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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

ROBERT VILLALOBOS,

Defendant and Appellant.

D058579

(Super. Ct. No. SWF026253)

APPEAL from a judgment of the Superior Court of Riverside County, F. Paul Dickerson III, Judge. Affirmed.

A jury convicted Robert Villalobos of willful, deliberate, and premeditated murder in the first degree of George Hernandez in violation of Penal Code section 187, subdivision (a) (hereafter section 187(a)) (undesigned statutory references will be to the Penal Code). The jury found true an enhancement allegation that Villalobos personally used a deadly and dangerous weapon (a knife), causing death in the commission of the crime within the meaning of sections 12022, subdivision (b)(1) and 1192.7, subdivision (c)(23). The court sentenced Villalobos to an indeterminate prison term of 25 years to

life for the murder, plus a consecutive one-year term for the weapon use enhancement, for a total indeterminate term of 26 years to life.

Villalobos appeals, contending (1) his murder conviction must be reversed because the court prejudicially erred by excluding the testimony of a witness he claims was an expert in knives and human stab wounds, and thereby violated his due process right to present a defense that someone else stabbed the victim; and (2) if this court does not reverse his murder conviction based on the exclusion of that testimony, this court should modify the judgment "to reflect a conviction of second degree murder" because there is insufficient evidence to support the jury's findings of premeditation and deliberation. We affirm the judgment.

FACTUAL BACKGROUND

A. The People's Case

On August 28, 2008, the date of the murder in this case, George Hernandez (the victim), Eloy Luna, and Max Reyes were friends. Corina Vasquez was Reyes's girlfriend.

Manuel and Angelica Saucedo lived on North Torn Ranch Road in Lake Elsinore with their two sons, Erik and Cristian Saucedo, their two daughters, and their niece, Maria Guadalupe Sanchez Saucedo.¹ Edgar Gomez was Maria's boyfriend.

Erik and Luna had been high school friends. Erik was acquainted with Hernandez. Villalobos and Erik were friends.

¹ In the interest of clarity and brevity, members of the Saucedo household will be referred to by their first names.

The Triple Six Kings, also known as TSK, was a "tagging crew" that spray-painted graffiti in certain areas of Lake Elsinore. Out Causing Panic, also known as OCP or TRS (for Torn Ranch Street), was a rival tagging crew in that city.

Reyes was a member of TSK and was actively involved in its tagging activities. Erik and Cristian associated with members of the rival OCP tagging crew. Luna was aware of Erik's association with OCP.

About a week before August 28, 2008, OCP members drove by the home of a TSK member who was a friend of Luna and fired a gunshot in the air in front of the home. Erik was in the car with the OCP crew.

In another incident that occurred prior to the murder, OCP tagged the home of Jerry Martinez in Lake Elsinore, a mutual friend of Hernandez, Luna, and Reyes, while Martinez was in custody in juvenile hall. The home was tagged in four places with graffiti that said "OCP" and "TRS." Martinez's home was located a couple of blocks from the Saucedas' home.

On August 28, 2008, Villalobos visited Erik and Cristian at their home. Villalobos was wearing an Oakland Raiders jersey with a white muscle shirt underneath it. During the investigation that followed the murder, Erik told detectives in a recorded statement that Villalobos had a long knife that had a fixed stainless steel blade with small curves on it.²

² At trial, Erik changed his story and claimed the knife was a clip-on pocket knife and he lied to the detectives when he described it as a curvy, fixed-blade knife.

Hernandez, Luna, and Reyes discussed the OCP's tagging of Martinez's home, which upset them. As a result of their being upset, Hernandez, Luna, and Reyes decided to cover up the graffiti and then confront Erik about both the tagging of Martinez's home and the OCP drive-by shooting.

Late that night, Vasquez drove Hernandez, Luna, and Reyes to North Torn Ranch Road, parked near the Saucedas' home and stayed in the car after Hernandez, Luna, and Reyes got out and approached the house, where one of them politely asked Maria to get Erik because they wanted to speak with him. Assuming the three men were Erik's friends, Maria replied that she would get him, and she then walked into the house through the front door.

