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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THE PEOPLE,

Plaintiff and Respondent,

v.

JUAN CARLOS CARDENAS,

Defendant and Appellant.

B254028

(Los Angeles County
Super. Ct. No. PA076101)

APPEAL from a judgment of the Superior Court of Los Angeles County, Hayden Zacky, Judge. Affirmed.

Joanna McKim, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald Engler, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Paul M. Roadarmel, Jr. and Stephanie A. Miyoshi, Deputy Attorneys General, for Plaintiff and Respondent.

INTRODUCTION

Juan Carlos Cardenas appeals from a judgment of conviction entered after a jury trial. The jury found him guilty of first degree murder in the death of Rosa Figueroa (Pen. Code, § 187, subd. (a)) and found true the allegation he used a deadly weapon in the commission of the crime (*id.*, § 12022, subd. (b)(1)). The jury also found him guilty of the attempted willful, deliberate, and premeditated murder of Lisa Q.¹ (*id.*, §§ 187, subd. (a), 664, subd. (a)) and found true the allegations he used a deadly weapon in the commission of the crime (*id.*, § 12022, subd. (b)(1)) and he inflicted great bodily injury on Lisa in the commission of the crime (*id.*, § 12022.7, subd. (e)). The trial court sentenced Cardenas to 25 years to life for the murder plus one year for the use of the deadly weapon. The trial court imposed a consecutive life sentence for the attempted murder plus six years for the use of a deadly weapon and the infliction of great bodily injury.

On appeal, Cardenas contends the trial court erred in excluding evidence that he appeared to be under the influence of methamphetamine at the time he committed the crimes. Cardenas also claims the trial court erred in admitting graphic photographs of the victims. We affirm.

¹ Because the trial court and parties refer to Lisa Q. without using her last name, and to protect Lisa's privacy, we will refer to her by her first name. (See *Adoption of Matthew B.* (1991) 232 Cal.App.3d 1239, 1251, fn. 1.)

FACTUAL AND PROCEDURAL BACKGROUND

A. *Testimony at Trial*

1. The Prosecution's Witnesses

a. *Events Leading up to the February 19, 2013 Incident*

Lisa testified to the following: Lisa began dating Cardenas in 2011. She broke up with him while she was pregnant with their son due to Cardenas's jealousy and aggressiveness. When she was six or seven months pregnant, Cardenas accused her of cheating on him. He threw her down, "head-butted" her, then got on top of her, putting pressure on her stomach. Another time, when they were at a park, Cardenas threatened to slice Lisa's throat and leave her there naked. Lisa was afraid of him.

Lisa, her son, and an older child from a previous relationship shared a house on Hubbard Street in Sylmar. Lisa lived with her mother Figueroa, her niece and nephew.

b. *The Murder of Figueroa and Attempted Murder of Lisa*

Lisa, Rafael Ochoa, and Jose Guteirrez testified about the incident on February 19, 2013. On the afternoon of February 19, Cardenas arrived uninvited at Lisa's house. He knocked on the door, then "rushed in" to the house. He threw himself on the floor and said, "somebody was following him." Cardenas on previous occasions had acted strangely, saying that people were following him. Because of how he was acting, Lisa offered to take Cardenas to the hospital, but he responded that he did not need any help. Cardenas then left the house, and Lisa locked the door.

Lisa looked for Figueroa, and went to the garage thinking Figueroa might be there smoking a cigarette. She found Figueroa in the driver's seat of their van, with Cardenas in the back seat. Lisa did not want Figueroa to go anywhere alone with Cardenas, so she got into the van. She and Figueroa offered to drop Cardenas off at his father's workplace, but he did not want to go there. They offered to drive him to the hospital, but he again declined.

Cardenas asked them instead to drive him to the ranch,² which was located on Borden Street in Los Angeles County. While they drove there, Cardenas said someone was following him and trying to kill him. Once they arrived, they pulled into the driveway, and Lisa opened the door so Cardenas could get out. However, Cardenas said in Spanish, “Now I have you guys. Now I’ve got you.” Lisa tried to get out of the van, but Cardenas jumped over the back seat and pinned her down by putting his knee on her neck. He repeatedly punched Lisa in the face and held Figueroa in a chokehold. Lisa asked Cardenas to let them go, but he held them in the van.

Lisa and Figueroa managed to get free and got out of the van. Lisa told Figueroa to hide, and then Lisa began screaming for help. Cardenas got into the driver’s seat and began driving in a circle, trying to hit Lisa and Figueroa with the van. At one point, Cardenas drove the van over Figueroa, who was on the ground. Lisa helped Figueroa up, and the two began running.

