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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

JOSEPH RICHMOND MORALES, JR.

Defendant and Appellant.

F063032

(Tulare Sup. Ct. No. VCF245155B)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Tulare County. Brett R. Alldredge, Judge.

J. Wilder Lee, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Michael P. Farrell, Assistant Attorney General, Carlos A. Martinez, Christina Hitomi Simpson, and Catherine Tennant Nieto, Deputy Attorneys General, for Plaintiff and Respondent.

* Before Wiseman, Acting P.J., Levy, J. and Cornell, J.

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INTRODUCTION

Appellant/defendant Joseph Richmond Morales, Jr., was convicted after a jury trial of multiple felonies based on an assaultive incident involving his former girlfriend and her family. On appeal, he contends the court improperly limited the testimony of a defense expert and also limited his own testimony, which allegedly prevented him from presenting his theory of diminished actuality to negate the specific intent required for some of the charged offenses. He also challenges the sentence that was imposed. We will remand for resentencing and otherwise affirm.

FACTS

S.G. testified that she dated defendant for about four years. By November 2010, they had broken up. S.G. had children but testified that defendant was not the father of any of her children. However, defendant thought he had children with her, and he had taken her to family court to claim custody and visitation. S.G. testified it was irrational for defendant to think they had children together, but he insisted that she was hiding his children from him. S.G. testified that defendant started to act strangely toward the end of their four-year relationship, and she told him that he needed help. At some point, she obtained a restraining order against defendant.

Around 12:45 p.m. on November 19, 2010, S.G. was at the Visalia home of her mother, R.D. M.C., R.D.'s boyfriend, was present. S.G.'s young son and another child were also there.

R.D. looked out the front window and saw defendant and his friend, Marlin Riddle, Jr., approach the house. R.D. heard a knock on the front door. The front door was open, but the screen door was closed and locked. R.D. spoke to defendant through the screen and asked what he was doing there. Defendant did not respond. Instead, defendant and Riddle broke down the screen door and entered the house.

R.D. yelled at defendant that there was a restraining order against him, and he could not be there. Defendant ignored R.D.'s warnings and grabbed her shoulders and hair. R.D. testified that defendant said he was there to see a baby, and that R.D. owed him \$100,000. R.D. knew that defendant did not have a child with S.G.

M.C. also warned defendant about the restraining order and told him to leave. Defendant punched M.C. in the face, and he fell to the floor. M.C. got up and shouted at defendant to leave. Defendant swore at M.C., and told Riddle to "get him." Defendant and Riddle pushed M.C., and Riddle held him down.

S.G. testified that defendant saw her, asked for his money, and said he wanted to see his children. S.G. told defendant that they did not have children. Defendant grabbed S.G.'s hair and knocked her to the floor. Defendant got on top of S.G., pinned back her arms, and straddled her body. He repeatedly hit her in the face with his closed fist. R.D. tried to protect S.G. and approached defendant with a chair. Defendant grabbed the chair away from R.D. He pushed and kicked R.D.'s leg and hit her chest. R.D. tried to pull defendant off S.G. Defendant grabbed R.D.'s hair and pulled her down. As he did so, however, S.G. was able to get away from him.

S.G. ran away from defendant and yelled at him not to hurt R.D. S.G. locked herself in the bathroom and tried to call 911. R.D. produced her own phone and told defendant that they were going to call the police. Defendant tried to grab the phone from R.D., and she threw it away from him so he couldn't get it. R.D. testified that defendant repeatedly swore and used foul language.

Defendant kicked down the bathroom door and discovered S.G. was trying to call 911. Defendant again used his closed fist to hit S.G. in the face and said that she wasn't "f***** calling anybody." Defendant said he wanted the money that R.D. owed him.

Riddle continued to pin down M.C. in the living room. M.C. testified there was "[a] lot of hollering and screaming and yelling," and "it was pure chaos." M.C. broke free from Riddle, went outside, and called for help.

