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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

MICHAEL BONFIGLIO,

Defendant and Appellant.

2d Crim. No. B243962  
(Super. Ct. No. NJA081091)  
(Los Angeles County)

Ginnie Samayoa (Samayoa) was shot and killed by Daniel Martinez as she sat in her car with him, Michael Bonfiglio and Raul Tiscareno. Following a separate trial, a jury convicted Bonfiglio of first degree murder and returned a true finding as to the robbery-murder special circumstance. Bonfiglio was also convicted of conspiring to commit robbery and of second-degree robbery. On the murder conviction, Bonfiglio was sentenced to life in prison without the possibility of parole. He was given a determinate sentence of five years in prison on the robbery counts. The determinate sentence was stayed. Bonfiglio appeals and contends there is insufficient evidence to support the finding by the jury of the robbery-murder special circumstance. He asserts the court erred by denying his motions for the release of confidential juror information and for a new trial. We affirm.

## *FACTS*

Bonfiglio agrees that his trial testimony confirms most of the evidence submitted by the prosecution and leaves not much in dispute about what happened on January 29 and 30, 2009. Bonfiglio's defense was that he did not, with the intent to kill, aid, abet or assist Martinez in robbing and murdering Samayoa.

### *The People's Case*

Samayoa lived in an apartment in San Pedro. She did not have a regular job and used her laptop computer to create fraudulent credit cards and gift cards. Bonfiglio and his girlfriend Monic Barnett lived in Whittier. Bonfiglio became acquainted with Samayoa in April 2007.

In 2009, Bonfiglio had been recently released from prison and was unemployed. He used methamphetamine and sold it to make a living. He and Barnett saw that Samayoa's credit card business was profitable. He accompanied her on "shopping trips" and allowed her to ship purchases to his address. In return, Samayoa promised to give Bonfiglio a computer programmed to make cards.

Bonfiglio testified that for six or seven weeks after making the promise, Samayoa repeatedly put off his demands for a computer, eventually stopped taking his calls and avoided him altogether. He became frustrated and very upset by Samayoa's failure to keep her promise and became increasingly angry when she avoided him and refused to take or return his telephone calls.

Bonfiglio testified that just after midnight on January 29, 2009, he and Martinez met at Bonfiglio's residence and stayed up all night using meth. During the morning of the 29th he asked Martinez to drive him to Samayoa's apartment to confront her about avoiding him and to intimidate her with threats so that she would keep her promise to help him create fraudulent credit cards on his own. Bonfiglio testified that he knew Martinez had a gun and told him to bring it to the meeting with Samayoa.

Bonfiglio claimed that he and Martinez had a quiet conversation with her and easily settled their disagreement. He said Samayoa agreed to his demands, apologized for hassling him and told him that she would provide the computer the next

day. She gave him \$ 800 or \$ 900 in fraudulent credit cards for the inconvenience she caused him. Even so, Bonfiglio told detectives he did not trust Samayoa and made it clear he was going to accompany her on the "shopping trip" the following morning. Bonfiglio said he would return to Samayoa's apartment sometime after midnight the next day, January 30.

Bonfiglio returned to his house and while there, discussed with Martinez and Tiscareno "several scenarios" about how to steal Samayoa's computer. The plan they eventually agreed upon was simple: Martinez would pick it up and walk out of the apartment. Bonfiglio would protest, pretend not to be in on the robbery and would remain behind after Martinez and Tiscareno left. Bonfiglio reasoned that this was to his advantage because he would not be blamed later for the robbery.

Bonfiglio, Martinez and Tiscareno returned to Samayoa's apartment between 2:00 and 3:00 a.m. Bonfiglio then noticed Martinez and Tiscareno having a suspicious, hushed conversation and learned Martinez had a gun. Bonfiglio claimed that although he asked Martinez to bring a gun to a *discussion* with Samayoa the day before, he did not expect Martinez to bring one to the *robbery* the following morning.

Bonfiglio claims he had second thoughts about the plan and told Samayoa everything. He agreed to confront Martinez and put an end to the robbery. Bonfiglio said he emphatically told Martinez that the plan was "over," that "it was not going to happen." He claims Martinez backed off and apologized to Samayoa. Nevertheless, Bonfiglio did nothing else to protect Samayoa from Martinez or Tiscareno such as getting her out of the apartment, asking Martinez or Tiscareno to leave or demanding that Martinez give up his weapon.

