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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

JOHN N. GUNTHER,

Defendant and Appellant.

D057805

(Super. Ct. No. SCE286830)

APPEAL from a judgment of the Superior Court of San Diego County, Herbert J. Exarhos, Judge. Affirmed.

A jury convicted John Nicholas Gunther of first degree murder (Pen. Code,<sup>1</sup> § 187, subd. (a)) and found true an enhancement allegation that he used a deadly or dangerous weapon (§ 12022, subd. (b)(1)). The court sentenced Gunther to an indeterminate term of 25 years to life in state prison on the murder conviction, plus one year on the weapon enhancement.

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<sup>1</sup> All statutory references are to the Penal Code.

At trial, Gunther admitted murdering his mother, Dixie Larson, and his sole appellate contention is that his conviction should be reduced to second degree murder because there was insufficient evidence that he acted with premeditation and deliberation. We affirm.

## BACKGROUND

Predawn on December 23, 2008, Larson's neighbor and friend, Betty Jarcki, heard a thumping sound coming from Larson's garage, and for several days afterwards had not seen Larson. On December 27, 2008, Jarcki contacted police, who conducted a welfare check at Larson's residence in El Cajon, California. San Diego County sheriff's deputies discovered dried blood in the laundry room. Larson's body lay covered with blankets in her garage. Paramedics came, concluded rigor mortis had set in, and pronounced Larson dead. Detectives saw that a partially unfinished wall in the garage had exposed metal studs and pipes. Based on the pipes' placement between the studs, one metal pipe was obviously missing.

On December 28, 2008, detectives found Larson's vehicle at a motel where Gunther was renting a room. They arrested him and found in the room a blood-stained pipe similar to those in Larson's garage. They also found Larson's television and DVD/VCR player in the room, as well as \$1378 in cash, Larson's purse, ID card, credit cards and her prescription medications (including diazepam, oxycodone, hydromorphone and alprazolam) inside Gunther's luggage.

A recording of Gunther's December 28, 2008 interview with detectives, in which he denied killing his mother, was played for the jury. Gunther initially claimed that his

mother had dropped him off at the motel on Christmas Day and returned to see him on each of the next two days. After the detective accused him of lying, Gunther claimed his former friend—who he identified only as "Steven"—had attacked his mother. According to Gunther, Steven had fought with Gunther and threatened to kill him. Gunther told detectives that after Steven's threat, Gunther went to his mother's house and was waiting for her in the garage when Steven appeared, attacked him and Larson, and hit her in the face with a big metal pole found in the garage. Gunther described his actions following Steven's attack: "I went inside of the house and I took the TV and the VCR thinking I could get some kind of money for it until I figured out what to do. Help get me some lodging while I figure out what to do, go to the cops, whatever, kill myself. I don't want, I didn't want to kill my mom. I wanted to go back to rehab. I called rehab up and even made an appointment to go back to rehab." Gunther admitted being addicted to painkillers and marijuana.

Gunther also admitted in the interview that on Christmas Day, two days after Larson's death, he purported to give Jarcki a Christmas gift from Larson. Jarcki testified that in discussing the gift, Gunther told her Larson was in the shower and would see her later. Gunther gave the same message to a family member who called Larson's home on Christmas Day. But Steven Aguilar testified that he, Gunther and other friends "took ecstasy and painkillers and smoked weed, watched movies" at Larson's house from December 23, 2008 until Christmas Day. Aguilar was surprised that Gunther possessed almost \$3,000 in cash and had paid for the drugs. Gunther had told them Larson was on vacation, and prohibited them from going into her garage.

Aguilar testified at trial that Gunther had talked to him approximately three or four times about killing his mother for her money. During one particular incident in the summer of 2008, Aguilar overheard Gunther tell Larson on the phone that he did not want to go to rehab. Afterwards, Gunther was angry and asked whether Aguilar wanted to help him kill his mother. Aguilar was shocked at the question, and recalled Gunther "quickly [replied] 'just kidding,' trying to blow it off." In December 2008, Gunther angrily complained to Aguilar that "his mother was never there for him, [that] she's a hypocrite and all this stuff." Petersen did not take Gunther's statements seriously; nonetheless, when she dropped him at his mother's house about three days before Christmas Day, she warned him, "Be careful and don't do anything stupid," meaning he should not lose control and hurt his mother. Around that time, Gunther told Petersen that his mother wanted him to go to rehab, but he did not want to go, and his mother was upset by that.

According to Petersen, some time before Christmas Day, Gunther told her he had killed his mother by hitting her head four times with a metal pipe found in the garage. Gunther said he was putting his mother out of her misery in doing so because she had been depressed and had always said she just wanted to die. Petersen and Gunther spent the following days at Larson's house, while Larson's body was in the garage. Petersen accepted Gunther's gift of his mother's ring after learning he had killed her. Gunther told Petersen he had taken cash from his mother and used it to buy drugs.