In the meantime, S.G.'s young son used a bedroom telephone and called 911. R.D. ran to the front of the house and heard M.C. call someone for help. Defendant started to leave but paused to punch S.G. in the face with a closed fist. Defendant and Riddle emerged from the house and started to walk away.

R.D. and M.C. warned defendant that the police were on their way. Defendant was talking to someone on his cell phone. Defendant turned toward R.D. and M.C. and said, " 'You are all going to be dead tonight. You are all going to be dead.' " R.D. testified that defendant repeatedly swore and threatened them. Defendant also said he was the head of a gang. R.D. had never heard anything about defendant being in a gang, but she was frightened that defendant was calling someone to come to their house.

M.C. and S.G. also heard defendant say, " 'You guys are all going to be dead tonight,' " and M.C. heard defendant say that he was the "shot caller for some gang." Defendant also said R.D. owed him \$200,000. S.G. testified that R.D. did not owe him anything. S.G. heard defendant say that he was the head of Nuestra Familia gang, but S.G. knew that was not true.

Defendant and Riddle walked away from the area. M.C. was frustrated because the police had not arrived, so he got into his truck and followed them. M.C. saw a police car in the vicinity, flagged it down, and told the officers about the suspects.

The police caught up with defendant and Riddle and took them into custody. Defendant and Riddle did not have any visible injuries, and they did not ask for medical assistance. The police later checked defendant's record and determined that he had not served any prior prison terms, and it was unlikely that he was the head of Nuestra Familia.

R.D. suffered bruises on her arm and both legs and a sore neck. M.C. suffered a black eye. S.G.'s jaw and cheeks were swollen and bruised.

After defendant was arrested in this case, he violated the existing restraining order by calling S.G. and writing to her.

DEFENSE EVIDENCE

Marlin Riddle, Jr., testified that defendant asked if he would go with him to see S.G. because they had things to talk about. Riddle agreed and met defendant at R.D.'s house. Riddle testified they knocked on the door, and R.D. invited them in. Riddle testified that they entered the house, things happened very fast, and R.D. "went berserk" and became "hysterical" when she saw defendant.

Riddle testified that defendant never tried to attack anyone in the house, and he never saw defendant punch S.G. or the others. Instead, R.D. and M.C. tried to "blind side" defendant, and M.C. restrained defendant. R.D. was yelling and cursing at them. Riddle helped defendant break loose from M.C. M.C. attacked Riddle, and Riddle pushed him again. M.C. got up and again attacked Riddle. R.D. continued to yell and curse at them.

Riddle testified that he pleaded guilty to battery in this case even though the charge against him was "false," because he had "no choice." Riddle admitted that during the incident, he heard R.D. yell that there was a restraining order against defendant.

Dr. Bindler

Dr. Stephen Bindler testified that he interviewed defendant in jail for one hour on December 24, 2010, pursuant to a court order, to determine if he was competent to stand trial.¹ He reviewed the police reports about the incident but he did not have access to any of defendant's medical records. He did not believe that defendant was taking any

¹ Shortly after the information was filed, the court suspended criminal proceedings and appointed Dr. Bindler to determine if defendant was competent to stand trial. Dr. Bindler determined defendant was competent but suffered from a delusional disorder. Thereafter, the court again declared a doubt as to defendant's competency, suspended criminal proceedings, and appointed Dr. Middleton to determine defendant's competency. Dr. Middleton concluded defendant was not competent. The prosecution requested a jury trial on defendant's competency, after which defendant was found competent to stand trial.

medication. Dr. Bindler testified defendant was cooperative, spoke coherently and logically, and his responses seemed “as if he rehearsed what he was going to say to me.”

Based on that interview, Dr. Bindler determined defendant was competent to stand trial. However, Dr. Bindler also believed defendant possibly suffered from a delusional disorder and bipolar disorder, which were not inconsistent with his competence to stand trial.² Dr. Bindler did not recommend that defendant receive any kind of medication because his delusions were isolated, and he did not need treatment.