Erik, followed a few minutes later by Villalobos and Cristian, came to the front doorway pointing a BB gun and angrily asked Hernandez, Luna, and Reyes, who were wearing hoodies, "Why are you here?"

Hernandez, Reyes, and Luna accused Erik of being involved in the tagging of Martinez's home. Erik threw down the BB gun and confronted Hernandez. Erik and Hernandez began pushing each other and then moved to the middle of the street, where they began fist fighting.

Erik punched Hernandez in the face, knocking him to the ground. Erik then kicked him twice in the head and punched him in the stomach and ribs. Neither Erik nor Hernandez used a weapon during the fight.

Luna punched Erik, knocking him down in the middle of the street. Hernandez struggled to stand up and then walked across the street away from the fight and in front of Vasquez's car to a neighbor's house.

Villalobos, who had returned to the Saucedas' house, brought the Saucedas' two pitbulls to the front door. Villalobos was holding a knife with a four-inch blade.

Villalobos removed the sheath or case of the knife as he exited the house.

After releasing the pitbulls and removing the knife from its sheath, Villalobos ran across the street past Erik and rushed Hernandez at full stride. An altercation then took place between Villalobos and Hernandez near Vasquez's car and the lawn of a house across the street from the Saucedas' home. Villalobos and Hernandez were swinging at each other and wrestling on the ground where blood was later found.

Soon thereafter, Luna helped Hernandez to stand up, but Hernandez "wasn't all there." Luna helped Hernandez walk across the driveway or down the sidewalk to Vasquez's car, and Hernandez got into the back seat of the passenger side of the car. Villalobos leaned into the driver's side window and punched Vasquez in the face. Vasquez testified she glanced at Villalobos's right hand, which was on the car door, and saw he was holding a knife which she described as a pocketknife, but she stated she did not get a long look at the knife.

Luna got in the back seat with Hernandez, and Reyes sat in the front passenger seat. Vasquez was hysterical and could not drive. Reyes leaned over, put the car in gear, grabbed the steering wheel, stepped on the gas pedal, and drove away. Villalobos fled and was not seen again.

Hernandez was taken to the hospital. Hernandez was not conscious when they arrived, and he died of a stab wound sometime after 5:00 a.m.

Dr. Mark Fajardo, a forensic pathologist employed by the Riverside County Sheriff- Coroner, performed Hernandez's autopsy and testified that Hernandez suffered two stab wounds in his mid- to lower back, and the fatal wound penetrated about four inches into Hernandez's body, severing the renal artery where it connected to the aorta and resulting in extensive blood loss which was the main cause of death.

At around 11:40 p.m. on the night of the murder, Erik and Cristian discussed the incident with Deputy Dwayne Parrish of the Riverside County Sheriff's Department and showed him where the fight occurred. A pool of blood was found in the sidewalk gutter across the street from the Saucedas' home. Homicide detectives later discovered that blood initially pooled in the front lawn of the house across the street from the Saucedas' home and saturated the grass before running down the driveway and sidewalk into the gutter. No weapons were found at the murder scene.

B. The Defense Case

Villalobos presented witnesses who indicated he had reasons to be living in Las Vegas at the time of his arrest because his uncle, Delfino Rubi, lived there and Villalobos went there to find work.

A captain at the Los Angeles Fire Department who was also a licensed paramedic and had responded to several hundred stabbing scenes testified that significant pooling of blood is not always found at stabbing scenes.

A former gang member testifying as a defense gang expert testified that if someone had gang associations 15 or 20 years ago, his current possession of gang memorabilia does not necessarily mean he still has ties to the gang.

DISCUSSION

I

EXCLUSION OF PURPORTED KNIFE EXPERT TESTIMONY

Villalobos contends his murder conviction must be reversed because the court prejudicially erred by excluding the testimony of Brian Martin, a witness he claims was an expert in knives and human stab wounds, and thereby violated his due process right to present a defense that someone else stabbed the victim. We conclude the court did not err.

A. Applicable Legal Principles

Evidence Code section 720, subdivision (a), provides: "A person is qualified to testify as an expert if he has special knowledge, skill, experience, training, or education sufficient to qualify him as an expert on the subject to which his testimony relates. Against the objection of a party, such special knowledge, skill, experience, training, or education must be shown before the witness may testify as an expert."

