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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

ANTHONY IVAN BOBADILLA,

Defendant and Appellant.

B240996

(Los Angeles County
Super. Ct. No. KA092622)

APPEAL from a judgment of the Superior Court of Los Angeles County, Robert M. Martinez, Judge. Affirmed.

Syda Kosofsky, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Paul M. Roadarmel, Jr., Supervising Deputy Attorney General, and Rama R. Maline, Deputy Attorney General, for Plaintiff and Respondent.

Appellant Anthony Ivan Bobadilla contends the evidence was insufficient to support the jury's conclusion that his attempted murder of his former girlfriend was willful, deliberate and premeditated. We affirm.

PROCEDURAL BACKGROUND

An amended information charged Bobadilla with attempted willful, deliberate, premeditated murder (count 1; Pen. Code, §§ 664, 187, subd. (a)¹) and assault with a deadly weapon (count 2; § 245, subd. (a)(1)). As to both counts, the information alleged that Bobadilla personally inflicted great bodily injury under circumstances involving domestic violence. (§ 12022.7, subd. (e).) As to count 1, it was further alleged that Bobadilla used a deadly and dangerous weapon. (§ 12022, subd. (b)(1).) Bobadilla pleaded not guilty, and denied the special allegations.

A jury found Bobadilla guilty on all counts and found the deadly weapon and great bodily injury allegations true.

Bobadilla was sentenced to life with the possibility of parole, plus four years for the great bodily injury allegation and one year for the deadly weapon allegation. The trial court imposed and stayed a sentence for the assault. (§ 654.)

FACTUAL BACKGROUND

Prosecution Case

1. The dating relationship between Bobadilla and Jasmine

Bobadilla and Jasmine began dating in early 2010 when Bobadilla was 16 years old, and Jasmine was 15 years old, and he began living with Jasmine's family in January or February 2010. Jasmine's family included her parents Tim and Diane, and a cousin, Anthony. Bobadilla and Jasmine shared a bedroom and were sexually active.

The couple frequently argued, "usually about the same thing, . . . jealousy issues." They accused one another of cheating or wanting to be with someone else. Bobadilla told Jasmine that "if he couldn't be with [her] then nobody else could." The arguments worsened

¹ Further unspecified statutory references will be to the Penal Code.

over time. Bobadilla told Jasmine he would never let her leave him. Jasmine's cousin Anthony, who had seen Bobadilla go through Jasmine's cell phone and question her on occasion, described Bobadilla's behavior toward Jasmine as protective, obsessive and controlling. Jasmine occasionally threatened to break up with Bobadilla. Afterwards, Bobadilla would intentionally hurt himself, including cutting or trying to strangle himself, and Jasmine felt sorry for him and remained in the relationship. Bobadilla repeatedly told Jasmine that she "couldn't live without [him]."

2. *Bobadilla attacks Jasmine*

On August 9, 2010, Jasmine and her parents went to a family birthday celebration. Bobadilla stayed home. When Jasmine and her parents returned late that evening, Bobadilla accused Jasmine of having gone to see someone else instead of attending the family gathering. Jasmine did not argue with or pay attention to Bobadilla, which made him angrier. Fed up with arguing about such things, Jasmine told Bobadilla she wanted to break up with him and suggested they just remain friends. He said, "we're not going to do that," and told her if he could not be with her, no one could.

Jasmine told Bobadilla they would talk about him leaving her house in the morning, and turned away from him to go to sleep. Bobadilla aggressively threatened Jasmine that she "better not go to sleep." She ignored him and fell asleep, which made him angrier. Jasmine woke up in pain to Bobadilla aggressively touching her vagina, and accusing her of dreaming about someone else. She pushed him away and went back to sleep.

Bobadilla woke Jasmine again by rolling her over and making her assume a kneeling position on the bed. Facing her, Bobadilla began hitting Jasmine with a bat multiple times. Jasmine had never seen the bat in their room before. Bobadilla struck Jasmine multiple times on her head and face. The final blow dislodged Jasmine from a kneeling position. In pain, Jasmine "screamed for [her] life." Bobadilla stopped hitting her and sat on the edge of the bed.

Jasmine's parents were awakened by Jasmine's scream. The door to Jasmine's room was locked, which was unusual, and they forced it open. Jasmine was lying on her back on the bed. Bobadilla was kneeling on the bed and stared at Diane with a blank expression.

