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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.

THOMAS ANDREW HUGHES,

Defendant and Appellant.

B282532

Los Angeles County  
Super. Ct. No. BA425964

APPEAL from a judgment of the Superior Court of  
Los Angeles County, Bernie C. LaForteza, Judge. Affirmed.

Julie Schumer, 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, Scott A. Taryle, Deputy Attorney General,  
for Plaintiff and Respondent.

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A jury convicted Thomas Andrew Hughes of the attempted willful, deliberate, and premeditated murder of his wife Gloria,<sup>1</sup> with the use of a deadly weapon and the infliction of great bodily injury. Witnesses at trial testified Hughes repeatedly hit Gloria in the head with a sledgehammer. We affirm his conviction.

### **BACKGROUND**

An information filed October 14, 2014 alleged that on June 8, 2014, Hughes willfully and with premeditation attempted to murder Gloria, using a deadly weapon (a sledgehammer). (Pen. Code,<sup>2</sup> §§ 664, 187, subd. (a).) The information also alleged that Hughes personally inflicted great bodily injury on Gloria under circumstances involving domestic violence. Hughes pleaded not guilty.

At trial, Yvonne R. testified that on June 8, 2014, she lived on the second floor of a Los Angeles apartment building owned by Hughes and Gloria. Hughes lived downstairs in a first-floor apartment. Yvonne R. had planned an outing with Gloria. When Gloria arrived with her grandson in the car, she called Yvonne R., who went out onto her porch and saw Gloria in the alleyway and in the yard, talking to the gardener.

Hughes came out of his apartment, walked to his car parked down the street, and backed the car up to park in front of the apartment house, where the street met the alley. Hughes then opened the car trunk, rummaged inside, and sat in the trunk with his arms folded.

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<sup>1</sup> We refer to the victim by her first name. (Cal. Rules of Court, rule 8.90(b)(4).)

<sup>2</sup> All subsequent statutory references are to the Penal Code.

Gloria came up the exterior steps to Yvonne R.'s apartment. She and Yvonne R. went inside to make plans for dinner and a trip to the beach. After 10 to 15 minutes, Gloria left, telling Yvonne R. to wait until she went down the stairs. From where Yvonne R. stood inside the storm door, she could not see Gloria going down the stairs. When Yvonne R. heard a scream, she opened the door and went out. She saw Gloria lying on the ground unconscious, with blood coming from her head. Gloria's grandson was screaming in the street.

Yvonne R. called the police, hearing the sound of additional impacts while on the phone. When she went back outside, Hughes was standing by his car with a sledgehammer in one hand and a cell phone in the other; he looked calm. When paramedics and police arrived, Hughes was talking on his cell phone, and the police told him to " 'drop it.' "

The prosecutor played a recording of Hughes's 911 call for the jury. Hughes said: "I need emergency. I just killed my wife. . . . I hit her in the head with a hammer. . . . My wife was harassing me over here at my apartment and I just couldn't take [it] no longer." Yvonne R. identified Hughes in a photo array, and gave the police a statement consistent with her testimony.

Gloria's and Hughes's grandson was about ten years old at the time of the sledgehammer attack. He testified that while he was waiting in Gloria's car, he heard Hughes yelling. When Hughes walked up to Gloria, she said, " 'Thomas,' " and then Hughes hit Gloria multiple times with the sledgehammer in the head and the leg. Gloria did not hit Hughes.

Leonard W. lived close by and knew Hughes and Gloria. On the day of the attack he was visiting a friend across the street. Leonard W. saw Hughes come out of his apartment and

hit Gloria from behind with his fist, knocking her to the ground. Hughes then walked to his car, popped the trunk, got the sledgehammer, and hit Gloria in the head with the sledgehammer more than five or six times. When Gloria lay still, her wig came off. Hughes stopped hitting her, put the wig back on her head, and started hitting her with the hammer again. Leonard W. called the police.

Gloria testified that she awoke from an induced coma in the hospital 15 days after the sledgehammer attack. Her head was wrapped in bandages covering over 100 stitches, and she was in great pain in her head, arms, and legs. Gloria was discharged after two months of rehabilitation and physical and occupational therapy. She still used a wheelchair, could not walk without assistance, experienced dizziness and had no sense of smell, was in constant pain, and needed a caregiver. She no longer was able to work as a teacher of special needs children.

Gloria and Hughes had been married over 40 years, and at the time of the sledgehammer attack they were going through a contentious divorce. They had owned the apartment building since 2001, and Hughes “felt that he should own the building totally and fully.” Three days before the attack, on June 5, 2014, the superior court had ruled that Gloria was to collect the rents and manage the building, and Hughes was to pay the mortgage. Hughes was “very upset in the court” and angry, believing he should be the one to manage the apartment building.