A trial court has broad discretion in deciding whether an expert witness is qualified to testify on a particular issue. The California Supreme Court has explained that "[t]he trial court is given considerable latitude in determining the qualifications of an expert and its ruling will not be disturbed on appeal unless a manifest abuse of discretion is shown. [Citations.] [¶] However, whether a person qualifies as an expert in a

particular case depends upon the facts of that case and the witness' qualifications."

(*People v. Kelly* (1976) 17 Cal.3d 24, 39.)

B. *Analysis*

Villalobos asserts Martin "would have testified that a wavy knife like the one that Reyes said [Villalobos] was wielding and which he made a sketch of that was admitted into evidence was not consistent with the injuries sustained by [Hernandez]"

Villalobos complains that Martin would "have educated the jury regarding various types of knives and the type of entry wounds they create," and contends the exclusion of Martin's testimony "eliminated" his defense that the knife he allegedly used could not have caused Hernandez's stab wounds.

We conclude Villalobos has not carried his burden on appeal of establishing the court abused its discretion or violated his right to present a defense by deciding Martin was not qualified to testify as an expert in this matter. Following the Evidence Code section 402 hearing at which Martin testified about his qualifications and asserted the kind of entry wound a particular knife may cause is "fairly easy to determine" by thrusting the knife into a block of clay, the court excluded Martin's testimony, stating:

"[T]his is not a close call. Your request to call the witness is denied. I do not have to hear any cross from [the prosecutor], and let me tell you why, [defense counsel]."

"Again, for the record, this is not a close call. Although there is no question in the Court's mind that Mr. Martin is, indeed, an expert in . . . all matters of cutlery, *no foundation has been laid in terms of his medical training, background.* In fact, in some ways, I think there would be some misinformation here for the jury, because at this time we don't have the knife that was used to stab the victim. If we had the knife, and then we were comparing and the foundation

has been laid of that, that clay was similar to skin, and then we had photographs that were lined up to show clay to skin, and then had a doctor testify, that would be one thing, but we don't have the knife.

"The pathologist already said he doesn't know the kind of knife that was used. There is no indication on those photographs that were shown in the exhibits whether or not there was a spine on those knives, and whether that would have made a difference." (Italics added.)

After defense counsel noted that Martin discussed the "spines" on knives depicted in defense photographs, the court stated:

"Oh, no, [defense counsel]. I am just trying to give you some of the reasons and also for any appellate purposes.

"You are right, all the knives that were shown in the court exhibits had spines, but we don't have this knife, so I don't know if the knife that was used had a spine. I also don't know even if it were shown that the knife . . . that was used to kill [Hernandez] had a spine, whether or not that would show up in a human body.

"Clay is one thing. Skin is another. *I don't have any testimony as to his medical background.* I have no testimony that the clay is similar to skin. I don't have the knife being used on the clay." (Italics added.)

The court reiterated that Martin was a cutlery expert, but found he could not provide information about the knife that Villalobos used and "how it would create a specific kind of injury in a human body."

Having reviewed both Martin's testimony and the court's ruling, we conclude the court did not abuse its broad discretion by excluding Martin's testimony because the record shows he was not qualified to testify on the subject to which his testimony

related.³ (See Evid. Code, § 720; *People v. Kelly*, *supra*, 17 Cal.3d at p. 39.) As the court correctly found, the defense failed to lay a foundation that Martin had special knowledge, skill, experience, training, or education sufficient to qualify him as an expert on human stab wounds and, specifically, on how particular knives "would create a specific kind of injury in a human body." Absent such a foundation, the court's determination that Martin was unqualified was, as the court stated, "not a close call."

II

SUFFICIENCY OF THE EVIDENCE (DELIBERATION AND PREMEDITATION)

Villalobos also contends that if this court does not reverse his murder conviction based on the exclusion of Martin's purported expert testimony, this court should modify the judgment "to reflect a conviction of second degree murder" because there is insufficient evidence to support the jury's findings of premeditation and deliberation. We conclude substantial evidence supports the jury's findings.

