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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

A130569

v.

**(San Mateo County
Super. Ct. No. SC062872A)**

QUINCY DEAN NORTON,

Defendant and Appellant.

_____ /

Quincy Dean Norton (appellant) appeals from a judgment entered after a jury convicted him of first degree murder. (Pen. Code, §§ 187, 189.) He contends his conviction must be reversed because (1) the trial court erred when it prevented him from presenting evidence concerning the prior misconduct of a third-party culpability suspect, (2) the court erred when it admitted evidence of his own prior misconduct, (3) the court erred when it admitted expert evidence about intimate partner battering syndrome and its effects, (4) the court erred when it denied his pretrial motion under *People v. Wheeler* (1978) 22 Cal.3d 258 (*Wheeler*), and (5) his conviction of first degree murder is not supported by substantial evidence. We conclude the trial court did not commit any prejudicial errors and will affirm.

I. FACTUAL AND PROCEDURAL BACKGROUND

Appellant was convicted of murdering his wife Tamika Mack.¹

Appellant met Tamika in 1996. They had a child, Quincy, Jr. in 1997 and started to live together. Although some aspects of the relationship were good, there were periods when appellant and Tamika would separate and appellant would move out. Appellant also had a girlfriend, Donisha Day, that caused Tamika concern. According to Tamika's sister Nicole, appellant and Tamika's relationship followed a familiar pattern. Tamika would get fed up and decide to end the relationship. Appellant would then promise to be better and would "work his way back into her good graces[.]" Tamika would stay with appellant because she "loved him."

Whatever problems appellant and Tamika had, the relationship continued. Appellant and Tamika had another child, Deon, in 1998, and they married in 2004. In 2005, appellant and Tamika had a daughter named Jasmine.

Things finally came to a head on June 29, 2006. Tamika frantically called her mother Charlene and told her appellant was so intoxicated he could not walk or stand. She said appellant accused her of cheating and threatened to take Jasmine away from her. Tamika was afraid because appellant was screaming and yelling. Charlene called the police. Appellant then left.

Tamika decided to divorce appellant after the incident. On July 12, 2006, she hired a document service to prepare divorce papers which she signed. But Tamika did not serve the papers.

Appellant stopped living with Tamika after the June 29, 2006 incident, but he still came to her house to help with the children. Tamika continued to spend time with appellant because she wanted the divorce to be amicable.

¹ Because the victim and many of the witnesses share the same last name, we will refer to them by their first names.

On the evening of July 21, 2006, Tamika and her children were at a friend's house when Tamika began to receive calls from appellant demanding to know where she was. Tamika told appellant repeatedly she was at a friend's house.

That same evening Tamika and her children went to her mother Charlene's house. A friend of Tamika's had died recently and Tamika and Charlene made plans to attend her funeral the following day, July 22, 2006. Tamika and her children drove home around 11:00 p.m.

Quincy, Jr. was awakened early the next morning by his mother screaming his and his brother's names. It sounded as though his mother was scared. Quincy, Jr. got out of bed, went to the doorway of his parent's bedroom, and looked inside. He saw his mother on the bed with appellant standing over her and holding her down by her wrists. She looked at Quincy, Jr. but did not say anything. Quincy, Jr. became upset. He cried because he was scared. Appellant calmly told him to go back to bed.

Quincy, Jr. returned to his bedroom. He then heard banging or thumping noises. It sounded like objects being moved. Sometime later, appellant came to Quincy, Jr.'s room and told him to get dressed. His father seemed "calm" at the time.

Quincy, Jr.'s brother Deon had a very similar experience that day. He awoke near dawn and began to watch television. At one point he heard his parents arguing in their bedroom. Appellant was using profanities like "fuck" and "bitch." Deon then heard his mother scream out his and his brother's names. She sounded scared. Deon stepped into the hallway and saw his brother Quincy, Jr. staring into his parent's bedroom. Appellant then closed the bedroom door. When Quincy, Jr. tried to open the door, Deon heard it being locked from the inside.

Deon went back to his bedroom. A few minutes later, the "arguing" stopped and Deon heard "bumping and thumping" which sounded like someone falling to the floor.