Guteirrez recounted similar facts. He had been driving on Borden Street when a van swerved around him and pulled into a driveway. He heard women screaming and saw Cardenas open the van door. Guteirrez saw Cardenas hit Lisa while she was on her back in the van, using his fists to hit her in the face several times. Guteirrez also saw Cardenas drive the van over Figueroa. Lisa picked Figueroa up, and Cardenas tried to run them both down.

At one point, Cardenas stopped the van and got out. He picked up a pipe that was on the ground and swung it like a baseball bat at Figueroa’s face, hitting her several times. Figueroa fell to the ground, and Cardenas continued to hit her in the face with the pipe. Guteirrez did not see Figueroa get up. Guteirrez identified exhibits 22 and 23 as

² Lisa and Figueroa were familiar with the ranch because Cardenas had kept a horse there.

photographs of what Figueroa looked like when he saw her on the ground after Cardenas hit her with the pipe.³ After Cardenas hit Figueroa with the pipe, he then went after Lisa.

As Lisa was running from Cardenas, she saw Ochoa on the other side of a nearby fence and asked him to call the police. He called 911 but was told there was no one available who spoke Spanish. He told Lisa to jump over the fence. After she jumped over the fence, he handed her his cell phone, and she spoke to a 911 operator. While she was on the phone, Cardenas jumped over the fence holding the metal pipe. Ochoa described Cardenas as wearing a serape, similar to a poncho.

Ochoa directed Lisa to a nearby building. She ran to the building and tried to hide. Cardenas followed Lisa into the building. She turned and covered her face with her arm as Cardenas hit her with the pipe. He first hit her on her arm. He then swung the pipe at Lisa's head like a baseball bat. Lisa remembers getting hit one time in the head, then passing out. Lisa thought Cardenas was going to kill her. Ochoa ran into the building, armed with a tool handle, to help Lisa. Cardenas told Ochoa "not to meddle in somebody else's business" and ran down the driveway.

c. Cardenas's Arrest and Condition of Lisa and Figueroa

Guteirrez and Los Angeles Police Officers Antonio Martin, Carlos Lozano, and Joshua I. Fillinger testified as to Cardenas's arrest and the condition of the victims when the police arrived. Guteirrez testified that when he saw Cardenas leaving the property, he followed him in his car. Guteirrez called 911 and told the operator someone had tried to kill a woman by hitting her with an object that looked like a stick and was running away. While Guteirrez was on the phone, Martin and Lozano arrived at the scene. Guteirrez pointed Cardenas out to the officers.

Martin and Lozano took Cardenas into custody. Martin described Cardenas as wearing a black and white serape. Cardenas was sweating profusely and was breathing

³ All exhibits referenced in the factual background are challenged by Cardenas as too "gruesome" for the jury to have seen.

hard, but he had no visible injuries. Martin and Lozano received another radio call about an assault and went to a nearby house. Lisa was there calling for help. She told the officers that Cardenas was her ex-boyfriend and was the one who had injured her. Lisa said, “Look at what he did to me.”

Martin described Lisa as “bleeding profusely from her head.” Martin testified that exhibit 7 showed how Lisa looked when he saw her.⁴ Guteirrez also described Lisa as “bloody and swollen.” He also identified exhibit 7 as showing what Lisa looked like after he saw her coming out of the driveway.

Paramedics arrived and treated Lisa. As they were putting her into the ambulance, Lisa said, “And I remember now. He killed my mom.” Martin asked her where it happened, and she indicated the ranch. Martin then went to search the property and found Figueroa, unconscious and not breathing. He described her head as bloody. Officers found the metal pipe, which had red stains on it. They also found a folder containing papers about 30 feet from Figueroa’s body. Martin testified that exhibits 22 and 23 showed what Figueroa looked like when he found her.

Fillinger testified that he and Los Angeles Police Officer Victor Hooper transported Cardenas to the police station. Cardenas had no visible injuries and his clothing was not muddy. During the drive, Cardenas stated: “That bitch tried to take my kid away from me and there was no way I was going to let that shit happen.” When Cardenas was booked, officers found what appeared to be a methamphetamine pipe in his possession. He did not tell the officers he was sick or injured, and he said he understood why he was being arrested.

⁴ Both Martin and Guteirrez described exhibit 7 as showing Lisa after her injuries. Guteirrez specifically described the photograph as showing Lisa “after [he] saw her coming out of the driveway[.]” It appears from the photographs that Martin and Guteirrez were actually describing how Lisa looked in exhibit 8 because exhibit 7 is a close-up of Figueroa, which is evident from a comparison of exhibits 7 and 23, both of which show the same view of Figueroa.

