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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

ERIC LEO WRIGHT,

Defendant and Appellant.

E053142

(Super.Ct.No. RIF153612)

OPINION

APPEAL from the Superior Court of Riverside County. Elisabeth Sichel, Judge.

Affirmed with directions.

Gregory L. Cannon, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, and Barry Carlton and Kelley Johnson, Deputy Attorneys General, for Plaintiff and Respondent.

On November 3, 2009, defendant Eric Leo Wright got into an argument with his cousin, Antoine Terrell Lawson. Defendant was reportedly upset that Lawson was flirting with defendant's girlfriend. After a fist fight, defendant and Lawson were separated. Defendant confronted Lawson thereafter while armed with one or two steak knives and fatally stabbed Lawson.

Defendant was convicted of willful, premeditated, and deliberate first degree murder (Pen. Code, § 187),¹ and the jury found true the allegation that he personally used a knife during the commission of the crime (§ 12022, subd. (b)(1)). He was sentenced to 25 years to life on the first degree murder and an additional one-year determinate sentence for the knife use, which was ordered to run consecutive to the life sentence.

Defendant now claims on appeal as follows:

1. The trial court abused its discretion by excluding evidence of Lawson's mental illness, which caused him to be violent and aggressive.
2. The abstract of judgment must be corrected in order to accurately reflect the oral sentence on defendant's requirement to complete substance abuse treatment in prison.

¹ All further statutory references are to the Penal Code unless otherwise indicated.

I

FACTUAL BACKGROUND

A. *People's Case-in-Chief*

The incident herein took place at an apartment complex located on Diana Avenue in Riverside (the Meadows).

J.V. was 16 years old at the time of trial and lived next door to defendant at the apartment complex. She was good friends with Ebony Hollins, who also lived at the Meadows. J. had a 17-year-old sister, W.V. Defendant treated J. like a sister and was very respectful to her. J. had observed that defendant and Lawson were very close. J. and W. first met Lawson one month prior to his death. J. considered W. and defendant to just be friends; W. denied any type of romantic relationship. Lawson and J. were in some kind of romantic relationship.

On November 2, 2009, during the day, J., defendant, and some other people hung out in her apartment, drinking alcohol. Defendant appeared "tipsy." At one point, she and defendant went to a nearby liquor store, and defendant bought more alcohol. When they returned, defendant; J.; and Jeffrey Edwards, Lawson's brother, were all drinking together.

Lawson came to the apartment at some point. J. gave Lawson some alcohol. J. did not recall Lawson paying too much attention to W.

At some point, J., defendant, and Hollins went outside and smoked a cigar or cigarettes. Lawson and W. stayed in the apartment. W. testified that she and Lawson

talked about another girl whom Lawson liked. Hollins indicated that defendant did not appear to be upset or angry. Around 11:30 p.m., after everyone had reconvened in J.'s apartment, W. told everyone that they needed to leave. J., defendant, Hollins, and Lawson all went outside to wait with Hollins for her ride.

Defendant and Lawson began talking. Their voices started to get angrier. At some point, defendant became very angry and walked away. J. tried to talk to him, but he was very mad. Lawson told J. to leave defendant alone. Defendant eventually came back. When defendant returned, he said to Lawson, "You fucking with my girl?" Lawson responded, "No, I'm not fucking with that bitch." Defendant and Lawson started fighting. J. saw Lawson punch defendant. They both were hitting and punching each other. They fell to the ground with defendant on top of Lawson. J. eventually was able to pull defendant off. Hollins recalled that before the fight defendant was complaining that Lawson was paying attention to W., who Hollins thought was defendant's girlfriend.

Hollins left with her friend. Defendant left the area, and J. and Lawson went to a nearby gate and talked. J. tried to convince Lawson to get out of there and run home. Lawson just responded that he did not give a "fuck."

