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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THE PEOPLE,

Plaintiff and Respondent,

v.

JOEL CORONADO,

Defendant and Appellant.

B275520

(Los Angeles County  
Super. Ct. No. SA089849)

APPEAL from a judgment of the Superior Court of  
Los Angeles County, H. Jay Ford III, Judge. Affirmed.

Mark D. Lenenberg, under appointment by the Court of  
Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief  
Assistant Attorney General, Lance E. Winters, Senior Assistant  
Attorney General, Jonathan M. Krauss and Abtin Amir, Deputy  
Attorneys General, for Plaintiff and Respondent.

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## INTRODUCTION

A jury convicted Joel Coronado of second degree murder of one victim, assault with a semiautomatic firearm on another victim, and possession of a firearm by a felon. He contends that the trial court erroneously instructed the jury on assault with a semiautomatic firearm and on self-defense and that the cumulative effect of the errors was prejudicial. We affirm.

## FACTUAL AND PROCEDURAL BACKGROUND

### A. *Party*

On February 14, 2015 Bernadette Ingram hosted a Valentine's Day gathering at her apartment in Mar Vista Gardens. The guests included Bernadette's boyfriend, Jesse Drumgole; her brother, Daryl Ingram; Daryl's wife; Bernadette's sister, Teresa Ingram; Teresa's boyfriend, Calvin Johnson; and Teresa's son, Randy Wheeler.<sup>1</sup> Most of the guests, including Johnson, enjoyed a day of eating and drinking. As the evening progressed, the music got louder.

The music from Bernadette's apartment annoyed her next door neighbor, Angelica Coronado-Acorda. Coronado-Acorda banged on the wall to signal to Bernadette and her guests to turn the volume down. Some of Bernadette's guests heard the banging on the wall and turned the volume of the music down. But Coronado-Acorda did not notice any change in the volume of the

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<sup>1</sup> Because some of the witnesses share the same last name, we refer to Bernadette Ingram and Teresa Ingram by their first names.

music. Unable to sleep, she texted her brother, Joel Coronado, to “shut these niggers up.”

Coronado was a member of the Culver City Boyz, a criminal street gang in the Mar Vista Gardens area. He was sleeping at his girlfriend’s apartment when he received the text message from his sister at 11:00 p.m., and he left the apartment to go help her. When he walked out the front door, his ex-wife, who lived across the street, told him to be careful because she had heard gunshots earlier that day. Coronado retrieved his nine-millimeter, semiautomatic firearm from his car and went to Bernadette’s apartment.

When he arrived, he put his face up to Bernadette’s screen door and said in a loud voice, “Excuse me, can you guys put the music down. My people are trying to sleep.” According to several of the guests, Coronado banged on the screen door and appeared aggressive. Drumgole wanted to diffuse the situation, so he walked outside to talk to Coronado about why he was disturbing their gathering.

Bernadette’s guests were upset by the way Coronado had disrupted their party. Bernadette was angry and wanted to go outside to talk to him. Teresa held Bernadette to keep her from leaving the apartment, but Bernadette broke free and ran outside to yell at Coronado. When Johnson said he would follow Bernadette, Teresa tried unsuccessfully to keep him inside. Teresa and her son, Wheeler, went outside to bring Johnson back into the apartment.

#### B. *Shots*

Coronado, Drumgole, Bernadette, Johnson, Wheeler, and Teresa were all outside. Coronado and Drumgole had finished

talking and Coronado had started to walk away, but he turned back around when Johnson came toward him and said, “Fuck what you’re talking about.” Coronado replied, “Fuck what I’m talking about?” Johnson repeated, “Fuck what you’re talking about.” Coronado, who testified at trial, stated he turned his back but, looking over his shoulder, saw Drumgole giving Johnson a pistol. No one else, however, observed Drumgole give Johnson a gun or saw a gun in Johnson’s hands.

Coronado pulled his gun out of his waistband and spun around. Bernadette and Drumgole, realizing the sudden danger, began running back to the apartment. Referring to Johnson, Teresa said, “Please don’t shoot him,” and she heard Johnson say, “Oh, shit.” As Johnson turned toward the apartment, Coronado shot him at least four times: in his back, the back of his left shoulder, the back of his left arm, and his thigh. The wounds were fatal.