Diane approached Bobadilla and asked him, “What happened? What’s going on?” She asked Bobadilla if he hit Jasmine, and he nodded his head yes. Jasmine held her face and screamed. Diane and Jasmine saw Bobadilla hit himself with the bat. Diane got a towel for Bobadilla, who was bleeding from his head. Bobadilla walked over to Jasmine’s purse and opened it. Diane took the purse away from him. Jasmine screamed for her mother. Diane ran to aid Jasmine, who ran from the room, afraid for her life.

Anthony was also awakened by Jasmine’s scream. As he ran from his room he saw Jasmine and Diane leaving Jasmine’s room. Anthony went into Jasmine’s room; there was blood everywhere. Anthony found Bobadilla in the bathroom, bleeding. When Anthony asked him what happened, Bobadilla walked past Anthony saying, “I’m as good as dead anyways.” There was a bat on the floor. Bobadilla retrieved a piece of broken glass from the mirror and sliced his wrist. Anthony said to Bobadilla, “[w]hat are you doing? What’s wrong with you? Stop. Stop.” Bobadilla stared blankly.

Anthony called the police, and told Bobadilla to stay in the bedroom. When Anthony returned to Jasmine’s room after retrieving his cell phone, Bobadilla was gone. He had gone out the window. Anthony followed a trail of blood to chase after Bobadilla, and found a hand print on a back wall that Bobadilla had jumped over. Anthony jumped over the wall but lost sight of Bobadilla sometime between 1:00 a.m. to 2:00 a.m.

Police officers arrived at Jasmine’s house at approximately 3:30 a.m. but were unable to find Bobadilla. An officer photographed a dumpster containing wet blood, located in a parking lot about 100 yards from Jasmine’s back yard.

3. *Jasmine’s injuries and Bobadilla’s apprehension*

Diane took Jasmine to the hospital. Jasmine’s face was swollen and her face and scalp were bleeding. She had received an orbital bone fracture and two lacerations, one on her scalp, for which she received nine staples, and one on her temple which was sealed with medical adhesive. As a result of her injuries, Jasmine had scars near her eye and the side of her head. She also had severe migraines and a lot of pain in her head as a result of the beating.

Anthony found Bobadilla behind a wall in back of Jasmine's house between 5:00 a.m. and 6:00 a.m. Bobadilla had changed his clothes. He approached Anthony holding a pair of pruning shears. The police arrived and arrested Bobadilla, who was compliant. Bobadilla was treated for his wounds and transferred to a psychiatric hospital.

4. *Bobadilla's letters*

Jasmine and her family moved out of their residence several months after the attack. While moving, Jasmine found three letters in her room that Bobadilla had written, which she gave to the police. The first two were hidden behind dressers. The third was on the bottom of a basket in which Bobadilla had kept his belongings.

The first letter (Peo. Exh. 10), dated February 22, 2010, reads as follows:

"How can I trust if there's no trust in her, in her eyes? I'll never cheat or lie to her. She's my love. I don't trust because she talks to other vatos. Man, if she ever cheats on me with my vato, I would cut their balls off and her eye and switch them and cut her nose off and replace it with his dick. [¶] I'll kill that vato, breaking his arms and legs. I'll take out his inside and feed them to Jasmine since she won't see. [¶] Fuck, I kill her too after she gets beat up by my fists and heel and then I'll kill her and me. [¶] I love you so much. I only want her for me and only me."

The second letter (Peo. Exh. 11) entitled "Suicide Note 2 Jasmine," reads:

"When I die, plz don't cry. I would be in the sky. So you could stay alive, just get high, to remeber [sic] the good times that we had at night without any lights when we made love with all our might!!! I tell you this bcuz [sic] I have a suicide mind; but instead just comeitd [sic] homicide bcuz you said I lied but all you do is make me cry[.] All you do is run your mind[.] I love you so good bye. So this is my life to not be alive, I just wana [sic] die!!!! with a tear in my eye now you won't have me by ur [sic] side but you guna [sic] have another in your life so I said fuck!!! I want you back. [B]ut we can't, so watch your back (anybody killa [sic])."

