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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE, Plaintiff and Respondent, v. ROBERT AL LAMMERS, Defendant and Appellant.	B276229 Los Angeles County Super. Ct. No. TA132247

APPEAL from a judgment of the Superior Court of Los Angeles County, Pat Connolly, Judge. Affirmed in part, reversed in part, and remanded with directions.

Lise M. Breakey, 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, Blythe J. Leszkay and Nima Razfar, Deputy Attorneys General, for Plaintiff and Respondent.

INTRODUCTION

Defendant Robert Al Lammers, a bipolar methamphetamine addict, was convicted of three counts of premeditated attempted murder and one count of assault after he went on a three-day spree in which he approached Hispanic men in public places, stabbed them with a folding knife, and fled in his car. Though a defense expert testified defendant was delusional at the time, the jury was instructed that it could consider defendant's mental illness *only* when deciding whether he acted with intent to kill. Defendant contends this was error because his mental illness was also relevant to whether he premeditated and deliberated the attempted killings. We agree and conclude the error was prejudicial as to count 1 but harmless as to counts 2 and 5. We therefore reverse count 1.

We also hold the court erred by doubling defendant's indeterminate sentences for counts 1, 2, and 5—imposing *two* indeterminate terms for each count subject to a life sentence—rather than doubling the minimum period of incarceration as required under the Three Strikes law. Because defendant's sentence is unauthorized, we vacate the sentence and remand for resentencing.

PROCEDURAL BACKGROUND

By information dated April 2, 2014, defendant was charged with three counts of premeditated attempted murder (Pen. Code,[1] § 664/187, subd. (a); counts 1, 2, 5), one count of assault with a deadly weapon (§ 245, subd. (a)(1); count 3), and one count of criminal threats (§ 422, subd. (a); count 4). The information also

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1 All undesignated statutory references are to the Penal Code.

alleged defendant personally inflicted great bodily injury (§ 12022.7, subd. (a)) in counts 1, 2, and 5; that he used a knife (§ 12022, subd. (b)(1)) in counts 1, 2, 4, and 5; and that he had suffered one strike prior (§ 667, subd. (d); § 1170.12, subd. (b)), one serious-felony prior (§ 667, subd. (a)(1)), and two prison priors (§ 667.5, subd. (b)). Defendant pled not guilty and denied the allegations.[2]

On June 5, 2014, defendant was found incompetent to stand trial under section 1368. He was remanded to Patton State Hospital on August 19, 2014. On February 25, 2015, after Patton certified defendant as mentally competent, the court reinstated proceedings. On June 30, 2015, defendant changed his plea to not guilty by reason of insanity.

After the guilt phase of a jury trial at which he did not testify, the jury found defendant guilty of all remaining counts and found the remaining allegations true. After the sanity phase, the jury found defendant sane.

The court denied defendant's motion to dismiss his prior strike and sentenced him to an aggregate determinate term of 17 years followed by six consecutive indeterminate life terms. For count 1 (§ 664/187, subd. (a)), the court imposed two indeterminate life sentences—the mandatory term of life in prison, doubled to two life terms based on the court's understanding of the Three Strikes law (§ 667, subds. (b)–(i); § 1170.12, subds. (a)–(d)). The court added three years for the great-bodily-injury enhancement (§ 12022.7, subd. (a)) and one year for the deadly-weapon enhancement (§ 12022, subd. (b)(1)),

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[2] During trial, the court granted the prosecution's motion to dismiss count 4 and one of the prison priors.

to run consecutively. The court imposed the same sentence for counts 2 and 5 (§ 664/187, subd. (a)), then added five years for the serious-felony prior (§ 667, subd. (a)), to run consecutively.[3] The court struck defendant's prior strike conviction for purposes of count 3 (§ 245, subd. (a)(1)) only and sentenced him to the midterm of three years, to run concurrently.

Defendant filed a timely notice of appeal.

FACTUAL BACKGROUND

1. Defendant stabs Alberto Robles at a car wash (count 1).

On July 28, 2013, at around 4:30 p.m., witness Armando Perez saw a small, dark-colored sedan pull into a car wash on Alondra Boulevard in Bellflower. The driver, later identified as defendant, parked and got out of the car.

