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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE,

Plaintiff and Respondent,

v.

ALBERTO H. FONSECA,

Defendant and Appellant.

B236021

(Los Angeles County
Super. Ct. No. NA084828)

APPEAL from a judgment of the Superior Court of Los Angeles County, James B. Pierce, Judge. Affirmed.

Landra E. Rosenthal, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Scott A. Taryle and Eric J. Kohm, Deputy Attorneys General, for Plaintiff and Respondent.

* * * * *

A jury convicted appellant Alberto H. Fonseca of first degree murder, a violation of Penal Code section 187, in connection with the stabbing death of his live-in girlfriend, Mireya Lopez Medina.¹ The jury also found true the special allegation that appellant personally used a deadly weapon, a knife, in violation of section 12022, subdivision (b)(1).

The trial court sentenced appellant to an indeterminate term of 25 years to life in prison for the murder conviction, plus an additional determinate term of one year for the personal use allegation found true.

On appeal, appellant raises two, related contentions: (1) the evidence is insufficient to support a first degree murder conviction and (2) appellant's conviction should be reduced to voluntary manslaughter or, at best, second degree murder. We reject both contentions and affirm the judgment below.

FACTUAL BACKGROUND

A. Prosecution Case-in-chief

1. The Killing of Medina

Prior to night of the killing, February 17-18, 2010, appellant and Medina had lived together for approximately six years. At the time of the killing, Medina's adult son, Alexis Ramirez, lived with the two in their apartment on Cedar Avenue in Long Beach.

At about 4:00 p.m. on February 17, Medina's neighbor, Nisreen Salameh, heard a man and woman screaming at each other but could not make out the words because the voices overlapped.

On the evening of February 17, at about 6:00, Ramirez heard appellant and Medina arguing for about 40 minutes before he fell asleep in his bedroom. The argument was loud enough for him to hear, but not enough for him to hear what was being said.

At around 9:00 or 9:30 p.m. on February 17, appellant called Medina's friend, Graciela Lizaola. Appellant told Lizaola that he had argued with Medina and had

¹ Unless otherwise indicated, all further statutory references are to the Penal Code.

insulted her. He also told her that Medina was on her way to Lizaola's house. At about 10:00 p.m., Medina called Lizaola and spoke to her over the telephone.

Also around 10:00 p.m., Medina's son, Ramirez, woke up to go to work. He left the house at about 10:40 p.m. When he left, appellant was asleep on the couch.

At about 12:30 a.m. on February 18, 2010, Medina's neighbor, Margaret Herren, heard a single female scream come from Medina's house. She heard no male voice. At about the same time, neighbor Salameh heard a woman scream, "Get out of my house," approximately four times. She did not hear any male voice.

Ramirez returned home from work shortly after 7:45 a.m. on February 18. After entering the house, he walked to the bathroom. He heard snoring coming from the room shared by appellant and Medina. When he entered the bathroom, Ramirez saw blood in the sink and on the floor. He noticed that Medina's prescription pill bottles were in the bathroom waste basket. He knocked on his mother's bedroom door, but got no answer. He tried to open the door, but it was locked. He forced the lock open with a credit card and entered the room. He saw his mother on the floor surrounded by blood. He then saw appellant lying near his mother, asleep and snoring.

Ramirez called 911 using his cell phone. Based upon instructions from the dispatch operator, he left the house and waited for the police outside. The police eventually arrived and transported appellant to the hospital.

Long Beach Police Officer Mark McGuire arrived at the scene to conduct an investigation. He saw blood stains on the sink. On the floor of the bathroom, he saw bloody footprints. He also observed a blood stain on the outside knob of the door into the bedroom where Medina's body was located.

Officer McGuire entered the bedroom shared by appellant and Medina. Medina was lying on the floor of the bedroom. McGuire observed a machete on the floor near Medina. McGuire later found a second weapon, a folding knife, under the foot of the bed near Medina's head. The ceiling, walls, and floor of the bedroom had blood spatter on them. The back side of the bedroom door also contained blood spatter, leading McGuire to conclude that the door was closed at the time of the attack on Medina.

Dr. Solomon Riley performed the autopsy on Medina. Medina's death was caused by multiple wounds from weapons with sharpened leading edges. According to Dr. Riley, Medina suffered at least 24 wounds to her head, neck, chest, arms, and hands, from sharpened edge weapons. Most of the wounds were incised or "slashing" wounds, consistent with the machete found at the scene. At least three of the wounds, though, were stabbing wounds to the chest not consistent with the machete but consistent with the knife found at the scene.

