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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

DIMARIO PICKFORD,

Defendant and Appellant.

A130297

(Alameda County
Super. Ct. No. C161563)

I. INTRODUCTION

A jury convicted Dimario Pickford (appellant) of murder (Pen. Code, § 187)¹ and possession of an assault weapon (§ 12280, subd. (b)). The jury also found true an allegation that appellant personally used a firearm to commit murder (§ 12022.7, subd. (a).) Appellant was sentenced to a term of 50 years and eight months to life in prison. The sole issue on appeal is whether the evidence supports the jury’s finding that the murder was premeditated. We hold that the premeditation finding is supported by substantial evidence and, therefore, affirm the judgment.

II. STATEMENT OF FACTS

A. *The Shooting of Desmond Thomas*

On October 18, 2008, at approximately two minutes after midnight, Oakland police officers were called to the scene of a shooting on Seminary Avenue just north of Hayes Street in East Oakland. “ShotSpotter” sensors in the area recorded seven gunshots

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

fired within less than three seconds and transmitted a signal calling police to the scene. When officers arrived five minutes later, they found Desmond Thomas on the ground with multiple gunshot wounds to the chest. He was accompanied by a woman who was screaming and attempting to apply pressure to the wounds. Thomas was conscious and talking, but said he did not know who shot him. The woman told police that she had been driving with Thomas when they decided to stop at a store to buy some snacks and, seconds after Thomas exited the passenger side of the vehicle, she heard gunshots and ducked down. Thomas called to her that he had been shot but she did not see the shooter.

While Oakland police officer Delbert White was gathering evidence at the scene, a woman named Tameca Jessie approached him and said she had information, but did not want to talk in public. She asked White to meet her at her house down the block. White walked to Jessie's house which was approximately 100 yards away and spoke to her while he stood on her porch and she stood inside behind her door. It did not appear to the officer that Jessie was under the influence of any substance, but she was clearly nervous. Jessie reported that "the word on the street" was that Thomas had been in an argument with some of his friends, but she was unable to recall any names at that time. Officer White gave Jessie a phone number to call if she had anything to add.

B. *The Investigation*

Thomas was taken to the hospital but died as a result of his injuries. The homicide investigation was assigned to two Oakland police officers, Sergeant Caesar Basa and Sergeant Robert Nolan. Within a few days of the shooting the officers identified appellant as their primary suspect based on separate reports by two of his acquaintances, Tameca Jessie and Darell Richardson.

1. *Tameca Jessie*

On the morning of the shooting, Detective Basa arrived at the crime scene at approximately 3:25 a.m. Shortly thereafter, a woman approached and talked to him about her vehicle which was parked within the taped crime scene area. The woman, who said her name was Tameca, asked Basa for a phone number so she could contact him later and he gave her the office number. Basa returned to his office and, at approximately 3:49

a.m., he received a call from Tameca Jessie. Basa recognized Jessie's voice as the women who spoke to him at the crime scene and decided to record the call. At trial, the jury was provided with a transcript of the telephone conversation and the recording of the phone call was played in court.

At the beginning of the phone conversation, Basa obtained identification and contact information and asked how Jessie was doing. She said that she was okay but nervous. She said that she needed to keep her voice low because people were around her. When Basa asked what Jessie had seen, she said that she had pulled up in her car and stopped in front of the store on Seminary when she heard the girl screaming and saw the ambulance. Then Jessie made this comment: "But what I do know, he got into it with somebody named Mario." Jessie said that Mario is also called "Rio," and as she spoke she had to tell herself to calm down.²

Jessie told Basa that she knew the victim, whose name was Desmond, because she had babysat for his young son. She also knew Rio because he was a friend of her teenage son, although he was older than her son. Jessie provided a physical description of Rio and of his car and said she would try to find out where he was living. Then she said "I think he really did it. He did it. He did. It." Jessie apologized for whispering but said that people were around and she did not want to be overheard.