At about 7:00 a.m. everyone left Samayoa's apartment. Samayoa agreed to drive Martinez and Tiscareno to Martinez's truck. Bonfiglio and Samayoa would then go shopping for a computer. Martinez and Tiscareno sat in the back seat, Bonfiglio sat in the front passenger seat and Samayoa sat in the driver's seat. Samayoa drove a short distance in the alley behind the apartments and Martinez told her to stop. She did and Martinez shot her in the back of her head.

Bonfiglio fled to a mobile home at Gun Club behind a locked gate in a remote area near Anza some hours from San Pedro. After a few days, he called Barnett and asked her to bring him some clothing. Detectives followed her to the meeting with Bonfiglio and arrested him.

Bonfiglio concedes the evidence is sufficient to support his conviction of first degree murder but contends the jury's true finding as to the murder-robbery special circumstance must be set aside because substantial evidence does not show he aided and abetted Martinez and Tiscareno in the robbery-murder with the intent to kill. His defense depends largely on the credibility of his testimony since no one else is in a position to speak about what happened on January 29 and 30. Bonfiglio's version of the crime was unanimously rejected by the jury.

#### *Procedural History*

##### *The Information*

Count 1 of the first amended information charged Bonfiglio with first degree murder of Samayoa and alleged that offense was aggravated by the special circumstance that he aided and abetted Martinez in the robbery and first degree murder of Samaoya *either* with the intent to kill her (Pen. Code,<sup>1</sup> § 190.2, subd. (c)), *or* as a major participant in the robbery-murder acting with reckless indifference to human life (*id.*, subd. (d).) Count 2 charges Bonfiglio, Tiscareno and Martinez with the crime of conspiracy to commit robbery (§§ 182, subd. (a)(1); 211). Count 3 charges Bonfiglio Tiscareno and Martinez with second degree robbery (§ 211), a serious and violent felony. Special allegations relating to the use of a firearm and prior convictions were added to the information.

##### *The Jury Instructions*

The jury instructions the court gave to the jury included a modified version of CALJIC No. 8.80.1 (Special Circumstances – Introductory, § 190.2). That instruction advised the jury that it could find the special circumstance to be true if Bonfiglio, with

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

the intent to kill, aided, abetted and assisted Martinez in the robbery-murder. The instruction omitted the alternative offered by section 190.2, subdivision (d) that the special circumstance could also be found true if Bonfiglio was found to be a major participant in the robbery and acted with reckless indifference to human life.

### *The Verdict*

The jury found Bonfiglio guilty of first degree murder and made a true finding as to the allegation that the offense was committed while he was engaged in the commission of the crime of robbery. He was also found guilty of the offenses charged in counts 2 and 3. Thus assuming the jury followed the court's instructions, as we must, the jury concluded that Bonfiglio intentionally aided and abetted Martinez in the robbery-murder of Samayoa.

### *DISCUSSION*

#### *Robbery-Murder Special Circumstance*

Bonfiglio contends that when Martinez shot Samayoa, he had withdrawn from the plan to rob her, emphatically told Martinez and Tiscareno the plan was not going to happen and that he never intended for Samayoa to be harmed. The jury did not believe his explanations.

In reviewing the sufficiency of evidence to support a conviction, we examine the entire record and draw all reasonable inferences therefrom in favor of the judgment to determine whether there is reasonable and credible evidence from which a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. (*People v. Streeter* (2012) 54 Cal.4th 205, 241.) We accept the logical inferences that the jury might have drawn from the evidence although we would have concluded otherwise. (*Ibid.*) Our review is the same in a prosecution primarily resting upon circumstantial evidence. (*People v. Watkins* (2012) 55 Cal.4th 999, 1020.) We do not reweigh the evidence or reassess the credibility of witnesses. (*People v. Albillar* (2010) 51 Cal.4th 47, 60.) "If the circumstances reasonably justify the trier of fact's findings, reversal of the judgment is not warranted simply because the circumstances might also reasonably be reconciled with a contrary finding. [Citation.]" (*Ibid.*)

The intent with which a person acts is rarely susceptible of direct proof and usually is inferred from the factual circumstances of the offense. (Former § 21, subd. (a), now § 29.2; *People v. Massie* (2006) 142 Cal.App.4th 365, 371.) "[C]ourts and juries every day pass upon knowledge, belief and intent – the state of men's minds – having before them no more than evidence of their words and conduct, from which, in ordinary human experience, mental condition may be inferred." [Citations.] (*U.S. v. Williams* (2008) 553 U.S. 285, 306.) Here, in spite of Bonfiglio's protestations to the contrary, there was ample evidence that he participated in the robbery-murder of Samayoa with the requisite intent to kill.