Gloria drove to the apartment building on the day of the attack with her grandson, to pay the gardener and visit her friend Yvonne R. Hughes came out of his downstairs apartment. Gloria said hello, and they exchanged no other words. She saw Hughes go to his car, reenter his apartment, reemerge, and move

his car to the end of the sidewalk before the alley. As Gloria walked up the stairs to Yvonne R.'s apartment, she saw Hughes open the trunk and sit inside. His legs were dangling out, he was on his cell phone, and a long handle was sticking out of the trunk. She went outside periodically to keep an eye on her grandson, and saw Hughes sometimes by the car and sometimes not. When she left the second-floor apartment, she went downstairs before Yvonne R. so Hughes would not see them together. After Gloria reached the bottom of the stairs, she remembered nothing until she woke up in the hospital over two weeks later.

A neighbor who was out in his yard across the street saw Hughes remove a sledgehammer from his car trunk and take it into his apartment. When Hughes came out, he hit Gloria in the head with the sledgehammer. She fell to the ground and he kept hitting her. The neighbor yelled for him to stop, but Hughes did not react and continued to hit Gloria. Hughes returned to the car and sat on the car trunk with the sledgehammer beside him, and the neighbor called the police. Gloria tried to get up; Hughes went back and hit her another seven or eight times with the sledgehammer before returning to the car trunk. When Gloria moved again, Hughes grabbed the sledgehammer and was about to hit her again, but more people had gathered and he stopped, returned to the car, and made a call. The neighbor heard no yelling before the sledgehammer attack.

The neighbor's wife saw Hughes, who seemed "pensive," open his trunk and move things around, take the sledgehammer out of the trunk, and go into the apartment. She was connecting a garden hose when she heard a scream. She turned around to see Hughes hitting Gloria on the nape of her neck with a sledgehammer. Hughes stopped and sat on the trunk of his car,

watching Gloria on the ground. When Gloria moved, he got up and hit her repeatedly. He paused again, and poked Gloria with the sledgehammer to see if she was still alive. When she moved, he started hitting her again. He stopped and made a call on his cell phone.

A Los Angeles Police Department officer testified he arrived to find Gloria stretched out unmoving on the ground behind the apartment house fence, her hair matted with blood and blood everywhere. Hughes was leaning against his car with a sledgehammer next to him, talking on a cell phone. A crowd of seven to 10 people all pointed at Hughes and said he did it. The jury was shown the sledgehammer, which had on it what appeared to the officer to be dried blood.

When Detective Michael Estrada arrived to secure the scene, Hughes was standing next to his car. Gloria was lying on the ground in a pool of blood, bleeding profusely from an open head wound, and Detective Estrada thought she was dead. Paramedics arrived and took her away.

Hughes testified in his own defense. At the time of the attack, he and Gloria had been married for over 40 years. For more than two years they had been in contentious divorce proceedings. His health was failing, and she “just didn’t want to be bothered.” Gloria made him leave their house in Altadena, and he was living in the apartment building without paying rent. He was not upset by any court decision about the apartment building.

On the day of the attack he had been drinking vodka and taking drugs for depression. He expected a friend to come over to watch sports and play chess, and went out to the car to get his chessboard. Hughes backed his car up to the front of the house.

His brother called, and while Hughes was on the phone he popped the trunk, where he kept a bucket of tools, including the sledgehammer. As he retrieved his chessboard, Gloria confronted him and accused him of not paying his spousal support. When Hughes ignored her, she came at him, grabbed his neck, and hit him in the chest. He “just snapped,” grabbed the hammer out of the trunk, panicked, and hit Gloria in the head with the hammer.

He loved his wife and did not intend to hit or kill her; instead, he was defending himself. “I was like in a trance, and I woke up and I had this hammer in my hand, and I see my wife laying there with blood everywhere, so I just assumed she was dead. I called the police.” He did not remember what he said in the 911 call. Hughes also did not remember hitting Gloria multiple times. Shown a photograph of her injuries and asked if that’s what he did to her, he agreed “[i]t’s evident.”

Psychiatrist Dr. Ronald Markman testified he had reviewed Hughes’s medical history and interviewed him four times. Hughes did not cooperate during the first two interviews. After two meetings in March 2016, Dr. Markman concluded that Hughes did not suffer from a major psychiatric disorder or psychosis, was competent to stand trial, and was sane when he attacked Gloria with the sledgehammer. Hughes’s use of alcohol and drugs and the emotional intensity of that day’s events meant “he would have had difficulty considering options other than the action he took . . . . I think he acted in a very thoughtless manner, without consideration of the consequences.” Dr. Markman relied entirely on Hughes’s statements about what happened, including how much alcohol or drugs he had consumed on the day of the sledgehammer attack.

The jury convicted Hughes of attempted murder with premeditation and deliberation, and found true the allegations that Hughes used a deadly weapon and inflicted great bodily injury under circumstances of domestic violence. The trial court sentenced Hughes to life with eligibility for parole after seven years, plus a determinate three-year term for the great bodily injury enhancement, and imposed fines, fees, and restitution.