Johnson fell to the sidewalk, and Teresa dropped down beside him. Wheeler saw Coronado point his gun at Teresa, and Wheeler yelled, “You better not shoot my mom, mother fucker.” Coronado turned to Wheeler and shot him in the foot. Coronado testified he did not shoot Wheeler and believed Wheeler injured himself by stepping on something.

Coronado left and threw his gun into a creek. He walked to his car and returned to his girlfriend’s apartment. When his girlfriend asked him about the gunshots she had heard, he said, “I have no idea what happened.” He called his sister several times and sent her a text message telling her to delete their earlier text message exchange and to erase her phone. The next morning, Coronado left Mar Vista to stay with family members,

first in Cudahy and then in Banning, where he stayed for a few weeks until the police arrested him.

C. *Trial*

The People charged Coronado with first degree murder in violation of Penal Code section 187, subdivision (a) (count 1), assault with a semiautomatic firearm in violation of Penal Code section 245, subdivision (b) (count 2), and possession of a firearm by a felon in violation of Penal Code section 29800, subdivision (a)(1) (count 3). As to count 1, the People alleged Coronado personally used a firearm within the meaning of Penal Code section 12022.53, subdivision (b), personally and intentionally discharged a firearm within the meaning of Penal Code section 12022.53, subdivision (c), and personally and intentionally discharged a firearm causing great bodily injury or death within the meaning of Penal Code section 12022.53, subdivision (d). As to count 2, the People alleged Coronado personally used a handgun within the meaning of Penal Code section 12022.5, subdivision (a). The People also alleged Coronado committed all three offenses for the benefit of, at the direction of, or in association with a criminal street gang with the specific intent to promote, further, or assist in criminal conduct by the gang, within the meaning of Penal Code section 186.22, subdivision (b)(1)(C).

At trial, Detective Douglas Kirkland testified as an expert on the operation of a semiautomatic firearm. Detective Kirkland explained that a semiautomatic pistol is a firearm that automatically loads the chamber but requires the user to pull the trigger to discharge a single bullet and reload another. Detective Kirkland brought a revolver and a semiautomatic pistol to court

to demonstrate the technical differences to the jury. Detective Kirkland analyzed the bullets and expended casings from the crime scene and testified they had to have been fired from a semiautomatic pistol.

Coronado testified he knew “the difference between a semiautomatic firearm and a revolver,” and every gun he purchased was a semiautomatic firearm. He stated the weapon he carried on February 14, 2015 was a nine-millimeter, semiautomatic pistol. Coronado explained how his semiautomatic pistol operated, including that pulling the trigger fires a single bullet and reloads another. In his closing argument, counsel for Coronado admitted Coronado had used a semiautomatic firearm, the same type of weapon used by police officers, but argued Coronado shot Johnson in self-defense. The prosecutor argued Coronado shot and killed Johnson because Johnson disrespected him.

The trial court instructed the jury pursuant to CALCRIM No. 875: “The defendant is charged in count 2 with assault with a semiautomatic pistol in violation of Penal Code section 245. To prove the defendant is guilty of this crime, the People must prove that, number 1, the defendant did an act with a semiautomatic pistol that by its nature would directly and probably result in the application of force to a person; number 2, the defendant did that act willfully; number 3, when the defendant acted, he was aware of facts that would lead a reasonable person to realize that his act by its nature would directly and probably result in the application of force to someone; number 4, when the defendant acted, he had the present ability to apply force with a semiautomatic firearm to a person; and number 5, the defendant did not act in self-defense.” The trial court also instructed the

jury with CALCRIM No. 2511 that “a firearm is any device designed to be used as a weapon, from which a projectile was expelled or discharged from a barrel by the force of an explosion or other form of combustion.” The trial court did not, however, read the bracketed portion of CALCRIM No. 875 that states: “A semiautomatic pistol extracts a fired cartridge and chambers a fresh cartridge with each single pull of the trigger.” Counsel for Coronado did not object to the instructions on assault with a semiautomatic weapon or request any additional instructions.