At some point thereafter, Alberto Robles was stabbed once in the stomach.[4] Robles approached Brenda Cuevas, who was washing her car, and told her he had been stabbed. He was holding his stomach and pointed towards defendant.

Defendant got in his green Honda and drove off. He appeared to be fidgeting and trying to conceal something. Cuevas called 911.

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[3] After the time for normal briefing had elapsed, we asked the parties to submit letter briefs addressing whether the six life sentences were authorized under the Three Strikes law.

[4] Robles did not testify at trial.

2. Defendant stabs Isidro Silva and assaults Marco Lauzano at a 99¢ Only store (counts 2 and 3).

The next day, July 29, 2013, Isidro Silva and his brother-in-law Marco Lauzano were walking toward the entrance of a 99¢ store in Artesia. Defendant, who had parked in the store's parking lot, got out of his car. He took three or four steps towards the store's entrance, doubled back to his car, paused, then started walking back toward the entrance. As he walked, he watched Silva and Lauzano proceed through the parking lot. Silva and Lauzano split up to walk on opposite sides of a parked SUV, and defendant slowed his gait until he was next to Silva. Defendant asked Silva if he spoke English, then immediately stabbed him in the arm with a knife.[5]

Silva ran, and defendant headed back to his car. Lauzano yelled after defendant, who turned to face him; defendant started calling Lauzano names and approached him with the knife. Lauzano and Silva fled in their car. Defendant also drove off.

Silva later identified defendant from a six-pack photographic lineup.

3. Defendant is apprehended after stabbing Oswaldo Reynoso at a bus stop (count 5).

The next day, July 30, 2013, at about 5:00 p.m., Oswaldo Reynoso was waiting for a bus at a bus stop in Compton when defendant pulled his dark-colored Honda up to the curb, parked, and got out. Defendant approached Reynoso and asked if he spoke English. Reynoso ignored him. Suddenly, Reynoso felt a

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[5] A surveillance camera captured aspects of this incident, but the stabbing itself was obscured by an awning near the store entrance.

"needle prick" at the bottom of his left ribcage that caused blood to ooze out. Reynoso tried to flee, but when he fell after a few steps, defendant grabbed the backpack Reynoso was wearing, pulled it aside, and stabbed him in the back. Reynoso lost consciousness and ultimately awoke at a hospital where he was treated for two stab wounds and significant blood loss. Sharann Gomez witnessed the stabbing while she was stopped at a red light and called 911.

Deputy Ricardo Garcia responded to the call. After searching the area—armed with a description of a bald, white male driving an older two-door Honda or Toyota with a partial license plate number—he pulled defendant over and detained him pending a field identification. Garcia thought defendant seemed calm, not intoxicated or mentally impaired. After Gomez identified defendant as the person who attacked Reynoso, deputies arrested him and impounded the car. Reynoso later identified defendant from a six-pack photographic lineup and at trial.

A search of defendant's car revealed numerous interior bloodstains and a folding knife covered in blood. Blood was discovered on the driver's interior door panel, exterior door, and headrest. The knife was recovered from under the center console. DNA extracted from the blood samples in the car matched defendant's DNA. DNA extracted from the blood on the knife was linked to defendant and to a fourth stabbing victim, Fernando Caballero of Orange County.

4. Other Crimes Evidence

At 6:00 p.m. on July 30, 2013—an hour after defendant stabbed Reynoso—Fernando Caballero waited at a bus stop in Orange County with his roommate, William Ross. Defendant

pulled up alongside them and parked, then got out of the car and looked under the hood as if he were checking something. He approached the two men and asked for directions. Caballero and Ross turned away momentarily to show defendant where to go, and when Caballero looked back, defendant lunged at him. Caballero leaned back, but defendant was able to stab him in the left arm. As defendant pulled his arm back, Caballero saw that he was holding a knife. Caballero fled, but defendant pursued him, swinging the knife at his chest. After failing to make contact a second time, defendant stopped, returned to his car, and drove away.