Basa asked about the "beef" between Rio and Desmond and Jessie said they had been fighting over a girl, not the girl who had been in the car with Desmond that night but another girl, who had become pregnant and that Desmond had been "messing around with her," but Rio was in love with her. Basa asked Jessie for details of what she saw earlier that night and finally asked whether Jessie had seen anybody shoot. At first Jessie laughed at the question but when Basa pressed her for an answer, Jessie admitted that she saw Rio shoot at Desmond five or six times.

² At trial, Jessie admitted that she had been "a little intoxicated" during her telephone conversation with Basa, but she also recalled that she was "focused" during that phone call.

After questioning Jessie about the details of what she saw that night, Basa asked about Rio. Jessie said that she had known him for over three years, that he was a grown man, but that he spent time with her 15-year-old son and that they would come to her house and she would cook for them. When Basa asked whether she had seen Mario with a gun before, Jessie laughed and said yes, she had seen him with a .45 and with a “chopper.”³ She said that Mario had brought a gun to her house a few weeks earlier and she had told him not to do that because she did not want it around her son who was already on probation for something he did not “even do.” Near the end of the conversation, Basa said that his partner Detective Nolan might call to follow up.

On October 23, 2008, Detective Nolan contacted Jessie by phone and arranged for her to come to the police station for an interview. Jessie said she was concerned about her family’s safety and that she was especially frightened for her son. So, after Nolan finished his phone conversation with Jessie, he contacted the victim witness office and arranged for Jessie to receive some money so that she and her family could be relocated to another town. Later that afternoon, Jessie arrived at the station, and the detectives took her into an interview room where they activated video equipment so that the interview would be recorded. The videotape of the interview was not admitted into evidence at trial, but significant portions of the transcript of that interview were read out-loud to the jury and transcribed into the trial record.⁴

During the first part of the October 23 interview, Jessie said she was unable to identify who shot Desmond Thomas. This revelation led to the following exchange between Nolan and Jessie:

“Q. ‘So you know Mario did this but you didn’t see his face?’

³ Thomas was killed by .45 millimeter bullets.

⁴ This fact has caused some confusion for appellate counsel and led to disagreements about what evidence was and was not presented to the jury. Our factual summary of the October 23 interview is based on the portions of the interview transcript that were read at trial as well as the trial testimony of the detectives who conducted the interview.

“A. ‘I didn’t see his face, but he came – remember I told you I spoke to him last night when I tried to see what was going on with my son, and that’s what made me say my son needs to go because he told me, he said it’s not good for your son. That’s what he told me and I talked to him last night.’

“Q. ‘What did he say?’

“A. “He told me – I asked him – let me start. He seen me yesterday, the day before that he pulls up in a tan, a champagne-looking Buick with three other guys. He’s on the passenger side. So my son was standing outside, I’m standing outside. My sister. And I just seen like the way he looked. He called my son to the car, so I went to see my son yelling so I walked over there because all the guys, they looking and I’m thinking, you know, they about to do my son something.

“He said, um yeah, yeah. The police came to your house huh. The police came to your house. You telling now? Are you telling?

“So Mario is yelling at my son. My son’s yelling. So I grabbed my son. So what I did, I had my son to call or because I want to know what’s going on.

“Because he pulled out a gun on us that day and said I’m always strapped.”

In light of the fact that Jessie had changed her story and was now claiming she did not see the shooter, the detectives took a break in the interview, and then escorted Jessie into another room where they had her listen to the recorded telephone conversation during which she told Basa that she saw Mario shoot Thomas. While listening to the recording, Jessie became subdued and looked defeated. She started to cry and asked the officers to turn off the recording. She told them she was afraid to be a witness and that her main concern was her son’s safety. Sergeant Nolan told Jessie that he was going to arrange for her son to be relocated and that he would give her \$200 to make that happen. He also said that he would help make arrangements to relocate Jessie and her daughter.

The group returned to the interview room, where the recording devices were still activated. Jessie apologized to the detectives for lying during the first part of the interview and said that she was just scared because she had an encounter with Mario the previous night. She said that she had gotten in the car to talk to him and that he had

threatened her, that he said that he knew the police had come to her house, and he claimed other people were saying that her son had told the police that he was the shooter. Jessie said that Mario advised her that it would be best for her and her son to leave town, and that he turned the light on in his car and he was holding the same gun that he had with him when he came to her house weeks earlier and told her that he was “always strapped.”

