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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE, Plaintiff and Respondent, v. STEWART MAUA TEOFILO, Defendant and Appellant.	B277419 Los Angeles County Super. Ct. No. NA103395

APPEAL from a judgment of the Superior Court of Los Angeles County, Laura L. Laesecke, Judge. Affirmed as modified.

Paul Couenhoven, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Steven D. Matthews and Ryan M. Smith, Deputy Attorneys General, for Plaintiff and Respondent.

A jury convicted Stewart Maua Teofilo of first degree murder with a deadly weapon of Maurice Howard. We conclude insufficient evidence supported the jury finding that Teofilo killed Howard with premeditation and deliberation. We modify the judgment to reduce his conviction to second degree murder, and modify his sentence to an indeterminate 16-years-to-life term.

BACKGROUND

On June 24, 2002, men out fishing discovered Howard stabbed to death in his truck, which was parked in the parking lot behind a pier in Long Beach. The killing remained without a suspect until DNA analysis performed in 2014, on samples collected from bloodstains on the outside of Howard's truck, found DNA matching Teofilo's profile. An information filed February 15, 2016, charged Teofilo with Howard's murder and alleged he used a deadly weapon ("sharp stabbing instrument"). (Pen. Code, §§ 187, subd. (a), 12022, subd. (b)(1).)[1] After trial, the jury convicted Teofilo of first degree murder and found the deadly weapon allegation true.

1. *Discovery of Howard's body in 2002*

At trial, Michael J. testified he spent the late afternoon and evening of June 21, 2002, catching up with his old friend Howard. Howard drove his Chevy Blazer to Michael J.'s house. The men then drove in Michael J.'s car to visit Michael J.'s uncle, and then to a nightclub where they danced, drank, and had a good time. They returned to Michael J.'s house around 2:30 a.m. the next day, June 22, and hung out briefly before Howard left in the Blazer for a friend's house.

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[1] Unless otherwise indicated, all subsequent statutory references are to the Penal Code.

Justin H. and Brandon G. testified that on the afternoon of June 24, 2002, they were fishing off a Long Beach pier with Brandon G.'s father. Brandon G. went to the fence around the parking lot to relieve himself. As he walked back he looked into the open driver's side window of a truck, and saw a dead African-American man in the back. Brandon G. told the other men, and after they went back and looked in the truck, Brandon G.'s father alerted security. None of the men touched the truck or the body. They talked to the police when they arrived, and Justin H. pointed out what looked like a small knife on the ground.

The body on the floor of the back seat was Howard's, and the truck was a blue two-door 1985 Chevy Blazer registered to his wife. Howard was lying on his right side with his head facing back behind the driver's seat, and his feet partially on the passenger side floor. His clothing was bloody and there was blood on the cloth headliner. No car keys were ever found.

When Long Beach homicide detectives arrived to preserve the crime scene, they saw smudges and drops of blood on the driver's side exterior of the Blazer. They found a knife handle on the ground approximately 25 feet away from the front passenger side, with no blade attached.

The coroner's investigator arrived, photographed Howard's body, and moved it onto a sheet over plastic on the ground next to the truck. Howard had multiple stab wounds. His clothing was booked into evidence along with hair and nail samples.

A forensic technician who photographed the scene noticed red splotches on the driver's side exterior. The technician placed next to each splotch one of seven lettered cards, photographed the splotches, and collected samples. The sealed samples were booked into evidence.

The coroner who performed the autopsy testified that Howard had 15 stab wounds on the left side of his head and face, 13 stab wounds on his left upper arm and underarm, four stab wounds on his left chest, and nine stab wounds on his left back. The stab wounds were haphazard, some going up, some down, and some left to right. The wounds varied in length from five-eighths of an inch to one-quarter of an inch, and varied in depth from three-quarters of an inch to more than three inches. The fatal stab wounds entered the brain, cut the cervical spine and major blood vessels from the carotid artery, pierced the left lung, and cut into the heart. Howard had defensive wounds on his left forearm. His blood alcohol level was roughly three times the legal limit. The coroner did not determine a time of death.

2. *2014 "cold case" DNA match with Teofilo*

The police had no suspect in Howard's murder. In 2002 the Long Beach Police Department rarely used DNA analysis because "the science [was] very expensive," and without a named suspect for comparison no test would be performed. The police had collected a saliva sample from Howard's wife, who reported him missing and was interviewed as part of the initial investigation, but she was never a suspect. The police department put the evidence in storage.