The police later showed Ochoa a photographic lineup. Ochoa testified that he identified Cardenas as the man he had seen come over the fence with a pipe in his hand.

d. *Medical Testimony*

Lisa was taken to Holy Cross Hospital. Dr. David Hanpeter, a trauma surgeon, testified as to Lisa's condition. When she arrived, Lisa "was critically ill, having sustained extensive damage to her face, making it very hard for her to breathe and communicate." She had a tracheostomy (breathing tube through the mouth to the trachea) and was placed on a ventilator to enable her to breathe. Lisa had extensive facial fractures from her eyes to her jaw, a broken jaw and broken teeth. Her right arm was broken in two places. She had scalp lacerations, a concussion, and swelling to the face and front of her scalp.

Lisa underwent surgery to implant plates to hold her facial bones together. Because her face was so unstable, an "external fixation apparatus" was attached to keep her facial bones in alignment. In addition, due to the extent of her injuries and the amount of pain she was suffering, doctors placed her into a medically induced coma. After she was brought out of the coma, she required a feeding tube. Lisa was not released from the hospital until March 16, 2013. Dr. Hanpeter identified exhibit 9 as a photograph of what Lisa looked like in the hospital with a tracheostomy, ventilator, and external fixation apparatus.

Deputy Medical Examiner Martina Kennedy performed an autopsy on Figueroa. Kennedy testified that Figueroa died from "[m]ultiple blunt force injuries to the head." She suffered multiple skull fractures, including fractures to the "basilar surface, the part that the brain actually sits on." Further, the fractured pieces of her skull had been displaced and were no longer aligned. She had lacerations on her right and left side scalp. She also suffered bruising and abrasions on her face and hands.

Kennedy identified exhibit 37 as a photograph of Figueroa before she performed the autopsy on her. As she testified, Kennedy described Figueroa's injuries and how she performed the autopsy by referencing photographs marked as exhibits. Exhibit 39 shows

lacerations to the scalp, with “hallmarks of blunt force injuries.” Kennedy also testified that “this laceration went all the way through the skin.” Exhibit 40 shows the left side of Figueroa’s skull or scalp. It shows lacerations and abrasions. Kennedy testified, “there were multiple basilar skull fractures within the brain.” She went on to describe the fractures to the skull shown in the photograph. Kennedy described exhibit 43 as the top right portion of Figueroa’s skull that shows “multiple fracture lines.” Exhibit 44 shows the part of the skull where the brain sits. The photograph shows “significant fracture, blunt force injury.” Kennedy also pointed out hemorrhaging on the scalp. Exhibit 45 shows bruising and lacerations on Figueroa’s hand, “indicating there was an impact of some kind that split open the skin.”

2. The Defense Witnesses

a. Cardenas’s Testimony

Cardenas met Lisa in 2010, and they were in a dating relationship, then had a son who was born on November 12, 2012. Cardenas had used methamphetamine for 10 years and had been arrested twice for possession of methamphetamine.⁵ In the three months leading up to the crimes, he had been experiencing “rough times” and was using methamphetamine “a little bit more than before.” In the week before the crimes, he had been smoking methamphetamine and marijuana almost every day. Smoking methamphetamine made him “feel calm in a way.”

On February 19, 2013 Cardenas got on his bicycle and began riding to Lisa’s house. Two men approached him, and one of them punched him in the face, leaving a bruise. Cardenas managed to get away. He threw his bicycle into Lisa’s neighbor’s yard, jumped over a wall, and tried to get into Lisa’s house. He knocked on the door and said that people were following him. When he came into the house, he threw himself on the

⁵ Cardenas also acknowledged having been arrested in September 2012 for assaulting Lisa and in January 2013 for assaulting his mother.

floor and told Lisa he was hurt. He asked if she would give him a ride to his father's workplace.

Figueroa left to pick up Lisa's older child, and Cardenas went outside to wait for her so she could give him a ride. When she returned, he asked her for a ride, and Lisa agreed to accompany them. Cardenas got into the van and lay down in the back. Because he believed the two men who attacked him could still be following him, he asked Figueroa to take him to the ranch instead of his father's workplace.

When they arrived at the ranch, Cardenas said he needed to go to court to return some papers. He also said he did not want to break up with Lisa. He saw two men about 14 to 16 feet away. When he got out of the van, someone grabbed him and hit him on the head. He also felt something touch his knee. He fell and lost consciousness. After Cardenas regained consciousness, he walked away to get help. When the police stopped him, he told them that he did not know what was happening and that he had been attacked. The officers handcuffed him and placed him in a police car.

At the police station, the police told him Lisa had been beaten. He told them he did not know what had happened and that he also had been injured, but the police did not care about his injuries.⁶ He also told the police that "some crows had picked on my eyes," and he was "seeing bad spirits." He did not know if he was hallucinating from drugs.

The folder of papers found near Figueroa's body were custody papers that Cardenas had signed three days earlier. He was trying to get "50/50" custody of his son. Cardenas told the police, "She knows where to bury the knife in my . . . heart and just twist it." Cardenas was also upset with Figueroa, who did not want him around. He had been told she took out a restraining order against him, but he believed it was a fake.