Dr. Bindler explained that a delusional disorder was a “pretty rare diagnosis,” and such a disorder could only be fully diagnosed through psychiatric testing. The principal characteristic of a delusional disorder was that “the person has a set belief or series of beliefs that are not based on anything real,” confirmable, or rational. “They are false beliefs that are closely held and ... not amenable to reason or discussion and not influenced by demonstrations of any kind that they might be impossible.”

Dr. Bindler testified that a person with a delusional disorder could be highly functional in daily life, and his outward behavior would not be bizarre, but that person would still have “really weird ideas.” Dr. Bindler testified that a delusional disorder could be treated with medication to minimize the effect on a person’s behavior.

² During pretrial motions in limine, defense counsel advised the court that defendant would rely on the defense of diminished actuality, based on defendant’s delusions, to negate the specific intent required for the charged offenses of burglary, criminal threats, and dissuading a witness. In support of that defense, defense counsel intended to call Dr. Bindler as a trial witness, based on the report he prepared during the competency proceedings, where he concluded that defendant suffered from a delusional disorder. The prosecutor was concerned about the admissibility of Dr. Bindler’s testimony and report, since he was appointed to examine defendant pursuant to the competency proceedings. Defense counsel replied that defendant would waive any objections to Dr. Bindler’s testimony even though it was based on the competency evaluation. Defense counsel further conceded that Dr. Bindler could only testify about his opinion regarding defendant’s mental state at the time of the competency examination, but not that defendant was incapable of forming intent at the time of the charged offenses.

“Q. ... If someone really believes that they have children and they don't and you are trying to convince them, hey you don't have kids, can you do that? Can you convince some one who really believes a fact that just isn't there?”

“A. Well that is the definition of a delusion and that ... it is a belief that is false that you can't persuade the person that the belief is false. So if a person has a delusional belief there is no way that you can convince them that their belief is false.”

Dr. Bindler explained that once a person has a delusion, it may become less prominent in that person's thinking but it does not necessarily go away. If that person was confronted with the facts that he did not “have children” and he was not “the head of the Nuestra Familia,” that person will reply that “you are full of it and you don't know what you are talking about because they know what they know.”

Defense counsel asked a hypothetical question based on a situation where someone brought a woman into court and claimed they had children together, when they did not have children together, and whether that act would be consistent with the person having a delusional disorder. Dr. Bindler agreed, and explained that the person would be asserting “an idea that they believe and they are doing that which a person who believes that would do,” that the person “firmly and convincingly believes that they have children” and will do anything to establish they have children. If a person claimed he was the head of a gang, that person might know “it is a crock and they are saying it for the purpose of scaring the other person,” or the person could believe that he was really the head of Nuestra Familia and he could not be convinced otherwise.

On cross-examination, the prosecutor asked Dr. Bindler about a hypothetical situation based on a person's belief that he had children and went to court for custody, but that person did not actually have children. Dr. Bindler explained that the person could have the delusion that he had children, while taking the apparent rational step of going to court to get custody. A person could also have the delusion that someone owed him money, and take the rational step of trying to get that person to repay him.

Defendant's trial testimony

Defendant testified that S.G. was his former girlfriend. He knew that S.G. had a restraining order against him. He also knew S.G. had children, but he did not know if he was the biological father of any of her children. He had seen S.G. pregnant on several occasions, but he did not know if he was the father. Defendant testified that S.G. had told him that he was the father of some of her children, but he never saw any birth certificates and never took a blood test.

Defendant further testified that he had previously taken S.G. to family court because S.G. told defendant they had children together, and he had seen the children with her. Defendant was "tired of all the innuendos" and S.G.'s paternity claims and decided to go to court. He represented himself, and asked the court to determine if he was the father. S.G. denied that she had children with him. Defendant testified the court ruled that he did not have any proof of paternity and refused to allow custody or visitation with any of S.G.'s children.