Appellant came to Deon's room a few minutes later and told him to get dressed. Appellant had a balled up T-shirt in his hands. Deon got dressed and went into the hallway. He asked appellant whether he could use the bathroom in the his parents' bedroom. Appellant said no and told Deon to get into the car in the garage.

Appellant, Quincy, Jr., Deon, and Jasmine got into Tamika's car and drove away. After a few stops, appellant went to a relative's house where he dropped the children off.

Meanwhile, Tamika's mother Charlene was becoming concerned. She had called Tamika around 6:30 a.m. but had gotten no answer. This was unusual because Tamika always answered her phone. Charlene then called appellant's cell phone around 7:40 a.m. When appellant answered, Charlene asked if he knew where Tamika was. Appellant said Tamika was at home and that he was on the way there himself. He did not mention where his children were.

Charlene went to Tamika's house. No one answered the door. Charlene then tried to call appellant several times. He did not answer.

Charlene went to the funeral, hoping to see Tamika there. When that did not happen, she asked a friend to call the police.

Police officers responding to the call found Tamika's body on the floor of her master bedroom, adjacent to the bed, in a large pool of blood. An autopsy performed the next day showed that Tamika died from multiple stab wounds to her neck and torso. Multiple cuts on Tamika's hands appeared to be defensive wounds that were consistent with a struggle. There were no signs of a sexual assault.

Based on these facts, an information was filed charging appellant with first degree murder. (Pen. Code, §§ 187, 189.) The information also alleged appellant had personally used a deadly weapon when committing the crime. (Pen. Code, § 12022, subd. (b).)

The case proceeded to trial where a jury convicted appellant as charged. But the court then granted appellant a new trial.

A new trial was conducted at which the prosecution presented the evidence we have set forth above. The prosecution buttressed its case with evidence that appellant had a long history of abusing Tamika physically. The prosecution also presented evidence from an expert on domestic violence who stated it is common for a woman who is abused not to leave her batterer because she loves him and thinks she can handle him.

Appellant defended the charges by arguing it was not he who committed the murder, but his girlfriend, a woman named Anitra Johnson. Appellant supported this

theory with evidence that indicated it was extremely likely that Johnson's DNA was found on the handle of a knife that was found in the kitchen of Tamika's home and in blood stains that were found around the kitchen sink. Appellant also supported this theory with evidence that Johnson had a history of acting aggressively toward women who were associating with men in whom she was interested.

The jurors apparently rejected this defense and found appellant guilty of first degree murder and found the use allegation to be true.

After the court sentenced appellant to 26 years to life in prison, he filed this appeal.

II. DISCUSSION

A. Evidence Describing Prior Misconduct by Third-Party Culpability Suspect

As we have stated, appellant's defense was that Tamika was murdered not by him, but by his girlfriend, Anitra Johnson. In an attempt to support that theory, appellant presented evidence that Johnson had a history of acting violently. Specifically, appellant presented testimony from Shaunta Powell who dated appellant for about a year in 2004. Powell described an occasion when she received "more than nine" voice mail messages from Johnson on her phone. The messages were "loud, wild, crazy, angry, [and] aggressive[.]" Every message contained the threat that Powell "better leave [appellant] alone" or she would "cut" her and come and "kill" her. After receiving the messages Johnson called again and this time, Powell answered the call personally. Johnson threatened Powell telling her, "I'm gonna come kill you. Stab you. Shoot you."

Appellant now contends the trial court erred because it precluded him from presenting additional testimony from two more witnesses on this point. The first witness Venus Murcer, testified at an Evidence Code section 402² hearing that she had a romantic

² Unless otherwise indicated, all further section references will be to the Evidence Code.

relationship with appellant from June through August 2004. Murcer became pregnant and both she and appellant believed he was the father.³

Murcer described an incident that occurred in spring 2005. Appellant and Murcer were at a friend's house when appellant and Johnson had a fight on the telephone about Murcer and her child. Murcer called Johnson a bitch and said she did not want to get involved in "her and [appellant's] B.S." Johnson arrived at the house later that same day. She pulled a knife although "[s]he didn't point it at anybody." Appellant grabbed Johnson from behind and got cut by the knife.

