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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
(Sacramento)

THE PEOPLE,

Plaintiff and Respondent,

v.

JAKARI LAFEYETTE WILSON,

Defendant and Appellant.

C069485

(Super. Ct. No.
10F06389)

After a domestic disagreement, defendant Jakari Wilson shot both his wife and his teenage stepdaughter. A jury convicted him of two counts of attempted willful, deliberate and premeditated murder (Pen. Code,¹ §§ 664/187), with enhancements for using a firearm and causing great bodily injury (§§ 12022.53, subd. (d); 12022.7, subd. (e)), and other charges. The jury also found true allegations that defendant had suffered two prior serious felony convictions (§§ 667, subd. (a); 667,

¹ Further undesignated statutory references are to the Penal Code.

subd. (b)-(i), 1170.12). Sentenced to 105 years to life in prison, defendant appeals.

Defendant contends the trial court erred in failing to sua sponte instruct the jury on attempted voluntary manslaughter. He further contends that there was insufficient evidence of deliberation and premeditation. Disagreeing, we shall affirm.

FACTS

Few details about the shooting were presented at trial. Defendant's wife Alona Jennings refused to testify, despite being held in contempt and fined \$1,000. Jennings's 16-year-old daughter J.B. did testify, but she was at times uncooperative and refused to identify the shooter. Defendant did not testify.

We glean from the record that the night of the shooting, there was a party or barbeque at defendant's house. Jennings, who had been drinking,² was angry with defendant and yelled at him. She went into the kitchen and told J.B. to get her "stuff" because they were leaving. J.B. went to her room to collect her phone and other items; she then returned to the front room, looking for her mother.

At trial, J.B. testified she "probably" told the deputy sheriff that defendant left the house and went to the garage. J.B. was truthful when she spoke to the deputy.

Defendant and Jennings were arguing in the hallway. Defendant reached over Jennings to grab something, perhaps a

² Later at the hospital, Jennings's blood-alcohol level was 0.14 percent.

cell phone. J.B. told defendant to get off her mother. Defendant grabbed Jennings and threw her to the ground. Defendant was standing about seven feet away; he pointed a gun at Jennings's head and shot her. Jennings was hit in the shoulder or upper arm; the bullet passed through, a "reasonably superficial" wound. J.B. tried to hide behind the refrigerator. From 12 feet away, defendant pointed the gun at J.B.'s head and fired. J.B. was shot under her eye.³ The shooting did not appear to be an accident.

Defendant then ran away.

Jennings and J.B. got in an SUV to drive to the hospital. J.B. called 911 and told dispatch that her stepdad had shot her and her mother with "a tiny black gun." She identified defendant by name to dispatch and gave a physical description. She testified she had told the truth in the 911 call.

A recorded telephone call between the incarcerated defendant and Jennings was played for the jury. In the call, defendant said, "it wasn't supposed to happen under no circumstances." He thought about killing himself because his life had almost lost its meaning. "I wish I could understand in my mind, but somehow I always do shit like that, man, some kinda way. I always manage to hurt the people closest to me, you know what I'm saying?" Jennings told him that neither he nor she

³ Neither injury required stitches. J.B. retained some metallic material in her cheek and was admitted to the hospital for observation.

could explain what had happened. "Because nothing that we were doing would even justify any of it, like it wouldn't have--I would never of in my wildest dreams that, you know, I honestly thought you were going to have your normal temper tantrum outside and drive off." Jennings then laughed.

DISCUSSION

I

Instruction on Attempted Voluntary Manslaughter

Defendant first contends the trial court erred in failing to instruct the jury sua sponte on attempted voluntary manslaughter as to count 1, the attempted murder of Jennings. He argues the evidence of a heated argument and sudden shooting supports such an instruction, and asserts the error was reversible per se.

A. *The Law*

In criminal cases, the trial court must instruct on principles of law relevant to the issues raised by the evidence, even absent a request from counsel for such instructions.

"That obligation has been held to include giving instructions on lesser included offenses when the evidence raises a question as to whether all of the elements of the charged offense were present [citation], but not when there is no evidence that the offense was less than that charged. [Citations.]" (*People v. Breverman* (1998) 19 Cal.4th 142, 154.)