Detective David Hermann of the Anaheim Police Department testified that he obtained a warrant to search defendant's apartment and car in connection with a June 2007 stabbing. The search of the apartment revealed a pin that said, "Speak English or get the fuck out." Inside the Honda, police found a Department of Corrections identification card belonging to defendant, a cream-colored shirt covered in blood, a white shirt bearing the handwritten phrase, "chicken shit MEX," and a glass pipe used to smoke methamphetamine.

5. Defense Evidence

Dr. Gordon Plotkin testified in both the guilt and sanity phases as a defense psychological expert.[6] Plotkin opined that defendant has a mental disease, disorder, or defect—namely, bipolar disorder with psychotic symptoms. Defendant's manic episodes are irritable, not euphoric, and his auditory

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[6] Because the evidence presented during the sanity phase is not relevant to this appeal, we limit our discussion to evidence presented during the guilt phase.

hallucinations and paranoid delusions are consistent with that irritability: he believes people are after him. Defendant forms ideas of reference, which cause him to misperceive the actions of others and infer alternative meanings from situations filtered through his delusions. He interprets other people as conspiring against him and as out to get him, which leads to poor judgment and insight. Defendant's symptoms have been consistent over time and have been documented in prison, by police, and during psychiatric holds under Welfare and Institutions Code section 5150.

In short, during a manic episode, defendant becomes irritable, suspicious, and paranoid. These symptoms impair his thinking, functioning, and judgment, and can affect his ability to control his impulses and frustrations. Plotkin believed defendant was in a manic state at the time of the stabbings, and the attacks were motivated by his delusions that the victims were mocking and threatening him. Plotkin explained: "I believe that without the delusions that were prompting his behavior, he wouldn't have committed those crimes. He was delusional, hallucinating, and paranoid, and getting messages from the victims."

At the car wash, defendant believed Robles was talking about him and laughing at him, so he stabbed Robles and fled. At the 99¢ store, defendant got out of his car and saw a couple of men laughing at him and making fun of him, so he stabbed Silva in the arm. In Compton, defendant saw Reynoso walk across the street to the bus stop with his hands in his pockets. Defendant believed Reynoso was "playing with himself," and thought he was sending signals to defendant and publically humiliating him by making fun of defendant's own masturbation.

Plotkin resisted the prosecutor's attempts to characterize the victims' perceived behavior as provoking rather than threatening—because a psychotic person cannot distinguish between provoking behavior and threatening behavior. Here, Plotkin explained, defendant "felt threatened by the people making fun of him, that were talking about him, that they were giving him signals. He was paranoid. He was delusional." And his actions were a product of the paranoia and delusions.

DISCUSSION

Defendant argues that the court committed prejudicial error by instructing the jury, in effect, that it could not consider his mental illness in deciding whether he acted with premeditation and deliberation. In response to our request for letter briefs, defendant also argues that the court imposed three unauthorized life sentences.

1. The jury instruction on mental impairment was erroneous.

1.1. Defendant has not forfeited his claim of instructional error.

As a preliminary matter, the People insist defendant's failure to object to the instruction on this ground at trial forfeited the error. The People are mistaken.

"A trial court in a criminal case is required to give correct jury instructions on the general principles of law relevant to issues raised by the evidence. [Citation.]" (*People v. Cruz* (2016) 2 Cal.App.5th 1178, 1183.) Although instructions relating mental state evidence to charged offenses need not be given sua sponte, "once a trial court undertakes to instruct on a legal point, it must do so correctly. [Citation.] An instruction not erroneous, deficient,

or misleading on its face … may become so in particular circumstances. [Citation.]" (*People v. Townsel* (2016) 63 Cal.4th 25, 58 (*Townsel*).)

The record before us does not include a transcript of any instruction conference at which the specific modifications to CALCRIM No. 3428 were discussed, but it appears from comments in the reporter's transcript that the defense requested the general instruction and the prosecution edited it to include the language at issue here. (See *Townsel*, *supra*, 63 Cal.4th at p. 59.) Defendant does not appear to have objected that the edited instruction was incomplete or unclear.