### **DISCUSSION**

#### **1. *Sufficient evidence supported Hughes’s conviction***

Hughes argues the evidence was insufficient to establish premeditation and deliberation. To the contrary, there was ample evidence that Hughes’s sledgehammer attack on Gloria was premeditated and deliberate.

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 Hughes premeditated and deliberated. (*People v. Perez* (1992) 2 Cal.4th 1117, 1124.)

“Attempted murder is not divided into different degrees. [Citations.] ‘[T]he provision in section 664, subdivision (a), imposing a greater punishment for an attempt to commit a murder that is “willful, deliberate, and premeditated” does not create a greater degree of attempted murder but, rather, constitutes a penalty provision that prescribes an increase in punishment (a greater base term) for the offense of attempted murder.’” (*People v. Favor* (2012) 54 Cal.4th 868, 876-877.)

“An intentional killing is premeditated and deliberate if it occurred as the result of reflection rather than unconsidered or rash impulse. [Citations.] However, the requisite reflection need



not span a specific or extended period of time. Thoughts may follow each other with great rapidity, and cold, calculated judgment may be arrived at quickly.” (*People v. Nelson* (2011) 51 Cal.4th 198, 213 (*Nelson*).)

“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 . . . .” (*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 here provides a reasonable foundation for a jury to infer Hughes premeditated and deliberated. Witnesses testified that Hughes backed his car up and parked it close to the apartment building, removed the sledgehammer from the trunk, sat in the trunk, and then went back inside his apartment. He emerged from his apartment when Gloria came down the stairs, and struck her in the head with the sledgehammer from behind. Hughes “clearly formed an intent to kill and took several steps to achieve that end” (*Nelson, supra*, 51 Cal.4th at p. 213) when he backed his car up, got the sledgehammer out of the trunk, and waited for Gloria to come down the stairs before attacking her.

In addition, Hughes and Gloria had been married for over 40 years and were involved in a contentious divorce. Gloria had recently been awarded the rents from the apartment building, which she testified angered Hughes. This is evidence “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,” which, combined with the evidence of planning activity, supports a finding that the sledgehammer attack was the product of pre-existing reflection rather than rash impulse. (*Anderson, supra*, 70 Cal.2d at pp. 26-27, italics omitted.)

Although evidence of planning and motive evidence suffices to support a finding of premeditation and deliberation (*People v. Boatman* (2013) 221 Cal.App.4th 1253, 1266), we note that three eyewitnesses testified that Hughes stopped hitting Gloria, checked to see if she was still alive, and when she moved, resumed hitting her in the head with the sledgehammer. Hughes’s pauses during the attack, followed by renewed blows to Gloria’s head after Hughes confirmed that Gloria was not dead yet, are strong evidence that he had time to reflect during the attack and form a cold, calculated decision to kill Gloria. (*Nelson, supra*, 51 Cal.4th at p. 213.) A brutal attack “is, at least in a vacuum, associated with someone losing his mind and going berserk, which is not a state of mind we associate with premeditation or deliberation.” (*People v. Nazeri* (2010) 187 Cal.App.4th 1101, 1118.) Here, Hughes’s pauses during the attack show he could control his impulses. And his attack did not occur “in a vacuum,” but amid evidence of planning activity and motive to kill.

Finally, Hughes testified Gloria attacked him first, but every eyewitness testified to the contrary, so the jury could



The defense did not object to the prosecutor's remark, so the claim that the remark was misconduct is not preserved for appeal. We note that in any event, the prosecutor did not—as Hughes contends—argue that Hughes had the burden of proof. “Comments on the state of the evidence or on the defense's failure to call logical witnesses, introduce material evidence, or rebut the People's case are generally permissible. [Citation.] However, a prosecutor may not suggest that ‘a defendant has a duty or burden to produce evidence, or a duty or burden to prove his or her innocence.’” (*People v. Woods* (2006) 146 Cal.App.4th 106, 112.)

Here, the prosecutor commented on the state of the defense evidence, which consisted of Hughes's testimony and Dr. Markman's testimony (based on what Hughes told him). “A distinction clearly exists between the permissible comment that a defendant has not produced any evidence, and on the other hand an improper statement that a defendant has a duty or burden to produce evidence, or a duty or burden to prove his or her innocence.” (*People v. Bradford* (1997) 15 Cal.4th 1229, 1340.) It was not misconduct to comment that the defense evidence was weak and entirely dependent on Hughes's account of the events. Because Hughes's argument has no merit, it was not error to fail to object, and Hughes's counsel did not provide ineffective assistance. (*People v. Young* (2007) 156 Cal.App.4th 1165, 1171.)

**DISPOSITION**

The judgment is affirmed.

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EGERTON, J.

We concur:

EDMON, P. J.

LAVIN, J.