Defense counsel argued this evidence should be admitted because appellant's defense was "when he and Anitra Johnson fight, when he and Anitra Johnson argue about his relationships with other women, she turns to violence. Her motive under those circumstances is to lash out at the woman that is the subject of the three-way relationship that is causing her angst"

The trial court declined to admit the evidence finding it inadmissible under section 1101, subdivision (b) and more prejudicial than probative under section 352.

The defense also wanted to present testimony from Ralph Brister about his experiences with Johnson. At a section 402 hearing Brister stated that he had an intimate relationship with Johnson between 1990 and 1999 and he described several instances where Johnson acted violently toward him.

In 1998, Brister and some friends were talking to some females in a parking lot. Johnson arrived and she almost hit him with her car. Johnson then got out of her car and wanted to fight Brister.

In August 1999, Johnson noticed Brister had a hickey on his neck. She jumped on Brister and started to scratch his face.

In 1998 or 1999, Brister and Johnson were at a party together when Brister held Johnson down and allowed someone to throw water on her. Johnson left and returned with a gun which she pointed at Brister.

³ This later turned out to be incorrect.

In 1996, Johnson saw Brister hugging a woman with whom he had a relationship. Johnson almost ran him over with her car.

On another occasion, Johnson learned Brister had impregnated someone else. Johnson confronted Brister with the allegation and then drove with him to the woman's house. Johnson jumped out of the car and told the woman's mother to "tell the bitch to come outside." The woman did not do so.

Defense counsel argued these incidents should be admitted because they demonstrated Johnson "is motivated by jealousy to act out in a violent manner."

The trial court declined to admit the evidence ruling they were not sufficiently similar to the charged crime.

Appellant now contends the trial court erred when it declined to admit testimony from Murcer and Brister about Johnson's prior violent and aggressive acts. The court's failure to admit that evidence, appellant argues, prevented him from presenting his defense and violated his due process rights.

Section 1101 applies the same way to third party suspects as it does to criminal defendants. (*People v. Davis* (1995) 10 Cal.4th 463, 501.) Section 1101, subdivision (a) "prohibits admission of evidence of a person's character, including evidence of character in the form of specific instances of uncharged misconduct, to prove the conduct of that person on a specified occasion." (*People v. Ewoldt* (1994) 7 Cal.4th 380, 393.) Section 1101, subdivision (b) clarifies, however, that this rule "does not prohibit admission of evidence of uncharged misconduct when such evidence is relevant to establish some fact other than the person's character or disposition." (*Ewoldt, supra*, 7 Cal.4th at p. 393, fn. omitted.) "[E]vidence of uncharged crimes is admissible to prove, among other things, the identity of the perpetrator of the charged crimes, the existence of a common design or plan, or the intent with which the perpetrator acted in the commission of the charged crimes. . . . only if the charged and uncharged crimes are sufficiently similar to support a rational inference of identity, common design or plan, or intent." (*People v. Carter* (2005) 36 Cal.4th 1114, 1147.) On appeal, the trial court's determination whether evidence is admissible pursuant to section 1101, subdivision (b) as well as its evaluation

whether the probative value of the evidence was outweighed by the probability that its admission would create a serious danger of undue prejudice, of confusing the issues, or of misleading the jury are reviewed for abuse of discretion. (*People v. Lewis* (2001) 25 Cal.4th 610, 637.)

Applying this standard, we conclude the trial court did not err when it declined to admit the evidence appellant has identified. The incident that Murcer described was murky at best. While it appears Johnson became angry with Murcer it is not at all clear why that occurred. As the trial court observed, “I simply fail to see the jealousy emotion surfacing in this incident. I don’t know what triggered the incident.” Furthermore, appellant’s theory for admitting the evidence was that it showed when he and Johnson fought about other women, Johnson’s response was to “lash out at the woman that is the subject of the three-way relationship that is causing her angst” But the evidence did not support that conclusion. Johnson did not attack Murcer or threaten her physically. While Johnson did pull a knife, “[s]he didn’t point it at anybody.” Indeed, according to Murcer, the entire incident “wasn’t even about [her]. It was all about him [i.e., appellant].” The trial court considering this evidence reasonably could conclude it did not show that when appellant and Johnson fought about his relationship with other women, her response was to “lash out at the woman that is the subject of the three-way relationship that is causing her angst” Rather, it was much more in the nature of character evidence that is expressly made inadmissible by section 1101, subdivision (a).