J. then saw defendant coming toward them. He looked different. J. described him as having "black" eyes. He did not seem like himself and was very angry. Lawson just looked shocked. J. testified at trial that she did not see either Lawson or defendant with a knife that night. However, it was clear that Lawson saw something because he pushed J. out of the way. Lawson started to walk toward defendant, stopped, and then started

walking quickly backward. Lawson and defendant started swinging at each other. J. could not tell who swung first. They fell to the ground.

J. heard one of them scream, “Uh.” At this point, J. separated them. Defendant left, and J. held onto Lawson, who immediately stood up. Lawson told J. to call an ambulance, but J. had left her cellular telephone at her house. J. saw blood; Lawson was holding onto his stomach. J. got Lawson to a grassy area, where he fell to the ground. J. tried to put pressure on his wounds, which were by his heart and on his stomach. Lawson told J., “Tell [defendant] I forgive him.” He was having trouble breathing.

When Lawson had consumed alcohol on one previous occasion, he had become argumentative and bolder than his normal shy demeanor. Lawson had a reputation for carrying a knife. J. had seen him carrying it once and asked him why he carried it. He responded it was because of his “environment.” Lawson told her he was no longer going to carry it. W. had seen Lawson carry a folding knife.

Jerry Bray was defendant’s older brother. He; defendant; their little brother, Laron Dashiell; and their mother moved into the Meadows in the summer of 2009. Defendant and Lawson were very close; they were like brothers. Bray had not observed any arguments between the two but had heard that they sometimes argued like siblings.

Bray was home on November 2, 2009. Around midnight, he heard noises coming for outside. He looked outside and saw defendant, J., and Lawson together. As Bray walked out of his apartment, defendant walked back toward the apartment. Bray went and talked to Lawson about what was going on. Lawson said, “Well, I’m not trying to go

back to jail. I'm not trying to fight my cousin." Bray went back to the apartment and told defendant to go to bed because he observed that defendant was drunk. Defendant set up his bed in the living room. Defendant told Bray that he was going to bed. Bray went to his own bedroom.

Bray went back out to the living room sometime later, and defendant was gone. Bray went outside to find him. As Bray left his apartment, defendant was coming back. Defendant appeared to Bray to be very angry; Bray had never seen him like that. Bray asked defendant what had happened, and he responded that he did not know. Bray immediately got his mother. Bray went over to Lawson to help him. Defendant eventually reappeared outside. Bray and Dashiell tackled defendant and tried to hold him until the police came. Defendant was struggling with them and got away.

Bray indicated that defendant was usually temperamental and would act out violently if he did not get his way. Bray had observed defendant punch a wall. Bray also believed that Lawson was violent.

Dashiell was in the family's apartment around midnight when he heard a commotion outside. He heard yelling and went to his window but couldn't see anything. Defendant came back to the apartment. He told Dashiell that Lawson was "trippin." When Dashiell asked defendant what he meant, defendant told him not to worry about it and that he was going to go to sleep. Dashiell went back to his room. He then heard yelling. He looked out the window and saw defendant walking away from the apartment. Defendant was walking quickly toward Lawson, who appeared to be walking away.

Dashiell opened the front door, and defendant was at the door. He was crying. There was blood on defendant's arms. Dashiell asked defendant what had happened and defendant responded, "Fuck him." Dashiell went outside and saw J. holding Lawson. Lawson was holding his stomach. Dashiell helped Bray tackle defendant because defendant approached Lawson and appeared to want to hit him.

It appeared to Dashiell that defendant liked W. Defendant knew that Lawson had previously been in jail for cutting his baby's mother with a knife.

Kim Thompson lived next door to defendant and his family. On November 3, 2009, she was asleep on her couch. She was awakened by talking and yelling outside her apartment. When she opened her apartment door, defendant approached her and said, "I think I stabbed him. I think I stabbed him." Defendant did not seem like himself; he seemed confused.