By 2009, DNA science had improved, and the Long Beach Police Department had a federal grant that included cold cases with blood or biological evidence. After conferring with a criminologist, in May 2009 the cold case unit sent the samples collected from the exterior of Howard's truck to the Los Angeles County Sheriff's Department Scientific Services Bureau, which sent the samples to one of the available labs. Howard's blood, his wife's saliva swab, and the knife handle were also sent for DNA

analysis. The outside laboratory found no DNA on the knife handle.

The sample from the red stain on the truck's exterior behind the driver's side door contained a complete unknown male DNA profile. (The sample did not contain Howard's profile.) The sheriff's laboratory uploaded that unknown DNA profile into a database. On May 23, 2014, a letter informed the sheriff's laboratory that Teofilo's DNA matched the profile from the stain found on the truck. The sheriff's laboratory tested a sample of a saliva swab taken from Teofilo after his 2015 arrest, and confirmed that Teofilo's DNA matched. The probability that someone other than Teofilo would have that profile was one in 26.9 quintillion.

In April 2016, the outside laboratory also tested the passenger seat cover, the driver's seat cover, and the headliner from Howard's truck. The sample from the passenger seat cover contained a major DNA profile matching Teofilo's profile. A red stain on the calf of Howard's lower left pant leg produced a blood sample matching Teofilo's profile. Fingerprints lifted from Howard's truck were inconclusive.

Teofilo's father testified that in June 2002, he and Teofilo lived on Pleasant Street in Long Beach, and used to fish off the same pier near where Howard's body was found. Justin H. lived five properties down from Teofilo on Pleasant Street. Brandon G. lived a few hundred yards away, on a different street.

3. *Teofilo's arrest and recorded conversations*

Lead investigating officer Detective Shea Robertson planned Teofilo's arrest after receiving the DNA match. Detective Robertson, his partner, and two other detectives drove in a booking van up to Modesto, where they arrested Teofilo on

April 21, 2015. Detective Robertson and his partner told Teofilo that he was under arrest for a 2002 cold case, and the police had found his DNA on a car. They said nothing about the location or the type of car, where on the car they found the DNA, or how the victim had been killed. The detectives drove back to Long Beach with Teofilo in the back compartment, which had recording capabilities.

At first Teofilo was the only passenger, but in Bakersfield the van picked up a "paid inmate" who joined Teofilo in the back. This inmate had been told the detectives were investigating a 2002 cold case murder with recent DNA results, and he received $1,000 to converse with Teofilo and "[t]alk about the case and obtain the truth." The jury heard recordings of the men's conversations (both while they were in the van and while they were housed together in a cell in Long Beach), and received transcripts.

In the van, Teofilo told the paid inmate the police said they had Teofilo's DNA in connection with a 2002 murder, but he didn't know what they were talking about. "DNA could have come from anywhere. I mean, somebody say I murdered somebody, that's a—that's a big-ass accusation." He thought it was "bullshit." Teofilo said, "I know they don't have no weapon with whatever they talking."

In a cell at the Long Beach station (after talking to detectives in an unrecorded interview), Teofilo told the paid inmate the police had told him they found his blood and DNA inside the truck and out, but he could not figure out how it got there. Howard's photo looked familiar. He had never seen or touched the knife the police showed him, and he had never seen the truck, so it was impossible for his DNA to be on the knife and

the truck. It was all "fucking lies." His dad had taken him fishing there, but, "[w]hat does that have to do with anything?" He was always fighting back then, and, "[i]t could have been I had a fight with somebody."

Teofilo was trying to figure out how his DNA got there. The detectives first said the DNA was inside on a big smear of blood, then outside, and showed him a picture of a truck with ten stickers on it. He thought they were bluffing and wondered, "[w]hy even lie like that?"

Teofilo told the paid inmate he had fished off that pier, and thought maybe he had hooked his hand while he was fishing. He said: "Some of my boys found the body and called the cops," and "maybe my DNA got in there like that. . . . I was the first one there, and I looked in the car . . . I seen there was something there. I took off and my boys came." He jumped out of the truck when he saw a body in the back, taking $30 or $40 from inside the truck. That would explain the DNA on the interior. He still could not think why his DNA was on the knife, which he had never seen. "[T]he next day, that's when some neighbors [went] fishing" and found the body. "It's the truth." He couldn't remember whether he fought with Howard 13 years ago. "[M]aybe I found the motherfucker, but I didn't kill the motherfucker."