As the October 23 interview continued, the questioning returned to the details of the October 18 shooting incident. Jessie acknowledged that she had witnessed the shooting. She told the detectives that appellant was the shooter and she also selected appellant’s photograph from a photo lineup.

2. *Darell Richardson*

Meanwhile, on October 19, 2008, Darell Richardson was arrested for auto theft. Upon learning that Richardson hung out in the Seminary area of East Oakland, the arresting officer asked if he knew anything about the shooting of Desmond Thomas. Richardson had already heard, from talk on the street, about the shooting, and he told the officer that he had some information.⁵ Richardson subsequently participated in a police interview which was recorded. Although the recording was not admitted into evidence at trial, Richardson subsequently testified about what he disclosed to police in October 2008.

Richardson and appellant were friends from childhood and, for approximately 10 years, they hung out in a group together in the area of Seminary and Hayes. Richardson was aware that there was “bad blood” between appellant and Desmond Thomas because appellant used to talk to him about their problems. At the time of trial, Richardson could not recall “the whole reason why” appellant disliked Thomas, but he testified that they had petty problems and they may have fought over a dice game or something.

⁵ Richardson offered information hoping it would keep him out of jail and subsequently testified at trial that somebody promised him he would not be charged with the auto theft if he provided information about the murder.

A few days before Thomas was shot, Richardson hung out with appellant and a group of friends outside the store on Hayes and Seminary, where the group often hung out together. Thomas happened to drive by and appellant told Richardson that he would have started shooting at Thomas if the group had not been with him. Appellant was armed when he made this statement and he pulled out his gun, which was a .40 or .45 caliber pistol, and showed it to Richardson. He said that the reason he did not shoot at Thomas was because he did not want to accidentally hit one of the friends who was in front of the store.

A few days after Thomas was shot, after Richardson had already heard about the shooting, appellant called Richardson and admitted that he had shot and killed Thomas.

3. Appellant's Arrest and Trial

On October 28, 2008, Detective Nolan obtained a warrant to arrest appellant. Before the warrant was served, Nolan ensured that Jessie's family was safe. He then requested that officers from the Targeted Enforcement Task Force try to locate and arrest appellant. The task force set up a surveillance in the Seminary area where appellant hung out.

On October 30, appellant was spotted and observed coming and going from a residence on Seminary near where the shooting had occurred. Undercover officers followed him when he left the residence and drove away in a red Infinity. They subsequently performed a traffic stop and placed appellant under arrest. Appellant was not armed but he was wearing a bulletproof vest. From the residence where appellant had been spending his time, police recovered a backpack which contained papers with appellant's name on them and a 9 millimeter assault weapon.

Appellant was charged with first degree premeditated murder and possession of an assault weapon. At the jury trial, which commenced on August 23, 2010, the prosecution presented substantial evidence of the facts summarized above. Both Tameca Jessie and Darell Richardson failed to appear in response to subpoenas but were apprehended and testified at trial while in custody. Jessie testified that she got a good look at the shooter and that there was no doubt in her mind that appellant shot Thomas. Richardson testified

about his friendship with appellant, the encounter they had when Thomas drove by the store a few days before the murder, and the phone call during which appellant admitted that he shot Thomas.

III. DISCUSSION

Appellant contends that his conviction for first degree murder must be reversed because there is insufficient evidence of premeditation and deliberation. In making this argument, appellant concedes there is sufficient evidence of an intent to kill but maintains that the “evidence of premeditation is woefully lacking in this case when compared [with] the case law upholding verdicts of first-degree murder.”

