that the court should modify CALCRIM No. 571 in accordance with *Mejia-Lenares* to state that an imperfect self-defense instruction cannot be based on a defendant's delusion that he was in danger of imminent harm at the time he committed the killing.

Defense counsel opposed the proposed modifications. Defense counsel argued that the statement concerning sexual overtures and imperfect self-defense in *Valencia* was dicta. With respect to the modification pursuant to *Mejia-Lenares*, defense counsel stated, "I don't think there's any evidence in this case that Mr. Martin had delusional beliefs or hallucinations." However, defense counsel argued that the jury should be permitted to judge the quality of Martin's testimony and that the modification improperly "allow[ed] the jury to conclude that his testimony is just a delusion."

The trial court ruled that it would instruct the jury pursuant to a version of CALCRIM No. 571 that included the prosecutor's proposed modifications pursuant to *Valencia* and *Mejia-Lenares.*

c. *The trial court's imperfect self-defense jury instruction*

The trial court instructed the jury with a modified version of CALCRIM No. 571 as follows:[9]

> " 'A killing that would . . . otherwise be murder is reduced to voluntary manslaughter if the defendant killed a person because he acted in imperfect self-defense. [¶] If you conclude the defendant acted in complete self-defense, his action was lawful and you must find him not guilty of any crime. The difference between complete self-defense and imperfect self-defense depends on whether the defendant's belief in the need to use deadly force was reasonable.
>
> " 'The defendant acted in imperfect self-defense if: one, the defendant actually believed that he was in imminent danger of being killed or suffering great bodily injury; and two, the defendant actually believed that the immediate use of deadly force was necessary to defend against the danger but at least one of those beliefs was unreasonable.
>
> " 'Belief in future harm is not sufficient, no matter how great or how likely the harm is believed to be. [¶] In evaluating the defendant's beliefs, consider all the circumstances as they were known and appeared . . . to the defendant. [¶] If you find that the victim threatened or harmed the defendant in the past, you may consider that information in evaluating the defendant's beliefs.
>
> "*A claim of imperfect self-defense cannot be based on the mere sexual overtures by a victim alone. . . . The defendant's actual belief that he was in imminent danger when he killed the victim, however, cannot be based solely on a delusion held by the defendant.*
>
> "Great bodily injury means significant or substantial physical injury. It is an injury that is greater than minor or moderate harm. [¶] The People have the burden of proving beyond a reasonable doubt that the defendant was not acting in imperfect self-defense. If the People

---

9 The court's modifications to the instruction pursuant to *Valencia* and *Mejia-Lenares* are indicated in italics.

> have not met this burden, you must find the defendant not guilty of murder." (Italics added.)

3. *Application*

The People contend that any error that the trial court may have committed in modifying CALCRIM No. 571 to state that a claim of imperfect self-defense cannot be based on a delusion alone was harmless.[10] We agree that any such error was harmless under any standard of prejudice.[11] Contrary to Martin's contention in his brief, there is no evidence in the record from which a reasonable jury could have found that Martin stabbed Pokres based on a delusional fear of "great bodily injury from a sexual assault" or imminent danger to his life. Since there is no evidence from which a jury could have reasonably found that Martin acted in imperfect self-defense, there is no possibility that Martin was prejudiced by the court's modification of the imperfect self-defense instruction.

---

10 The People contend that the trial court properly modified CALCRIM No. 571 pursuant to *Mejia-Lenares* to state that a claim of imperfect self-defense cannot be based on a delusion alone. We need not consider this contention in light of our conclusion that any modification was harmless.

11 The parties disagree as to the proper standard of prejudice to apply to Martin's claim. Martin contends that the "beyond a reasonable doubt" standard articulated in *Chapman v California* (1967) 386 U.S. 18, 26 applies because the trial court "misinstruct[ed] on the elements of [the] charged offense." The People contend that the "reasonably probable" standard contained in *People v. Watson* (1956) 46 Cal.2d 818, 837 (*Watson*), applies because an erroneous instruction on a lesser included offense constitutes error under state law only. The law is not fully settled in this area. (See *People v. Moye* (2009) 47 Cal.4th 537, 558, fn. 5 [stating that issue of whether "lesser-included offense instructions . . . were defective under federal law because they incompletely defined the malice element of murder," must await resolution in a case in which claim is properly raised].) However, we need not resolve this issue in this case, because we conclude that any error was harmless under either standard.

To begin with, there is absolutely no evidence that Martin was in fear for his life prior to stabbing Pokres. In fact, Martin testified that he did *not* think that Pokres was going to kill him prior to the killing.[12] Further, there is no other evidence from which a reasonable jury could have found that Martin did in fact fear for his life, notwithstanding his own testimony to the contrary. It is thus clear that no reasonable jury could have found that Martin killed Pokres in imperfect self-defense based on a fear that his life was in imminent danger.