Petersen testified that after she was arrested, she initially told police Larson was not dead. But midway through Petersen's police interview she decided to tell the truth.

She was initially charged with three felonies: receiving stolen property, residential burglary, and being an accessory after the fact. In a plea agreement, Petersen was given immunity to testify at Gunther's trial. Separately, she pleaded guilty to a misdemeanor count of receiving stolen property, for which she was to be sentenced after Gunther's trial.

The parties stipulated that Jamie Troyer had dated Gunther between August and December 2008, and their relationship revolved around their use of illegal drugs. Gunther told her he hated his mother "with a passion" because she was a hypocrite and manipulative. Troyer did not hear him say he wanted to kill his mother; rather, he was going to wait for his mother to die and get her house.

Brian Lopez, who was incarcerated with Gunther in a county jail, testified Gunther told him he had killed his mother because he hated her and wanted money.

A San Diego County deputy medical examiner who performed an autopsy on Larson's body testified: "She had a large injury that involved most of the left side of her face. It was basically lacerated, meaning tearing the skin. But there were also many fractures of the facial bones, so that the whole left side of the face was basically caved in and there was tearing and injury to that part of the face. Basically, it extended from above the ear, across around the eye and down around the nose and the cheek area was all involved." Larson had other "fairly large lacerations on the back of the head," and skull fractures that, "basically, went around her whole head." The medical examiner concluded the manner of death was homicide, and the cause of death blunt force head injury.

### *Defense Case*

Gunther testified that a few days before Christmas Day, he had been using many drugs, including methamphetamines and opiates; therefore, he did not remember much about what happened on the day of the murder. Nonetheless, he remembered being at his mother's house, and she said he was not worth anything because he had thrown away his life. She questioned why he was bothering to return to rehab, and doubted he would succeed. She yelled at him, poked him in the chest, grabbed his chin, stared intently in his eyes and said that after dropping him off at rehab she would wash her hands of him, and he was not her son anymore. He hit her with a metal pipe found in the garage, realized he had caved her face in, but he did not call 911 or do anything to help her. He conceded that he was bigger and stronger than her, and therefore not in physical danger from her.

Gunther admitted getting angry and telling people that he hated his mother numerous times, but denied asking Aguilar for help in killing his mother or telling him or anyone he was going to kill her. He denied planning or intending to kill her. He acknowledged lying in his interview with the detectives, including by identifying Aguilar as the killer. Gunther, however, admitted stealing from his mother and lying about it. He took his mother's television and VCR/DVD player to the motel, hoping to sell them to buy drugs.

Marc Murphy, a clinical psychologist and neuropsychologist, reviewed Gunther's medical records, which showed that in 2007, Gunther was assaulted and suffered a head trauma that caused him to stop breathing. In 2008, Gunther had suffered another head

trauma in a drug overdose incident after which Gunther was unresponsive for an unspecified time. Dr. Murphy administered a series of tests to Gunther and concluded that his frontal lobe was damaged, possibly reducing his ability to premeditate or deliberate, and instead causing him to act impulsively on the night he killed his mother.

Clark Smith, a psychiatrist, also reviewed Gunther's medical records and testified in accord with Dr. Murphy. When asked if Gunther's brain injuries could have caused someone to act impulsively or in the heat of the moment or affected his ability to form mental states such as specific intent to kill his mother, premeditation and deliberation, Dr. Smith responded in the affirmative.

#### DISCUSSION

Relying on *People v. Anderson* (1968) 70 Cal.2d 15, 26-27 (*Anderson*), Gunther contends his first degree murder conviction should be reduced to second degree because there was not sufficient evidence of premeditation and deliberation to show his planning, motive and method of carrying out his mother's death.

"The law governing sufficiency-of-the-evidence challenges is well established . . . [Citations.] In reviewing a claim for sufficiency of the evidence, we must determine whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime or special circumstance beyond a reasonable doubt. We review the entire record in the light most favorable to the judgment below to determine whether it discloses sufficient evidence—that is, evidence that is reasonable, credible, and of solid value—supporting the decision, and not whether the evidence proves guilt beyond a reasonable doubt. [Citation.] We

neither reweigh the evidence nor reevaluate the credibility of witnesses. [Citation.] We presume in support of the judgment the existence of every fact the jury reasonably could deduce from the evidence. [Citation.] If the circumstances reasonably justify the findings made by the trier of fact, reversal of the judgment is not warranted simply because the circumstances might also reasonably be reconciled with a contrary finding." (*People v. Jennings* (2010) 50 Cal.4th 616, 638-639.)