Nevertheless, we "may review defendant's claim of instructional error, even absent objection, to the extent his substantial rights were affected." (*Townsel*, *supra*, 63 Cal.4th at pp. 59–60 [considering erroneous instruction with precursor to CALCRIM No. 3428 despite defendant's failure to object below]; § 1259 [we "may also review any instruction given, refused or modified, even though no objection was made thereto in the lower court, if the substantial rights of the defendant were affected thereby"]; § 1469 [same].) Whether a defendant's substantial rights were affected, of course, can only be determined by deciding if the instruction as given was flawed and, if so, whether the error was prejudicial. (*People v. Hudson* (2006) 38 Cal.4th 1002, 1011–1012 [forfeiture rule does not apply to incorrect statements of law].) That is, if defendant's claim has merit, it has not been forfeited. Thus, we must necessarily review the merits of his claim.

We review instructional errors de novo. (*People v. Manriquez* (2005) 37 Cal.4th 547, 581.)

1.2. The mental impairment instruction was erroneous.

We begin by reviewing the relevant instructions given below.

First, the court instructed the jury that to convict defendant of attempted murder in counts 1, 2, and 5, the People had to prove: "1. The defendant took at least one direct but ineffective step toward killing another person; and 2. The defendant intended to kill that person." (CALCRIM No. 600.) The court then elaborated on the direct step element.

Next, the court explained: "**If you find the defendant guilty of attempted murder** under Counts 1, 2, or 5, you must then decide whether the People have proved the **additional allegation** that the attempted murder was done willfully, and with deliberation and premeditation. [¶] The defendant acted willfully if he intended to kill when he acted. The defendant deliberated if he carefully weighed the considerations for and against his choice and, knowing the consequences, decided to kill. The defendant premeditated if he decided to kill before acting. [¶] … A decision to kill made rashly, impulsively, or without careful consideration of the choice and its consequences is not deliberate and premeditated." (CALCRIM No. 601, emphasis added.)

After instructing on assault with a deadly weapon (count 3) and the prior-conviction allegation, the court instructed: "**If you find the defendant guilty of the crimes charged in Counts 1, 2, or 5,** you must then decide whether, for each crime, the People have proved the **additional allegation** that the defendant personally used a deadly or dangerous weapon during the commission or attempted commission of that crime."

(CALCRIM No. 3145, emphasis added.) Then, the court instructed that if the jury found "the defendant guilty of the crimes charged in Counts 1, 2, or 5," it must decide whether the People proved the "additional allegation" that defendant personally inflicted great bodily injury on a non-accomplice. (CALCRIM No. 3160.) Finally, the court instructed the jury:

> "You have heard evidence that the defendant may have suffered from a mental disease or defect or disorder. *You may consider this evidence only for the limited purpose* of deciding whether, at the time of the **charged crime**, the defendant acted or failed to act with the intent or **mental state required for that crime**.
>
> "The People have the burden of proving beyond a reasonable doubt that the defendant acted or failed to act with the required intent or mental state, **specifically: Intent to Kill**. If the People have not met this burden, you must find the defendant not guilty of Attempted Murder."

(CALCRIM No. 3428, emphasis added.)

The People, citing *Townsel*, argue these instructions "accurately informed the jury how to incorporate appellant's mental disorder into its analysis." We disagree.

In *Townsel*, the court instructed the jury that it could consider evidence of the defendant's mental disease or defect " 'solely for the purpose of determining whether or not the defendant … actually formed the mental state which is an element of the crime charged in Counts 1 and 2, to wit, murder.' " (*Townsel*, *supra*, 63 Cal.4th at p. 59.) Earlier instructions had

described premeditation and deliberation as elements of the charged crime of first-degree murder. (*Id.* at pp. 62–63.) Because these mental states were embedded *within the murder instruction itself*, the mental illness instruction's reference to the " 'mental state which is an element' " of the offense, plainly "encompassed the concepts of premeditation and deliberation." (*Ibid.*)

Here, by contrast, the attempted murder instruction, CALCRIM No. 600, did not encompass premeditation and deliberation. Unlike the jury in *Townsel*, the jury in this case was instructed to determine *first* whether defendant was guilty of attempted murder and *then* to decide whether the people "proved the additional allegation that the attempted murder was done willfully, and with deliberation and premeditation." (CALCRIM No. 601.) By explicitly identifying premeditation and deliberation as an "additional allegation" (*ibid.*), the instructions separated those concepts from the "mental state required for" (*id.*, No. 3428) attempted murder itself. Other instructions, which used identical language to describe the deadly-weapon and great-bodily-injury allegations, reinforced that division.