Cardenas denied attacking Lisa or Figueroa. The two men who attacked him were the ones who attacked Lisa and Figueroa.

⁶ Cardenas did not mention anything about the assault on the way to Lisa's house.

b. *Cardenas's Mother*

Cardenas's mother Antonia Ochoa testified that Cardenas lived with her, her husband, and her other son. In January 2013 Cardenas had been taken to Olive View Hospital. On January 7, Ochoa drove to work and discovered Cardenas in the trunk of her car. On January 11, the police were called to Antonia Ochoa's house, and Cardenas was arrested.

At about 1:00 a.m. on February 19, 2013 Antonia Ochoa heard Cardenas "talking a lot" and saying ghosts or spirits were looking at him; Cardenas was alone at the time. He said that crows wanted to attack him; he also said that he was God and the devil. Antonia Ochoa left for work before 6:00 a.m.

Antonia Ochoa left work about 3:30 p.m. after receiving a call from Lisa. When she got home, she saw a lot of candles on the table. Her dog was on the table, and a teddy bear was tied to a chair. She went to Olive View Hospital and Holy Cross Hospital, but Cardenas was not at either one. After receiving a telephone call from Cardenas, she went to the ranch and saw the police there.

c. *Samantha F. and Christopher Dominguez*

Samantha F. and her boyfriend Christopher Dominguez were at Figueroa's house when Cardenas arrived. Cardenas yelled that he was freezing, and Lisa let him into the house. Once inside, he said someone was looking for him and that he had been beaten. Cardenas walked toward the kitchen and lay down on the floor. He held a blanket over himself and was mumbling about someone looking for him. His face appeared to be swollen by his eyebrow, and Lisa wanted to take him to the hospital, but he did not want to go.

d. *Expert Testimony*

Forensic psychologist Haig Kojian, who worked at Patton State Hospital, conducted a forensic evaluation of Cardenas. He interviewed Cardenas, reviewed his medical records, and reviewed records related to the case. A January 9, 2013 report from

Olive View Hospital stated that Cardenas had been acting erratically, making “bizarre comments,” and saying “random words.” He was unable to follow commands and had to be placed in “four-point restraints.” He was given powerful antipsychotic medication. This indicated to Kojian that Cardenas was “clearly out of control.”

In Kojian’s opinion, the events of February 19, 2013 showed that Cardenas was in a “decompensated mental state,” meaning he had fallen below “baseline level[s] of functioning.” Methamphetamine may cause a decompensated mental state because it is a “psychoactive substance, which means that it mimics psychiatric symptoms.” It can cause hallucinations, psychosis, delusions, and paranoia. The effect of methamphetamine is “idiosyncratic to the individual” and depends on the type of methamphetamine used, the dosage, and the extent of the person’s usage of the drug.

Kojian listened to a recording of a police interview of Cardenas. While Cardenas sometimes rambled and was “difficult to follow,” Cardenas was able to answer some questions clearly and directly, and he understood that he was under arrest and speaking to the police. Kojian noted that even if a person is delusional, he might be able to act normally and answer routine questions. Only if the interviewer raises specific issues would the person exhibit signs of psychosis. Kojian pointed out that during the interview, Cardenas exhibited “some bizarre thinking,” such as talking about crows picking at his eyes, talking about God and the devil, and saying Satan had taken over him. This occurred when the police asked him about what happened to Lisa and Figueroa.

Kojian did not observe Cardenas on February 19, 2013 and did not know whether Cardenas was in a decompensated state at that time. However, based on witness statements, he believed this was the case. Kojian conceded that Cardenas could have just been angry.

3. Prosecution Rebuttal Witnesses

Los Angeles Police Detectives Efren Gutierrez and Gene Parshall interviewed Cardenas at the police station. He did not appear to have any difficulty understanding

their background questions. When they read him his *Miranda*⁷ rights, he said he understood his rights and agreed to talk to them. He told them that he was having a custody dispute with Lisa and that Figueroa did not like him and wanted him to stay away from Lisa. The detectives asked him about the metal pipe, and he said his fingerprints would be found on it and elsewhere at the ranch because he worked there. When the detectives asked Cardenas about the attacks on Lisa and Figueroa, he became evasive and “stalled a lot in answering.” He kept saying that he was the victim. It appeared that Cardenas understood the detectives’ questions, and he subsequently gave correct answers to questions about what month and year it was.

Cardenas acknowledged using methamphetamine that day. He talked about the crows picking at his eyes, he said “a radio” was following him, and he felt spirits around him. These statements were irrational, but Detective Gutierrez thought Cardenas was being deceptive because he only made the irrational statements when asked why he had attacked Lisa and Figueroa.