The most lethal wound was to Medina's throat. It severed her jugular vein and her carotid artery. One of the stab wounds went through her chest wall and punctured the lining of her lung cavity. Medina also suffered multiple defensive wounds to her hands and arms, including one that nearly severed her right middle finger.

Blood and urine samples were taken from appellant at about 8:50 a.m. on February 18, 2010. A test of the blood showed no alcohol in appellant's bloodstream.

The urine sample tested positive for tricyclics and methamphetamine. The blood sample tested positive for tramadol, amphetamine and methamphetamine.

2. Prior Incidents Between Appellant and Medina

When Medina's 19-year-old daughter, Mauren Figueroa, was 12, she saw appellant and Medina arguing. During the argument, appellant was on top of Medina, who was trying unsuccessfully to push him away. Figueroa saw appellant attempt to open a folding knife. Figueroa jumped on appellant and bit him on the shoulder, which caused him to get off of Medina.

Sometime prior to the date of the killing, Medina's friend, Lizaola, also saw appellant "take out a knife" in front of Medina.

B. Defense Case

1. Appellant's Testimony

On February 17, 2010, appellant went to his gardening job at about 6:00 a.m. At around noon, appellant drank four 24-ounce beers with his boss's brother. Appellant got off work at 3:00 p.m. and took the gardening tools to the garage where they were stored. There, he drank three more 24-ounce beers. On the way home, he picked up two 40-

ounce bottles of beer. He began cleaning the house and drinking one beer when he got home. Later, he took a shower. He finished the first 40-ounce beer at about 5:30 p.m.

Around 6:00 p.m., Medina arrived home unexpectedly. Ordinarily, Medina would call from work and appellant would pick her up. When appellant asked why she had not called for him to pick her up, Medina became angry. Appellant tried to touch her but Medina pushed him away, telling him, "Don't touch me." Appellant asked Medina if she was cheating on him with another man. Medina told him she was.

Appellant felt very depressed and cried. Appellant sat on one couch while Medina sat on the other couch watching television. Eventually, Medina went inside her bedroom. Appellant began drinking his second 40-ounce bottle of beer and also began snorting \$50 of methamphetamine that he had purchased earlier.

After finishing his beer, appellant went to the neighborhood market and bought three more 40-ounce beers. He drank those beers and decided to kill himself by taking all of Medina's medications. He took all of Medina's medications. He began to feel dizzy and his eyes got cloudy. He began to feel as if his brain and heart were going to explode. Appellant then entered the bedroom to lie down next to Medina because he wanted to die next to her. As appellant entered, Medina raised her head, told him he was drunk, and said he should leave the room. Appellant asked Medina if she wanted him to leave so that she could sleep with another man. She said, "Yes, for him to sleep in your place."

Appellant felt his "whole body on fire." He reached for the machete that he kept behind the nightstand and hit Medina on the left side of her neck with it. She was lying on the mattress when he struck her. The next thing he knew, he woke up in the hospital.

With respect to the earlier incident witnessed by Figueroa, appellant denied that he had a knife. He said the incident was an argument between him and Medina about picking up clothes around the house. Both he and Medina had their hands on each other's shoulders during the argument.

2. Defense Expert

Dr. Gordon Plotkin is both a clinical and forensic psychiatrist, as well as a board certified psychologist. Use of methamphetamine can cause aggressive behavior and

misperception of other people's actions. Excessive use can cause psychotic episodes, where the user misperceives events in a paranoid fashion and may even hear voices. Tricyclics are antidepressant medications that can cause cardiac episodes as a side effect. Tramadol is an anti-inflammatory drug. Alcohol alone or alcohol combined with tricyclics can cause "twilight sleep" or "blackouts." Such a condition is effectively "conscious sedation": one is able to move and possibly even converse but is effectively unconscious and will have no recollection of what occurred.

On average, alcohol will burn off at the rate of one drink per hour for the average-sized male.

An individual with the toxicology of appellant, as determined by the blood drawn on February 18 at 8:50 a.m., would be under the influence of methamphetamine between midnight and 1:00 a.m. that same day. He would also have had tramadol and tricyclics present in his system. Such a person could demonstrate the behaviors previously described.

3. Medina's Affair

Victor Granillo had an affair with Medina spanning the year prior to her death.

C. Prosecution Rebuttal

Officer McGuire did not see any blood on the mattress. Although he did see blood on the sheets, comforter, and bed cover, it was located near the foot of the bed.

