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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

PATRICK MARK DILLON,

Defendant and Appellant.

E054317

(Super.Ct.No. INF063886)

OPINION

APPEAL from the Superior Court of Riverside County. Richard A. Erwood,
Judge. Affirmed.

Athena Shudde, under appointment by the Court of Appeal, for Defendant and
Appellant.

Kamala D. Harris, Attorney General, Julie L. Garland, Assistant Attorney General,
and Garrett Beaumont and Vincent P. LaPietra, Deputy Attorneys General, for Plaintiff
and Respondent.

On June 1, 2011, a jury found defendant Patrick Mark Dillon guilty of premeditated murder (Pen. Code,¹ § 187, subd. (a)) and that he personally used a deadly weapon within the meaning of section 12022, subdivision (b)(1) and section 1192.7, subdivision (c)(23)). On August 15, 2011, defendant was sentenced to an indeterminate term of 26 years to life. He appeals, contending the evidence is insufficient to establish premeditation. We affirm.

I. FACTS

On December 15, 2008, defendant was hitchhiking near the Arizona-California border. Luz Caldera² and her adult son, Carlos,³ picked up defendant and took him to their camp site near the Colorado River. He spent the night with them.

The next day, defendant went with the Calderas to fish. They picked up Donald Thomas⁴ at his campsite and purchased provisions. Luz recalled thinking that defendant did not like fishing, because when they got to the river, he turned around and did not take a pole. Defendant and Carlos argued at the fishing site. Thomas overheard Carlos tell defendant that he (Carlos) was not going to buy cigarettes for, or otherwise support, defendant. The group left after approximately 45 minutes. Defendant and Carlos

¹ All further statutory references are to the Penal Code unless otherwise noted.

² Luz died on March 12, 2011, at the age of 84. Because she was unavailable to testify at trial, her preliminary hearing testimony was read to the jury.

³ Carlos was short, approximately four feet seven or eight inches tall, and morbidly obese.

⁴ At the time of trial, Mr. Thomas was 78 years old.

continued arguing in the car. Thomas recalled defendant saying that he could not be traced because he had no fingerprints; he further described the situation between Carlos and defendant as tense.

After dropping off Thomas, the Calderas returned to their camp site with defendant. Defendant and Carlos went back to the river to fish. Defendant later returned to the camp site smiling. Luz testified she had not seen him smile before then. As defendant began packing up his things, Luz asked if he was leaving, and he replied in the affirmative. Luz asked him if he had said goodbye to Carlos. Defendant went back and then took off.

Defendant hitched a ride from Denise LeSieur, who lived a few blocks from the camp where the Calderas were staying. When Denise asked defendant where he was going, he said, "away from here." He told her he wanted to go to Slab City in Yuma. Denise testified that initially she thought defendant seemed "a little anxious," but after she started driving, defendant was very calm. The two stopped at McDonald's and she bought dinner for him before dropping him off at Quartzsite.

Back at the camp site, when Luz went down to the river to get Carlos because it was getting late, she discovered his body lying on a rock. He had blood all over his face. The police were called. Carlos's body had over 40 stab wounds, including defensive wounds to his hands. He had been stabbed in the neck and had suffered an injury to his jugular vein that would have been sufficient to kill him by itself. There were no shoes on Carlos's feet, even though the weather was very cold and overcast. His right pocket was

turned inside out, and his wallet was located approximately 10 feet from his body. A sweatshirt was found in a trash can just inside a nearby bathroom.

When Denise heard about the murder, she contacted the sheriff's department and reported her encounter with defendant. Defendant was arrested at Quartzsite and subsequently interviewed after advisal and waiver of his rights. He acknowledged going to the river with Carlos; however, he claimed that Carlos attacked him with a hammer. Defendant said he reacted and assaulted Carlos, picking up his knife and stabbing Carlos in self-defense. The Riverside County Sheriff's Department dive team searched the river for a hammer but none was found.

Deputies recovered defendant's belongings from a wash area off of Highway 95. A knife was included among items that were secured inside a dead tree.

II. EVIDENCE OF PREMEDITATION

The People alleged that defendant committed first degree murder on the sole theory that the killing was willful, deliberate and premeditated. The jury was not instructed on any other theory of first degree murder. The jury returned a special finding to this effect. Defendant contends, as a matter of law, that the jury's true finding of willful, deliberate and premeditated murder was not supported by substantial evidence.

“Review on appeal of the sufficiency of the evidence supporting the finding of premeditated and deliberate murder involves consideration of the evidence presented and all logical inferences from that evidence in light of the legal definition of premeditation and deliberation Settled principles of appellate review require us to 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.] The standard of review is the same in cases such as this where the People rely primarily on circumstantial evidence. [Citation.]” (*People v. Perez* (1992) 2 Cal.4th 1117, 1124.)