"Voluntary manslaughter is a lesser included offense of murder. [Citation.]" (*People v. Booker* (2011) 51 Cal.4th 141, 181.) Hence, attempted voluntary manslaughter is a lesser

included offense of attempted murder. (See, e.g., *People v. Lopez* (2011) 199 Cal.App.4th 1297, 1304, fn. 35; *People v. Van Ronk* (1985) 171 Cal.App.3d 818, 824-825.) An attempted murder may be reduced to attempted voluntary manslaughter where the evidence shows an attempted intentional killing without malice. Absence of malice may be shown either by evidence the defendant acted in a sudden quarrel or heat of passion, or in the unreasonable but good faith belief of having to act in self-defense. (*People v. Barton* (1995) 12 Cal.4th 186, 199 (*Barton*).

An instruction on sudden quarrel/heat of passion is warranted where there is substantial evidence that at the time of the crime, the defendant's reason was "'obscured or disturbed by passion to such an extent as would cause the ordinarily reasonable person of average disposition to act rashly and without deliberation and reflection, and from such passion rather than from judgment.'" (*Barton, supra*, 12 Cal.4th at p. 201.) The heat of passion theory has both objective and subjective components. (*People v. Manriquez* (2005) 37 Cal.4th 547, 584 (*Manriquez*)). To satisfy the objective component, there must be sufficiently provocative physical or verbal conduct to "cause an ordinary person of average disposition to act rashly or without due deliberation and reflection." (*People v. Moya* (2009) 47 Cal.4th 537, 562.) The provocative conduct must have been caused by the victim or reasonably believed by the defendant to have been caused by the victim. (*Manriquez, supra*, 37 Cal.4th at p. 583.)

As for the subjective component, the defendant must actually, subjectively, act under the heat of passion. (*Manriquez, supra*, at p. 584.) "When relying on heat of passion as a partial defense to the crime of *attempted* murder, both provocation and heat of passion must be demonstrated. [Citation]." (*People v. Gutierrez* (2003) 112 Cal.App.4th 704, 709.)

B. Analysis

Here, there was no evidence of an objective provocation sufficient to warrant instructing on attempted voluntary manslaughter. J.B. testified defendant and Jennings argued before the shooting. Jennings was angry and yelling at defendant; J.B. described the argument as "back and forth." "A provocation of slight and trifling character, such as words of reproach, however grievous they may be, or gestures, or an assault, or even a blow, is not recognized as sufficient to arouse, in a reasonable man, such passion as reduces an unlawful killing with a deadly weapon to manslaughter." [Citation]" (*People v. Najera* (2006) 138 Cal.App.4th 212, 226.) We see no evidence in the record of the specific words Jennings used in the argument or even what the argument was about. The only evidence of violence is that *defendant* pushed *Jennings* to the ground. Jennings told defendant that nothing they had been doing immediately prior to the shooting would justify it; she thought he was "going to have [his] normal temper tantrum outside and drive off." Evidence of defendant and his victim involved in a domestic disagreement, which was apparently "normal" to their relationship, is insufficient to support an

instruction on attempted voluntary manslaughter. (*People v. Gutierrez* (2009) 45 Cal.4th 789, 827 [verbal exchange including victim's "cussing" at defendant insufficient provocation for voluntary manslaughter]; *People v. Cole* (2004) 33 Cal.4th 1158, 1216 [long term live-in girlfriend's threats of imminent harm to defendant (to put a "butcher knife in your ass") during domestic argument immediately prior to killing did not warrant voluntary manslaughter instruction].)

II

Sufficient Evidence of Deliberation and Premeditation

Defendant contends there was insufficient evidence of deliberation and premeditation to sustain his conviction. He argues there was no evidence of planning or motive, and that the manner of the attempted killings shows the shooting was "an unreflecting explosion of violence," not "a preconceived design to kill." (See *People v. Proctor* (1992) 4 Cal.4th 499, 530.)