The mental impairment instruction, CALCRIM No. 3428, simply applied the distinction between crimes and allegations that the earlier instructions had set up. The first paragraph told the jury it could consider evidence of defendant's mental disease or defect "*only for the limited purpose* of deciding whether, at the time of the *charged crime*," defendant acted with the "mental state required *for that crime*." (Italics added.) Then, the second paragraph clarified that "the required intent or mental state" for the charged crime of attempted murder was "Intent to Kill." The instruction in *Townsel* did not contain such clarifying language.

Thus, taken together, the court instructed the jury that to convict defendant of the *charged crime* of attempted murder, the People needed to prove intent to kill. To decide whether the People met their burden, the jury could consider defendant's mental illness. If it found defendant guilty of attempted murder, the jury *then* had to "decide whether the People have proved the additional allegation[s] that" defendant (1) acted with premeditation and deliberation, (2) personally used a deadly weapon, and (3) personally inflicted great bodily injury. In making those decisions, it could not consider defendant's mental illness.[7]

"Defendant is correct that in directing the jury to consider the evidence of his [mental illness] solely on the question whether he formed the mental state required for the [attempted] murder charges, the instruction effectively told the jury it must not consider that evidence on any other question before it. We presume the jury followed the instruction. [Citation.] Therefore, if defendant was entitled to have the evidence considered on any other charge or allegation … the instruction violated that right." (*Townsel*, *supra*, 63 Cal.4th at p. 63.)

Here, defendant's defense rested on the premise that he acted rashly in response to his delusions "rather than out of rational thought, a planning process, or a weighing of the

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[7] The prosecutor's closing argument reinforced this interpretation of the instructions. She explained, "So that's the attempt murder. Let's talk now about once you find the defendant guilty of counts 1, 2, and 5, attempted murder, you're going to have these *special allegations* to look at. One of them is that he did it willfully, deliberately, and with premeditation." (Italics added.) After discussing that "special allegation," she went on to the next one: great bodily injury.

consequences. Because the trial court effectively instructed the jury *not* to consider that evidence" when evaluating premeditation and deliberation, "it erred under both state law and the federal Constitution." (*Townsel*, *supra*, 63 Cal.4th at pp. 63–64.)

1.3. We evaluate prejudice under *Chapman v. California*.

Although we conclude the trial court committed instructional error, we will not reverse the judgment unless we also determine the error was prejudicial. Defendant contends the error violated his federal due process right to have the jury consider his defense at trial, therefore requiring the People to prove beyond a reasonable doubt that the error was harmless. (*Chapman v. California* (1967) 386 U.S. 18, 23–24 (*Chapman*).) The People assert the error is one of state law, which requires defendant to establish that it is reasonably probable he would have achieved a more favorable result absent the error. (*People v. Watson* (1956) 46 Cal.2d 818, 836.)

In *Townsel*, the Supreme Court applied *Chapman* to the instructional error at issue here. The court explained, "Because the trial court effectively instructed the jury *not* to consider that evidence on the charge and allegation, it erred under both state law and the federal Constitution." (*Townsel*, *supra*, 63 Cal.4th at p. 64.) Then, citing *Chapman*, the court held that the People failed to meet their burden of "showing that the guilty verdict on the dissuading charge and the true finding on the witness-killing special-circumstance allegation were 'surely unattributable' to the trial court's error in essentially instructing the jury not to consider the [mental disorder] evidence in relation to that charge and allegation." (*Townsel*, at p. 64.)

Following *Townsel*, we apply *Chapman* to the instructional error in this case and assess whether the People have proven beyond a reasonable doubt that the error was harmless. (*Chapman*, *supra*, 386 U.S. at pp. 23–24.) The People, however, do not address any individual count. Instead, they contend generally that the "evidence that appellant premeditated and deliberated the stabbings was compelling. Appellant's coordinated actions involving the sudden use of a concealed knife at an opportune moment and unprovoked attacks on the victims demonstrated premeditation. His statements before stabbing two of the victims asking whether they spoke English along with related racist belongings found during a prior search provided a motive based on racial animosity."