Thompson walked out of her apartment. Defendant said, "He's laying over there. Help him. Help him." When she asked defendant who was lying on the ground, he responded, "Terrell." Thompson found Lawson lying on the ground moving his head back and forth. She called 911. Thompson began to perform cardiopulmonary resuscitation (CPR) on Lawson. While she was attending to Lawson, he kept saying, "I'm sorry. Tell Eric I'm sorry. I'm sorry. I didn't mean to do it." Lawson took three breaths and then stopped breathing, and his heart stopped.

When the paramedics took over, Thompson returned to her apartment. Defendant was sitting in her living room. At this point, defendant was acting normal. He asked

Thompson how Lawson was doing. It seemed as though defendant did not realize what had happened. Thompson told defendant what had happened and convinced him that he had to go outside to talk to the police. Defendant was crying.

Thompson understood that Lawson had a reputation for being a violent person. He also had a reputation for being violent with defendant. Thompson observed several cuts on defendant's arms and legs that night.

Riverside Police Officer Gary Hirdler was working patrol on November 3, 2009. About 12:30 a.m., he received a call to respond to a stabbing that had just occurred at the Meadows. When Officer Hirdler arrived, there was a group of approximately 10 to 15 people surrounding Lawson, who was lying in a grassy area. He was not breathing and did not have a pulse. Officer Hirdler and Officer Jeff Maier, who also responded, performed CPR, and he started breathing. Officer Maier observed two stab wounds in Lawson's abdominal area. Officer Hirdler followed the ambulance to the hospital. Lawson died at the hospital.

Officer Maier remained at the scene talking to witnesses. One of the witnesses identified defendant as the potential suspect.

In defendant's apartment, blood drops were found on the floor, and there were bloody clothes in the closet. There was a made-up bed on the living room floor. On the street, law enforcement officers recovered bloody clothing belonging to Lawson. Three knives were recovered outside. There was a blood trail leading from a pool of blood where Lawson had come to rest. Two of the knives were found near the blood trail and

had blood on them. In defendant's apartment, steak knives identical to the ones found outside were located. A bloody sock was found inside Thompson's apartment.

J. told police officers prior to trial that Lawson did not have any weapons on his person that day. J. also told him that Lawson was on the ground and defendant stabbed him. Lawson never stabbed defendant. She also stated it was dark and that Lawson may have gotten the knife from defendant at some point. J. had previously testified that she saw defendant with two knives in his hands and that Lawson still wanted to fight him. J. felt that the second fight was mutual; she admitted that she previously told police that Lawson attacked defendant.

Defendant had to have four stitches to his leg and had to go to the hospital before being taken to the police station.

An autopsy revealed that Lawson had a total of four stab wounds on his body. He had a number of abrasions on his extremities and a bruise on his forehead. Two of the stab wounds were to his chest. One of the stab wounds penetrated his heart and ended in his stomach. There was another stab wound that went into his stomach that started in his lower chest. It penetrated the liver. Lawson would have bled profusely from the stab wound to the heart. The third wound was in the chest area and just went through the muscle. The final wound was on his elbow. Lawson had other wounds consistent with being punched or falling on the ground. There were also some scratches that may have been caused by a knife. The cause of death was the multiple stab wounds.

DNA was collected from all three knives found at the scene. Separate swabs were taken from the handles and the blades. Blood samples were taken from Lawson and defendant and compared to the blood samples and swipes taken from the knives. Blood on the blade of one of the knives matched Lawson's. Defendant was excluded. The handle on that knife was inconclusive. The second knife had Lawson's blood on the blade. There was DNA from Lawson on the handle of that knife as well. There was also a minor contributor of DNA, but a source could not be determined. The third knife did not have DNA from either Lawson or defendant.

B. *Defense*

Defendant presented several character witnesses who attested that they never saw defendant be angry or violent. Further, defendant's sister testified that the relationship between defendant and Lawson was like "two peas in a pod"

Defendant's blood was taken seven hours after the stabbing. He had a blood alcohol content of .08 percent. Based on the burn off of alcohol, at the time of the stabbing, defendant likely had a blood alcohol content between .18 and .22.² Defendant's judgment likely would have been impaired.