In a subsequent recorded interview with Detective Robertson and another detective (also played to the jury), Teofilo agreed he had been read his rights and had agreed to talk. He did not remember Howard's Blazer (of which the police showed him a photograph) or know anything about the murder, although he might have seen Howard working at a neighborhood store. The detectives asked whether he'd ever stabbed anyone ("[l]et

alone over 41 times?") or killed anyone, and he answered: "Never." Teofilo asked, "[D]id we fish over there and I touched the car or somethin'?" He did not understand how his blood got on the truck. The detectives told Teofilo: "Your blood's mixed in all over with this other guy's blood. . . . And he's dead. And he's dead, stabbed 41 times inside the car." Teofilo said did not know who did it or if the knife was the murder weapon. The scars on his hands were from stitches he had received in a Florida hospital after he cut himself on a window.

Detective Robertson testified he listened to the van and the jail cell recordings before interviewing Teofilo and learned that Teofilo denied he murdered Howard, but told the paid inmate he had been at the scene and his friends had found the body. The recorded interview with detectives, and another that was unrecorded, were "stimulations" in which the detectives used ruses to let Teofilo know they had evidence against him.

The court instructed the jury on first and second degree murder, after overruling a defense objection that there was no evidence of premeditation or deliberation. The court denied a defense request for a voluntary manslaughter instruction.

In closing argument, the prosecutor emphasized that Howard had been brutally stabbed 41 times and had defensive wounds. The prosecutor explained that the premeditation and deliberation necessary for first degree murder could happen very quickly, and the killer made the decision to kill Howard over and over again each time he stabbed Howard. Although there was no evidence of a motive, motive was not an element of the crime. Teofilo's blood was found on the outside of the truck, on Howard's pants, and on the passenger seat cover.

The defense argued in closing that no witness connected Teofilo to Howard and no weapon ever was found. DNA alone was not enough. In spite of all the police pressure and confession techniques, Teofilo did not confess, but told the truth: he did not know Howard and did not kill anyone. The 41 stab wounds showed rage and hate, "which doesn't come from a man with no relationship at all with Mr. Howard."

The jury deliberated for just over three hours and found Teofilo guilty of first degree murder with a deadly weapon.

The trial court denied Teofilo's motion for new trial, and sentenced him to 26 years to life. Teofilo filed a timely notice of appeal.

DISCUSSION

1. *The evidence did not support the premeditation and deliberation required for first degree murder*

Teofilo argues the evidence is insufficient to support his first degree murder conviction. We review the entire record in the light most favorable to the judgment to determine whether there is substantial evidence that is reasonable, credible, and of solid value, from which the jury could find beyond a reasonable doubt that Teofilo premeditated and deliberated. (*Peoplev. Perez* (1992) 2 Cal.4th 1117, 1124 (*Perez*).)

In addition to a showing of intent to kill, a first degree murder verdict requires evidence of premeditation and deliberation. (*People v. Mendoza* (2011) 52 Cal.4th 1056, 1069.) Second degree murder requires malice, either express (intent to kill) or implied (the intentional commission of a life-threatening act, with conscious disregard for life), but not willfulness, premeditation, and deliberation. (*People v. Chun* (2009) 45 Cal.4th 1172, 1181.)

"It is well established that the brutality of a killing cannot in itself support a finding that the killer acted with premeditation and deliberation. 'If the evidence showed no more than the infliction of multiple acts of violence on the victim, it would not be sufficient to show that the killing was the result of careful thought and weighing of considerations.' [Citations.] Moreover, although premeditation and deliberation may be shown by circumstantial evidence [citations], the People bear the burden of establishing beyond a reasonable doubt that the killing was the result of premeditation and deliberation, and that therefore the killing was first, rather than second, degree murder." (*People v. Anderson* (1968) 70 Cal.2d 15, 24-25 (*Anderson*).) Where, as here, the evidence is circumstantial, we must determine "whether the proof is such as will furnish a *reasonable foundation* for an inference of premeditation and deliberation." (*Id.* at p. 25.)