The trial court instructed the jury on self-defense: “The defendant is not guilty of murder if he was justified in killing someone in self-defense. The defendant acted in lawful self-defense if, number one, the defendant reasonably believed that he was in imminent danger of being killed or suffering great bodily injury; number two, the defendant reasonably believed that the immediate use of deadly force was necessary to defend against that danger; and number three, the defendant used no more force than was reasonably necessary to defend against that danger.” The court also instructed the jury pursuant to CALCRIM No. 3472, “contrived self-defense” (*People v. Ramirez* (2015) 233 Cal.App.4th 940, 957): “A person does not have the right to self-defense if he or she provokes a fight or quarrel with the intent to create an excuse to use force.” Counsel for Coronado did not object to this instruction.

#### D. *Verdict*

The jury found Coronado not guilty of first degree murder but guilty of second degree murder. The jury also found Coronado guilty of assault with a semiautomatic firearm and possession of a firearm by a felon. The jury found true all

allegations except the gang allegation. The trial court sentenced Coronado to an aggregate prison term of 50 years to life.<sup>2</sup> Coronado timely appealed.

## DISCUSSION

### A. *The Trial Court Did Not Have a Sua Sponte Duty To Read a Bracketed Portion of CALCRIM No. 875*

The trial court instructed the jury on the elements of assault with a semiautomatic pistol pursuant to CALCRIM No. 875, and it gave the jury the definition of a firearm in CALCRIM No. 2511. The trial court also instructed the jury pursuant to CALCRIM No. 200, “Words and phrases not specifically defined in these instructions are to be applied in their ordinary, everyday meanings.” Coronado did not request, and the court did not give, the definition of a semiautomatic pistol in one of the bracketed portions of CALCRIM No. 875. Coronado argues the trial court had a sua sponte duty to instruct the jury with the definition of a semiautomatic pistol in the bracketed portion of CALCRIM No. 875, and the court’s failure to give this part of the instruction lessened the prosecution’s burden to prove all of the elements of the crime beyond a reasonable doubt.

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<sup>2</sup> On count 1 the court sentenced Coronado to a term of 15 years to life, plus 25 years to life for the firearm enhancement under Penal Code section 12022.53, subdivision (d). On count 2 the court sentenced Coronado to a consecutive term of 10 years, comprised of the middle term of six years plus four years for the firearm enhancement under Penal Code section 12022.5, subdivision (a). On count 3 the court imposed a concurrent term of two years.



The trial court has duties to instruct the jury on general principles of law applicable to the case (*People v. Souza* (2012) 54 Cal.4th 90, 115) and to ensure the jury instructions provide a complete and accurate statement of the law (*People v. Ramirez, supra*, 233 Cal.App.4th at p. 949). “An appellate court reviews the wording of a jury instruction de novo’ [citation] and determines whether ‘the instructions are complete and correctly state the law.’” (*People v. Delacerda* (2015) 236 Cal.App.4th 282, 288.)

The trial court did not have a sua sponte duty to define “semiautomatic pistol.” “When a word or phrase “is commonly understood by those familiar with the English language and is not used in a technical sense peculiar to the law, the court is not required to give an instruction as to its meaning in the absence of a request.” [Citations.] [Citation.] It is only when a word or phrase has a ‘technical, legal meaning’ that differs from its ‘nonlegal meaning’ that the trial court has a duty to clarify it for the jury.” (*People v. Jennings* (2010) 50 Cal.4th 616, 670 (*Jennings*)). “A word or phrase having a technical, legal meaning requiring clarification by the court is one that has a definition that *differs* from its nonlegal meaning. [Citation.] Thus, . . . terms are held to require clarification by the trial court when their statutory definition differs from the meaning that might be ascribed to the same terms in common parlance.” (*People v. Estrada* (1995) 11 Cal.4th 568, 574-575.)

“Semiautomatic pistol” does not have a technical, legal meaning different from its common, nonlegal meaning. As noted, CALCRIM No. 875 defines a semiautomatic pistol as follows: “A semiautomatic pistol extracts a fired cartridge and chambers a fresh cartridge with each single pull of the trigger.” A dictionary

definition of a semiautomatic pistol is a pistol “able to fire repeatedly through an automatic reloading process but requiring release and another pressure of the trigger for each successive shot.” (Merriam-Webster English Dict. Online <https://www.merriam-webster.com/dictionary/semiautomatic> [as of Sept. 1, 2017].) The definitions are essentially the same. (See, e.g., *People v. Wardell* (2008) 162 Cal.App.4th 1484, 1495-1496 [the phrase “displays a firearm in a menacing manner” is commonly understood and does not have a technical meaning peculiar to the law].) Therefore, the trial court did not have a sua sponte duty to define the term by giving the bracketed portion of CALCRIM No. 875 defining a semiautomatic pistol.