We also reject Martin's contention that there is substantial evidence from which a reasonable jury could have found that Martin feared an imminent sexual assault.[13] Martin testified that he did *not* think that Pokres wanted to have sex with him in the truck in the parking lot of the grocery store. Rather, Martin testified that he thought Pokres was telling him that she wanted to have sex with him at some unspecified time in the future. Given this testimony, no reasonable jury could have found that Martin feared an *imminent* sexual assault at the time he stabbed Pokres. (*Uriarte, supra*, 223 Cal.App.3d at p. 197 ["the defendant must have reason to believe that the danger is *imminent*," in order to act in imperfect self-defense].)

---

12 On redirect examination, defense counsel asked Martin, "Did you think she was going to kill you?" Martin responded, "No."

13 We assume for purposes of this opinion that substantial evidence of a defendant's fear of an imminent *sexual assault* based on something other than the victim's "mere sexual overtures" (*Valencia, supra*, 43 Cal.4th at p. 286) constitutes fear of imminent *great bodily injury* sufficient to warrant an imperfect self-defense instruction.

There is no other evidence in the record from which a reasonable juror could have found that Martin feared an imminent sexual assault. Martin's testimony that Pokres leaned forward to kiss him, if believed, amounts to nothing more than evidence of "mere sexual overtures," and does not constitute evidence from which a reasonable jury could find that Martin perceived a need to defend against imminent threat of great bodily injury. (*Valencia, supra*, 43 Cal.4th at p. 286.) Pokres's alleged actions in this case were far less indicative of an imminent sexual assault than were the victim's alleged actions in *Quintero*, which this court held were *insufficient* to warrant an imperfect self-defense instruction. (*Quintero, supra*, 135 Cal.App.4th at pp. 1159-1160,1165-1166 [evidence that armed victim repeatedly asked defendant whether he had ever had sex with man, and then grabbed defendant and held defendant's face toward victim's genital area insufficient to warrant imperfect self-defense instruction].)

We reject Martin's contention that the jury could have found that he acted in imperfect self-defense based on evidence presented concerning his mental health. No reasonable juror could have found, based on this evidence, that Martin feared an imminent sexual assault prior to the stabbing. At most, this evidence tended to demonstrate that Martin was impulsive, and that he had a history of reacting unreasonably to stressful situations. To conclude that Martin feared an imminent *sexual assault*, despite his own testimony to the contrary, based on evidence pertaining to his mental health would be entirely speculative. Martin repeatedly testified that the stabbing was *accidental*, and the manner of killing (stabbing the victim 26 times) did not indicate that Martin acted in self-defense.

In sum, there is no evidence from which a jury could have reasonably found that Martin acted in imperfect self-defense in stabbing Pokres, since there is no evidence from which a reasonable juror could have found that Martin stabbed Pokres based on a delusion that he was in imminent danger of death or great bodily injury. There is thus no possibility that Martin was prejudiced by the trial court's modification of the imperfect self-defense instruction to state that a claim of imperfect self-defense cannot be premised on a delusion alone.[14]

B. *The trial court did not commit reversible error in excluding evidence pertaining to Pokres's purported desire to have sexual relations with Martin*

Martin claims that the trial court committed reversible error in excluding evidence from Prock's pretrial conditional examination[15] concerning Pokres's purported desire to

---

14 We reject Martin's contention that the trial court's modification of the imperfect self-defense instruction pursuant to *Mejia-Lenares* was prejudicial because the prosecutor emphasized the trial court's modification during his closing argument. For the reasons stated in the text, no reasonable juror could have found that Martin acted in imperfect self-defense based on a delusional fear of imminent danger to his life or great bodily injury. Therefore, the prosecutor's closing argument did not prejudice Martin.

We similarly reject Martin's contentions that a jury question concerning the meaning of "deliberation" in CALCRIM No. 521 (describing the distinction between first and second degree murder), and the length of the jury's deliberations (approximately seven hours) demonstrate prejudice. Neither the jury question nor the length of deliberations remotely suggests that Martin was prejudiced by the trial court's modification of the imperfect self-defense instruction.

15 Section 1336 permits a court to order the conditional examination of a material witness who "is about to leave the state, or is so sick or infirm as to afford reasonable grounds for apprehension that he or she will be unable to attend the trial." Section 1345 describes the circumstances under which testimony given during a conditional examination may be introduced at evidence at trial.

Prior to trial, the court granted the People's request to conduct a pretrial conditional examination of Prock pursuant to section 1336 on the ground that she resided

have sexual relations with Martin. Specifically, Martin contends that the trial court erred in excluding evidence that Pokres had talked with Prock about having another baby on numerous occasions; that Pokres once joked with Prock in Martin's presence about Martin impregnating her; that Martin told Prock that Pokres had said she wanted to have Martin impregnate her and that she would go to Colorado to have the baby; and that Martin told Prock that Pokres had made a sexual advance toward Martin just prior to the killing.