Defendant testified that S.G. called him four times in the days prior to the incident in this case. She wanted defendant to meet her at the residence where she was staying with her current boyfriend. Defendant refused and suggested they meet at her mother's house. Defendant asked S.G. if he could bring Riddle with him. S.G. asked why, and defendant said he just wanted to bring someone because they were always arguing. S.G. said okay.³ S.G. said that M.C. might be there and asked defendant if he was okay with that. Defendant said he did not have a problem with that. However, defendant warned

³ On direct examination from defense counsel, defendant started to testify about what S.G. said during their telephone calls. The prosecutor raised a hearsay objection, and the court sustained the objection. On cross-examination, however, the prosecutor asked defendant about his telephone conversations with S.G., and defendant testified about S.G.'s statements without objection.

S.G. to tell R.D. that he was bringing Riddle, an African-American, because M.C. did not like African-Americans.

Defendant testified he went to R.D.'s house because he was invited by S.G., but he did not want to go there. S.G. wanted to talk and reconcile their differences. Defendant brought Riddle with him because he felt uncomfortable and wanted someone else present.

Defendant testified he also went to R.D.'s house to collect money. He believed S.G. owed him a few hundred dollars that he won at a bingo palace. He asked S.G. for the money several months earlier, and S.G. said she was holding it for him.

Defendant testified he did not break into R.D.'s house to commit a felony, steal anything, or beat up anyone. He did not touch M.C. first, and he did not tell Riddle to get M.C. He did not threaten to kill anyone. He did not call anyone and tell them to come over and beat up someone. However, he might have made inappropriate comments that could have been considered as threats.

Defendant testified that when he arrived at the house, he knocked on the door and heard several different voices inside, which he thought were S.G., R.D., and M.C. Defendant was going to testify about what S.G. and R.D. said. The court sustained the prosecutor's hearsay objection.⁴

Defendant testified he opened the screen door and entered the house because S.G. and R.D. invited him in. Defendant felt like he had permission to enter. He walked into the dining room and S.G. smiled at him. Defendant testified that R.D. asked him what was going on. Defendant started to testify about what R.D. said, but the court sustained the prosecutor's hearsay objection.

⁴ On appeal, defendant contends the court improperly limited his trial testimony by preventing him from testifying about what he perceived S.G., R.D., and M.C. said to him during the incident. In issue I, *post*, we will address defendant's evidentiary contentions.

Defendant testified that he thought he saw blood on the kitchen counter and floor, and asked S.G. what it was. S.G. said it was fake blood. Defendant admitted that R.D. told him that he should not be there because of the restraining order, but he remained in the house.

Defendant testified he did not attack, hit, or punch R.D., M.C., or S.G. Defendant testified that M.C. hit him, grabbed his shoulder, and pushed him to the floor. M.C. also used racial slurs against Riddle, and “man handle[d]” Riddle for 12 to 15 minutes. Defendant told M.C. to stop, and M.C. continued to use racial slurs at Riddle.

Defendant testified that M.C. told defendant to hit him. Defendant refused, but he pushed M.C. away because he was just defending himself. Riddle grabbed M.C. in a bear hug to stop him, and Riddle did not hit M.C.

Defendant testified that R.D. also told M.C. to stop, because it was her choice to have them in the house. M.C. ignored her. S.G. got on her knees and begged defendant to go into the bedroom so they could have a “more intense conversation there.”

Defendant followed S.G. into the bedroom and asked her “where her kids were” because he noticed a child seat on the floor. Defendant started to testify about what S.G. said, and the court sustained a hearsay objection. Defendant testified that he talked with S.G. in the bedroom for a brief minute, and defendant thought S.G. wanted to have sex with him. Defendant refused and walked out of the bedroom.

Defendant testified S.G. asked him to enter R.D.’s bedroom, and he followed her into the master bathroom. S.G. locked the bathroom door and “started moaning and screaming real loud.” Defendant was scared and tried to leave, but the door was locked. He kicked out the bathroom door, and the door hit S.G. in the face. S.G. suffered a “little red crease” and bruising on her forehead. Defendant grabbed her arm and asked if she was okay.

Defendant testified they went into the hallway, and S.G. grabbed defendant’s phone and tried to call someone. He thought she was calling her current boyfriend, and

he yanked the phone out of her hand. Defendant testified he never tried to stop her from calling the police.