Cardenas did not mention any injury to his head or request medical treatment, and the detectives did not see any injuries. Photographs taken of Cardenas after the interview did not show any injuries to his face or hands, although there were small abrasions on his torso and “a long abrasion and red area” on his shin. His clothes were clean.

The jury was informed that the parties stipulated that about a month before the incident, Rafael Ochoa and Cardenas smoked methamphetamine together.

B. Evidentiary Hearings

1. Evidence of Cardenas Acting Under the Influence of Methamphetamine

At trial, the prosecutor moved to exclude Lisa’s testimony regarding Cardenas’s methamphetamine use for lack of foundation. The trial court framed the issue as to what evidence it would allow as to whether Cardenas was “under the influence of

⁷ *Miranda v. Arizona* (1966) 384 U.S. 436 [86 S.Ct. 1602, 16 L.Ed.2d 694].

methamphetamine or something else that particular day that would impact on his ability to formulate the specific intent required for murder.”

Before holding a hearing, the trial court made clear that “any witness can certainly testify about their visual observations of the defendant. What he was doing, how he was acting, his mannerisms. If he was saying weird, outlandish things, I think that’s admissible. But I think that we will need to have [an Evidence Code section] 402 [hearing] with Lisa . . . and maybe get a better foundation. Because I think it would be . . . unless I hear from her, it would be a leap of faith to say, he was acting really weird that day because he was using meth.”

At the hearing outside the presence of the jury, Lisa testified that while she was dating Cardenas, she had seen him use drugs one time. She stated that Cardenas smoked drugs from a pipe in front of her while they were in Tijuana, and she thought it was “meth.” Based on Lisa’s testimony, the court estimated that this occurred in approximately August of 2012. When asked whether she observed any unusual behavior after he smoked the drug, Lisa responded, “[h]e was normal.” As to Cardenas’s behavior on February 19, 2013, Lisa testified as follows:

“Q Did you see him use any drugs that day?

“A No.

“Q Do you know if he was on drugs that day?

“A I don’t know.

“ Q How was he behaving that day?

“A Not himself.

“Q Do you have any idea why?

“A No.”

On cross-examination, Lisa testified that she had taken Cardenas to purchase drugs one time, but he did not show her what kind of drugs he purchased. Lisa had seen pipes that Cardenas used for smoking drugs, but she did not know if he had a pipe with him on February 19. Lisa also testified that she had talked with Cardenas’s mother about whether he needed to go to “rehab” for drug use sometime before the incident. Lisa was

aware that Cardenas had been arrested for having methamphetamine. She also testified that one of the reasons she broke up with Cardenas was his drug use. After his arrest, Lisa had observed Cardenas's behavior toward her became increasingly negative.

Cardenas's counsel argued that Lisa testified that Cardenas "was not acting like himself" on the day of the incident, although counsel conceded that she had no information regarding Cardenas's drug use on that day. The court reminded counsel that Lisa could testify as to her observations of Cardenas's behavior and the statements he made. Defense counsel had nothing more to add. The court ruled that Lisa "can't testify that he used drugs that day. And she doesn't know. She only knows how he acted that day." The court later ruled: "[I]t's fair game for the defense to ask about the observations of the defendant that day . . . [a]nd whether [Lisa] saw him using any illegal narcotics that day, things of that nature. That's fine." However, the court found there was no foundation for asking Lisa whether she believed Cardenas was under the influence of drugs that day.

On appeal, Cardenas argues that Lisa should have been allowed to testify about Cardenas's drug use because she dated Cardenas for over two years and knew him well, she saw him previously smoke methamphetamine, she went with him one time to buy drugs, she terminated her relationship with him because of his drug use, and she tried to get him help for his drug use.

2. Motion to Exclude Photographs of Victims

Cardenas moved to exclude photographs of Lisa and Figueroa depicting them after the incident, including (1) five photographs of Figueroa and Lisa at the crime scene; (2) two photographs of Lisa at the hospital; and (3) six autopsy photographs of Figueroa. We discuss each in turn.

a. *Crime Scene Photographs*

The prosecutor sought to admit three photographs of Figueroa at the crime scene, including exhibits 7, 22 and 23, and two of Lisa, including exhibit 8.⁸ The court described two of Figueroa as having “nothing in that picture that is remotely graphic or disturbing.” The court described exhibit 22 as showing Figueroa lying on the ground face up with “an EKG sticker on her lower-left abdomen area and she does have blood about the face,” but “it’s not particularly graphic or gruesome.” The court described what later was marked as exhibit 7 or exhibit 23 as “a close up of [Figueroa’s] face, which includes two large gash wounds on the right and left side of the forehead area above the eyes, and substantial injury to her left orbital area or cheek bone below the left eye.” As we note above, both Detective Gutierrez and Officer Martin testified that the photographs showed how Figueroa looked after the incident.