DISCUSSION

A. Sufficiency of the Evidence: Premeditation and Deliberation

Appellant initially contends that the evidence is insufficient to sustain the finding of premeditation and deliberation required for first degree murder. Appellant argues that the evidence shows, at best a second degree murder and, more likely, only voluntary manslaughter. We disagree.

1. Standard of Review

An appellate court reviewing a challenge based on sufficiency of the evidence at trial must review the entire record in the light most favorable to the People and determine whether any rational fact finder could have found the essential elements of the crime

beyond a reasonable doubt. (*People v. Davis* (1995) 10 Cal.4th 463, 509.) Put another way, the appellate court reviews the entire record in the light most favorable to the verdict and determines whether there is substantial evidence – evidence that is reasonable, credible, and of solid value – such that a reasonable juror could find the defendant guilty beyond a reasonable doubt. (*Ibid.*; see also *People v. Osband* (1996) 13 Cal.4th 622, 690.) When making such an evaluation, the appellate court does not reevaluate witness credibility or resolve conflicts in the evidence. Such matters are exclusively the province of the trier of fact below. (*People v. Young* (2005) 34 Cal.4th 1149, 1181.) Further, the reviewing court must accept logical inferences that the jury might have drawn from any circumstantial evidence. (*People v. Maury* (2003) 30 Cal.4th 342, 396.)

2. Murder and Manslaughter

The trial court instructed the jury on both first and second degree murder, as well as voluntary manslaughter. The jury rejected both second degree murder and voluntary manslaughter, and found appellant guilty of first degree murder.

Murder is the unlawful killing of a human being with malice aforethought. (§ 187.) Malice is express when a defendant intends to kill. (§ 189.) Malice is implied when (1) a defendant intentionally commits an act, (2) the natural consequences of the act are dangerous to human life, (3) he knows the act is dangerous to human life, and (4) he deliberately acts with conscious disregard for human life. (*People v. Knoller* (2007) 41 Cal.4th 139, 143.)

In the context of this case, a murder that is willful, deliberate, and premeditated is of the first degree. (§ 189.) A “willful” murder is an intentional murder; in other words, a murder committed with express malice. (*People v. Moon* (2005) 37 Cal.4th 1, 29.) A murder is “premeditated” when it is “‘considered beforehand,’” and it is “deliberate” when it is “‘formed or arrived at or determined upon as a result of careful thought and weighing of considerations for and against the proposed course of action.’ [Citation.]” (*People v. Mayfield* (1997) 14 Cal.4th 668, 767.) “The process of premeditation and deliberation does not require any extended period of time. ‘The true test is not the

duration of time as much as it is the extent of the reflection. Thoughts may follow each other with great rapidity and cold, calculated judgment may be arrived at quickly.’ [Citation.]” (*Ibid.*; *People v. Perez* (1992) 2 Cal.4th 1117, 1127.)

People v. Anderson (1968) 70 Cal.2d 15, 26-27 (*Anderson*), sets forth three types of evidence ordinarily used to establish premeditation and deliberation: (1) planning activity, (2) motive, and (3) manner of killing. Although the *Anderson* factors provide, essentially, a “synthesis of prior case law,” they “are not a definitive statement of the prerequisites for proving premeditation and deliberation in every case.’ [Citation.]” (*People v. Mayfield, supra*, 14 Cal.4th at p. 768.) To sustain a verdict of first degree murder based upon premeditation and deliberation, evidence of all three *Anderson* categories is not required. (*People v. Perez, supra*, 2 Cal.4th at p. 1125.)

Provocation, to the extent that it raises a reasonable doubt about either premeditation or deliberation, reduces murder from first to second degree. (*People v. Thomas* (1945) 25 Cal.2d 880, 903.)

Sufficient provocation may further reduce a killing from murder to voluntary manslaughter. In the context of this case, a killing is voluntary manslaughter, rather than murder, when it occurs upon a “sudden quarrel or heat of passion.” (§ 192, subd. (a).) Under such circumstances, the malice aforethought required for murder is negated. (*People v. Carasi* (2008) 44 Cal.4th 1263, 1306.) Voluntary manslaughter has two components: (1) the objective component, which is satisfied if the verbal or physical conduct of the victim would be sufficient to provoke an ordinary person of average disposition to act rashly or without due deliberation and reflection, and (2) the subjective component, which is satisfied if the killer is shown to have acted while under the actual influence of a strong passion induced by such provocation. (*People v. Moye* (2009) 47 Cal.4th 537, 549-550.)

3. The Evidence Presented

In the immediate case, the evidence is more than sufficient to sustain the finding of deliberation and premeditation required for first degree murder. The prosecution presented evidence that demonstrates all three *Anderson* categories.