The incidents that Brister described were even further afield. Those incidents might have been relevant if they indicated Johnson had a habit of attacking other women with whom appellant was associating, but that is not what this evidence showed. As the trial court noted although those incidents show “Anitra Johnson is an angry woman who seems to be mad at Ralph Brister a lot and took it out on him. . . . none of these incidents involve Anitra Johnson going after any female involved with Mr. Brister. It was strictly a matter of going after him, the male.” Again, the trial court reasonably could conclude the incidents Brister described did not support the conclusion that Johnson had a motive to murder Tamika.

We conclude the trial court did not abuse its discretion when it excluded the evidence appellant has identified. (*People v. Lewis, supra*, 25 Cal.4th at p. 637.) There was no error on this ground.

Having found no error under state law, we also reject appellant's federal due process claim. A defendant has the right to offer a defense through the testimony of his witnesses (*Washington v. Texas* (1967) 388 U.S. 14, 23), but a state court's application of ordinary rules of evidence generally does not infringe upon that right. (*People v. Lawley* (2002) 27 Cal.4th 102, 155.) The evidence excluded in the present case was not so vital to the defense that due process principles required its admission. (*People v. Hawthorne* (1992) 4 Cal.4th 43, 56-59.) Indeed, it was largely cumulative of the evidence that appellant was allowed to present.

B. Evidence of Prior Misconduct

With defense counsel's agreement, the prosecutor presented evidence about two occasions when appellant acted violently toward Tamika in the past. The first incident occurred in January 2003. Tamika's sister Tahnee was at Tamika's house when appellant came home screaming, yelling, and accusing Tamika of cheating on him. Tamika tried to leave but appellant blocked her departure and then hit her in the head with the palm of his hand.

The second incident occurred a few months later in April 2003. Tamika's mother Charlene testified that Tamika called her in the middle of the night and said appellant had beaten her. Charlene went to Tamika's house and saw that her face, eyes and jaw were swollen. Tamika said appellant had accused her of cheating and had punched her several times.

But over appellant's objection, the court allowed the prosecutor to present additional evidence describing appellant's prior misconduct.

Tamika's sister Nicole described four instances where appellant engaged in what reasonably can be characterized as stalking behavior. The first occurred in August 2000 when Nicole, Tamika, and two friends went to an event in Reno. According to Nicole, appellant called Tamika as many as 50 times yelling and screaming and accusing her of

being with another man. Finally, appellant came to Reno and banged on their door in the middle of the night.

The second incident occurred in December 2000 when Nicole and Tamika went to a comedy show in San Francisco. Appellant called Tamika as many as 10 times speaking loudly and angrily. He then came to the theater and sat on the stairs next to Tamika for the entire show.

The third incident occurred in December 2005. Nicole and Tamika went to a New Year's Eve show and appellant called Tamika repeatedly throughout the show.

The fourth incident occurred February 2006 when Nicole and Tamika went to a birthday party at a hotel. Appellant called Tamika during the party to tell her the dome light in her car was on.

In addition, the prosecutor presented testimony from Tamika's mother Charlene who described an incident that occurred in June 2006. Tamika called saying appellant was very drunk. He accused Tamika of cheating and threatened to take Jasmine from her.

The prosecutor also presented evidence from appellant's former girlfriend, Donisha Day who said that in January 2000, appellant came to her apartment about 1:30 in the morning, accused her of cheating, and threatened her with a gun.

Finally, the prosecutor presented evidence that appellant had a cocaine problem in the past. This testimony was provided by a relative of Tamika who said he asked appellant why he had beaten Tamika. Appellant did not deny the act, but explained that he was now "off that candy." When the relative asked appellant "what candy?" appellant replied cocaine.