The court described exhibit 8 as showing Lisa “covered in blood and seems to be holding her throat with her left hand. And she appears to have a shocked look on her face.” From Gutierrez’s testimony it appears that he identified the photograph of Lisa as how she looked on the driveway after the incident.

Cardenas’s counsel argued that these exhibits were “graphic, very powerful in nature, highly likely to cause an emotional reaction from the viewer, particularly the jurors. It could prejudice them against my client I don’t think that [the jurors] necessarily need to see photos that are that dramatic and gory to get the factual results of what the People are trying to prove.”

⁸ At the time of the evidentiary hearing, the photographs were described by the court but had not yet been marked with exhibit numbers. We identify the photographs by exhibit number based on the testimony of the witnesses. It is not clear which exhibit is described as the second photograph of Lisa nor do the parties provide this information to the court. Also, as noted above, the parties describe exhibit 7 as a photograph of Lisa at the crime scene, but it appears this was actually marked as exhibit 8. Exhibit 7 is a close-up of exhibit 23.

The trial court found the photographs were relevant and held, “the jury has a right to see them. I think it shows the nature and the extent of the injuries. And . . . perhaps it’s relevant to the intent issues. Specific intent to kill. And I have considered [Evidence Code section] 352. Their probative value is not substantially outweighed by prejudice, so I will allow those in.”

b. *Photographs of Lisa in the Hospital*

As noted above, the photographs of Lisa in the hospital (exhibits 9 and 10) show her condition after the beating. The trial court admitted these photographs for the same reasons it set forth for the crime scene photographs.

c. *Autopsy Photographs of Figueroa*

The prosecutor sought to admit five autopsy photographs of Figueroa, including exhibits 37, 39, 40, 43, and 45. Later the prosecutor sought to admit a sixth autopsy photograph, exhibit 44. The blood had been washed off Figueroa’s head and her head had been shaved to show the injuries. As we discuss above, medical examiner Kennedy used these photographs during her testimony to describe how she conducted the autopsy and to describe the severity of the injuries to Figueroa. The court found one photograph of Figueroa on her back at the time of the autopsy (exhibit 37) to be “not particularly gruesome.”

The court described the second and third photographs showing Figueroa’s scalp and forehead with “gash wounds” and the fourth photograph showing the scalp pulled back and the fractured skull.⁹ The court described the fifth photograph, which appears to be exhibit 45, as showing Figueroa’s right hand, with “a wound on the middle finger/knuckle area which presumably is a defensive type of wound.” The trial court

⁹ From our review of the photographs, the court appears to be describing as the second, third and fourth photographs, exhibits 39, 40, and 43.

ruled that these autopsy photographs were admissible “for the same reasons” as the other photographs, over the defense’s objections.

The prosecution later sought to admit what appears to be exhibit 44, which the court described as “a photograph which appears to be the victim’s skull. The scalp is reduced either back or forward, and the skull is shown,” with “a relatively large fracture.” Cardenas’s counsel objected that this photograph was “[g]ory and provocative in an emotional sense.” The trial court stated, “tentatively, I am going to allow this. I think it’s relevant to show intent to kill and the severity of the blows that the victim was subjected to. I have considered [Evidence Code section] 352. The probative value is not substantially outweighed by prejudice.” No further objections were raised by Cardenas, and all of the photographs were admitted.

DISCUSSION

A. The Court Properly Excluded Testimony That Cardenas Was Under the Influence of Methamphetamine

Cardenas argues that lay opinion as to whether he was under the influence of methamphetamine is admissible under Evidence Code section 800, which provides that “[a] lay witness may testify to an opinion if it is rationally based on the witness’s perception and if it is helpful to a clear understanding of his testimony. [Citation.]’ [Citation.]” (See *People v. Virgil* (2011) 51 Cal.4th 1210, 1254; *People v. Bradley* (2012) 208 Cal.App.4th 64, 83.) We review the trial court’s ruling on the admission of lay opinion testimony for abuse of discretion. (*Bradley, supra*, at p. 83; see *Virgil, supra*, at p. 1254.)

“Lay opinion regarding drug intoxication is admissible so long as the party eliciting the evidence establishes a foundation. [Citation.]” (*People v. Navarette* (2003) 30 Cal.4th 458, 493; accord, *People v. Moore* (1945) 70 Cal.App.2d 158, 165; see also *People v. Leahy* (1994) 8 Cal.4th 587, 620 [“we allow lay opinion testimony regarding

both drug and alcohol intoxication because laypersons are sufficiently familiar with the symptoms”].)