The evidence in this case does not furnish a reasonable foundation for a jury to infer Teofilo killed Howard with premeditation and deliberation. The undeniable brutality of the killing and the multiple stab wounds are not enough to show that Teofilo acted with careful thought and weighing of considerations. Nothing supports a conclusion that Teofilo formed an intent to kill Howard upon preexisting reflection, actual deliberation, or forethought. (*Anderson*, *supra*, 70 Cal.2d at p. 26.) The DNA evidence connecting Teofilo to Howard's 2002 murder provides no basis for insight into what Teofilo did before the killing, or whether Teofilo had any prior acquaintance or relationship with Howard. (*Id.* at pp. 26-27.) Teofilo's own statements about finding the body and taking the money from Howard's truck are evidence about the aftermath of the killing,

not a " 'preconceived design' " beforehand. (*Id.* at p. 27.) Teofilo's conduct after Howard was dead, standing alone, is not sufficient to establish premeditation and deliberation. (*Perez*, *supra*, 2 Cal.4th at p. 1128.)

The 41 stab wounds scattered over Howard's body do not allow a jury to "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.' " (*Anderson*, *supra*, 70 Cal.2d at p. 27.) Just the opposite: the manner of Howard's killing, with 41 stab wounds around the head, face, arm, chest, and back, and some defensive wounds, "is, at least in a vacuum, associated with someone losing his mind and going beserk, which is not a state of mind we associate with premeditation or deliberation. We note an irony here: The more genteel the form of dispatch, the more readily premeditation may be inferred. Vicious brutal knifings, particularly when the victim is awake and fighting back, tend to fall on the opposite side of the spectrum from, say, the administration of arsenic in a guest's tea." (*People v. Nazeri* (2010) 187 Cal.App.4th 1101, 1118.) "Cases that have found sufficient evidence of premeditation and deliberation in the absence of planning or motive evidence are those in which '[t]he manner of the killing clearly suggests an execution-style murder.' " (*People v. Boatman* (2013) 221 Cal.App.4th 1253, 1269.) Such methodical killings—for example, by single shots to one victim's head and to the other's neck—are "sufficiently ' "particular and exacting" ' to warrant an inference that defendant was acting according to a preconceived design." (*People v. Thomas* (1992) 2 Cal.4th 489, 518.) No evidence here " ' "supports an inference that the killing occurred as the result of

preexisting reflection rather than unconsidered or rash impulse.' " (*People v. Cage* (2015) 62 Cal.4th 256, 276.)

Viewing the entire record in the light most favorable to the judgment, we conclude that insufficient evidence supports the finding that Teofilo killed Howard with premeditation and deliberation. In the absence of substantial evidence to support first degree murder, we reduce Teofilo's conviction to second degree murder (*People v. Martinez* (1987) 193 Cal.App.3d 364, 369), and reduce his sentence from 26 years to life to 16 years to life. (See §§ 190, subd. (a), 12022, subd. (b)(1).)

2. *The trial court did not abuse its discretion when it excluded expert testimony about false memories*

Teofilo also contends the trial court abused its discretion when it did not allow a defense expert to testify about false memories.

During trial, defense counsel sought to introduce expert testimony to discuss "the type of stress and pressures and tactics and things that the police used in this case to try and plant memories and get my client to talk and say things that may or may not have been true about this case." The prosecutor pointed out that the conversations in the van were not a police interrogation. Defense counsel argued that the jury should know that the goal of putting the other inmate in the van was to get Teofilo to talk about the crime. The court declined to "allow questions about whether or not [Teofilo] was *Mirandized* before [he was] put in the van" (having already ruled on the legality of the operation), but allowed defense counsel to use the term "paid inmate."

At a later hearing, defense counsel argued the expert testimony was necessary to show how the conversation in the van

and the interrogation by the detectives "pressure[ ] the person to come up with false memories." The court asked, "What false memory are you referring to?" The court noted Teofilo did not confess, and most of his statements were that he was not there and did not commit the murder. Defense counsel argued the false memory was Teofilo's statement to the paid inmate that he had entered Howard's truck and stolen some money. Teofilo may have been "trying to retrieve a memory that he doesn't have" after the police and paid inmate "continually plant[ed] information in his head that because of his DNA, he must have been there." Again, the court pointed out that Teofilo continually stated "he didn't do it." The court saw no coercive techniques and was considering excluding the witness. The prosecutor argued the expert testimony was irrelevant, especially as Teofilo did not confess.