Reasonable inferences can be drawn from the largely undisputed evidence. Bonfiglio wanted to "work credit cards" because he saw the profits Samayoa effortlessly produced. Bonfiglio was frustrated and angry with Samayoa for not living up to her promise to give him a computer programmed to produce fraudulent cards. Bonfiglio first tried to frighten Samayoa into giving him the computer by intimidating her with threats and by bringing Martinez to the meeting to emphatically make the point with a gun. Bonfiglio decided he would wait no longer for the computer and assembled a team to rob Samayoa at gunpoint. Bonfiglio helped plan the robbery, provided access for the team to Samayoa and gave them directions to her apartment. Bonfiglio told Martinez to bring a loaded gun to the meeting with Samayoa on January 29 and expected him to do so at the robbery on January 30.

Samayoa was a small woman and the jury could rationally conclude that it did not take three men and a gun to rob her of a laptop computer and that they brought the gun to the robbery to kill her. Bonfiglio structured the robbery in a way that shifted responsibility for the killing to Martinez and Tiscareno making him less likely to be a target for retribution. Bonfiglio, Martinez and Tiscareno knew Samayoa's friends included "unsavory characters" connected to criminal gangs who might exact retribution if she were left alive to identify her robbers. Martinez's statement, "It had to be done," permits the inference that the plan to rob Samayoa included killing her.

Based upon this record, it was entirely rational for the jury to conclude Bonfiglio intended to rob and kill Samayoa.

*Request for Confidential Juror Information*

Bonfiglio argues the trial court abused its discretion by denying his petition for release of confidential juror information and for a new trial because two jurors felt they were "pressured to convict" and because of "at least two serious instances of misconduct by the jury foreman [that were] presumptively prejudicial." We disagree.

Following a verdict, a defendant may "petition the court for access to personal juror identifying information within the court's records necessary for the defendant to communicate with jurors for the purpose of developing a motion for new trial or any other lawful purpose." (Code Civ. Proc., § 206, subd. (g).) "The petition shall be supported by a declaration that includes facts sufficient to establish good cause for the release of the juror's personal identifying information. The court shall set the matter for hearing if the petition and supporting declaration establish a prima facie showing of good cause for the release" of the requested information. (*Id.*, § 237, subd. (b).)

Good cause for disclosure of juror information to support a motion for new trial based on juror misconduct is a sufficient showing to support a reasonable belief that jury misconduct occurred. (*People v. Jefflo* (1998) 63 Cal.App.4th 1314, 1322.) Good cause is not shown when the allegations of juror misconduct are unsupported conclusions on the part of a juror or are based upon hearsay or speculation or if they are not "of such a character as is likely to have influenced the verdict improperly." (Evid. Code, § 1150.) We review the denial of a petition for disclosure for an abuse of discretion. (*People v. Jones* (1998) 17 Cal.4th 279, 317.)

After the verdict was received, Bonfiglio's trial counsel received an email from Juror M.B., who claimed she was "pressured to convict" Bonfiglio and said another juror, L.G. also claimed she was "improperly pressured to reach a verdict of guilt." Jurors M.B. and L.G. were then interviewed by Bonfiglio's trial counsel, an associate and

an investigator. Nearly identically worded declarations were prepared by Bonfiglio's counsel for them to sign.

M.B. and L.G. claimed Juror 3, the foreman, "told the other jurors that he had signed onto the internet and conducted research about the effects of methamphetamine on human behavior." L.G. said the foreman "shared this information with the other jurors during deliberations." M.B. said the foreman shared the information with the other jurors and "argued based on this information that Mr. Bonfiglio was guilty." M.B. and L.G. added that prior to deliberations Juror 3 "also told some of the jurors on two occasions that . . . his adult daughter or a friend of hers, . . . told him she had worked with Monic Barnett, Mr. Bonfiglio's girlfriend at the time Samayoa was shot and [who was] a witness at trial. Juror No. 3 said his daughter told him Barnett was no longer dating Mr. Bonfiglio."