Defendant testified he was not the head of Nuestra Familia and never made that claim. He never threatened the lives of S.G., R.D., and M.C. However, defendant admitted he assaulted S.G. when “[s]he hit me several times almost rendering me unconscious 3 to 4 times in the left side of my jaw and as a reaction, not as an attacking method of hitting her, it was more of a reaction which I shouldn’t have done.” Defendant testified he hit S.G. three or four “different individual times on the tip of her chin which is in the mouth area after she had punched me 3 or 4 times in the face.” Defendant also admitted that he physically touched R.D. Defendant testified that R.D. hit him first, and he grabbed R.D. and tried to push her away.

It was stipulated that defendant was convicted of the misdemeanor infliction of corporal injury to a spouse or cohabitant in 2003.

REBUTTAL EVIDENCE

S.G. testified that she never spoke to defendant in the days prior to the incident, she never invited defendant to R.D.’s house, she never asked to reconcile with him, she did not owe him any money, she did not ask defendant to go into the bedroom or bathroom with her, and she never punched defendant in the face. S.G. further testified that M.C. never used racial slurs against defendant or Riddle.

THE CHARGES, CONVICTIONS, AND SENTENCE

Defendant was charged with count 1, first degree burglary (Pen. Code,⁵ § 459), counts 2, 3, and 4, criminal threats against, respectively, S.G., M.C., and R.D. (§ 422); counts 5 and 6, assault by means likely to cause great bodily injury on, respectively, S.G. and R.D. (§ 245, subd. (a)(1)); count 7, corporal injury to a former cohabitant, S.G.

⁵ All further statutory citations to the Penal Code unless otherwise indicated.

(§ 273.5, subd. (a)); counts 8 and 9, dissuading a witness, respectively, S.G. and R.D. (§ 136.1, subd. (b)(1)); and count 10, misdemeanor vandalism (§ 594, subd. (a)).

After a jury trial, defendant was found not guilty of count 3, criminal threats as to M.C., and count 9, dissuading a witness as to R.D. As to count 6, assault by means likely to cause great bodily injury on R.D., he was convicted of the lesser included offense of simple assault (§§ 240, 241, subd. (a)). He was found guilty of the remaining charges.

The court sentenced defendant to six years four months in prison: the midterm of four years for count 1; consecutive terms of eight months (one-third the midterms) for counts 2 and 4, a consecutive term of one year (one-third the midterm) for count 5, and concurrent terms for counts 6, 7, 8, and 10. The court ordered a \$7,200 restitution fine pursuant to section 1202.4, subdivision (b), and stayed a \$7,200 restitution fine under section 1202.45.

DISCUSSION

I. The court's evidentiary rulings

Defendant contends the court's evidentiary rulings violated his due process rights and prevented him from presenting his diminished actuality defense. Defendant asserts the court improperly sustained the prosecutor's hearsay objections to portions of Dr. Bindler's trial testimony and to his own trial testimony, which resulted in the exclusion of relevant evidence as to defendant's alleged delusional beliefs about what the alleged victims said to him. Defendant asserts that the evidence was not offered for the truth of the matter, but to support his diminished actuality defense, that his delusions made him believe that the victims said certain things to him, when they did not actually make the statements he imagined.

A. Evidentiary rulings

The trial court's evidentiary rulings are reviewed under the abuse of discretion standard. (*People v. Fuiava* (2012) 53 Cal.4th 622, 667-668; *People v. Cole* (2004) 33 Cal.4th 1158, 1195.) To prevail under this standard, a defendant must show the trial

court exercised its discretion in an arbitrary, capricious, or patently absurd manner that resulted in a manifest miscarriage of justice. (*People v. Rodriguez* (1999) 20 Cal.4th 1, 9-10; *People v. Guerra* (2006) 37 Cal.4th 1067, 1113, overruled on other grounds in *People v. Rundle* (2008) 43 Cal.4th 76, 151.)