1. *Factual and procedural background*

Prior to trial, the People moved to exclude as hearsay various statements contained in Prock's pretrial conditional examination, including those described above. The People requested that the statements be redacted from Prock's conditional examination, which the People intended to introduce in evidence at trial. Defense counsel objected to the proposed redactions. At a hearing on the motion, the trial court granted the People's request with respect to the statements described above. The court stated that it would revisit the issue if the People were to "open the door" at trial by introducing statements made by Martin concerning the subject matter.

At trial, the People played a recording of Prock's redacted conditional examination during their case-in-chief.

During the People's cross-examination of Martin, the prosecutor asked Martin questions concerning whether Pokres had made a sexual pass at him just prior to the

---

out of state and was experiencing medical complications related to her pregnancy. Prock's conditional examination took place approximately a month before the jury trial commenced.

killing, and whether Pokres had said that she wanted Martin to impregnate her. After the prosecutor posed these questions to Martin, defense counsel filed a motion in limine seeking to be permitted to introduce evidence from Prock's conditional examination in which Prock stated that Pokres had joked about Martin getting her pregnant. The trial court ruled that the statements were hearsay and denied the motion.

2. *Any error in excluding the evidence of Prock's testimony was harmless*

Martin argues that he wanted to introduce evidence of Prock's conditional examination for the non-hearsay purpose of establishing that he "harbored an unreasonable but actual belief that he needed to self-defend against imminent bodily harm at the time he stabbed Pokres," and contends that the trial court erred in excluding the evidence from Prock's conditional examination pertaining to Pokres's purported desire to have sexual relations with Martin on hearsay grounds. Martin also contends that the evidence was admissible to "rehabilitate his . . . credibility" after the prosecutor's cross-examination implied that Martin was fabricating his claim that Pokres had made a sexual advance and told Martin that she wanted Martin to impregnate her just prior to the killing. We assume, without deciding, that the trial court erred in excluding this evidence, and conclude that the exclusion of the evidence was harmless.[16]

In determining whether a trial court's erroneous exclusion of evidence is prejudicial, we apply *Watson*, *supra*, 46 Cal.2d at p. 837, and determine whether it is

---

16 In light of our conclusion, we need not consider the People's claim that Martin forfeited his contentions as to some of the statements by failing to seek to admit the statements in evidence after Martin testified at trial. We also need not consider the People's contention that the trial court did not abuse its discretion in excluding the statements.

"reasonably probable that had the evidence been admitted a result more favorable to [Martin] would have ensued." (*People v. Samaniego* (2009) 172 Cal.App.4th 1148, 1179-1180.)[17]

For the reasons stated in part III.A.3, *ante*, evidence that Martin thought that Pokres was making a sexual advance does not constitute substantial evidence from which the jury could have found that Martin acted in imperfect self-defense. Further, none of the excluded evidence tended to demonstrate that Martin feared that Pokres was about to commit an imminent sexual *assault* on him. For these reasons, even assuming that the trial court erred in excluding the evidence on hearsay grounds, the evidence would not have demonstrated that Martin acted in imperfect self-defense in killing Pokres. There is thus no reasonable probability that Martin would have received a more favorable result if the trial court had admitted the evidence for this purpose.

There is also no reasonable probability that Martin would have received a more favorable result at trial if the evidence had been admitted to rehabilitate Martin's

---

17 Martin contends that the trial court's evidentiary rulings deprived him of his federal constitutional rights to a fair trial and due process and therefore, that the *Chapman* beyond a reasonable doubt standard of prejudice applies. Although the precise basis of Martin's assertion that his constitutional rights were violated is not clear, the law is well settled that even erroneous limitations placed on a defendant's right to present evidence generally do not constitute a deprivation of a defendant's constitutional right to present a defense. (See *People v. Boyette* (2002) 29 Cal.4th 381, 428 [" 'Although completely excluding evidence of an accused's defense theoretically could rise to this level, excluding defense evidence on a minor or subsidiary point does not impair an accused's due process right to present a defense' [citation]"].) The trial court's ruling did not deprive Martin of his right to present a defense or otherwise violate his federal constitutional rights. Accordingly, we reject Martin's contention that the *Chapman* standard of prejudice applies to this claim. In any event, for the reasons stated in the text, the trial court's exclusion of the evidence was harmless, even under the *Chapman* standard.

credibility. Whether Martin was telling the truth when he claimed that Pokres had expressed a sexual interest in Martin just prior to the killing was essentially a collateral matter, since even if the jury determined that Martin was credible in this regard, a reasonable jury could not have found that Martin acted in imperfect self-defense in killing Pokres. There is thus no reasonable probability that there would have been a more favorable result for Martin if the trial court had permitted the introduction of evidence rehabilitating Martin's credibility on this point.

IV.

DISPOSITION

The judgment is affirmed.

AARON, J.

WE CONCUR:

HUFFMAN, Acting P. J.

McINTYRE, J.