The court heard the expert's testimony outside the presence of the jury. The expert described how repeated suggestion, using a number of tactics over time, could possibly "move [a] person from not believing to actually believing, and then to false memories. It is possible." The police techniques in this case were useful to find true memories, but "also they have the powerful effect of inducing false beliefs and false memories."

The court ruled against admitting the expert testimony. Teofilo did not confess, and although he gave the paid inmate some information, he continually told the detectives, " 'I didn't do it, I didn't do it, I didn't do it.' " The expert testimony therefore would not assist the jury.

In closing, the defense argued that although the police created "an entire operation . . . . [t]o try to get a confession," and "to plant information in his head to make him believe that he

must have been there," Teofilo had not confessed, even to the paid inmate whose "purpose was to nag and nag and tell him" that his denial was not good enough. The paid inmate helped Teofilo make up the story about fishing and finding Howard's body in the truck and stealing. Nevertheless, "despite all [the detective's] pressures, despite all of his confession techniques, Mr. Teofilo told the truth that he doesn't know Mr. Howard. . . . He didn't stab anyone."

The trial court has broad discretion to rule on the admissibility of evidence, including on the basis that, under Evidence Code section 352, the probative value of the offered testimony is substantially outweighed by the probability that its admission will be unduly time-consuming, will create undue prejudice, or will confuse or mislead the jury. (*People v. Tully* (2012) 54 Cal.4th 952, 1010; Evid. Code, § 352.)

The techniques used by the police were not unconstitutional. In *Illinois v. Perkins* (1990) 496 U.S. 292, 296-297, the Supreme Court held that a conversation between an incarcerated suspect and an undercover agent posing as a fellow inmate was not custodial interrogation requiring warnings under *Miranda v. State of Arizona* (1966) 384 U.S. 436. In addition, "[p]olice deception during a custodial interrogation may but does not necessarily invalidate incriminating statements. A psychological ploy is prohibited only when, in light of all the circumstances, it is so coercive that it tends to result in a statement that is both involuntary and unreliable." (*People v. Mays* (2009) 174 Cal.App.4th 156, 164.) " 'So long as a police officer's misrepresentations or omissions are not of a kind likely to produce a *false* confession, confessions prompted by deception are admissible in evidence.' " (*Id.* at p. 165.) Tactics such as an

officer implying he could prove more than he actually could, or telling a suspect his fingerprints were on the getaway car when no prints had been found, do not make a subsequent confession involuntary. (*Id.* at pp. 164-165.) Where the police falsely told the defendant he had failed a polygraph test, "the trickery was not particularly coercive because, even after the police showed defendant the fake test results, defendant continued to deny involvement in the crime. He merely admitted being present at the scene wearing a gray sweatshirt. . . . [¶] [D]efendant's ability to admit being present, while steadfastly denying participation, demonstrates that his will was not overborne by the police ruse." (*Id.* at pp. 166-167.)

Teofilo argues that the expert's testimony was relevant to prove that the police tactics (both the paid inmate and the stimulations) could have induced him to have false memories. But memories of what, and shared with whom? Teofilo did not confess to killing Howard, either to the paid inmate or to the police. He eventually told the paid inmate he took money from the truck and then jumped out when he saw Howard's body, but he then told the detectives he couldn't figure out how his blood got on the truck, repeatedly denied he killed anyone, and, when pressed, said he did not remember ever getting into the truck. The exclusion of the expert testimony also did not prevent the defense from arguing that the paid inmate pressured Teofilo to "make up a story about fishing," and that Teofilo did not tell that story to the detectives. (See *People v. Alcala* (1992) 4 Cal.4th 742, 789.)

Teofilo told conflicting stories about whether he was at the scene or entered Howard's truck. He steadfastly and uniformly denied that he murdered Howard. In the light of Teofilo's

inconsistent statements and his repeated denials that he killed Howard, expert testimony that Teofilo might have formed a false memory of getting into Howard's truck would not be probative of his guilt of murder, and ran a real risk of prolonging the trial and confusing and misleading the jury.

The trial court did not abuse its discretion when it refused to allow testimony by the defense expert witness.

DISPOSITION

The judgment is modified to reflect a conviction for second degree murder with a sentence, including a deadly weapon enhancement, of 16 years to life. As modified, the judgment is affirmed. The superior court is directed to prepare a corrected abstract of judgment and forward it to the Department of Corrections and Rehabilitation.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

Egerton, J.

We concur:

Edmon, P. J.

Lavin, J.