A. *The Law*

In reviewing the sufficiency of the evidence of premeditation and deliberation, we assess whether the evidence supports an inference that the killing occurred as the result of preexisting reflection, as opposed to an unconsidered or rash impulse. (*People v. Pride* (1992) 3 Cal.4th 195, 247 (*Pride*).) We do not substitute our judgment for that of the jury, but "review the entire record in the light most favorable to the judgment below to determine whether it discloses substantial evidence—that is, evidence which is reasonable, credible, and of solid value—from which a reasonable trier of fact could

find that the defendant premeditated and deliberated beyond a reasonable doubt. [Citations.]” (*People v. Perez* (1992) 2 Cal.4th 1117, 1124 (*Perez*).

Three categories of evidence bear on premeditation and deliberation: (1) planning activity; (2) motive; and (3) manner of killing. (*People v. Anderson* (1968) 70 Cal.2d 15, 26-27.) These factors, however, need not all be present, or in any special combination; nor must they be accorded a particular weight. (*Pride, supra*, 3 Cal.4th at p. 247.) The *Anderson* factors simply serve as an aid to reviewing courts in assessing whether the killing was the result of preexisting reflection. (*Perez, supra*, 2 Cal.4th at p. 1127.) Finally, we emphasize “a core principle that has guided appellate courts in assessing the sufficiency of the evidence of premeditation and deliberation for over 60 years: ‘The true test is not the duration of time as much as it is the extent of the reflection.’ [Citations.] We have observed that ‘thoughts may follow each other with great rapidity and cold, calculated judgment may be arrived at quickly. . . .’ [Citation.] . . . [a] killing resulting from preexisting reflection, of any duration, is readily distinguishable from a killing based on unconsidered or rash

impulse. [Citation.]” (*People v. Solomon* (2010) 49 Cal.4th 792, 812-813.)

B. Analysis

Here, there was sufficient evidence for the jury to find premeditation and deliberation. Defendant did not shoot Jennings during their “back and forth” argument that preceded any physical violence, but *after* he had thrown her to the ground and stood over her. The shooting was apparently in response to J.B.’s plea not to hurt Jennings. Thus, defendant had time to consider his actions before he pointed the gun at Jennings’s head and fired from close range. (See *People v. Harris* (2008) 43 Cal.4th 1269, 1287.) The timing and manner of the attempted killing of Jennings shows premeditation and deliberation.

Defendant then shot J.B., with no provocation whatsoever, as she tried to hide behind the refrigerator. Again, defendant fired a shot toward her head from close range. (See *People v. Gonzales & Soliz* (2011) 52 Cal.4th 254, 295 [close-range shooting without any provocation or evidence of a struggle supports an inference of premeditation and deliberation]; *People v. Marks* (2003) 31 Cal.4th 197, 230 [same]; *People v. Koontz* (2002) 27 Cal.4th 1041, 1082 [shooting victim in a “vital area” at close range supports the inference of premeditation and deliberation].)

There was also some evidence of motive and planning. The prior relationship of defendant with his victims allowed the jury to infer a motive: anger with Jennings and J.B. because

they challenged him and were leaving him. Jennings had told J.B. to get her things because they were leaving shortly before the shooting occurred. The law does not require a rational motive; “[a]nger at the way the victim talked to him [citation] or any motive ‘shallow and distorted but, to the perpetrator, genuine’ may be sufficient [citation].” (*People v. Lunafelix* (1985) 168 Cal.App.3d 97, 102.)

There was evidence to support the inference that defendant retrieved a gun after the argument started. In *People v. Thomas* (1992) 2 Cal.4th 489 (*Thomas*), a witness saw defendant with the victims before the shooting without mentioning a gun. The court found there was circumstantial evidence of planning because the jury could infer defendant returned to car to get his rifle and ammunition. (*Thomas, supra*, 2 Cal.4th at p. 517.) Here, J.B.’s “probable” statement to the deputy that defendant went to the garage just before the shooting provided some evidence of planning; the jury could infer defendant went to the garage to get a gun. (*People v. Bolin* (1998) 18 Cal.4th 297, 332-333 [evidence of planning activity where defendant retrieved gun from cabin and shot victims without warning]; *People v. Haskett* (1982) 30 Cal.3d 841, 850 [obtaining kitchen knife before killing was evidence of planning].)

Thus there was sufficient evidence of deliberation and premeditation to support both counts of willful, deliberate and premeditated murder.

DISPOSITION

The judgment is affirmed.

DUARTE, J.

We concur:

BLEASE, Acting P. J.

HULL, J.