The third (Peo. Exh. 12), dated July 13, 2010, entitled "My Death Letter," states:

"If you find this letter its [sic] cuz [sic] I'm dead and so is Jasmine, yes I killed her for so many reasons I can't trust that "slut" I love her but she aint [sic] gona [sic] change her

ways she told me herself, she loves to fuck! . . . She lie's [sic] about who she fucks she has a dipped in back, she does'nt [sic] even want me she is using me she don't fuckn [sic] love me so I killed her so we can go together in the light so I can trust her. [¶] She wouldn't kill herself if I ever died I would for her if she ever died. [¶] She said she would change but haven't seen changes she still talks, write's [sic], and think about sex & lust fuck her she thinks I'm her fool. Now chales she fucked with the wrong vato I was born to kill since I was fucked up in the head. [¶] Sorry I didn't mean for this to happen but Jasmine hurt me to the point I want to kill her I did it for love.”

Defense case

Bobadilla testified in his own defense. Before he met Jasmine, Bobadilla tried to kill himself more than once. After they began living together, Bobadilla and Jasmine regularly accused one another of cheating. Jasmine scratched Bobadilla on three or four occasions, and also hit or slapped him three times. She was jealous of a woman named Marina, about whom Bobadilla and Jasmine frequently argued. Bobadilla was jealous of Jasmine, and his jealousy made him angry and sad. He wrote letters to relieve stress over such feelings, but never meant to kill Jasmine.

When Jasmine returned home on August 8, 2010, she accused Bobadilla of leaving the house and being with other girls in her absence. Bobadilla and Jasmine then watched television and had intercourse. After they had sex, Jasmine told Bobadilla he “looked too happy” and asked who he was thinking about. Bobadilla said he was thinking of her, but Jasmine accused him of lying and thinking about Marina. She told Bobadilla he disgusted her, that she did not like the way he made her feel when they had sex and that she would stick to the people who made her feel good. This information caused Bobadilla to feel very bad.

Jasmine went to sleep. When Bobadilla tried to hug and kiss her and tell her that he loved her, he saw that Jasmine was masturbating. She told Bobadilla that he was “ruining the moment right now,” and that she was thinking of some other guy. Bobadilla was heartbroken and could take no more. He grabbed a bat to go outside and hit stuff to relieve his frustration. Jasmine asked him where he was going, and tried to slap or scratch him.

Bobadilla reacted by swinging the bat at Jasmine, hitting her in the head. He hit her again in the head or face. Bobadilla lost control and was not in his right state of mind. Bobadilla said he had not tried to kill Jasmine. He stopped hitting her when she screamed, dropped the bat on the bed, and hugged Jasmine and asked if she was okay. Jasmine's parents broke down the door and asked Bobadilla what he had done. Bobadilla did not recall telling Diane he hit Jasmine. He struck himself in the head three times to punish himself for hurting Jasmine; her parents had to stop him.

After Anthony came into the room Bobadilla stabbed himself in the wrist multiple times with glass shards. Bobadilla left the house through a window after Anthony said he was calling the police. He went into a parking lot behind the backyard and hid in a dumpster when he saw Jasmine's father and cousin chasing him. Bobadilla returned to Jasmine's house after the sun rose. He had changed his clothes and picked up "cutters" so he could cut his throat. Bobadilla saw Anthony and asked if Jasmine was okay; Anthony did not reply. When the police arrived and asked Bobadilla to put the clippers down, he complied.

In early October 2010, Jasmine and her father contacted the police regarding a letter Jasmine found in a basket in her room. Jasmine told the police Bobadilla had told her that, if he ever killed himself, she would find a letter entitled "*My Death Letter.*" In November 2010, Jasmine gave police a letter entitled "*Suicide Note 2 Jasmine.*" (Peo. Exh. 11.) She had found the letter behind a dresser in her room where Bobadilla had hidden it. She said Bobadilla hid several letters throughout the house, and intended her to "find them after he was gone."

DISCUSSION

Bobadilla contends that the evidence was insufficient to support the jury's conclusion that he committed the attempted murder of Jasmine in a deliberate, premeditated fashion. We disagree.

On appeal, ""we must [view] the . . . record in the light most favorable to the judgment below."" (*People v. Elliot* (2005) 37 Cal.4th 453, 466.) The test is whether substantial evidence supports the verdict (*People v. Johnson* (1980) 26 Cal.3d 557, 577), not whether we are persuaded that the defendant is guilty beyond a reasonable doubt. (*People v.*

Crittenden (1994) 9 Cal.4th 83, 139.) It is the exclusive province of the jury to weigh the evidence, assess witness credibility and to resolve conflicts in the testimony. (*People v. Sanchez* (2003) 113 Cal.App.4th 325, 330.) We must presume in support of the judgment the existence of facts reasonably drawn by inference from the evidence. The fact that circumstances may be reconciled with a contrary finding does not warrant reversal of the judgment. (*People v. Maury* (2003) 30 Cal.4th 342, 396.) Consequently, an appellant “bears an enormous burden” in a challenge to the sufficiency of the evidence. (*Sanchez*, at p. 330.)