Appellant now contends the trial court erred when it allowed the prosecutor to present this evidence of his prior misconduct.

We turn first to the testimony provided by Tamika's sister Nicole who described four instances where appellant stalked Tamika.

Section 1101, subdivision (a), states the general rule that character evidence is inadmissible to prove a defendant's conduct on a specific occasion. But section 1101 is

subject to several exceptions one of which is set forth in section 1109, subdivision (a)(1). As is relevant section 1109 states: “in a criminal action in which the defendant is accused of an offense involving domestic violence, evidence of the defendant’s commission of other domestic violence is not made inadmissible by Section 1101”

The term “domestic violence” is defined as “abuse committed against an adult . . . who is a spouse . . . cohabitant . . . or person with whom the suspect . . . has had a dating or engagement relationship.” (Pen. Code, § 13700, subd. (b).) Appellant’s murder of his wife Tamika plainly “involve[ed] domestic violence” within the meaning of section 1109, subdivision (a)(1). Furthermore, case law holds that stalking is an act of domestic violence within the meaning of section 1109. (*People v. Ogle* (2010) 185 Cal.App.4th 1138, 1142.) Therefore, evidence that appellant stalked Tamika on several prior occasions was admissible under section 1109.

The same section authorized the admission of the evidence from appellant’s former girlfriend Day. Because appellant and Day had a dating relationship, evidence he had abused Day previously by threatening her with a gun was admissible under section 1109.

The trial court properly admitted the testimony from Tamika’s mother Charlene under section 1101, subdivision (b) which authorizes the admission of evidence of prior misconduct “when such evidence is relevant to establish some fact other than the person’s character or disposition.” (*People v. Ewoldt, supra*, 7 Cal.4th at p. 393, fn. omitted.) That is the situation here. The fact that appellant accused Tamika of cheating and threatened to take Jasmine from her provided strong evidence of his motive to beat and kill Tamika. As another court stated when faced with a similar facts, “Evidence tending to establish prior quarrels between a defendant and decedent and the making of threats by the former is properly admitted . . . to show the motive and state of mind of the defendant.” (*People v. Cartier* (1960) 54 Cal.2d 300, 311; see also *People v. McCray* (1997) 58 Cal.App.4th 159, 172.)

Finally, evidence that appellant had taken cocaine was admissible to explain why Tamika would continue to associate with appellant *after* he had beaten her. In effect

appellant blamed his attack on his cocaine problem and indicated the problem would not recur because he was no longer taking the drug. A reasonable inference is Tamika stayed with appellant because he claimed he had reformed.

We conclude the trial court properly admitted the evidence appellant has identified.

Appellant contends that even if the court had a legal justification for admitting the evidence in question, the court should have excluded it under section 352. We disagree. The trial court is granted broad discretion to determine whether evidence is more prejudicial than probative and its ruling will be reversed on appeal only where the court abused its discretion. (*People v. Lee* (2011) 51 Cal.4th 620, 643.) We find no abuse here. Each item of evidence was relevant on an issue that was disputed at trial. Evidence of appellant's stalking behavior, his prior threat against Day, and the prior threats described by Tamika's mother Charlene were all relevant as evidence of motive and to demonstrate appellant's state of mind. Appellant's prior cocaine use, and the fact that he allegedly had stopped using the drug helped explain why Tamika would stay with appellant even though he had beaten her. While appellant's prior misconduct placed him in a bad light, none of the incidents described was prejudicial as that term is defined, i.e., "evidence which uniquely tends to evoke an emotional bias against the defendant as an individual" (*People v. Karis* (1988) 46 Cal.3d 612, 638, quoting *People v. Yu* (1983) 143 Cal.App.3d 358, 377.) On these facts, we conclude the trial court did not abuse its discretion when it admitted the evidence appellant has identified.

Appellant's last argument on this issue is that the trial court's admission of the evidence violated his due process rights. As a general rule application of the ordinary rules of evidence do not implicate federal due process. (*People v. Fudge* (1994) 7 Cal.4th 1075, 1102-1103.) We see no reason why that general rule should not apply here.