" "Generally, there are three categories of evidence that are sufficient to sustain a premeditated and deliberate murder: evidence of planning, motive, and method. [Citations.] When evidence of all three categories is not present, 'we require either very strong evidence of planning, or some evidence of motive in conjunction with planning or a deliberate manner of killing.' [Citation.] But these categories of evidence, borrowed from [*Anderson*], 'are descriptive, not normative.' [Citation.] They are simply an 'aid [for] reviewing courts in assessing whether the evidence is supportive of an inference that the killing was the result of preexisting reflection and weighing of considerations rather than mere unconsidered or rash impulse.' " " " (*People v. Prince* (2007) 40 Cal.4th 1179, 1253.)

" 'Deliberation' refers to careful weighing of considerations in forming a course of action; 'premeditation' means thought over in advance. [Citations.] '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." " " (*People v. Koontz* (2002) 27 Cal.4th 1041, 1080.)

Here, the jury reasonably could conclude Gunther planned to murder his mother. He repeatedly told several people, over an extended period of time, that he hated her. He asked Aguilar to help him kill her. He specifically told Petersen that he could use a razor to slit his mother's throat. Gunther's conversations were sufficiently frequent and detailed as to signal his intent to murder his mother, which he eventually did.

Gunther concedes "there was evidence that [he] stated he hated his mother or wanted her dead numerous times over a course of many years" but he argues his statements "most often came in the context of an emotional outburst triggered by some form of verbal quarrel between them or when he was on drugs." He also dismisses his comments as jokes. But we need not credit these arguments because, as the California Supreme Court has stated, "The existence of possible exculpatory explanations, whether they are simply suggestions not excluded by the evidence or even where they could be reasonably deduced from the evidence, could not justify this court's rejecting the determination of the trier of fact that defendant is guilty unless on appeal it 'be made clearly to appear that upon no hypothesis whatever is there sufficient substantial evidence to support the conclusion reached in the [trial court.]' " (*People v. Redrick* (1961) 55 Cal.2d 282, 290.)

The evidence permitted the jury to conclude that Gunther's possible motive for killing his mother included his desire for her money and house. He admitted he had stolen from her several times, and he had more than a thousand dollars in cash when he was arrested. He also admitted taking Larson's television and DVD/VCR player to sell and use the proceeds to buy drugs. The jury could find another possible motive in

Gunther's hatred of his mother for reminding him he had not succeeded in life in general, and rehab in particular, and that, by killing her, he sought to eliminate the distress she caused him. Finally, Gunther's statement to Petersen provided another possible motive for the killing: to ease his mother's suffering.

Gunther counters that he did not have a motive to kill his mother because she gave him a place to stay and helped him find a drug rehabilitation center; therefore, he fared better with her alive. He also claims that because he had periodically robbed his mother while she was alive, he did not need to kill her to continue doing so. Again, because the jury's verdict is based on sufficient evidence, we may not reject it merely because the evidence does not foreclose Gunther's alternative arguments. (*People v. Redrick, supra*, 55 Cal.2d 282 at p. 290.)

Gunther argues regarding the method of death that "[t]he brutality of this crime suggests than an emotional explosion rather than a cool, detached decision to kill prompted the attack." We conclude that even if the evidence regarding the method of killing was weak, "[i]n reviewing sufficiency of evidence claims, each case of necessity must turn on its own particular facts." (*People v. Smith* (2005) 37 Cal.4th 733, 745.) Further, "[e]vidence of all three elements is not essential, however, to sustain a conviction." (*People v. Edwards* (1991) 54 Cal.3d 787, 813.) Rather, "[t]hese three categories are merely a framework for appellate review; they need not be present in some special combination or afforded special weight, nor are they exhaustive." (*People v. Booker* (2011) 51 Cal.4th 141, 173.) Here, the evidence of planning was strong and, along with evidence of motive, sufficed to show Gunther deliberated.

Although Gunther focuses on the *Andersen* factors, we note that additional circumstantial evidence may support the jury's first degree murder conviction based on his intent to kill his mother: Although she was not a physical threat to him, he hit her so severely that her face was "caved in." He showed consciousness of guilt by not calling 911 or summoning help, and by lying to her family and friends that she was in the shower. As outlined above, Gunther repeatedly lied to detectives during his interview. He showed no remorse after murdering Larson; rather, he stayed in her house, used her money to fund his drug use, and gave her ring to a woman he was dating. In sum, there is ample direct and circumstantial evidence to support Gunther's first degree murder conviction.

#### DISPOSITION

The judgment is affirmed.

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O'ROURKE, J.

WE CONCUR:

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McINTYRE, Acting P. J.

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IRION, J.