As a general matter, the application of ordinary rules of evidence does not infringe upon a criminal defendant's rights to due process, including the right to present a defense. (*People v. Boyette* (2002) 29 Cal.4th 381, 427-428; *People v. Cudjo* (1993) 6 Cal.4th 585, 611.) “ ‘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 evidence.’ ” (*People v. Boyette, supra*, 29 Cal.4th at p. 428.)

B. Diminished actuality, instructions, argument

Defendant relied on the theory of “diminished actuality,” based on his alleged delusional disorder. “To support a defense of ‘diminished actuality,’ a defendant presents evidence of voluntary intoxication or mental condition to show he ‘actually’ lacked the mental states required for the crime. [Citation.]” (*People v. Clark* (2011) 52 Cal.4th 856, 880, fn. 3.) “[T]he jury may generally consider evidence of voluntary intoxication or mental condition in deciding whether defendant actually had the required mental states for the crime. [Citations.]” (*People v. Steele* (2002) 27 Cal.4th 1230, 1253.)

“A delusion is defined as ‘something that is falsely or delusively believed or propagated ... as ... a false conception and persistent belief unconquerable by reason in something that has no existence in fact [or] a false belief regarding the self or persons or objects outside the self that persists despite the facts....’ [Citation.]” (*People v. Mejia-Lenares* (2006) 135 Cal.App.4th 1437, 1454, fn. 22.) “A person acting under a delusion is not negligently interpreting actual facts; instead, he or she is out of touch with reality. That may be insanity, but it is not a mistake as to any fact.” (*Id.* at pp. 1453-1454.) “To allow a true delusion—a false belief with no foundation in fact—to form the basis of an

unreasonable-mistake-of-fact defense erroneously mixes the concepts of a normally reasonable person making a genuine but unreasonable mistake of fact (a reasonable person doing an unreasonable thing), and an insane person. Thus, while one who acts on a delusion may argue that he or she did not realize he or she was acting unlawfully as a result of the delusion, he or she may not take a delusional perception and treat it as if it were true for purposes of assessing wrongful intent.” (*Id.* at p. 1456.)

The jury in this case was instructed with both concepts discussed in *People v. Mejia-Lenares*, *supra*, 135 Cal.App.4th 1437: mistake of fact and mental impairment. The jury received CALCRIM No. 3406, as to whether mistake of fact negated the specific intent required for burglary (count 1), criminal threats (counts 2, 3 & 4) and dissuading a witness (counts 8 & 9).

“The defendant is not guilty of Counts 1, 2, 3, 4, 8 and 9 if he did not have the intent or mental state required to commit the crime because he reasonably did not know a fact or mistaken belief of a fact.

“If the defendant’s conduct would have been lawful under the facts as he believed them to be he did not commit Counts 1, 2, 3, 4, 8 and 9.

“If you decide that the defendant believed that he had permission to enter the house he did not have the specific intent or mental state required to convict him in Counts 1, 2, 3, 4, 8 and 9.

“If you have a reasonable doubt about whether the defendant had the specific intent or mental state required for Counts 1, 2, 3, 4, 8 and 9[,] you must find him not guilty of that crime.”

The jury also received CALCRIM No. 3428, as to whether the defendant had a mental impairment to negate the specific intent required for the same offenses:

“You have heard evidence that the defendant may have suffered from a mental disorder. You may consider this evidence only for the limited purpose of deciding whether at the time of the charged crime the defendant acted with the intent or mental state required for that crime.

“The People have the burden of proving beyond reasonable doubt that the defendant acted with the required intent or mental state specific

intent as described to you. If the People have not met this burden you must find the defendant not guilty of Counts 1, 2, 3, 4, 8, and 9.”

In his closing argument, defense counsel relied on Dr. Bindler’s testimony and argued that defendant suffered from a delusional disorder which constituted a mental impairment. Defense counsel argued that defendant believed S.G., R.D., and M.C. said and did certain things to him, and his delusional disorder negated the specific intent required for most of the charged offenses.

With these points in mind, we turn to defendant’s complaints that the court improperly excluded evidence which prevented him from presenting his diminished actuality defense to the jury.