B. *Any Error in Giving CALCRIM No. 3472 Was Harmless*

As noted, as part of the instructions on self-defense, the trial court instructed the jury with CALCRIM No. 3472, which provides: “A person does not have the right to self-defense if he or she provokes a fight or quarrel with the intent to create an excuse to use force.” Coronado contends the trial court erred by giving this instruction because the evidence did not support it.

Any error in giving the instruction, however, was harmless. (See *People v. Eulian* (2016) 247 Cal.App.4th 1324, 1334-1335 [“[i]f CALCRIM No. 3472 was erroneously given because it was irrelevant under the facts, the error is merely technical and not grounds for reversal”].) Instructional error is subject to the *Watson* harmless error standard. (*People v. Gamache* (2010) 48 Cal.4th 347, 376; see *People v. Watson* (1956) 46 Cal.2d 818, 836 (*Watson*).) We review the jury instructions as a whole and ask whether there is a “reasonable likelihood” the jury applied the

instructions in the manner suggested by the appellant. (*People v. Jablonski* (2006) 37 Cal.4th 774, 831.) We also ““assume that the jurors are intelligent persons and [are] capable of understanding and correlating all jury instructions which are given.”” (*People v. Spaccia* (2017) 12 Cal.App.5th 1278, 1287.)

The trial court instructed the jury to ignore instructions that did not apply: “Some of these instructions may not apply. Do not assume just because I give a particular instruction that I am suggesting anything about the facts. After you’ve decided what the facts are, you follow the instructions that do apply to the facts as you find them.” We presume the jury disregarded an instruction if they did not find evidence to support its application. (See *People v. Frandsen* (2011) 196 Cal.App.4th 266, 278 [“assertion that no substantial evidence supported [CALCRIM No. 3472] does not warrant our finding reversible error because the jury is presumed to disregard an instruction if the jury finds the evidence does not support its application”]; *People v. Olguin* (1994) 31 Cal.App.4th 1355, 1381 [giving the CALJIC predecessor to CALCRIM No. 3472 was harmless where “the jurors were specifically instructed they were to ‘[d]isregard any instruction which applies to facts determined by you not to exist”], disapproved on another ground in *People v. Cromer* (2001) 24 Cal.4th 889, 901, fn. 3.) As the Supreme Court stated in *People v. Crandell* (1988) 46 Cal.3d 833, disapproved on another ground in *People v. Crayton* (2002) 28 Cal.4th 346, 364-365, “we are confident the jury was not sidetracked by the correct but [purportedly] irrelevant instruction, which did not figure in the

closing arguments,” and any error in “the giving of the instruction was harmless error.” (*Crandell*, at pp. 872-873.)<sup>3</sup>

C. *The Cumulative Effect of Any Instructional Errors Was Harmless*

Coronado contends the cumulative effect of the instructional errors he argues the trial court committed requires reversal. As noted, however, the court did not err in failing to give a bracketed portion of CALCRIM No. 875, and any error in giving CALCRIM No. 3472 was harmless. There was no cumulative error.

**DISPOSITION**

The judgment is affirmed.

SEGAL, J.

We concur:

PERLUSS, P. J.

MENETREZ, J.\*

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<sup>3</sup> *People v. Ramirez* (2015) 233 Cal.App.4th 940, cited by Coronado, is distinguishable. In that case the prosecutor argued to the jury that an initial aggressor cannot defend himself or herself against even deadly force. (*Id.* at p. 953.) The prosecutor in *Ramirez* “repeatedly emphasized” it made no difference under CALCRIM No. 3472 whether the victim “escalated a nondeadly conflict to deadly proportions.” (*Id.* at p. 950.) The prosecutor here made no such argument, and CALCRIM No. 3472 did not feature in the prosecutor’s closing argument.

\*Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.