C. Intimate Partner Battering Syndrome

Over appellant's objection, the trial court allowed Rhonda Leipelt, a sergeant with the Redwood City Police Department, to testify as an expert witness about intimate partner battering syndrome and its effects. Leipelt stated that when one spouse beats

another, the goal of the batterer is to gain control over the victim. The victim will not leave the batterer because she loves him and thinks she can handle him. Over time, the victim will tend to underestimate the danger of the abusive environment and to overestimate her ability to control her partner. The majority of times, the situation will continue until the victim reaches a breaking point. Some major life event like the death of a family member or close friend will cause the victim to reassess her life and “find the courage to leave on behalf of the others [who] may be hurt in the process.”

Appellant now contends testimony from Leipelt concerning intimate partner battering syndrome and its effects should have been excluded because it was “irrelevant with regard to the murder charge”

As is relevant here, section 1107, subdivision (a) states, “In a criminal action, expert testimony is admissible . . . regarding intimate partner battering and its effects, including the nature and effect of physical, emotional, or mental abuse on the beliefs, perceptions, or behavior of victims of domestic violence” The statute makes intimate partner battering syndrome testimony “relevant to explain that it is common for people who have been physically and mentally abused to act in ways that may be difficult for a layperson to understand.” (*People v. Riggs* (2008) 44 Cal.4th 248, 293.) The trial court is granted broad discretion to determine whether expert testimony should be admitted and its ruling will be reversed on appeal only where the court abused that discretion. (*People v. McAlpin* (1991) 53 Cal.3d 1289, 1303.) We find no abuse here.

The evidence that was presented showed appellant abused Tamika physically and emotionally over a long period of time. But the evidence also showed that despite this abuse, Tamika stayed with appellant. The trial court reasonably could conclude that the jurors might be confused by why a woman would stay with a man who abused her, and that they would benefit from hearing an expert explain that such conduct is predictable and is consistent with the conduct of others who have experienced similar abuse. We conclude the trial court did not abuse its discretion when it admitted the evidence in question.

Appellant contends that the trial court should not have admitted the evidence because Tamika “acted in a way that was not at all difficult to understand – i.e., fed up with appellant’s conduct, she sought to divorce him.” While Tamika did begin taking steps to divorce about 10 days before she was murdered, that did not explain why she had not done so earlier despite years of abuse. The trial court reasonably could conclude the testimony was helpful to explain why Tamika delayed acting as the jurors might otherwise have expected.

D. *Wheeler* Motion

So many prospective jurors were assigned to the courtroom in which appellant was to be tried that there were not enough seats to accommodate them. Accordingly, the parties stipulated to a procedure under which each side would be allowed to excuse five potential jurors before the voir dire even began. After the prosecutor used one of his challenges to excuse J.S., an African American man, the defense objected under *Wheeler* complaining that J.S. was the only African American on the panel. The prosecutor denied J.S. was the only African American on the panel. The court said it was unsure whether defense counsel was correct, but even if she was, the court ruled defense counsel had failed to make a prima facie case of discrimination based on “a single challenge to a single prospective juror self-identifying as black.”

Notwithstanding this ruling, the court allowed the prosecutor to explain his challenge. As is relevant here, he said he was concerned about J.S. because his questionnaire indicated he had been wrongfully stopped by the Oakland police. As the prosecutor explained, “My concern . . . is that, especially recently, he says he was profiled. And the Oakland Police Department just doesn’t have a good reputation. . . . [¶] . . . And I would be hard-pressed to argue with him if he says he was profiled.”

Appellant now contends the trial court erred when it denied his *Wheeler* motion.