C. Dr. Bindler’s trial testimony

As set forth *ante*, Dr. Bindler testified for the defense that he examined defendant pursuant to a court order to determine whether he was competent to stand trial. Dr. Bindler testified that based on that examination, he concluded defendant was competent but he suffered from a delusional disorder and bipolar disorder, and he extensively explained delusional disorders based on hypothetical questions.

On appeal, defendant contends the court erroneously limited Dr. Bindler’s testimony on two points. Defendant’s first assignment of error is based on a sequence of questions during direct examination. Defense counsel asked Dr. Bindler if, based on talking to defendant for one hour, he believed that defendant was suffering from delusional disorder. The prosecutor objected as going beyond the scope. The court replied that Dr. Bindler could testify about what he included in his competency report to the court, but not beyond that. Dr. Bindler testified that the report he prepared for the court concluded that it was likely that defendant had a delusional disorder.

Defendant’s second complaint is based on defense counsel’s question to Dr. Bindler to explain what he meant in his report, where he diagnosed defendant with “mixed type grandiose prosecutorial” delusions. Dr. Bindler explained that some people

think that others are out to get them, and that defendant made comments “about children being taken away, about his relationship to” The prosecutor objected to any statements made by defendant. The court sustained the objection and ordered the references to defendant’s statements stricken.

The court’s evidentiary rulings on these two points did not prevent defendant from presenting his diminished actuality defense. By the time defense counsel asked Dr. Bindler about his opinion, Dr. Bindler had already repeatedly testified that, based upon his one-hour examination of defendant in December 2010, he had concluded that defendant was competent to stand trial, but that he suffered from a delusional disorder. Dr. Bindler extensively explained the meaning of a delusional disorder and responded to hypothetical questions that were specifically based on the two delusional allegations, which defendant had made against S.G.—that he fathered some of her children, and that S.G. or Dodson owed him money. (See, e.g., *People v. Vang* (2011) 52 Cal.4th 1038, 1044-1045 [hypothetical questions to an expert “must be rooted in the evidence of the case being tried”].) Indeed, the prosecution witnesses testified that defendant repeatedly claimed that either S.G. or R.D. owed him money, and that he was the father of S.G.’s children. In response to the hypothetical questions, Dr. Bindler explained that someone could have a delusion about paternity and a debt, and take the seemingly rational steps of going to court to claim paternity, and trying to get a party to repay the debt.

Thus, to the extent the court may have erroneously limited Dr. Bindler’s testimony about what defendant said to him during the interview, the nature and circumstances of defendant’s purported delusions were extensively discussed throughout the trial and in the course of Dr. Bindler’s testimony. Even were we to assume the trial court erred by excluding the proffered evidence, prejudice is lacking under either the state or federal standards of review. (*People v. Brady* (2010) 50 Cal.4th 547, 559; *Chapman v. California* (1967) 386 U.S. 18, 24; *People v. Watson* (1956) 46 Cal.2d 818, 836.)

D. Defendant's trial testimony

Defendant further argues that the court improperly limited his own trial testimony when it sustained the prosecutor's hearsay objections about statements that he believed were made by S.G., R.D., and M.C., and prevented him from presenting his defense of diminished actuality.

Defendant complains that the court's erroneous hearsay rulings prevented the jury from hearing about defendant's alleged delusional perceptions about what S.G., R.D., and/or M.C. said as to the following specific points: S.G. asked defendant to visit her; S.G. and R.D. invited defendant to enter the house; M.C.'s racial slurs at defendant and Riddle; S.G.'s response to defendant's questions about the children's whereabouts; S.G.'s statements to defendant when they were in the bathroom; S.G.'s statements to defendant when he asked for his cell phone back; and defendant's perceptions about the family court proceedings he initiated against S.G.

As set forth in the factual statement, *ante*, the court sustained several hearsay objections made by the prosecutor when defendant attempted to testify about certain statements made by S.G., R.D., and M.C. At that time, defendant argued the statements were admissible as nonhearsay state of mind. This argument was erroneous. “[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.” (*People v. Ortiz* (1995) 38 Cal.App.4th 377, 389, italics added.)