The People also argue any error was harmless because "the defense theory centered on a complete rejection of any requisite specific intent based on appellant's mental illness. Defense counsel did not mention premeditation or deliberation during closing argument, and instead emphasized how the only issue before the jury was whether appellant meant to kill the victims or not."[8]

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[8] The People also point out that the court gave other, correct instructions on premeditation, intent to kill, and specific intent. Be that as it may, those instructions did not tell the jurors they could consider defendant's mental illness when evaluating whether he premeditated and deliberated the stabbings. As such, they have no bearing on whether the instructional error here was prejudicial.

1.4. The instructional error was prejudicial as to count 1.

The evidence of premeditation and deliberation for count 1, the Robles carwash stabbing, was exceedingly weak. While the prosecution established that Robles was stabbed and that defendant stabbed him, the record reveals little else about the incident.[9] (See *People v. Anderson* (1968) 70 Cal.2d 15, 26–27 [premeditation and deliberation assessed by examining evidence of planning, motive, and manner of killing].)

Perez testified that he saw defendant park and get out of his car. But he did not specify whether defendant drove in to the car wash itself, which could suggest that he planned to wash his car, or parked at the curb, which could support an inference that he stopped for another purpose. Cuevas testified that Robles told her he had been stabbed and pointed towards defendant as the perpetrator. But since the witnesses did not see the stabbing and Robles did not testify at trial, there was no testimony about whether defendant spoke to Robles or how soon after defendant's arrival the stabbing occurred.

The jury could, perhaps, have inferred premeditation and deliberation from the other crimes, but even that inference was subject to justifiable suspicion. The car wash incident was the first of the three stabbings. Robles's injuries were less serious than those of the other victims. And unlike the victims of the

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[9] As defendant does not contend there was insufficient evidence to support the jury's finding of premeditation and deliberation, we offer no opinion on that question.

other stabbings, Robles was surrounded by bystanders. All of these factors suggest impulsivity and lack of planning.[10]

In short, the evidence that defendant premeditated and deliberated before stabbing Robles was not "compelling," as the People suggest. There is no evidence that this was an "unprovoked attack[ ]" involving the sudden use of "a concealed knife at an opportune moment … ." The record simply does not reveal what occurred between defendant and Robles.

Nor are we persuaded by the People's contention that defense counsel's focus on intent to kill in closing argument mitigated the prejudicial impact of the instructional error for this count. To be sure, defendant's primary defense in the guilt phase was that he lacked intent to kill—and to focus on premeditation and deliberation would have undermined that defense. But defendant offered evidence that would have supported a not-true finding on the allegation. Plotkin testified at length that defendant's mania impaired his thinking, functioning, judgment, and impulse control. He suggested the attacks were motivated by defendant's delusions that the victims were mocking and threatening him, and that without those delusions, he would not have committed the crimes. Those opinions were consistent with an impulsive—but not premeditated—decision to kill. On this record, then, defense counsel's tactical choice to focus on intent to kill does not establish that the "jury rejected any notion that appellant's mental condition precluded him from" premeditating or deliberating.

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[10] The jury's finding in the sanity phase that defendant was sane when he stabbed Robles does not change our conclusion. As the People acknowledge, in the sanity phase, the *defendant* has the burden of showing that he was legally insane when he committed the crimes.

Accordingly, we conclude the People have not established beyond a reasonable doubt that the error was harmless. (See *People v. McDonald* (1984) 37 Cal.3d 351, 376, overruled on other grounds by *People v. Mendoza* (2000) 23 Cal.4th 896 ["An error that impairs the jury's determination of an issue that is both critical and closely balanced will rarely be harmless."].)

1.5. The instructional error was harmless as to counts 2 and 5.

Unlike count 1, however, there was ample evidence from which the jury could conclude that the acts charged in count 2 (99¢ store) and count 5 (bus stop) were premeditated and deliberate. We therefore conclude that for those counts, the error was harmless beyond a reasonable doubt. (*Chapman*, *supra*, 386 U.S. at pp. 23–24.)