In 2008, Edwards was present with Lawson and the mother of Lawson's child, Shetora McGill. Lawson was drinking a lot. McGill and Lawson were arguing over her seeing another man and cheating on him. Lawson was angry and was walking around the

² Although the record states ".018 or .022" it is clear it is .18 or .22.

house carrying a knife.³ Edwards described him as being out of control. At some point, Lawson cut McGill on the arm with the knife. McGill thought Lawson was so mad that he was going to kill her.

Riverside County Sheriff's Detective Roman Plumier responded to the report that Lawson had stabbed McGill. Edwards told Detective Plumier that Lawson had used a steak knife to stab McGill. McGill told Detective Plumier that she and Lawson got into a fight because she had a tattoo with another man's name on it. McGill claimed that Lawson got so angry with her that he lunged at her with a steak knife and stabbed her.

James Ortego interviewed Lawson in January 2009 for purposes of providing psychiatric treatment. Lawson told Ortego that he had been in fights in jail in the prior 12 months. Ortego did recall that Lawson had a bandage on his wrist during the interview. Ortego indicated that Lawson told him the bandage was due to a fight. During the interview, Lawson was banging on the desk with his hand. He appeared to be guarded and angry. Ortego suspected that Lawson was "responding to internal stimuli."

Christine McCormick, a clinical therapist, interviewed Lawson on October 26, 2009. Lawson told McCormick that he had been in two fights in the prior two years and was seeking treatment for an anger problem.

³ At trial, Edwards testified that it was a butter knife. Edwards told a defense investigator prior to trial, however, that it was a steak knife.

II

EXCLUSION OF EVIDENCE

Defendant contends that the trial court erred by refusing to admit evidence that Lawson suffered from a mental illness that caused him to act violently and aggressively. The exclusion of this evidence denied him his right to present a defense as guaranteed by the federal and state Constitutions.

A. *Additional Factual Background*

During the defense case, the People objected to the testimony of Ortego and McCormick to the extent they would testify about Lawson's violent behavior. The People initially objected on Evidence Code section 352 grounds that there already was an abundance of testimony regarding Lawson's violent behavior. Defendant's counsel made an offer of proof that Lawson had told Ortego, when questioned about his history of violence, that, "I only fight the demons" and then added that he beat up his older brother to the point that the brother had to be hospitalized. Defendant's counsel argued that this evidence was relevant to the determination as to who was the primary aggressor in the altercation between defendant and Lawson. The trial court wanted to know the time frame for these comments. It noted that unless it was "[w]ithin a couple of years" of the current incident, it was going to exclude it as more prejudicial than probative.

Defendant's counsel asked Ortego for a specific time period, but he was unable to provide one. The trial court ruled, "Then it's not admissible. It's more prejudicial than probative. Without being able to put it closer to time, that highly prejudicial, seems to

me, because it deals with the issue of the likeability of the victim as well as his propensity for violence. And without knowing the time frame of it, it doesn't add anything.”

Ortego began testifying regarding psychiatric treatment for Lawson in January 2009. Ortego was asked about jail records that he had reviewed pertaining to Lawson being in fights in jail. The People's objection was sustained. Outside the presence of the jury, defendant's counsel made an offer of proof that Lawson had been in a fight in jail and had been the aggressor in November 2008. The trial court considered the information to be hearsay.

Defendant's counsel felt the information from jail records was admissible because it was information that Ortego used to treat Lawson. The trial court responded that Lawson's mental illness was not an issue in the case. The only things that were admissible were past incidents of violence.

During cross-examination, Ortego stated that he diagnosed Lawson as psychotic and as having auditory hallucinations. The People moved to strike the answer as nonresponsive. The trial court struck the testimony.

McCormick testified that Lawson was not communicating very well with her during their interview, and most of the information she obtained came from Lawson's mother. The People objected on the grounds of double hearsay, since any information about Lawson came from his mother. Defendant's counsel stated on the record that McCormick had not advised her prior to trial that her information came from Lawson's

mother. However, since Lawson was present with McCormick and his mother, it was admissible as an adoptive admission.