A. Applicable Legal Principles

An unlawful killing of a human being with malice aforethought is murder and is of the first degree if it is willful, premeditated, and deliberate. (§§ 187(a), 189.) "To prove the killing was 'deliberate and premeditated,' it shall not be necessary to prove the

³ In light of our conclusion that the court did not abuse its discretion, we do not address Villalobos's claim that the exclusion of Martin testimony was prejudicial.

defendant maturely and meaningfully reflected upon the gravity of his or her act."

(§ 189.)⁴

In *People v. Anderson* (1968) 70 Cal.2d 15, the California Supreme Court "distilled certain guidelines to aid reviewing courts in analyzing the sufficiency of the evidence to sustain findings of premeditation and deliberation. The *Anderson* analysis was intended only as a framework to aid in appellate review; it did not propose to define the elements of first degree murder or alter the substantive law of murder in any way. [Citation.] . . . The *Anderson* guidelines are descriptive, not normative. [Citation.] The goal of *Anderson* was to aid 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. Perez* (1992) 2 Cal.4th 1117, 1125.)

"[T]he *Anderson* court identified three categories of evidence pertinent to the determination of premeditation and deliberation: (1) planning activity, (2) motive, and (3) manner of killing. . . . The *Anderson* factors, while helpful for purposes of review,

⁴ The court properly instructed the jury on the meanings of deliberation and premeditation within the following version of CALCRIM No. 521: "The defendant acted deliberately if he carefully weighed the considerations for and against his choice and, knowing the consequences, decided to kill. The defendant acted with premeditation if he decided to kill before committing the act that caused death. [¶] The length of time the person spends considering whether to kill does not alone determine whether the killing is deliberate and premeditated. The amount of time required for deliberation and premeditation may vary from person to person and according to the circumstances. A decision to kill made rashly, impulsively, or without careful consideration is not deliberate and premeditated. On the other hand, a cold, calculated decision to kill can be reached quickly. The test is the extent of the reflection, not the length of time."

are not a sine qua non to finding first degree premeditated murder, nor are they exclusive." (*People v. Perez*, *supra*, 2 Cal.4th at p. 1125.)

1. *Standard of review*

When assessing a challenge to the sufficiency of the evidence, we apply the substantial evidence standard of review, under which we view the evidence "in the light most favorable to the judgment below to determine whether it discloses substantial evidence—that is, evidence that is reasonable, credible, and of solid value—such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt." (*People v. Johnson* (1980) 26 Cal.3d 557, 578; *Jackson v. Virginia* (1979) 443 U.S. 307, 319.) "The same standard of review applies to cases in which the prosecution relies mainly on circumstantial evidence." (*People v. Maury* (2003) 30 Cal.4th 342, 396.)

The uncorroborated testimony of a single witness is sufficient to sustain a conviction or true finding on an enhancement allegation, "unless the testimony is physically impossible or inherently improbable." (*People v. Scott* (1978) 21 Cal.3d 284, 296.) We do not reweigh the evidence, resolve conflicts in the evidence, or reevaluate the credibility of witnesses. (*People v. Ochoa* (1993) 6 Cal.4th 1199, 1206; *People v. Jones* (1990) 51 Cal.3d 294, 314.) "Resolution of conflicts and inconsistencies in the testimony is the exclusive province of the trier of fact." (*People v. Young* (2005) 34 Cal.4th 1149, 1181.)

B. *Analysis*

Viewing the evidence in the light most favorable to the judgment, we conclude substantial evidence supports the jury's finding that Villalobos murdered Hernandez with

premeditation and deliberation. With respect to the first *Anderson* factor, substantial evidence supports a reasonable inference that Villalobos *planned* his murder of Hernandez and, in so doing, killed him with premeditation and deliberation. Villalobos joined Cristian and Erik, who had a BB gun, in front of the Saucedas' house during the initial confrontation with Hernandez and his friends. Villalobos went back into the house and, holding a knife, brought the Saucedas' two pitbulls to the front door. During a recorded interview, Erik told detectives, "I ain't gonna take this fucking rap. This fool [Villalobos] had a knife there." The record shows no one else was seen in possession of a knife at the scene of the murder that day. A defendant's act of arming himself with a knife is evidence of planning activity for purposes of determining whether substantial evidence supports the jury's finding of premeditation and deliberation. (*People v. Perez, supra*, 2 Cal.4th at p. 1126.)