In *People v. Anderson* (1968) 70 Cal.2d 15 (*Anderson*), the California Supreme Court established a tripartite test for deciding whether there is sufficient evidence to support a finding of premeditation and deliberation. *Anderson* explained that evidence sufficient to “sustain a finding of premeditation and deliberation falls into three basic categories: (1) facts about how and what defendant did *prior* to the actual killing which show that the defendant was engaged in activity directed toward, and explicable as intended to result in, the killing—what may be characterized as ‘planning’ activity; (2) facts about the defendant’s *prior* relationship and/or conduct with the victim from which the jury could reasonably infer a ‘motive’ to kill the victim, which inference of motive, together with facts of type (1) or (3), would in turn support an inference that the killing was the result of ‘a pre-existing reflection’ and ‘careful thought and weighing of considerations’ rather than ‘mere unconsidered or rash impulse hastily executed’ [citation]; [and] (3) facts about the nature of the killing from which the jury could infer that the *manner* of killing was so particular and exacting that the defendant must have intentionally killed according to a ‘preconceived design’ to take his victim’s life in a particular way for a ‘reason’ which the jury can reasonably infer from facts of type (1) or (2).” (*Id.* at pp. 26–27.) Recently, the California Supreme Court clarified that, “[i]n the context of first degree murder, “premeditated” means “considered beforehand,” and “deliberate” means “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.] [Citation.] “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” [Citations.]” (*People v. Lee* (2011) 51 Cal.4th 620, 636.)

Bobadilla argues that, under the *Anderson* factors, there was no evidence of planning, little evidence that he had a motive to kill Jasmine, and nothing methodical about his attack to suggest premeditation and deliberation. The factors are disjunctive, and no single factor carries definitive weight. (*People v. Pride* (1992) 3 Cal.4th 195, 247; *People v. Carasi* (2008) 44 Cal.4th 1263, 1306.) They are not exclusive and no specific combination of factors need be present to conclude there is substantial evidence to support findings of premeditation and deliberation. (*People v. Stitely* (2005) 35 Cal.4th 514, 543; *People v. Koontz* (2002) 27 Cal.4th 1041, 1081 (*Koontz*)). The issue on appeal is simply whether a jury reasonably could find an attempted killing resulted from preexisting reflection, rather than an unconsidered and rash impulse. (*People v. Hughes* (2002) 27 Cal.4th 287, 342; *People v. Young* (2005) 34 Cal.4th 1149, 1183.)

Nevertheless, considering the *Anderson* guideline factors and the entire record, we conclude substantial evidence supports the jury’s finding that Bobadilla’s attempted murder of Jasmine was premeditated and deliberate. To the extent Bobadilla points to contrary evidence and contrary inferences to support his claim there is insufficient evidence to support the jury’s finding, he misapplies the substantial evidence standard of review.

As to the first *Anderson* factor, Bobadilla maintains there was no evidence of planning because he did not lure Jasmine somewhere after arming himself with a weapon, did not lock the bedroom door as part of a plan of attack, and his letters do not illustrate a “specific scheme or plan for killing Jasmine.” This argument is meritless and ignores the applicable standard of review: We “must accept [all] logical inferences that the jury might have drawn from the . . . evidence,” not Bobadilla’s selective interpretation of that evidence on appeal. (See *People v. Maury, supra*, 30 Cal.4th at p. 396.)

First, when Bobadilla woke Jasmine and forced her to her knees, he was waiting, armed with a bat she had never before seen in the room the couple had shared for five months. A defendant’s act of arming himself with a weapon is evidence of planning activity for purposes of determining whether substantial evidence supports the jury’s finding of

premeditation and deliberation. (*Koontz, supra*, 27 Cal.4th at pp. 1081–1082; *People v. Perez* (1992) 2 Cal.4th 1117, 1126.) The jury could reasonably infer that Bobadilla brought the bat into the room as part of his plan to attack Jasmine.