The California and federal Constitutions forbid a prosecutor from excluding prospective jurors for a racially discriminatory purpose. (*People v. Zambrano* (2007) 41 Cal.4th 1082, 1104, overruled on another point in *People v. Doolin* (2009) 45 Cal.4th 390, 421, fn. 22.) A three-step procedure is used to determine whether a prosecutor is

exercising his challenges in an improper manner. “““First, the defendant must make out a prima facie case ‘by showing that the totality of the relevant facts gives rise to an inference of discriminatory purpose.’ [Citations.] Second, once the defendant has made out a prima facie case, the ‘burden shifts to the State to explain adequately the racial exclusion’ by offering permissible race-neutral justifications for the strikes. [Citations.] Third, ‘[i]f a race-neutral explanation is tendered, the trial court must then decide . . . whether the opponent of the strike has proved purposeful racial discrimination.’””” (Zambrano, *supra*, at p. 1104.)

Here, the trial court ruled appellant failed to make out a prima facie case of discrimination. Appellant argues this finding is “moot” because the prosecutor went on to explain his reasons for excusing J.S. as a juror. This is incorrect. Our Supreme Court addressed this issue in *People v. Taylor* (2010) 48 Cal.4th 574, and its ruling was unequivocal, “we reject defendant’s argument that, because the trial court asked the prosecutor to state her race-neutral reasons for excusing T.B., we should proceed immediately to the third step of the *Batson* analysis—determining whether the record supports the prosecutor’s race-neutral explanations—without first determining whether defendant established a prima facie case of intentional discrimination.” (*Taylor, supra*, at p. 612.)

Therefore, we turn to whether the trial court’s finding that appellant had failed to make out a prima facie case is supported by the record. We evaluate that question under the standard recently set forth by our Supreme Court in *Taylor*, i.e., we must “undertake an independent review of the record to decide ‘the legal question whether the record supports an inference that the prosecutor excused a juror on the basis of race.’” (*Taylor, supra*, at p. 614, quoting *People v. Hawthorne* (2009) 46 Cal.4th 67, 79, overruled on other grounds in *People v. McKinnon* (2011) 52 Cal.4th 610, 637-368.)

Here, the only reason cited by defense counsel in support of his *Wheeler* motion was that J.S. was the sole African-American on the panel.

Many courts have ruled this type of showing is inadequate to establish a prima facie case. For example, in *People v. Rousseau* (1982) 129 Cal.App.3d 526, the

prosecution used peremptory challenges to strike two African Americans and the defendant's attempt to make out a prima facie case was "limited to his statement that 'there were only two blacks on the whole panel, and they were both challenged by the district attorney.'" (*Id.* at p. 536.) The *Rousseau* court ruled that statement was insufficient to establish "a prima facie showing of systematic exclusion." (*Ibid.*) Our Supreme Court followed *Rousseau* in *People v. Wright* (1990) 52 Cal.3d 367, 399, disapproved on other grounds in *People v. Williams* (2010) 49 Cal.4th 405, 459, and found that the defendant failed to establish a prima facie case "solely by his observation that one prospective juror peremptorily challenged by the prosecutor was Black." Similarly, in *People v. Howard* (1992) 1 Cal.4th 1132, the Supreme Court found the defendant's showing "completely inadequate" where he showed only "that the prosecutor had challenged the only two Black prospective jurors." (*Id.* at p. 1154.) We likewise find that appellant's explanation of the reason for her objection inadequate to establish a prima facie case.

Furthermore and importantly, the questionnaire J.S. submitted discloses several obvious race-neutral reasons for excusing him as a juror. First, as the prosecutor later explained, J.S. was asked whether he had any bad or unpleasant experiences with a law enforcement officer. J.S. replied that he had been "pulled over on my way to work (profiled)." Given that much of the testimony at trial would be presented by law enforcement personnel, it would be reasonable for the prosecutor to be leery of a juror who had a bad experience with a police officer.

Second, the juror questionnaire stated, "The Court will instruct you not to read, view, listen to, or discuss any news coverage of this case with anyone, including family members. Will you be able to follow that instruction?" J.S. answered "No." If this response was honest, it is clear why a prosecutor would not want J.S. as a juror. If the response was an honest mistake caused by inattention, it would also be reasonable to question whether J.S. would be a good juror.