The trial record shows that after Villalobos armed himself with the knife, he released the pitbulls, removed the knife sheath or case as he exited the house, ran across the street past Erik, and rushed Hernandez at full stride. He and Hernandez swung at each other and wrestled on the ground where blood was later found.

The process of premeditation does not require any extended period of time, and the true test is not the duration of time as much as it is the extent of the reflection. (*People v. Harris* (2008) 43 Cal.4th 1269, 1286.) Here, the foregoing substantial evidence supports a reasonable inference that Villalobos's killing of Hernandez 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.)

Villalobos armed himself with the sheathed knife and two pitbulls only after the initial confrontation took place in front of the Saucedas' house. He had sufficient time to reflect upon what he was doing. Before he attacked and fatally stabbed Hernandez, Villalobos had to perform the additional intentional act of removing the sheathing from the murder weapon. In sum, the prosecution presented ample evidence of planning activity.

Regarding the second *Anderson* factor, substantial evidence supports a reasonable inference that Villalobos had a *motive* to kill Hernandez. Hernandez was a close friend of Reyes, who was an active member of the TSK graffiti tagging crew. Villalobos and Erik were friends. Erik and his brother, Cristian, associated with members of the rival OCP tagging crew. OCP graffiti was found on a tequila bottle at the Villalobos family's three-bedroom residence—where Villalobos had lived and where he kept clothing and other personal items—during the execution of a lawful search warrant. His father testified he did not know what OCP was, and he would be surprised if there was graffiti in the house with the initials "OCP." Hernandez was with Reyes and Luna when they confronted Erik in front of Erik's home—in the presence of Villalobos and Cristian—the night of the murder and accused Erik of being involved in the tagging of Martinez's home. As shown by the opinion testimony of gang expert Nelson Gomez in response to a hypothetical question by the prosecutor, Villalobos's actions demonstrated a desire to align himself with the OCP and gain its respect. In sum, substantial evidence supports reasonable inferences that Villalobos had a motive to kill Hernandez and he did kill Hernandez with premeditation and deliberation.

Regarding the third *Anderson* factor, Villalobos's *manner* of killing Hernandez also supported a reasonable inference that Villalobos killed him with premeditation and deliberation. The focused infliction of injuries to a vital part of the victim's body is method evidence for purposes of determining whether substantial evidence supports the jury's finding of premeditation and deliberation. (See *People v. Harris, supra*, 43 Cal.4th at p. 1287 [stabbing in the area of the victim's heart with sufficient force to pierce the heart]; *People v. Thomas* (1992) 2 Cal.4th 489, 518 [shooting victims in the head].) Here, as shown by the pathologist's testimony that the fatal stabbing wound penetrated four inches into Hernandez's body and severed the renal artery, Villalobos inflicted Hernandez's wounds in "a method sufficiently "particular and exacting" to warrant an inference that [he] was acting according to a preconceived design." (*People v. Thomas*, at p. 518, quoting *People v. Caro* (1988) 46 Cal.3d 1035, 1050, disapproved on another ground in *People v. Bonillas* (1989) 48 Cal.3d 757, as stated in *People v. Whitt* (1990) 51 Cal.3d 620, 657, fn. 29.) The jury could reasonably infer from Villalobos's manner of killing Hernandez that he premeditated and deliberated the murder.

Considering all three *Anderson* factors and the entire record, we conclude substantial evidence supports the jury's finding that Villalobos premeditated and deliberated his murder of Hernandez. To the extent Villalobos points to contrary evidence and contrary inferences to support his claim there is insufficient evidence to support a finding of premeditation and deliberation, he misapplies the substantial evidence standard of review discussed, *ante*. We conclude Villalobos has not carried his

burden to affirmatively show on appeal that there is insufficient evidence to support the judgment.

DISPOSITION

The judgment is affirmed.

NARES, J.

WE CONCUR:

McCONNELL, P. J.

O'ROURKE, J.