The court properly rejected defendant's reliance on nonhearsay state of mind. Defendant's proposed testimony about what he *believed* S.G., R.D., and/or M.C. said to him based upon his alleged delusions, was not admissible as nonhearsay state of mind because it was not relevant to the state of mind of the *declarants*—S.G., R.D., and/or M.C.

However, defendant's testimony about what *he believed* the three victims said to him, and why he acted in a certain way, might have been admissible for a different nonhearsay purpose:

“This is an example of ‘ ‘one important category of nonhearsay evidence—evidence of a declarant’s statement that is offered to prove that the statement imparted certain information to the hearer and *that the hearer, believing such information to be true, acted in conformity with that belief.* The statement is not hearsay, since it is the hearer’s reaction to the statement that is the relevant fact sought to be proved, not the truth of the matter asserted in the statement.’ ’ [Citations.]” (*People v. Livingston* (2012) 53 Cal.4th 1145, 1162, italics added.)

It is a close question as to whether defendant's testimony would have been admissible under this category of nonhearsay evidence. Defendant argues that based on his delusional disorder, his testimony on these points was necessary to demonstrate that he sincerely held the *false belief* that the declarants made certain statements, and that he actually believed his delusions were true—not that the declarants *in fact* made those statements.

Even if the court abused its discretion when it ruled on the hearsay objections to defendant's testimony, however, the error is harmless under any standard. While defendant may not have testified to the precise words used by the parties, he still testified to the critical points that he claims formed the basis for his diminished actuality defense: Defendant testified to his belief that S.G. called and invited him to R.D.'s house because she wanted to reconcile; defendant testified that when he arrived at R.D.'s house, he heard the voices of R.D. and S.G., that he did not kick down the screen door, that he entered the house, and that he believed he had permission to enter the house; defendant testified that he already knew M.C. did not like Riddle because of racial issues, that M.C. used racial slurs against Riddle, and that M.C. hit him first; defendant testified that he believed S.G. wanted to have sex with him when they were in the bathroom and bedroom; defendant testified that he believed S.G. was calling her current boyfriend

when he knocked her phone away from her, and that he did not think she was calling the police; and that defendant initiated the family court proceedings because he believed he was the father of S.G.'s children.

Moreover, defendant's attempt to rely on a diminished actuality defense was undermined by Riddle's testimony. There is no evidence that Riddle also suffered from any type of mental impairment or delusional disorder. While defendant tried to claim that he had the delusional belief that he was invited into R.D.'s house, Riddle testified that they knocked at the door and R.D. invited them to enter. While defendant tried to claim that he had the delusional belief that M.C. hit him first, Riddle testified that defendant never tried to attack anyone in the house, R.D. and M.C. assaulted defendant, and M.C. repeatedly attacked Riddle.

We thus conclude that even if the court erroneously limited defendant's testimony on certain points, the jury still heard evidence as to defendant's beliefs on these precise issues. In addition, defendant's attempt to rely on his purported delusional disorder to negate his specific intent to commit burglary, criminal threats, and dissuading a witness, were undermined by Riddle's testimony about his own perceptions, which were apparently not affected by any type of mental impairment. Riddle's testimony supported defendant's version of events, and led to the inference that both defendant and Riddle were not relying on a delusional version of events, but contradicting the testimony of S.G., R.D., and M.C. as to every aspect of the assaultive incident. Finally, defendant was not prevented from presenting a defense since the jury was also instructed on mistake of fact to negate his specific intent.

II. Sentencing

Defendant contends, and the People concede, that the matter must be remanded for resentencing because certain terms should have been stayed pursuant to section 654, and that the court must recalculate the restitution fines imposed in this case. We further note

that the abstract of judgment erroneously states that defendant was sentenced to one month, instead of one year, for count 5.

DISPOSITION

The judgment of conviction is affirmed. Defendant's sentence is vacated and the matter remanded for resentencing.