“The law we apply in assessing a claim of sufficiency of the evidence is well established: ‘ ‘ ‘[T]he court must review the whole record in the light most favorable to the judgment below to determine whether it discloses substantial evidence—that is, evidence which is reasonable, credible, and of solid value—such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt.’ ’ ’ [Citation.] The standard is the same under the state and federal due process clauses. [Citation.] ‘We presume ‘ ‘in support of the judgment the existence of every fact the trier could reasonably deduce from the evidence.’ [Citation.] This standard applies whether direct or circumstantial evidence is involved.’ [Citation.]’ [Citation.]’ (*People v. Gonzales and Soliz* (2011) 52 Cal.4th 254, 294.)

To support his contention that the jury’s premeditation finding is not supported by substantial evidence, appellant applies the so called “*Anderson* factors” that were first articulated by our Supreme Court in *People v. Anderson* (1968) 70 Cal.2d 15, 26-27 (*Anderson*). The *Anderson* factors, which are evidence of (1) planning activity, (2) preexisting motive, and (3) manner of killing, “are three types of evidence commonly present in cases of premeditated and deliberate murder.” (*People v. Gonzales and Soliz, supra*, 52 Cal.4th at p. 294.) However, “these factors are not exclusive nor are they invariably determinative. [Citation.]” (*People v. Marks* (2003) 31 Cal.4th 197, 230.) Rather, as our Supreme Court recently confirmed, the “*Anderson* analysis was intended as a framework to assist reviewing courts in assessing whether the evidence supports an

inference that the killing resulted from preexisting reflection and weighing of considerations. It did not refashion the elements of first degree murder or alter the substantive law of murder in any way.’ [Citation.]” (*People v. Gonzales and Soliz, supra*, 52 Cal.4th at p. 294.)

Contrary to appellant’s arguments on appeal, we find that evidence pertaining to each of the three *Anderson* factors supports the inference of deliberation and premeditation that the jury made in this case. With regard to planning, evidence was presented that, a few days before the murder, appellant expressed his desire if not intention to shoot Thomas, and he showed his friends that he was prepared to satisfy that desire in the future by displaying a gun. Additional evidence was presented that, during the relevant time period, appellant always carried a gun and that he also owned and may have routinely worn a bullet proof vest. With regard to motive, the prosecution presented evidence that appellant and Thomas disliked each other, that they had ongoing petty disagreements and that they also had a more serious conflict over a woman who had become pregnant. Finally, the evidence regarding the manner of the shooting incident itself established that there was no struggle and that appellant was not provoked in any way. Instead, appellant found his intended victim at or near the same location where Thomas was spotted days before, and then executed a plan which he also formulated days earlier while hanging out with Richardson and his friends.

On appeal, appellant attempts to discredit each of these categories of evidence. He argues that the fact that he carried a gun was not evidence of planning because “unfortunately many young men on the streets believe they need to carry a weapon for their own protection.” However, even if a reasonable jury might share appellant’s interpretation of this evidence, that fact would not be a ground for reversal because the evidence also supports an inference that the murder was planned. When the “circumstances reasonably justify the jury’s findings, the reviewing court may not reverse the judgment merely because it believes that the circumstances might also support a contrary finding.’ [Citation.]” (*People v. Gonzales and Soliz, supra*, 52 Cal.4th at p. 295.)

Appellant also contends that the evidence of his ongoing feud with Thomas was not substantial because its only source was uncorroborated testimony from a “jailhouse informer.” He overlooks, however, that Tameca Jessie also told Detective Basa that appellant and Thomas had problems and that the most serious problem between them involved a woman who had become pregnant.

Finally, appellant contends that the manner of the shooting was not evidence of premeditation because all seven shots were fired in less than three seconds and there “was no time in those three seconds to deliberate, premeditate and fire the rounds simultaneously.” This argument is illogical and perplexing; once appellant formulated his plan and found the opportune time to execute it, the fact that he did so with such violent speed does not preclude a finding of premeditation. Rather, a “close-range shooting without any provocation or evidence of a struggle” supports an inference of premeditation and deliberation. (*People v. Gonzales and Soliz, supra*, 52 Cal.4th at p. 295; see also *People v. Marks, supra*, 31 Cal.4th at p. 230.)

IV. DISPOSITION

The judgment is affirmed.

Haerle, J.

We concur:

Kline, P.J.

Lambden, J.