Our review of any claim of insufficiency of the evidence is therefore a limited review. If the evidence presented to the trial court is subject to differing inferences, the reviewing court must assume that the trier of fact resolved all conflicting inferences in favor of the prosecution. (*Jackson v. Virginia* (1979) 443 U.S. 307, 326.) A reviewing court is precluded from making its own subjective determination of guilt or innocence. (*Id.* at p. 319, fn. 13.)

In *People v. Perez, supra*, 2 Cal.4th at page 1127, our Supreme Court emphasized: “[T]he relevant question on appeal is not whether *we* are convinced beyond a reasonable doubt, but whether *any* rational trier of fact could have been persuaded beyond a reasonable doubt that defendant premeditated the murder. [Citations.]”

“In assessing the sufficiency of the evidence, we review the entire record in the light most favorable to the judgment to determine whether it discloses 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. [Citations.] Reversal on this ground is unwarranted unless it appears ‘that upon no hypothesis whatever is there sufficient substantial evidence to support [the conviction].’ [Citation.]” (*People v. Bolin* (1998) 18 Cal.4th 297, 331.)

Given this court's limited role on appeal, defendant bears a heavy burden in claiming there was insufficient evidence to sustain his conviction for first degree murder. If the verdict is supported by substantial evidence, we are bound to give due deference to the trier of fact and not retry the case ourselves. "On appeal, we must view the evidence in the light most favorable to the People and must presume in support of the judgment the existence of every fact the trier could reasonably deduce from the evidence. [Citation.]" (*People v. Ochoa* (1993) 6 Cal.4th 1199, 1206.) It is the exclusive function of the trier of fact to assess the credibility of witnesses and draw reasonable inferences from the evidence. (*People v. Alcala* (1984) 36 Cal.3d 604, 623.)

Defendant's hurdle to secure a reversal is just as high when the prosecution's case depends on circumstantial evidence. (*People v. Stanley* (1995) 10 Cal.4th 764, 792.) "If the circumstances reasonably justify the trier of fact's findings, the opinion of the reviewing court that the circumstances might also reasonably be reconciled with a contrary finding does not warrant a reversal of the judgment." [Citations.] [Citation.]" (*Id.* at p. 793.)

"Murder is the unlawful killing of a human being . . . with malice aforethought." (§ 187.) To prove one variety of first degree murder, the prosecution must show a willful, deliberate and premeditated killing. If it fails to do so, the murder is a second degree murder. (§ 189.) A killing is deliberate and premeditated if the killer weighs and considers the question of killing and the reasons for and against such a choice and, having in mind the consequences, decides to and does kill. (*People v. Mayfield* (1997) 14

Cal.4th 668, 767.) ““The true test is not the duration of time [of reflection] as much as it is the extent of the reflection.”” (*People v. Koontz* (2002) 27 Cal.4th 1041, 1080.)

“A verdict of deliberate and premeditated first degree murder requires more than a showing of intent to kill. [Citation.] “Deliberation” refers to careful weighing of considerations in forming a course of action; “premeditation” means thought over in advance. [Citations.] “The process of premeditation . . . does not require any extended period of time. ‘The true test is not the duration of time as much as it is the extent of the reflection. Thoughts may follow each other with great rapidity and cold, calculated judgment may be arrived at quickly. . . .’ [Citations.]” [Citation.] [¶] In *People v. Anderson* (1968) 70 Cal.2d 15, 26-27 [(*Anderson*)], [our state’s highest] court reviewed earlier decisions and developed guidelines to aid reviewing courts in assessing the sufficiency of evidence to sustain findings of premeditation and deliberation. [Citation.] We described three categories of evidence recurring in those cases: planning, motive, and manner of killing. [Citations.] The *Anderson* decision stated: ‘Analysis of the cases will show that this court sustains verdicts of first degree murder typically when there is evidence of all three types and otherwise requires at least extremely strong evidence of [planning] or evidence of [motive] in conjunction with [evidence of] either [planning] or [manner of killing].’ [Citations.] Since *Anderson*, we have emphasized that its guidelines are descriptive and neither normative nor exhaustive, and that reviewing courts need not accord them any particular weight. [Citations.]” (*People v. Halvorsen* (2007) 42 Cal.4th 379, 419-420.)