At the 99¢ store, defendant got out of his car, took a few steps towards the store's entrance, then doubled back to his car before heading back toward the store. The jury could reasonably have inferred that defendant returned to his car to retrieve his folding knife. (See *People v. Manriquez*, *supra*, 37 Cal.4th at pp. 577–578 [evidence that defendant left and returned with murder weapon supported a finding of premeditation and deliberation].) The surveillance video from the 99¢ store showed defendant watching Silva and Lauzano walk through the parking lot, then slowing his gait until he was next to Silva. This, too, could be evidence of planning—and notably, the jury asked to re-watch this portion of the video. Defendant asked Silva if he spoke English, then immediately stabbed him in the arm.

According to Plotkin, defendant believed the men were laughing at him and making fun of him, which gave him a motive to act. Because Silva and Lauzano were only walking next to each

other while defendant stood and watched them, defendant must have formed his belief at that point, because by the time defendant slowed down to wait for Silva, Silva and Lauzano had split up.

As to count 5, the Reynoso stabbing at the Compton bus stop, Plotkin's testimony established that defendant stopped his car and got out *so that* he could stab Reynoso based on his delusion that Reynoso was mocking him for masturbating. And this incident was the first time defendant continued to pursue a victim who was fleeing or injured. Moreover, as Reynoso's injuries were worse than the other victims', it was reasonable to infer that defendant was growing increasingly violent with each stabbing.

Finally, this does not appear to have been a close case: after a week-long trial, the jury deliberated for only two hours before reaching a verdict. (Compare *People v. Cardenas* (1982) 31 Cal.3d 897, 907 [six hours of deliberations is evidence of a close case].)

2. Defendant's sentence is unauthorized.

As discussed, the court sentenced defendant to six life terms for the three counts of attempted willful, deliberate, and premeditated murder. The court arrived at this sentence by imposing one indeterminate life sentence for each count and doubling it under the Three Strikes law. We requested supplemental briefing on whether this sentence was unauthorized, and conclude that it was. (See *People v. Scott* (1994) 9 Cal.4th 331, 354 [court may correct unauthorized sentence on appeal].)

The Three Strikes law provides, "If a defendant has one prior serious and/or violent felony conviction … that has been pled and proved, the determinate term *or minimum term for an*

indeterminate term shall be twice the term otherwise provided as punishment for the current felony conviction." (§ 667, subd. (e)(1); § 1170.12, subd. (c)(1), emphasis added.) Under the plain language of this provision, only two types of sentences are doubled: a determinate term and the *minimum term* of an indeterminate term.

A determinate sentence is one "consisting of a specific number of months or years in prison." (*People v. Jefferson* (1999) 21 Cal.4th 86, 92.) An indeterminate sentence means "the defendant is sentenced to life imprisonment." (*Ibid*.) "If the current felony is punished by an *indeterminate* term of imprisonment, the Three Strikes law requires a doubling of the 'minimum term' the defendant must serve. [Citation.] For example, a defendant who has a prior strike and who is convicted of a felony punishable by a term of 15 years to life in prison will receive a sentence of 30 years (2 times 15 years) to life." (*Id*. at pp. 89–90.)

Although section 664, subdivision (a), does not explicitly specify a minimum parole term, it is governed by section 3046, which provides that anyone sentenced to life with the possibility of parole must serve at least seven years or "a term established pursuant to any 'other section of law' that 'establishes a [greater] minimum period of confinement.' " (*People v. Jefferson*, *supra*, 21 Cal.4th at p. 96.) Here, there is no other statute that establishes a greater minimum confinement period. Therefore, the "minimum term" within the meaning of the Three Strikes law is seven years. Thus, the court was authorized to impose, for each

offense, no more than a single life term with a minimum parole period of 14 years. (*Id.* at pp. 89–90.)[11]

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[11] The terms for defendant's conduct and status enhancements were included in the determinate sentence, and as such, are irrelevant to the minimum parole eligible date for the indeterminate sentence. (§ 669, subd. (a) [term for consecutive, determinate enhancement served first and not credited toward indeterminate MEPD].)

DISPOSITION

Count 1 is reversed and remanded for retrial. Defendant's sentence is vacated and the matter is remanded for resentencing in accordance with the views expressed in this opinion. In all other respects, the judgment is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

LAVIN, J.

WE CONCUR:

EDMON, P. J.

EGERTON, J.