The trial court was concerned that Lawson might not have been competent at the time. It offered to have a hearing outside the presence of the jury and indicated defendant's counsel could ask McCormick what Lawson said to her directly. It felt, however, that there was sufficient evidence already that Lawson had a history of getting into fights.

A hearing outside the presence of the jury was held to examine McCormick as to Lawson's competency. She thought that Lawson was suffering from a psychotic disorder. He would just sit and say nothing when his mother would respond to questions. Defendant's counsel argued that Lawson was competent. The trial court asked McCormick if Lawson said anything directly to her about fights, and she could not recall. The trial court was only going to admit statements made by Lawson. McCormick specifically recalled that Lawson told her that he was hearing voices that he claimed were causing him to commit the assaults.

The People objected to any evidence of Lawson's mental health or testimony that he was hearing voices that caused him to do the assaults. The trial court responded, "[T]he problem I have with that is . . . at what point the psychosis occurred or whether he was psychotic or having the delusions on a particular day." Defense counsel responded, "I agree. I don't think I can make the connection between specific event on the date [that

is] the subject matter of this particular case and his psychological status.” The evidence that Lawson was hearing voices or was psychotic was not admitted.

B. *Analysis*

Defendant now contends on appeal that he had a right, since he was raising a self-defense claim, to introduce evidence of the aggressive and violent character of Lawson caused by his mental illness. Further, he states that he was entitled to admit character evidence of the victim in order to prove conduct in conformity with the victim’s character or trait of character under Evidence Code section 1103.

Evidence Code section 1103 allows for admission of the violent character of a victim. It provides as follows: “(a) In a criminal action, evidence of the character or a trait of character (in the form of an opinion, evidence of reputation, or evidence of specific instances of conduct) of the victim of the crime for which the defendant is being prosecuted is not made inadmissible by Section 1101 if the evidence is: [¶] (1) Offered by the defendant to prove conduct of the victim in conformity with the character or trait of character.”

A defendant being prosecuted for a violent offense who asserts self-defense may introduce evidence of specific violent acts by the victim to show that the victim had a violent character and was the aggressor in the current offense. (*People v. Wright* (1985) 39 Cal.3d 576, 587.) “The law recognizes the well established fact in human experience that the known reputation of an assailant as to violence, even if specific acts are not within the knowledge of a person assaulted, has a material bearing on the degree and

nature of apprehension of danger on the part of the person assaulted (and further even if the reputation is unknown) to show that one who is turbulent and violent may more readily provoke or assume the aggressive in an encounter. [Citation.]” (*People v. Smith* (1967) 249 Cal.App.2d 395, 404.)

Defendant failed to show that Lawson was suffering from any mental illness that caused him to be violent or aggressive at the time of the instant crime and that he acted in conformity with that character at the time of the assaults. Here, even defense counsel admitted that she could not tie the mental illness to the fact that Lawson was acting in conformity with that character on the day in question. None of the witnesses described Lawson as being out of his mind or responding to internal stimuli.

Moreover, evidence that is relevant and admissible may be excluded under Evidence Code section 352 if its probative value is substantially outweighed by the probability that its admission will create substantial danger of undue prejudice or of misleading the jury. “[T]he trial court enjoys broad discretion in assessing whether the probative value of particular evidence is outweighed by concerns of undue prejudice, confusion or consumption of time. [Citation.]” (*People v. Rodrigues* (1994) 8 Cal.4th 1060, 1124.) We review Evidence Code section 352 rulings under an abuse of discretion standard. (*People v. Jennings* (2000) 81 Cal.App.4th 1301, 1314-1315).