Thus, while the *Anderson* factors are not exclusive or exhaustive, they provide a sound basis to determine if the evidence supports the jury’s finding that a murder was willful, deliberate, and premeditated. (See *People v. Thomas* (1992) 2 Cal.4th 489, 517.) “Given the presumption that an unjustified killing of a human being constitutes murder of the second, rather than of the first, degree, and the clear legislative intention to differentiate between first and second degree murder, we must determine in any case of circumstantial evidence whether the proof is such as will furnish a reasonable foundation for an inference of premeditation and deliberation [citation], or whether it ‘leaves only to conjecture and surmise the conclusion that defendant either arrived at or carried out the intention to kill as the result of a concurrence of deliberation and premeditation.’ . . . [Citation.]” (*Anderson, supra*, 70 Cal.2d at p. 25.)

With this background, we consider the applicability of the *Anderson* factors to this case, keeping in mind our purpose of differentiating between a deliberate and premeditated killing and a killing perpetrated on “‘mere unconsidered or rash impulse hastily executed’ [citation]” (*Anderson, supra*, 70 Cal.2d at p. 27.)

The first factor is planning: “(1) facts about how and what defendant did *prior* to the actual killing which show that the defendant was engaged in activity directed toward, and explicable as intended to result in, the killing—what may be characterized as ‘planning’ activity” (*Anderson, supra*, 70 Cal.2d at pp. 26-27.) According to defendant, “there was no evidence presented showing or suggesting planning activity, ‘the most important prong of the *Anderson* test.’” Defendant points out that he had met the victim the day before the killing; he spent the night at the victim’s invitation; the

victim chose the spot where he was killed; the victim's mother knew the location of the victim and defendant; and the knife used to kill the victim was one that defendant found "during his travels and used . . . for protection and as a tool incidental to his transient living circumstances."

In contrast, the People point out that defendant had been arguing with the victim because the victim refused to buy defendant cigarettes. Despite this argument, defendant accompanied the victim to a lagoon area along the river where the victim went to fish. However, according to testimony, earlier in the day, defendant showed no interest in fishing. He further stated he did not have a fishing license and could not fish. Moreover, defendant clearly took his knife with him, while his other belongings remained at the camp site.⁵ These circumstances support the inference that defendant seized an opportunity to attack the victim.

The second *Anderson* factor is motive: "(2) facts about the defendant's *prior* relationship and/or conduct with the victim from which the jury could reasonably infer a 'motive' to kill the victim" (*Anderson, supra*, 70 Cal.2d at p. 27.) Defendant contends that his case "bears no resemblance to those cases where there was some preexisting motive for the crime, such as avoiding discovery of a firearm, or an effort to avoid arrest Nor is this case similar to those cases where a motive was apparent at the time of the crime." Defendant faults the prosecution for "completely gloss[ing] over the issue." The People argue that defendant's motive stems from his argument with the

⁵ While defendant claimed he did not take his knife, he admitted attacking the victim with his knife.

victim over the victim's refusal to purchase cigarettes for defendant. According to the record, before picking up defendant, the victim had gone to the bank to get money, and he later purchased a pack of cigarettes for defendant. Also, defendant stated the victim was "ordering [him] around" at the camp. This evidence, coupled with the evidence that the victim's shoes were missing, his right pocket was turned inside out, and his wallet was found approximately 10 feet from his body, sufficiently support a finding that defendant was motivated to kill for money.

The third *Anderson* factor is the manner of killing, i.e., "(3) facts about the nature of the killing from which the jury could infer that the manner of killing was so particular and exacting that the defendant must have intentionally killed according to a 'preconceived design' to take his victim's life in a particular way for a 'reason' which the jury can reasonably infer," based on evidence of planning and motive. (*Anderson, supra*, 70 Cal. 2d at p. 27.) According to defendant, the multiple stab wounds to the victim's body, "the majority of which were non-fatal," are "consistent with a frenzied attack characteristic of an unconsidered explosion of violence."

The People contend the manner of killing supports a finding of premeditation. Because the victim was morbidly obese and not wearing shoes when he was killed, the People argue this shows that defendant struck at an opportune time. We also note the victim had been awake since 4:00 a.m. that day. Defendant went through the victim's pockets and wallet, discarded his (defendant's) sweatshirt, calmly packed up his belongings, and then said goodbye to the victim's mother. Defendant's demeanor remained cool and collected when he was with Denise. Thus, the People maintain that

the killing “was the result of ‘a pre-existing reflection’ and ‘careful thought and weighing of considerations’ rather than ‘mere unconsidered or rash impulse hastily executed’ [citation]” (*Anderson, supra*, 70 Cal.2d at p. 27.) We agree.

III. DISPOSITION

The judgment is affirmed.

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HOLLENHORST

Acting P. J.

We concur:

MCKINSTER

J.

KING

J.