A foundation is established where the witness is “sufficiently knowledgeable” about use of the drug in question “to give an opinion as to whether defendant was under the influence of that drug.” (*People v. Navarette, supra*, 30 Cal.4th at p. 494.) The witness’s knowledge may be based on personal observations. (*Ibid.*; see also *People v. McAlpin* (1991) 53 Cal.3d 1289, 1308 [“when a lay witness offers an opinion that goes beyond the facts the witness personally observed, it is held inadmissible”].)

In *People v. Williams* (1988) 44 Cal.3d 883, relied on by Cardenas, the court held that the trial court properly allowed testimony that at the time of the crime the witnesses did *not* observe that the defendant was “‘strung out’” on drugs, where the witnesses stated that they had previously seen people “‘strung out,’” and described their observations of defendant at the time in question. (*Id.* at pp. 915-916.)

Similarly, in *Moore*, also cited by Cardenas, a police officer “who testified he had seen people under the influence of narcotics ‘on numerous occasions’ was permitted to express the opinion that [a witness] was, on the morning in question, under the influence of narcotics. Sufficient foundation was laid for this testimony and it was admissible. [Citations.]” (*People v. Moore, supra*, 70 Cal.App.2d at p. 165.)

In *Navarette*, our Supreme Court held that the trial court properly excluded testimony from two witnesses who testified they had never seen people on drugs before, finding they therefore were not “sufficiently knowledgeable about cocaine use to give an opinion as to whether defendant was under the influence of that drug.” (*People v. Navarette, supra*, 30 Cal.4th at p. 494.)

As in *Navarette*, there was no foundation for Lisa to testify about whether Cardenas was under the influence of methamphetamine at the time of the incident. Lisa saw Cardenas use drugs on one occasion, and testified that after using what she believed was methamphetamine, he appeared “normal.” This did not provide a foundation for her to testify that Cardenas was under the influence of a drug at the time of the incident. Therefore, she was not “sufficiently knowledgeable” about use of the drug in question “to

give an opinion as to whether defendant was under the influence of that drug.” (*People v. Navarette*, *supra*, 30 Cal.4th at p. 494.) The trial court did not abuse its discretion in ruling that Lisa could not testify that Cardenas appeared to be under the influence of drugs at the time of the crimes.¹⁰

B. The Court Did Not Abuse its Discretion by Admitting the Photographs of the Victims

Evidence Code section 352 gives the trial court discretion to exclude evidence if the probative value of the evidence is substantially outweighed by the probability its admission will create a substantial danger of undue prejudice. (*People v. Cowan* (2010) 50 Cal.4th 401, 475; *People v. DeSantis* (1992) 2 Cal.4th 1198, 1226.) Further, “[e]vidence is prejudicial within the meaning of Evidence Code section 352 if it “uniquely tends to evoke an emotional bias against a party as an individual” [citation]” (*Cowan*, *supra*, at p. 475; accord, *People v. Duff* (2014) 58 Cal.4th 527, 557 [photographs more probative than prejudicial where “they depicted minimal blood and were no more gruesome than one would expect of any pictures of gunshot victims”].)

As our Supreme Court has explained, ““[M]urder is seldom pretty, and pictures, testimony and physical evidence in such a case are always unpleasant” [citation], and we rely on our trial courts to ensure that relevant, otherwise admissible evidence is not more prejudicial than probative [citation]. A trial court’s decision to admit photographs under Evidence Code section 352 will be upheld on appeal unless the prejudicial effect of such

¹⁰ Because we find the testimony was properly excluded, we need not address Cardenas’s claim that exclusion of the testimony deprived him of his constitutional right to present a defense. (*People v. Sattiewhite* (2014) 59 Cal.4th 446, 472 [no violation of defendant’s constitutional rights where court properly excluded evidence]; *People v. Lewis* (2009) 46 Cal.4th 1255, 1289 [“[t]he “routine application of state evidentiary law does not implicate [a] defendant’s constitutional rights”]). We likewise need not address the prosecution’s assertion that Cardenas forfeited his contention on appeal by failing to make this argument with specificity at trial.

photographs clearly outweighs their probative value.’ [Citation.]” (*People v. Cowan, supra*, 50 Cal.4th at p. 475; accord, *People v. Boyce* (2014) 59 Cal.4th 672, 688.)

As the court held in *People v. McKinzie* (2012) 54 Cal.4th 1302, 1351: ““The admission of photographs of a victim lies within the broad discretion of the trial court when a claim is made that they are unduly gruesome or inflammatory. [Citations.] The court’s exercise of that discretion will not be disturbed on appeal unless the probative value of the photographs clearly is outweighed by their prejudicial effect. [Citations.]” [Citation.]’ [Citation.]”