First, the claim that Juror 3 researched the effect of methamphetamine on behavior is hearsay. M.B. and L.G. said Juror 3 told "the *other* jurors" he did some internet research and shared it with "the *other* jurors." Since the declarations prepared by Bonfiglio's trial counsel do not describe what the foreman's research allegedly turned up or what data was shared with other jurors, the claimed misconduct plainly came from unidentified third persons and is hearsay. Its effect, if there were any, can only be the subject of speculation.

Moreover, the trial was littered with "information" about methamphetamine and its effects on human behavior. Bonfiglio's trial counsel asked him to describe its effects and he also questioned a witness about its effects. There is no reason to believe that even if Juror 3 uncovered something about methamphetamine in his online research and shared it with jurors, that it had any impact on jurors' deliberation of the question of whether Bonfiglio harbored an intent to kill when he aided and abetted Martinez and Tiscareno in the robbery-murder of Samayoa. M.B. and L.G. do not claim that the foreman's research about methamphetamine created a bias in them against Bonfiglio.



How the remarks by M.B. and L.G. about the faint connection between Juror 3's daughter (or a friend or hers) and Monic Barnett warrant disclosure of confidential juror information is unclear.

The trial court reasonably concluded that appellant had not made a prima facie showing sufficient to warrant disclosure of jurors' confidential information. (*People v. Hayes* (1999) 21 Cal.4th 1211, 1256-1257.) Requiring other jurors to testify would have amounted to a "fishing expedition to search for possible misconduct." (*People v. Avila* (2006) 38 Cal.4th 491, 604.)

#### *Motion for a New Trial*

A new trial based upon juror misconduct results in a new trial if there appears a substantial likelihood that a juror was improperly influenced to the defendant's detriment. (*People v. Hensley* (2014) 59 Cal.4th 788, 894 ; *People v. Danks* (2004) 32 Cal.4th 269, 302; *In re Carpenter* (1995) 9 Cal.4th 634, 650-655.) Misconduct raises a presumption of prejudice which the prosecution must rebut by demonstrating that there is no substantial likelihood that any juror was improperly influenced to the defendant's detriment. (*In re Boyette* (2013) 56 Cal.4th 866, 892.) Improper influence or bias may be manifested in two ways "(1) if the extraneous material, judged objectively, is so prejudicial in and of itself that it is inherently and substantially likely to have influenced a juror; or (2) even if the information is not "inherently" prejudicial, if, from the nature of the misconduct and the surrounding circumstances, the court determines that it is substantially likely a juror was "actually biased" against the defendant." (*Id.*, at p. 891.)

Here, even assuming Juror 3 consulted the internet about the effect of methamphetamine on the human body and shared that information with other jurors, that information is unrelated to the subject matter of this appeal; viz., whether substantial evidence supports the jury's finding that Bonfiglio, with the intent to kill, aided and abetted Martinez and Tiscareno in the robbery and murder of Samayoa. The effect of methamphetamine was neither an element of the case made by the prosecution nor part of Bonfiglio's defense. Bonfiglio did not contend, for example, that he was under the influence of methamphetamine or some other controlled substance to the point

that his capacity to form the intent to kill was diminished or extinguished. (*In re Boyette*, *supra*, 56 Cal.4th at p. 892; see *People v. Nunez and Satele* (2013) 57 Cal.4th 1, 55; *People v. Danks*, *supra*, 32 Cal.4th at p. 309.) There is no substantial likelihood that any juror was improperly influenced to the defendant's detriment by Juror 3's research on methamphetamine.

#### DISPOSITION

The judgment is affirmed.

BURKE, J.\*

We concur:

GILBERT, P. J.

YEGAN, J.

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\* (Judge of the Superior Court of San Luis Obispo County, assigned by the Chief Justice pursuant to art. 6, § 6 of the Cal. Const.)

Mark C. Kim, Judge

Superior Court County of Los Angeles

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