The evidence presented demonstrates planning, the first of the *Anderson* categories. Dr. Riley effectively testified that Medina was killed with two separate bladed weapons: some of her wounds were consistent with the machete found at the scene while others were inconsistent with that weapon but consistent with the knife found at the scene. This demonstrates that appellant had access to and made the decision to use two separate weapons, facts which logically suggest planning. Further, based upon Officer McGuire's testimony regarding blood spatter, it was logical for the jury to infer that appellant closed the bedroom door before attacking Medina. Since there was no one else in the house at the time of the killing from whom it was necessary to conceal the attack – which itself would suggest planning – the jury could have inferred that appellant closed the door beforehand to prevent Medina's escape. Again, such a fact is evidence of planning.

The testimony at trial, including appellant's own, provides evidence of both motive and reflection upon that motive, the second *Anderson* category. Medina admitted her infidelity to appellant that evening hours before the killing. Inferentially, the two were already arguing about it six hours prior to the killing when Ramirez was falling asleep. Appellant spoke to Medina's friend, Lizaola nearly two hours before the killing and told her that he and Medina had argued and that he had insulted her. This testimony allowed the jury to conclude that the attack was not the relatively immediate and spontaneous result of an admission of infidelity, but rather, the considered result of an hours-long reflection upon an admission of infidelity.

Appellant suggests Medina's taunt, moments before the attack, that he should leave so she could sleep with another man, provoked him into an unreflecting rage. This argument relies upon the jury having made a favorable finding regarding appellant's credibility, something it was not required to do for two reasons. First, as the person on trial for Medina's murder, appellant, as a witness, inherently presented the issue of bias. Second, appellant's testimony was not entirely consistent with other physical evidence presented in the case: (1) his claim that he first struck Medina with the machete while she was laying on the bed was inconsistent with the absence of blood on the mattress or

the upper portions of the bedclothes and (2) his description of the amount of alcohol he consumed prior to the killing was arguably inconsistent with results obtained from blood drawn roughly eight hours after the killing. These facts presented the jury with a logical basis to reject self-serving portions of appellant's testimony.

Appellant's argument also overlooks two logical inferences the jury was entitled to draw that undercut the theory of unreflecting rage: prior to the taunt, appellant (1) shut the door to the bedroom, inferentially to hinder Medina's escape, and (2) made sure he had access to not one, but two, bladed weapons. In any event, appellant's argument asks us to reweigh evidence and theories already considered and rejected by the jury. That is not our duty when evaluating the sufficiency of the evidence in support of a jury verdict.

Evidence of the manner of the killing also supports the jury's finding of premeditation and deliberation. Appellant himself testified that his first blow with the machete was to Medina's neck, logically a strike that by itself could have caused death. He delivered multiple slashing or striking blows with the machete to Medina's neck and head, and three stabbing wounds to her chest with the knife, logical places to attack if one intended and planned to kill. Medina suffered multiple defensive wounds to her arms and hands, facts which inferentially indicate that Medina resisted appellant's attack and that a struggle, which was at least somewhat protracted, occurred. Together these facts allowed the jury to conclude that appellant, rather than killing in a relatively short burst of spontaneous rage, made multiple decisions to kill again and again during a somewhat lengthy struggle.

In his brief, appellant points to many of the same facts mentioned above, but argues different inferences more favorable to his position: (1) the machete was always in the room and thus its availability is not evidence of planning; (2) the provocation of Medina's final taunt, coupled with the sheer number of Medina's wounds, is consistent with "an explosion of violence," not a deliberate decision to kill; and (3) the fact that "his blood was boiling" and that "he felt as if he was on fire from head to toe" immediately prior to the attack shows conduct in the heat of passion. These, and presumably other inferences consistent with conviction of a lesser offense, were appropriate for the jury to

consider. As indicated above, however, there were counter-inferences and conclusions the jury could reach as well, which it obviously did in this case. Appellant effectively asks us to reweigh the evidence and substitute a new conclusion for that reached by the jury. That we will not do. As recounted above, there is ample evidence to support the jury's verdict of first degree murder.

B. Reduction to Second Degree Murder or Voluntary Manslaughter

In the second part of his brief, appellant essentially repeats his arguments and asks us to reduce his conviction to second degree murder or voluntary manslaughter. For the reasons discussed above, the jury's verdict of first degree murder is fully supported by the trial record. There is no basis to reduce his conviction or modify the judgment in any way.

DISPOSITION

The judgment below is affirmed.

SORTINO, J.*

We concur:

RUBIN, Acting P. J.

GRIMES, J.

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