Here, there already was a considerable amount of evidence that Lawson was known for being violent. There was evidence that he carried a knife. He had stabbed the mother of his child. The trial court certainly could restrict this evidence and could find

that the fact that Lawson was suffering from a mental illness that caused him to be violent was cumulative to other evidence presented. His violent behavior was already before the jury. Additionally, there was little or no explanation how his mental illness related to his violent behavior and being an aggressor in the instant situation. The trial court did not abuse its discretion by excluding the evidence.

Moreover, even if the trial court erred in excluding evidence of Lawson's mental illness, that error was harmless in that it is not reasonably probable that defendant would have received a more favorable verdict had the evidence been admitted. (*People v. Espinoza* (2002) 95 Cal.App.4th 1287, 1317; *People v. Watson* (1956) 46 Cal.2d 818, 836.)

Besides the fact that there was already a plethora of evidence that the victim was violent, the evidence of first degree murder in this case was overwhelming. Defendant had a motive, in that he thought Lawson was flirting with his girlfriend. Lawson told Bray he did not want to fight defendant. After the initial argument, defendant went back to his apartment and armed himself with at least two steak knives. Defendant was described as having "black" eyes and being very angry when he came back outside. Defendant immediately pursued Lawson. Lawson originally walked toward defendant but quickly retreated. Lawson was stabbed deeply four times, and defendant escaped with a small cut. Moreover, immediately following the altercation, defendant stated, as to Lawson, "Fuck him." Defendant was clearly angered by Lawson and took his anger out on him by stabbing him four times.

Defendant claims that there was conflicting evidence of who was the aggressor in the fight and that evidence of Lawson's mental illness would have provided the needed evidence to find that Lawson was the aggressor. However, the evidence established that defendant went back to his apartment and pretended that he was going to sleep. Once his family retired, he armed himself with two or three knives, and he went straight toward Lawson and stabbed him.

Defendant claims that his right to present a defense was infringed. “As a general matter, the “[a]pplication of the ordinary rules of evidence . . . does not impermissibly infringe on a defendant’s right to present a defense.” [Citations.] 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.]” (*People v. Boyette* (2002) 29 Cal.4th 381, 427-428.)

The excluded evidence did not preclude defendant from presenting other evidence of Lawson’s violent character. Whether Lawson was violent because he heard voices telling him to be violent and aggressive or was just naturally violent is really a distinction without a difference. There was no constitutional violation.

III

ERROR ON ABSTRACT OF JUDGMENT

Defendant contends that the abstract of judgment and the minute order from sentencing incorrectly state that he was “ordered” to participate in substance abuse

counseling in prison, when the trial court stated during the oral pronouncement of sentence that it was only recommending such treatment. The People concede the error.

During oral sentencing, the trial court stated, “And the defendant is recommended to participate at Division of Adult Institutions in a counseling or educational program having a substance abuse component.” The minute order from sentencing on March 11, 2011, however, states, “Defendant to participate in a counseling or educational program having a substance abuse component through the Div of Adult Instructions (PC 1203.096).” The abstract of judgment likewise states, “Defendant to participate in a counseling or educational program having a substance abuse component through the Div of Adult Institutions (PC 1203.096).”

The oral pronouncement of judgment controls over the minute order and the abstract of judgment. (*People v. Farrell* (2002) 28 Cal.4th 381, 383, fn. 2.) Appellate courts have jurisdiction to order the corrections of abstracts of judgment that do not accurately reflect the oral judgments of sentencing courts. (*People v. High* (2004) 119 Cal.App.4th 1192, 1200.) In light of the discrepancies between the oral pronouncement and the minutes and the abstract of judgment in this case, we direct the clerk of the superior court to amend the abstract of judgment to conform with the oral pronouncement of judgment.

IV

DISPOSITION

The judgment is affirmed. The superior court is directed to issue an amended abstract of judgment and an amended sentencing minute order to reflect that the trial court recommended, rather than ordered, that defendant participate at the Division of Adult Institutions in a counseling or educational program having a substance abuse component.

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RICHLI
J.

We concur:

RAMIREZ
P. J.

HOLLENHORST
J.