Third, the questionnaire stated, "The victim's two children, now ages 11 and 13 will testify in this case. Is there anything about that fact alone that would substantially

interfere with your ability to be a fair and impartial juror in this case? If yes, please explain.” J.S. responded, “I don’t believe children should be under pressure of court.” J.S.’s response strongly indicates that he could not be fair and impartial because Quincy, Jr. and Deon would be testifying in the case. This alone is an adequate race-neutral basis for removing J.S. as a juror.

In sum, the record contains ample grounds for removing J.S. as a juror and legally insufficient grounds to make out a prima facie case. We do not hesitate to conclude the trial court correctly denied appellant’s *Wheeler* motion.

E. Sufficiency of the Evidence

Appellant contends the evidence that was presented at trial was insufficient to support his conviction of first degree murder.

Our role when evaluating this type of argument is “a limited one.” (*People v. Ochoa* (1993) 6 Cal.4th 1199, 1206.) “The proper test for determining a claim of insufficiency of evidence in a criminal case is whether, on the entire record, a rational trier of fact could find the defendant guilty beyond a reasonable doubt. [Citations.] On appeal, we must view the evidence in the light most favorable to the People and must presume in support of the judgment the existence of every fact the trier could reasonably deduce from the evidence. [Citation.] [¶] ‘Although we must ensure the evidence is reasonable, credible, and of solid value, nonetheless it is the exclusive province of the trial judge or jury to determine the credibility of a witness and the truth or falsity of the facts on which that determination depends. [Citation.] Thus, if the verdict is supported by substantial evidence, we must accord due deference to the trier of fact and not substitute our evaluation of a witness’s credibility for that of the fact finder. [Citations.]’” (*Ibid.*, quoting *People v. Jones* (1990) 51 Cal.3d 294, 314.)

Here, appellant was convicted of first degree murder that is defined as a killing that is “willful, deliberate and premeditated.” (Pen. Code, § 189.) In *People v. Anderson* (1968) 70 Cal.2d 15, our Supreme Court surveyed a prior cases involving the sufficiency of evidence to support findings of deliberation and premeditation and identified three categories of evidence that could support such findings: (1) planning activity, (2) motive,

and (3) manner of killing. (*Id.* at pp. 26-27.) The court stated, “Analysis of the cases will show that this court sustains verdicts of first degree murder typically when there is evidence of all three types and otherwise requires at least extremely strong evidence of (1) or evidence of (2) in conjunction with either (1) or (3).” (*Id.* at p. 27.)

All three types of evidence are present here. Planning is shown by the facts that surround the murder itself. Quincy, Jr. testified that he was awoken by his mother’s scream and, when he looked into his parents’ bedroom, he saw his mother on the bed with appellant standing over her and holding her down by her wrists. Appellant calmly told Quincy, Jr. to shut the door. Later, Quincy, Jr. heard banging and thumping coming from his parents’ bedroom. The process of premeditation and deliberation does not require an extended period of time. (*People v. Koontz* (2002) 27 Cal.4th 1041, 1080.) The jurors here reasonably could conclude that appellant decided to kill Tamika after encountering Quincy, Jr. and that he willfully and deliberately carried out that plan.

Motive is shown by appellant’s prior violent history, his extreme jealousy, and by the fact Tamika had recently decided to divorce him. A reasonable inference from the evidence is that Tamika’s decision to leave appellant caused appellant to become angry and culminated in his decision to murder her.

The method of killing also showed deliberation. A reasonable interpretation of the evidence is that appellant stabbed Tamika repeatedly but then did nothing and simply left her to die in a pool of blood. In *People v Lasko* (2000) 23 Cal.4th 101, 112-113, our Supreme Court stated premeditation was shown by the defendant hitting his victim in the head with a bat and then not calling for medical care. The same situation is present here.

In sum, we conclude appellant’s first degree murder conviction is supported by substantial evidence.

F. Cumulative Error

Appellant contends that even if none of the errors he has articulated are prejudicial individually, when viewed cumulatively, they compel a reversal of his conviction. We have rejected each of the arguments appellant has advanced. There is no error to cumulate.

III. DISPOSITION

The judgment is affirmed.

Jones, P.J.

We concur:

Needham, J.

Bruiniers, J.