Our Supreme Court has repeatedly found that photographs of murder victims, even if graphically showing injuries, are relevant and admissible to show how the crime occurred and to show mental state, including malice and premeditation. (See *People v. McKinzie, supra*, 54 Cal.4th at p. 1351 [affirming trial court’s admission of crime scene and autopsy photographs, including photograph of victim’s face showing hemorrhages and skull showing severity of the blunt force trauma]; *People v. Cowan, supra*, 50 Cal.4th at pp. 474, 475 [affirming admission of 10 graphic photographs of bodies of victims with “flesh discolored and bloated due to decomposition,” as relevant to show killing was premeditated and deliberate]; *People v. Carey* (2007) 41 Cal.4th 109, 127 [autopsy photographs showing “graphic image[s]” of victim’s chest with lacerations, cuts to her neck and chest, and rib cage with skin removed were relevant to prove malice and to show how crime occurred]; *People v. Lewis* (2001) 25 Cal.4th 610, 641 [photographs of victims at crime scene, including those with deep stab wound to neck, showed nature and placement of injuries and supported witnesses’ testimony as to how crimes were committed].)

As the court held in *People v. Heard* (2003) 31 Cal.4th 946, 973, 976, in finding the trial court properly admitted graphic photographs of murder victims to show how the crimes were committed and the “savageness” of attack: “[T]he photographs portray the results of defendant’s violent conduct; that they are graphic and unpleasant to consider does not render the introduction of those images unduly prejudicial.” (Accord, *People v. Mills* (2010) 48 Cal.4th 158, 191-192 [trial court properly admitted ““gruesome

photographs””” showing how crime was committed, amount of force used, and extent of victim’s injuries].)

As to autopsy photographs, the court in *McKinzie* held: ““Autopsy photographs are routinely admitted to establish the nature and placement of the victim’s wounds and to clarify the testimony of prosecution witnesses regarding the crime scene and the autopsy, even if other evidence may serve the same purposes.’ [Citations.]” (*People v. McKinzie, supra*, 54 Cal.4th at p. 1352; accord, *People v. Carey, supra*, 41 Cal.4th at p. 127 [“[a]utopsy photographs of a murder victim are always relevant at trial to prove how the crime occurred”].)

Cardenas relies on older cases, including *People v. Redston* (1956) 139 Cal.App.2d 485 and *People v. Burns* (1952) 109 Cal.App.2d 524, to argue that the court should exclude “gruesome” photographs “[w]here the inevitable effect of introducing a photograph is to arouse the sympathy or prejudice of the jury, and the fact in proof of which it is offered is not denied” (*Redston, supra*, at p. 490; see *Burns, supra*, at p. 541.) While a trial court must weigh the probative value of potentially inflammatory photographs against the prejudice they can cause, our Supreme Court has noted that “cases of more recent vintage have recognized that photographs of murder victims are relevant to help prove how the charged crime occurred, and that in presenting the case a prosecutor is not limited to details provided by the testimony of live witnesses. [Citations.]” (*People v. Booker* (2011) 51 Cal.4th 141, 170.)

We have examined the challenged photographs. The photographs of Figueroa and Lisa at the crime scene show their condition at the time and corroborate the testimony of witnesses at the scene. Further, they are no more “gruesome” than necessary to show the victims’ condition and the severity of the attack by Cardenas.

The photographs of Lisa at the hospital show her condition after the crime and were used by Lisa and trauma surgeon Dr. Hanpeter to describe her injuries. Notably, all blood was removed from Lisa before these photographs were taken. Finally, the autopsy photographs of Figueroa’s skull were relied upon by the medical examiner to describe Figueroa’s injuries and their severity and to support her conclusion that Figueroa’s death

was caused by “multiple blunt force injuries to the head.” As in *People v. Blacksher* (2011) 52 Cal.4th 769, 827, the autopsy photographs “depict cleaned wounds showing far less blood than photographs of the crime scene showing the position of the bodies.” (See also *People v. Garcia* (2008) 168 Cal.App.4th 261, 294 [autopsy “photographs are clinical in appearance, consisting of close-up shots of the bullet wounds on the body” and “[n]one of the photographs depicts the victim’s face or entire body”].)

We find the trial court did not abuse its discretion in admitting the photographs to show Cardenas’s intent to kill, his malice and premeditation, and the severity of the injuries inflicted upon Figueroa and Lisa.¹¹

DISPOSITION

The judgment is affirmed.

FEUER, J.*

We concur:

PERLUSS, P. J.

ZELON, J.

¹¹ Because we find that the trial court did not abuse its discretion in admitting the photographs, we need not address Cardenas’s claim that admission of the evidence violated his constitutional right to a fair trial. (See *People v. Sattiewhite*, *supra*, 59 Cal.4th at p. 472; *People v. Lewis*, *supra*, 46 Cal.4th at p. 1289.)

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