Second, the door to the bedroom was locked during the attack and Jasmine’s parents had to break it open to get in. Both Jasmine and her mother testified that it was unusual for Jasmine’s bedroom door to be locked. Again, the jury could reasonably conclude that Bobadilla locked the bedroom door before the attack to keep Jasmine inside the room, and/or to prevent Jasmine’s family members from getting in to help her or to stop the attack. “Like first degree murder, attempted first degree murder requires a finding of premeditation and deliberation.” (*People v. Villegas* (2001) 92 Cal.App.4th 1217, 1223–1224, fn. omitted.) “Deliberation” refers to careful weighing of considerations in forming a course of action. “Premeditation” means “““considered beforehand.””” (*People v. Lee, supra*, 51 Cal.4th at p. 636.) ““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.””” (*Ibid.*)

Although perhaps not overwhelming, substantial evidence supports the jury’s finding that Bobadilla had deliberated and premeditated before attacking Jasmine. Planning activity is shown by the evidence that he woke Jasmine twice after their confrontation about the breakup of their relationship and waited for her to wake, armed with a bat. The manner of the assault, swinging a bat multiple times at Jasmine’s face and head, also indicates calculation. Sufficient evidence supports a reasonable inference that Bobadilla’s attempt to beat Jasmine to death with a bat was the result of planning and “preexisting reflection and weighing of considerations rather than mere unconsidered or rash impulse.” (*People v. Perez, supra*, 2 Cal.4th at p. 1125.) The prosecution presented ample evidence of planning activity.

Regarding the second *Anderson* factor, substantial evidence supports a reasonable inference that Bobadilla had a motive to kill Jasmine. Bobadilla’s letters demonstrate his motive to kill Jasmine. Quite simply, he was jealous and undone by the thought that Jasmine

was or might be interested in any man other than him. Just before the attack, Bobadilla told Jasmine that if he could not be with her, no one could. Bobadilla's motive was clear: he wanted to kill Jasmine because he was jealous that she was interested in sex with other men, and so she could never be with anyone but him.

The evidence supports a finding of motive and planning activity. (*Anderson, supra*, 70 Cal.2d at pp. 26–27.) The fact that Bobadilla brought a bat into the room with him after a jealous confrontation with Jasmine during which she hurt his feelings and pride, and stood waiting with that weapon while she woke and sat up, shows planning activity and motive. As stated in *People v. Lunafelix* (1985) 168 Cal.App.3d 97, 102, “the law does not require that a first degree murderer have a ‘rational’ motive for killing. Anger at the way the victim talked to him [citation] . . . may be sufficient [citation].” (See also *People v. Proctor* (1992) 4 Cal.4th 499, 529 [motive not clear].) “[T]he incomprehensibility of the motive does not mean that the jury could not reasonably infer that the defendant entertained and acted on it. [Citation.]” (*People v. Pensinger* (1991) 52 Cal.3d 1210, 1238.)

Bobadilla concedes that his letters contain “some evidence of motive,” but maintains the evidence is inconsistent because they also express his love for Jasmine. Again, Bobadilla simply ignores the rule that all evidentiary conflicts must be resolved in favor of the judgment. His argument is rejected.

Finally, Bobadilla claims there is insufficient evidence of premeditation and deliberation because there was nothing “‘methodical’” about his attack on Jasmine. He is wrong.

Before she went to sleep, Jasmine told Bobadilla she wanted to end their romantic involvement, and said they would discuss his move out of her house the next morning. Bobadilla threatened Jasmine that she better not sleep. She did not argue with or resist Bobadilla, but ignored him and went to sleep. After Jasmine was asleep, Bobadilla woke her up painfully by aggressively touching her vagina, and expressed his jealousy when he believed she was fantasizing about someone else. Jasmine went back to sleep. Bobadilla woke Jasmine again, forced her to her knees, waited for her to sit up and then hit her repeatedly in the head with the bat he held at the ready. These events readily demonstrate

premeditation and deliberation. In addition, “[t]he utter lack of provocation by the victim is a strong factor supporting the conclusion that appellant’s attack was deliberately and reflectively conceived in advance.” (*People v. Lunafelix, supra*, 168 Cal.App.3d at p. 102.)

Substantial evidence supports the jury’s conclusion that the attempted murder was committed with premeditation and deliberation.

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED.

JOHNSON, J.

We concur:

ROTHSCHILD, Acting P. J.

CHANEY, J.